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Federal Register

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0908; Project Identifier MCAI–2020–01256–T; Amendment 39–21282; AD 2020–21–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321 series airplanes. As published, a paragraph reference located in the reporting exception is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This correction is effective October 30, 2020. The effective date of AD 2020–21–09 remains October 30, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 30, 2020 (85 FR 65200, October 15, 2020).

The date by which the FAA must receive comments on AD 2020–21–09 remains November 30, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the European Union Aviation Safety Agency (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–2020–0908.

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–2020–0908; 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, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223; email: *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION: AD 2020–21–09, Amendment 39–21282 (85 FR 65200, October 15, 2020) (AD 2020–21–09), currently requires a general visual inspection of the main landing gear (MLG) sliding tubes for cracks, and replacement, if necessary. That AD applies to all Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321 series airplanes.

Need for the Correction

As published, paragraph (h)(3) of the regulatory text of AD 2020–21–09 contains a reference to paragraph (4) of EASA AD 2020–0193, dated September 7, 2020 (EASA AD 2020–0193). However, paragraph (h)(3) of AD 2020–21–09 is an exception to the reporting required by EASA AD 2020–0193. The correct reference to the reporting requirement is paragraph (3) of EASA AD 2020–0193.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0193 describes procedures for a general visual inspection of the MLG sliding tubes for cracks, and replacement, if necessary. 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.

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains October 30, 2020.

Since this action only corrects a paragraph reference located in the reporting exception, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

2020–21–09 Airbus SAS: Amendment 39–21282; Docket No. FAA–2020–0908; Project Identifier MCAI–2020–01256–T.

(a) Effective Date

This AD becomes effective October 30, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

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

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of cracks on the main landing gear (MLG) sliding tubes. The FAA is issuing this AD to address cracks on the MLG sliding tubes, which could cause MLG sliding tube fracture, and could possibly result in the MLG collapsing, damaging the airplane, and injuring 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 2020–0193, dated September 7, 2020 (EASA AD 2020–0193).

(h) Exceptions to EASA AD 2020–0193

(1) Where EASA AD 2020–0193 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0193 does not apply to this AD.

(3) Paragraph (3) of EASA AD 2020–0193 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 15 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 15 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 responsible Flight Standards 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 responsible Flight Standards 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*): Except as required by paragraphs (h)(3) and (i)(2) of this AD, if any service information referenced in EASA AD 2020–0193 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223; email: *sanjay.ralhan@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.

(3) The following service information was approved for IBR on October 30, 2020 (85 FR 65200, October 15, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0193, dated September 7, 2020.

(ii) [Reserved]

(4) For EASA AD 2020–0193, 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.*

(5) 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–2020–0908.

(6) 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 October 21, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–23658 Filed 10–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9927]

RIN 1545–BP27

Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 1502 and 1503 of the Internal Revenue Code (Code). These regulations provide guidance implementing recent statutory amendments to section 172 of the Code

relating to the absorption of consolidated net operating loss (CNOL) carryovers and carrybacks. These regulations also update regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes. These regulations affect corporations that file consolidated returns.

DATES:

Effective Date: These regulations are effective on December 28, 2020.

Applicability Date: For dates of applicability, see §§ 1.1502–1(l), 1.1502–21(h)(10), 1.1502–47(n), and 1.1503(d)–8(b)(8).

FOR FURTHER INFORMATION CONTACT: Justin O. Kellar at (202) 317–6720, Gregory J. Galvin at (202) 317–3598, or William W. Burhop at (202) 317–5363.

SUPPLEMENTARY INFORMATION:

Background

This Treasury decision amends the Income Tax Regulations (26 CFR part 1) under section 1502 of the Code. Section 1502 authorizes the Secretary of the Treasury or his delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to reflect clearly the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. See § 1.1502–1(h) (defining the term ''consolidated group''). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502–1.

On July 8, 2020, the IRS published a notice of proposed rulemaking (REG–125716–18) in the **Federal Register** (85 FR 40927) under section 1502 of the Code (proposed regulations). The proposed regulations provided guidance implementing recent statutory amendments to section 172, relating to net operating loss (NOL) deductions, and withdrew and re-proposed certain sections of proposed guidance issued in prior notices of proposed rulemaking relating to the absorption of CNOL carryovers and carrybacks. In addition, the proposed regulations updated regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes.

In connection with the proposed regulations, the IRS published on the same date temporary regulations under section 1502 (TD 9900) in the **Federal Register** (85 FR 40892) (temporary regulations). The temporary regulations permit consolidated groups that acquire new members that were members of another consolidated group to elect to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 for certain losses attributable to the acquired members. The text of the temporary regulations also serves as the text of § 1.1502–21(b)(3)(ii)(C) and (D) of the proposed regulations.

The IRS received seven comments in response to the proposed regulations. Copies of the comments received are available for public inspection at *http://www.regulations.gov* or upon request. No public hearing was requested or held. This Treasury decision adopts the proposed regulations, other than proposed § 1.1502–21(b)(3)(ii)(C) and (D), as final regulations with the changes described in the following Summary of Comments and Explanation of Revisions. The Treasury Department and the IRS expect to finalize proposed § 1.1502–21(b)(3)(ii)(C) and (D) at a later date and welcome further comments on these provisions.

Summary of Comments and Explanation of Revisions

I. Comments On and Changes To Proposed § 1.1502–21

A. Overview of Section 172

These final revisions implement certain statutory amendments to section 172 made by Public Law 115–97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), and by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (March 27, 2020). See generally the Background section of the preamble to the proposed regulations. As amended, section 172(a)(2) allows an NOL deduction for a taxable year beginning after December 31, 2020, in an amount equal to the sum of (A) the aggregate amount of pre-2018 NOLs that are carried to such taxable year, and (B) the lesser of (i) the aggregate amount of post-2017 NOLs that are carried to such taxable year, or (ii) the ''80-percent limitation.'' The 80-percent limitation is equal to 80 percent of the excess (if any) of (I) taxable income computed without regard to any deductions under sections 172, 199A, and 250 of the Code, over (II) the aggregate amount of pre-2018 NOLs carried to the taxable year. See section 172(a)(2)(B)(ii). For purposes of the foregoing computation, the term ''pre-2018 NOLs'' refers to NOLs arising in taxable years beginning before January 1, 2018, and the term ''post-2017 NOLs'' refers to NOLs arising in taxable years beginning after December 31, 2017.

The 80-percent limitation does not apply to the offset of income by NOLs in taxable years beginning before January 1, 2021. Section 172(a)(1). The 80-percent limitation also does not apply to limit the use of pre-2018 NOLs. Section 172(a)(2)(A).

Moreover, the 80-percent limitation does not apply to insurance companies other than life insurance companies (nonlife insurance companies). Section 172(f). Therefore, the taxable income of nonlife insurance companies may be fully offset by NOL deductions. In addition, under section 172(b)(1)(C) and (b)(1)(D)(i), losses of nonlife insurance companies arising in taxable years beginning after December 31, 2020, may be carried back two years and carried over 20 years. In contrast, losses (aside from farming losses) of other taxpayers arising in such taxable years may not be carried back but may be carried forward indefinitely. Section 172(b)(1). Thus, nonlife insurance companies are subject to special rules under section 172 both with respect to the amount of taxable income that may be offset by NOL deductions and with respect to the taxable years to which NOLs may be carried.

B. Overview of the Proposed Approach and the Alternative Approach

To implement the special rules under section 172 for nonlife insurance companies for a consolidated return year beginning after December 31, 2020, the proposed regulations provided that the application of the 80-percent limitation within a consolidated group to post-2017 NOLs depends on the status of the member that generated the income being offset. The proposed regulations further provided that the amount of post-2017 CNOLs that may be absorbed by one or more members of the group in such a consolidated return year (post-2017 CNOL deduction limit) is determined by applying the 80-percent limitation, section 172(f) (that is, the special rule for nonlife insurance companies), or both, to the group's consolidated taxable income (CTI) for that year. See proposed § 1.1502–21(a)(2)(ii)(A) and (B).

For consolidated groups comprised of both nonlife insurance companies and other members for a consolidated return year beginning after December 31, 2020, the proposed regulations adopted a two-factor computation (proposed

approach). In general, under the proposed approach, the post-2017 CNOL deduction limit for such a group equals the sum of two amounts. The first amount, which relates to the income of those members that are not nonlife insurance companies (residual income pool), is subject to the 80-percent limitation. The second amount, which relates to the income of those members that are nonlife insurance companies (nonlife income pool), is not subject to the 80-percent limitation. See proposed § 1.1502–21(a)(2)(iii)(C). Thus, the proposed approach divides a consolidated group's nonlife insurance companies and its other members into two separate ''pools'' for purposes of determining the amount of CTI that is available to be offset by post-2017 CNOLs after applying the 80-percent limitation.

In formulating the proposed regulations, the Treasury Department and the IRS considered another approach (alternative approach). This alternative approach would have required a group to first offset income and loss items within a pool of nonlife insurance companies and a pool of other members for all purposes of section 172 applicable to taxable years beginning after December 31, 2020. In other words, the alternative approach would have applied a pooling concept beyond merely determining the group's post-2017 CNOL deduction limit, but would have required a group's CTI to be allocated between the operations of its nonlife insurance company members, which can be offset fully by CNOL deductions, and the operations of its other members subject to the 80-percent limitation. This alternative approach would also have applied similar rules to allocate CNOLs within groups including both nonlife insurance companies and other members to consistently identify the portions of CNOLs allocable to nonlife insurance company members, which are subject to different carryover rules than those of other members.

The alternative approach would have contrasted with the historical application of § 1.1502–21(b)(2)(iv)(B), under which a CNOL for a taxable year is attributed pro rata to all members of a group that produce net loss, without first netting among entities of the same type. In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments regarding both the proposed approach and the alternative approach.

C. Comments on the Proposed Approach and the Alternative Approach

In response to the request for comments, the Treasury Department and the IRS received comments that uniformly approved the proposed approach. For example, two commenters commended the proposed regulations as implementing the statutory amendments to section 172 in a reasonable manner that is consistent with both the statute and consolidated return principles. Specifically, both commenters supported the proposed regulations' approach to computing a group's post-2017 CNOL deduction limit as well as the proposed regulations' retention of the historical pro rata approach under § 1.1502–21(b)(2)(iv)(B) to determine the amount of nonlife insurance company losses that can be carried to other taxable years.

In support of the proposed regulations, one commenter asserted that the proposed approach is more consistent with the treatment of CNOLs as consolidated items and with the current CNOL use and absorption rules in § 1.1502–21 than the alternative approach. The commenter further asserted that, because the alternative approach would depart from the general pro rata rules of § 1.1502–21 by first netting income and loss among entities of the same type within a consolidated group, the alternative approach could result in computational and compliance complications in circumstances that may be difficult to anticipate.

In response to the comments received, these final regulations retain the proposed approach to computing a consolidated group's post-2017 CNOL deduction limit.

D. Application of the Proposed Approach to Life-Nonlife Groups

One commenter recommended that, for consolidated groups with both nonlife insurance companies and life insurance companies, the amounts of the residual income pool and the nonlife income pool in proposed § 1.1502–21(a)(2)(iii)(C)(*2*) and (*3*) be clarified to refer only to the items of income, gain, deduction, or loss of members of the nonlife subgroup (as defined in § 1.1502–47(b)(9) of these final regulations). The commenter further recommended that, in making this clarification, the Treasury Department and the IRS should not prevent nonlife CNOLs from offsetting life subgroup income where permitted by the Code and § 1.1502–47. The commenter noted that this outcome appears to be the intent of the cross-reference to § 1.1502–47 in proposed § 1.1502–21(b)(2)(iv)(E), but the commenter indicated that clarification would be useful. The Treasury Department and the IRS agree with the commenter regarding the purpose of the cross-reference to § 1.1502–47 in proposed § 1.1502–21(b)(2)(iv)(E) and have revised the regulations to more clearly confirm this outcome.

E. Consolidated Capital Gain Net Income

Section 1.1502–11(a)(3) provides that the CTI for a consolidated return year is determined by taking into account, among other enumerated items, any consolidated capital gain net income. See generally § 1.1502–22(a) (providing rules for determining consolidated capital gain net income). Under § 1.1502–22(a), the determinations for a consolidated group under section 1222, including capital gain net income, are not made separately. Instead, such consolidated amounts are determined for the group as a whole.

Section 1.1502–11 does not provide explicit rules for allocating consolidated capital gain net income among members. Thus, one commenter requested that the final regulations clarify that, for groups that include nonlife insurance companies, consolidated capital gain net income under § 1.1502–11(a)(3) is allocated to the residual income pool and the nonlife income pool using a pro rata method based on the principles of § 1.1502–21(b)(2)(iv), as reflected in the general rule in § 1.1502–21(b)(1), for the use and absorption of CNOLs.

Section 1.1502–11 also does not provide explicit rules for determining the amount of each member's income that is offset by losses (whether incurred in the current year or carried over or back as a part of a CNOL or consolidated net capital loss). However, the Treasury Department and the IRS understand that, in the absence of express rules, consolidated return practitioners generally apply the principles of § 1.1502–21(b)(2)(iv) to make such determinations. The methodology for computing a consolidated group's post-2017 CNOL deduction limit is intended to implement the changes made to section 172(a) by the TCJA and the CARES Act in a manner that is flexible for taxpayers to apply and administrable for the IRS. The Treasury Department and the IRS have determined that specific rules regarding the allocation of consolidated capital gain net income to the residual income pool and the nonlife income pool under § 1.1502–21(a)(2)(iii)(C)(*2*) and (*3*) would exceed the scope of these final regulations. Accordingly, the Treasury Department and the IRS continue to reflect on the commenter's recommendation but have not incorporated that recommendation into the final regulations.

F. Example 6 in Proposed § 1.1502–21(b)(2)(v)(F)

Proposed § 1.1502–21(b)(2)(v)(F) (Example 6) contains an example that illustrates the application of section 172 to a CNOL incurred by a consolidated group (P group) that includes P, an includible corporation under section 1504(b) of a type other than a nonlife insurance company, and PC1, a nonlife insurance company. Both P and PC1 were incorporated in Year 1, a year beginning after December 31, 2020. In Year 1, the P group has $45 of CTI, $20 of which is attributable to P and $25 of which is attributable to PC1. In Year 2, the P group incurs a $16 CNOL that is attributable to PC1 and that is carried back to Year 1 under section 172(b)(1)(C)(i).

The example illustrates that, under proposed § 1.1502–21(a)(2)(iii)(C), the P group's post-2017 CNOL deduction limit for Year 1 is $41, which is the sum of the residual income pool ($16) and the nonlife income pool ($25), as described in proposed § 1.1502–21(a)(2)(iii)(C)(*2*) and (*3*), respectively. More specifically, the amount of the residual income pool equaled the lesser of the aggregate amount of post-2017 NOLs carried to Year 1 ($16), or 80 percent of the excess of P's taxable income for that year ($20) over the aggregate amount of pre-2018 NOLs allocable to P ($0), which also was $16 (80 percent × ($20 − $0)). See proposed § 1.1502–21(b)(2)(v)(F)(*3*). The amount of the nonlife income pool equaled the excess of PC1's taxable income for Year 1 ($25) over the aggregate amount of pre-2018 NOLs allocable to PC1 ($0). Id.

Two commenters requested clarification as to how much taxable income in each pool is offset by a CNOL carryover or carryback if each pool has positive taxable income, as in Example 6. Specifically, commenters contended that a specific absorption rule is needed to determine how much taxable income in the residual income pool (which is subject to the 80-percent limitation) can be offset by subsequent CNOL carryovers or carrybacks to the same year. For example, assume the same facts as in Example 6, but that the P group also incurs a $30 CNOL in Year 3 that is entirely attributable to PC1 and that is eligible to be carried back to Year 1. Absent a rule specifying how much taxable income in each pool was offset in Year 1 by the $16 Year 2 CNOL carryback, the commenters questioned how to compute the residual income pool for purposes of determining how much of the P group's Year 3 CNOL carryback could be absorbed by the P group in Year 1.

As noted in part I.A of this Summary of Comments and Explanation of Revisions, the computation in section 172(a)(2)(B)(ii) is made ''without regard to the deductions under [section 172] and sections 199A and 250.'' Consistent with the statute, the amount of income in the residual income pool that is subject to the 80-percent limitation for a particular consolidated return year is not recomputed to reflect the amount of CNOLs carried over to and absorbed in that year. See § 1.1502–21(a)(2)(iii)(C)(*2*) of these final regulations. Rather, the only component of the post-2017 CNOL deduction limit that is subject to change upon the carryover or carryback of additional CNOLs to the same consolidated return year is the aggregate amount of post-2017 CNOLs carried to that year. See § 1.1502–21(a)(2)(iii)(C)(*1*)(*i*) of these final regulations. Determining this amount does not require an absorption rule.

With regard to Example 6, if the P group were to incur a $30 CNOL in Year 3 that was eligible to be carried back to Year 1, the P group would redetermine the aggregate amount of the P group's post-2017 CNOLs that are carried to Year 1, but the P group would not recompute the amount of Year 1 income subject to the 80-percent limitation. Thus, an absorption rule is not needed to determine how much of the P group's Year 1 CTI can be offset by subsequent CNOL carrybacks. However, these final regulations provide additional facts in Example 6 to illustrate the computation of the amount of additional CNOL carryovers or carrybacks to the same consolidated return year that can be deducted to offset income in that year.

G. Split-Waiver Elections

If a member of one consolidated group becomes a member of another consolidated group, § 1.1502–21(b)(3)(ii)(B) permits the acquiring group to make an irrevocable election to relinquish, with respect to all CNOLs attributable to the acquired corporation, the portion of the carryback period for which the acquired corporation was a member of another group (so long as any other corporation joining the acquiring group that was affiliated with the acquired corporation immediately before it joined the acquiring group also is included in the waiver).

A commenter noted that, pursuant to § 1.1502–21(b)(3)(ii)(B), an acquiring group may make a split-waiver election only with respect to acquired corporations that were members of a different consolidated group in a carryback year. The commenter recommended that § 1.1502–21(b)(3)(ii) be expanded to allow a split-waiver election if the acquired corporation was not a member of a consolidated group in the carryback year.

The Treasury Department and the IRS appreciate the commenter's suggestion and will continue to consider it in connection with the future finalization of the temporary regulations. However, this comment exceeds the scope of these final regulations, which adopt the provisions of the proposed regulations other than those for which the text was contained in the temporary regulations (specifically, § 1.1502–21(b)(3)(ii)(C) and (D)). Therefore, the Treasury Department and the IRS decline to adopt this recommendation in this Treasury decision.

H. Modification to SRLY Rules

The proposed regulations modify the separate return limitation year (SRLY) rules in § 1.1502–21(c) to take into account the limitations on NOL deductions under section 172, as amended by the TCJA and the CARES Act. See proposed § 1.1502–21(c)(1)(i)(E). A commenter recommended that this modification not apply for purposes of section 1503(d) (the dual consolidated loss (DCL) rules). In certain cases, the extent to which section 1503(d) restricts the use of a DCL, or requires the recapture of a DCL (or a related interest charge), depends on the application of the SRLY rules in § 1.1502–21(c), subject to certain adjustments. See §§ 1.1503(d)–4(c)(3) and 1.1503(d)–6(h)(2). In these cases, the adjusted SRLY rules are generally intended to ensure that a DCL may be used only to offset income of the dual resident corporation or separate unit that incurred the DCL, such that the use does not result in a ''double dip'' of the DCL.

The commenter recommended that the modification reflected in proposed § 1.1502–21(c)(1)(i)(E) not apply for purposes of the DCL rules because the modification addresses policies specific to the SRLY rules in § 1.1502–21(c) (replicating, to the extent possible, separate-entity usage of SRLY attributes), which differ from the policies underlying the DCL rules (preventing double dipping of losses). In addition, the commenter asserted that applying the rule in proposed § 1.1502–21(c)(1)(i)(E) for DCL purposes could distort the determination of whether double dipping could occur.

The Treasury Department and the IRS agree with the commenter. The final regulations therefore provide that § 1.1502–21(c)(1)(i)(E) does not apply for purposes of the DCL rules. See § 1.1503(d)–4(c)(3)(v).

I. Clarifying Changes to Proposed § 1.1502–21

In addition to the foregoing comments, a commenter recommended clarifying changes to proposed § 1.1502–21. The Treasury Department and the IRS appreciate these suggested clarifications and have incorporated many of them into the final regulations. However, the commenter also recommended deleting the reference to section 199A in proposed §§ 1.1502–21(a)(2)(iii)(A)(*2*)(*ii*) and 1.1502–21(a)(2)(iii)(C)(*2*)(*ii*) on the grounds that the deduction under section 199A is available to only noncorporate taxpayers. Because section 199A(g) provides a deduction for specified agricultural or horticultural cooperatives, which (as C corporations) can be members of a consolidated group, these references to section 199A have been retained in the final regulations.

The Treasury Department and the IRS also have made additional clarifying revisions based on further review of the proposed regulations. In particular, the final regulations contain corrections to scrivener's errors in the two-factor computation in proposed § 1.1502–21(a)(2)(iii). Specifically, the ''lesser of'' language in proposed § 1.1502–21(a)(2)(iii)(C)(*2*), which was intended to reflect the application of section 172(a)(2)(B) to groups that include both nonlife insurance companies and other corporations, was mislocated. To accurately reflect the comparison required under section 172(a)(2)(B), the language at issue has been moved to § 1.1502–21(a)(2)(iii)(C)(*1*) of the final regulations.

Additional edits have been made to enhance the consistency and clarity of the rules in proposed § 1.1502–21(a)(2). For example, language reflecting the ''lesser of'' comparison described in the preceding paragraph has been explicitly integrated into §§ 1.1502–21(a)(2)(iii)(B) and 1.1502–21(a)(2)(iii)(C)(*5*)(*ii*) (concerning CNOL deductions that offset income of nonlife insurance company members) of these final regulations. As discussed in part II.B of this Summary of Comments and Explanation of Revisions, the post-2017 CNOL deduction limit equals the maximum amount of post-2017 CNOLs that can be deducted against taxable income in a consolidated return year beginning after December 31, 2020. This amount could never exceed the total amount of post-2017 CNOLs carried to that year. See section 172(f) (providing that, in the case of a nonlife insurance company, the amount of the NOL deduction allowed under section 172(a) in any taxable year equals the aggregate of NOL carrybacks and carryovers to that year).

Likewise, in the absence of any other limitation, the taxable income of a taxpayer always constitutes a limit on the deductibility of NOLs. See generally section 172(b)(2). Without such limit, the deduction of NOLs in excess of taxable income would create an additional NOL. The Treasury Department and IRS have determined that explicitly providing the respective post-2017 CNOL and taxable income limitations on the deduction of NOLs to offset taxable income of nonlife insurance companies will enhance the clarity of the final regulations and the consistency of their application.

II. Comments On and Changes To Proposed § 1.1502–47

The proposed regulations updated the rules in § 1.1502–47 to reflect statutory changes enacted since these rules were promulgated. Commenters commended the Treasury Department and the IRS for updating these regulations. Additionally, several commenters expressed their understanding that another guidance project has been initiated to propose substantive changes to § 1.1502–47 and urged the Treasury Department and the IRS to give priority to this effort. These commenters argued that the objective of that guidance project should be the elimination of any provisions that depart from general consolidated return principles in life-nonlife consolidation, except to the extent non-conforming provisions are necessary to implement specific provisions of the Code. In particular, these commenters expressed concern about the treatment of consolidated capital gains and losses under § 1.1502–47 and requested simplification of the eligibility and tacking rules.

The Treasury Department and the IRS appreciate the commenters' input and welcome further comments regarding substantive changes to § 1.1502–47 for purposes of potential future guidance. However, such changes are beyond the scope of these final regulations.

Additionally, commenters recommended several clarifying changes to proposed § 1.1502–47. Many of these suggested clarifications have been incorporated into the final regulations. For example, these final regulations have added a cross-reference to the definition of ''nonlife insurance company'' in § 1.1502–1(k). However, one commenter recommended that § 1.1502–47(g)(3) of these final regulations be modified to more closely parallel § 1.1502–47(f)(3) of these final regulations. The commenter further requested that paragraph (d)(5) of these final regulations be modified to explicitly set forth the various rules (both statutory and regulatory) that apply to certain dividends received by an includible member from another member of the consolidated group. These comments exceed the scope of these final regulations, but the Treasury Department and the IRS will continue to consider these comments for purposes of potential future guidance regarding § 1.1502–47.

Effective/Applicability Dates

The final regulations in §§ 1.1502–1(k), 1.1502–21(a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E), 1.1502–47, and 1.1503(d)–8(b)(8) apply to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply the rules in §§ 1.1502–1(k) and 1.1502–47 of these final regulations to taxable years beginning on or before December 31, 2020. If a taxpayer makes the choice described in the previous sentence with regard to the rules in § 1.1502–47, the corporation must apply those rules in their entirety and consistently with the provisions of the Internal Revenue Code applicable to the years at issue.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563, 13771, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the final regulations as economically significant under section 1(c) of the Memorandum of Agreement. Accordingly, OMB has reviewed the final regulations.

A. Background and Need for Regulations

In general, taxpayers whose deductions exceed their income generate a net operating loss (NOL),

calculated under the rules of section 172. Section 172 also governs the use of NOLs generated in other years to offset taxable income in the current year. Regulations issued under the authority of section 1502 may be used to govern how section 172 applies to consolidated groups of C corporations. In general, a consolidated group generates a combined NOL at an aggregate level (CNOL), with the CNOL generally equal to the loss generated from treating the consolidated group as a single entity. Under regulations promulgated prior to the Tax Cuts and Jobs Act (TCJA), the allowed CNOL deduction was equal to the lesser of the CNOL carryover or the combined taxable income of the group (before the CNOL deduction).

The TCJA and the Coronavirus Aid, Relief, and Economic Security (CARES) Act made several changes to section 172. First, the TCJA and the CARES Act disallowed the carry back of NOLs generated in taxable years beginning after 2020, except for farming losses and losses incurred by corporations that are insurance companies other than life insurance companies (nonlife insurance companies). Second, the TCJA and the CARES Act limited the NOL deduction in taxable years beginning after 2020 for NOLs generated in 2018 or later (post-2017 NOLs) to 80 percent of taxable income determined after the deduction for pre-2018 NOLs but before the deduction for post-2017 NOLs. This 80-percent limitation does not apply to nonlife insurance companies.

These final regulations implement the changes to section 172 in the context of consolidated groups. In particular, regulations are needed to address three issues related to consolidated groups that were not expressly addressed in the TCJA or the CARES Act. First, the final regulations describe how to determine the 80-percent limitation in the case of a ''mixed'' group—that is, a consolidated group containing nonlife insurance companies and other members. Second, the final regulations address the calculation and allocation of farming losses. Third, the final regulations implement the 80-percent limitation into existing regulations to determine the CNOL deduction attributable to losses from a member arising during periods in which that member was not part of that group. Part I.B of this Special Analyses describes the manner by which the final regulations addresses each of these issues.

Part I.B also describes an alternative approach that was contemplated by the Treasury Department and the IRS regarding the allocation of currently generated losses to nonlife insurance companies and other members. The Treasury Department and the IRS elected not to implement this approach.

B. Overview of the Final Regulations

In this part I.B the following terms are used. The term ''P group'' means a consolidated group of which P is the common parent. The term ''P&C member'' means a member of the P group that is a nonlife insurance company. The term ''C member'' means a member of the P group that is a C corporation other than a nonlife insurance company.

1. Application of 80-Percent Limitation in Mixed Groups

Under the statute, the general rule for determining the NOL deduction (for a taxable year beginning after December 31, 2020) effectively proceeds in two steps. First, the taxpayer deducts pre-2018 NOLs without limit. Second, the taxpayer deducts post-2017 NOLs up to 80 percent of the taxpayer's taxable income (computed without regard to the deductions under sections 199A and 250) determined after the deduction of pre-2018 NOLs (but, naturally, before the deduction for post-2017 NOLs). However, this 80-percent limitation does not apply for corporations that are nonlife insurance companies.

The application of the 80-percent limitation to the P group is straightforward if (i) there are no pre-2018 NOLs and (ii) both classes of P&C members and C members have positive income before the CNOL deduction. In that case, these final regulations provide, quite naturally, that the CNOL limitation is determined by adding (i) the pre-CNOL income generated by the class of C members (C member income pool), determined by applying the 80-percent limitation, plus (ii) 100 percent of the pre-CNOL income generated by the class of P&C members (P&C member income pool). This latter treatment reflects the rule in section 172(f) that nonlife insurance companies are not subject to the 80-percent limitation.

One complication arises when the pre-CNOL C member income pool is positive and the pre-CNOL P&C income pool is negative, and the P group has positive combined pre-CNOL taxable income. In this case (where the pre-CNOL income is generated by C members, rather than P&C members), these final regulations provide that the post-2017 CNOL deduction limit is determined by applying the 80-percent limitation to the income of the P group. If the situation were reversed, such that the P group had positive combined taxable income but the pre-CNOL income is generated by P&C members, rather than the C members, the post-2017 CNOL deduction limit is equal to the income of the P group (that is, determined without regard to the 80-percent limitation). In essence, in these situations, the amount of the P group's income able to absorb a post-2017 CNOL carryover is defined by the member pool (that is, the C member income pool or the P&C member income pool) that is generating the income.

The other complication occurs when there is a pre-2018 NOL. In this situation, it matters whether the pre-2018 NOL is treated as reducing the amount of the C member income pool or reducing the amount of P&C member income pool. Consider the following example (Example 1). In Example 1, the P group carries $50 in pre-2018 NOLs and $1000 in post-2017 NOLs to 2021. In 2021, the P&C members and the C members, respectively, earn (pre-CNOL) income of $100. If the pre-2018 NOL were treated as solely reducing the amount of C member income pool, then the limitation for the post-2017 CNOL deduction would be $100 plus 80 percent of $50 ($100 minus $50), equal to $140. If the pre-2018 NOL were treated as solely reducing the amount of the P&C member income pool, then the post-2017 CNOL deduction limit for the P group would be $50 ($100 minus $50) plus 80 percent of $100, or $130.

These final regulations allocate the pre-2018 NOL pro-rata to the C member income pool and the P&C member income pool in proportion to their current-year income. In Example 1, $25 of the pre-2018 NOL would be allocated to the C member income pool and $25 to the P&C member income pool. Therefore, the post-2017 CNOL deduction limit for the P group would be $75 ($100 minus $25) plus 80 percent of $75 ($100 minus $25), or $135.

2. Farming Losses

Section 172 provides that NOLs arising in a taxable year beginning after December 31, 2020, may not be carried back to prior years, with two exceptions: (1) Farming losses and (2) nonlife insurance company losses. Section 172(b)(1)(B) defines a ''farming loss'' as the smaller of the actual loss from farming activities in a given year (that is, the excess of the deductions in farming activities over income in farming activities) and the total NOL generated in that year. This statutory provision means that if a taxpayer incurs a loss in farming activities but has overall income in other activities, the farming loss will be smaller than the loss in farming activities (and can possibly be zero).

Regulations were needed to clarify two issues that arise in the context of consolidated groups. First, these regulations clarify that the maximum amount of farming loss is the CNOL of the group rather than the NOL of the specific member generating the loss in farming activities. This approach follows closely regulations issued by the Treasury Department and the IRS in 2012 in an analogous setting.

Second, given the overlapping categories of carryback-eligible NOLs (farming losses and nonlife insurance companies), regulations are needed to allocate the farming loss to the various members to determine the total amount of CNOL that can be carried back. Consider the following example (Example 2). In Example 2, the P group consists of one C member and one P&C member. In 2021, the C member's only activity is farming and the C member incurs a loss of $30, while the P&C member incurs a loss of $10. The total farming loss is $30, since $30 is less than the P group CNOL of $40. If this farming loss were allocated entirely to the C member, then the total amount eligible for carryback would be $40 (that is, $30 for the farming loss and $10 for the loss incurred by the P&C member). By contrast, if the farming loss were allocated entirely to the P&C member, only $30 would be eligible to be carried back.

Again, following a similar rule as the 2012 regulations, these final regulations allocate the farming loss to each member of the group in proportion with their share of total losses, without regard to whether each member actually engaged in farming. In Example 2, this would allocate $7.50 (that is, one-fourth of $30) of the farming loss to the P&C member and the remaining $22.50 (that is, three-fourths of $30) to the C member. Therefore, the P group would be allowed to carry back $32.50 total (that is, the $10 of loss generated by the P&C member and the $22.50 of farming losses allocated to the C member).

3. Separate Return Limitation Year

To reduce ''loss trafficking,'' existing regulations under section 1502 limit the extent to which a consolidated group (that is, the P group) can claim a CNOL attributable to losses generated by some member (M) in years in which M was not a member. In particular, existing rules limit this amount of loss to the amount of the loss that would have been deductible had M remained a separate entity; that is, the rules are designed to preserve neutrality in loss use between being a separate entity or a member of a group. Existing rules operationalize this principle using the mechanic of a ''cumulative register.'' The cumulative register is equal to the (cumulative) amount of M's income that is taken into account in the P group's income. Income earned by M while a member of the P group increases the cumulative register, while losses (carried over or otherwise) taken into account by the group reduce the cumulative register. In general, the existing rules provide that M's pre-group NOLs cannot offset the P group's income when the cumulative register is less than or equal to zero.

The introduction of the 80-percent limitation in the TCJA and CARES Act necessitates an adjustment to this mechanism in order to retain this neutrality-in-loss-use property. In particular, these final regulations provide that any losses by M that are absorbed by the P group and subject to the 80-percent limitation cause a reduction to the register equal to the full amount of income needed to support that deduction. The following example (Example 3) demonstrates why this adjustment is necessary. In Example 3, P and S are each corporations other than nonlife insurance companies (that is, they are subject to the 80-percent limitation). Suppose in 2021, S incurs a loss of $800, which is the only loss ever incurred by S. In 2022, S incurs income of $400. If S were not a member of a consolidated group, its 2022 NOL deduction would be limited to $320 (80 percent of $400). Suppose instead that P acquires S in 2022 and that P has separate income of $600 in 2022, so the consolidated group has $1000 in pre-CNOL income in 2022. Before claiming any CNOLs, S's cumulative register would increase to $400 in 2022. Without any additional rules, the $400 cumulative register would allow P to claim a CNOL of $400 (bringing the register down to zero), greater than what would have been allowed had S remained a separate entity. By contrast, requiring the register to be reduced by 125 percent of the NOL (as under the final regulations) allows P to claim only a $320 CNOL, replicating the result if S were a separate entity.

4. Allocation of Current Losses to Nonlife Insurance Companies

In general, under the TCJA and CARES Act, taxpayers may not carry back any losses generated in tax years beginning after 2020, with the exception of losses generated by nonlife insurance companies and farming losses. Existing regulations clarify that CNOLs are allocated to each member in proportion to the total loss. This allocation rule can be illustrated by example (Example 4). In Example 4, the C member has a current loss of $10 (in a tax year beginning in 2021 or later). The P&C members are corporations PC1 and PC2. PC1 has a gain of $40 and PC2 has a loss of $40. Assume that the P group does not engage in any farming activities. The CNOL for the P group is $10. The $10 of CNOL is allocated to the C member and PC2 in proportion to their total losses. The C member has one-fifth of the total loss ($10 divided by $50) and PC2 has four-fifths. Therefore, under the existing regulations, the C member is allocated $2 ($10 times one-fifth) and PC2 is allocated $8 ($10 times four-fifths). In the end, $8 of the CNOL may be carried back in Example 4. The final regulations do not alter these existing regulations.

In formulating these final regulations, the Treasury Department and the IRS contemplated an alternative approach. Under this alternative, consolidated groups would be required to compute gain and loss by grouping P&C members and C members separately prior to allocating CNOL to members. The application of this approach can be seen by revisiting Example 4. Under this alternative approach, because the P&C members as a whole do not have a loss, no CNOL would be allocated to any P&C member regardless of the gain or loss of any of the individual P&C members. Thus, under the alternative approach, none of the $10 CNOL would be eligible for carryback in Example 4.

C. Economic Analysis

1. Baseline

In this analysis, the Treasury Department and the IRS assess the benefits and costs of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

2. Summary of Economic Effects

The final regulations provide certainty and clarity to taxpayers regarding the treatment of NOLs under section 172 and the regulations under section 1502. In the absence of such guidance, the chance that different taxpayers would interpret the statute and the regulations differently would be exacerbated. Similarly situated taxpayers might interpret those rules differently, with one taxpayer pursuing an economic opportunity that another taxpayer might decline to make because of different interpretations of the ability of losses to offset taxable income. If this second taxpayer's activity were more profitable, the resulting economic decisions are inefficient. Such situations are more likely to arise in the absence of guidance. While no guidance can

curtail all differential or inaccurate interpretations of the statute, the regulations significantly mitigate the chance for differential or inaccurate interpretations and thereby increase economic efficiency.

To the extent that the specific provisions of the final regulations result in the acceleration or delay of the tax year in which taxpayers deduct an NOL relative to the baseline, those taxpayers may face a change in the present value of the after-tax return to new investment, particularly investment that may result in losses. The resulting changes in the incentives facing the taxpayer are complex and may lead the taxpayer either to increase, decrease, or leave unchanged the volume and risk level of its investment portfolio, relative to the baseline, in ways that depend on the taxpayer's stock of NOLs and the depreciation schedules and income patterns of investments they would typically consider, including whether the investment is subject to bonus depreciation. Because these elements are complex and taxpayer-specific and because the sign of the effect on investment is generally ambiguous, the Treasury Department and the IRS have not projected the specific effects on economic activity arising from the final regulations.

The Treasury Department and the IRS project that these regulations will have annual effects below $100 million ($2020) relative to the baseline. The effects are small because the regulations apply only to consolidated groups; in addition, several provisions of the final regulations apply only to the extent that a consolidated group contains a mix of member types. Moreover, the effects are small because: (i) For provisions of the final regulations that affect the deduction for pre-2018 NOLs, the effects are limited to the stock of the pre-2018 NOLs; and (ii) for provisions that affect the allowable rate of loss usage of post-2017 NOLs, the effect arises only from the 20 percentage point differential in the deduction for these NOLs. This latter effect in particular, to which the bulk of the provisions apply, is too small to substantially affect taxpayers' use of NOLs and thus too small to lead to meaningful changes in economic decisions.

The Treasury Department and the IRS did not estimate more precisely the economic effects of these regulations because (i) the effects are expected to be small and (ii) data or models that would address the effects of these regulations are not readily available. In the absence of quantitative estimates, the subsequent discussion provides qualitative analysis of these economic effects.

The proposed regulations solicited comments on the economic effects of the proposed regulations. No such comments were received.

3. Allocation of CNOLs to Specific Members of Consolidated Groups

The final regulations do not amend existing rules for the allocation of the CNOL within consolidated groups. The final regulations follow existing rules and allocate the CNOLs to each member of the group in proportion to the total loss.

The Treasury Department and the IRS considered an alternative approach that would have required groups to compute gain and loss at the subgroup level prior to allocating CNOL to members. Recall Example 4 in which the P&C subgroup had no gain or loss but the C subgroup had a loss of $10. Under this alternative approach, because the P&C subgroup as a whole does not have a loss, no CNOL would be allocated to any member in the P&C group regardless of the gain or loss of any of the individual members of PC. Thus, in Example 4, none of the $10 CNOL would be eligible for carryback.

The Treasury Department and the IRS recognize that as a result of the TCJA and the CARES Act, the final regulations may provide groups with an incentive to split their C members into several corporations—some with loss and some with gain; this potential incentive would not exist under the alternative regulatory approach. In certain circumstances, such a strategy would effectively enable some share of the losses generated by the other C members to be carried back. This change in the business structure of consolidated groups may entail economic costs because, to the extent this strategy is pursued, it would result from tax-driven rather than market-driven considerations. The Treasury Department and the IRS project, however, that the adopted approach will have lower compliance costs for taxpayers, relative to the alternative regulatory approach, because it generally follows existing regulatory practice for allocating losses within a consolidated group.

The Treasury Department and the IRS have not attempted to estimate the economic consequences of either of these effects but project them to be small. The effects are projected to be small because (i) only a small number of taxpayers are likely to be affected; (ii) any reorganization that occurs due to the final regulations will primarily be ''on paper'' and entail little or no economic loss; and (iii) the compliance burden of loss allocation, under either the final regulations or the alternative approach, is not high.

No additional substantive alternatives were raised by the comments.

4. Affected Taxpayers

The Treasury Department and the IRS project that these regulations will primarily affect consolidated groups that contain at least one nonlife insurance member and at least one member that is not a nonlife insurance company. Based on data from 2015, the Treasury Department and the IRS calculate that there were 1,130 such consolidated groups. Approximately 460 of these groups were of ''mixed loss'' status, meaning that at least one nonlife insurance member had a gain and one other member had a loss, or vice versa.

D. Summary

In sum, these regulations clarify the recent statutory changes to section 172 as they apply to consolidated corporate groups. The Treasury Department and IRS project the economic effect of these regulations to be small given that (1) the effect of NOL usage on investment incentives is of ambiguous sign, (2) these regulations are projected to have only a small effect on NOL usage, and (3) it is expected that most taxpayers would have come to a similar interpretation of the statute in the absence of these regulations.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these final regulations would not create additional obligations for, or impose an economic impact on, small entities. Accordingly, the Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments on the notice were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

V. Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (CRA). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Consistent with this requirement, the effective date of this Treasury decision is December 28, 2020, whereas the rules in this Treasury decision apply for taxable years beginning after December 31, 2020.

Drafting Information

The principal authors of these regulations are Justin O. Kellar, Gregory J. Galvin, and William W. Burhop of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX

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

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

■ **Par. 2.** Section 1.1502–1 is amended by adding paragraphs (k) and (l) to read as follows:

§ 1.1502–1 Definitions.

* * * * *

(k) *Nonlife insurance company.* The term *nonlife insurance company* means a member that is an insurance company other than a *life insurance company,* each as defined in section 816(a).

(l) *Applicability date.* Paragraph (k) of this section applies to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply paragraph (k) of this section to taxable years beginning on or before December 31, 2020.

■ **Par. 3.** Section 1.1502–21 is amended:

■ 1. By revising paragraph (a).

■ 2. By revising paragraph (b)(1).

■ 3. By revising paragraph (b)(2)(iv).

■ 4. By revising paragraph (b)(2)(v) introductory text.

■ 5. In paragraph (b)(2)(v), by designating *Examples 1* through *3* as paragraphs (b)(2)(v)(A) through (C), respectively, and removing the period after each example number in the paragraph headings and replacing them with a colon.

■ 6. In newly designated paragraphs (b)(2)(v)(A) through (C), by redesignating paragraphs (b)(2)(v)(A)(i) and (ii) as paragraphs (b)(2)(v)(A)(*1*) and (*2*), paragraphs (b)(2)(v)(B)(i) and (ii) as paragraphs (b)(2)(v)(B)(*1*) and (*2*), and paragraphs (b)(2)(v)(C)(i) and (ii) as paragraphs (b)(2)(v)(C)(*1*) and (*2*).

■ 7. By adding paragraphs (b)(2)(v)(D) through (G).

■ 8. In paragraph (b)(3)(ii)(B), by removing the text ''§ 1.1502–21(b)(3)(ii)(B)(*2*)'' and adding in its place ''§ 1.1502–21(b)(3)(ii)(B)''.

■ 9. By revising paragraph (b)(3)(ii)(C).

■ 10. By adding paragraph (b)(3)(ii)(D).

■ 11. By revising paragraph (c)(1)(i) introductory text.

■ 12. In paragraph (c)(1)(i)(C)(*2*), by removing the word ''and''.

■ 13. In paragraph (c)(1)(i)(D), by removing the word ''account.'' and adding in its place ''account; and''.

■ 14. By adding paragraph (c)(1)(i)(E).

■ 15. By revising paragraph (c)(1)(iii) introductory text.

■ 16. In paragraph (c)(1)(iii), by designating *Examples 1* through *5* as paragraphs (c)(1)(iii)(A) through (E), respectively, and removing the period after each example number in the paragraph headings and replacing them with a colon.

■ 17. In newly redesignated paragraphs (c)(1)(iii)(A) through (E), by redesignating paragraphs (c)(1)(iii)(A)(i) through (iii) as paragraphs (c)(1)(iii)(A)(*1*) through (*3*), paragraphs (c)(1)(iii)(B)(i) through (vi) as paragraphs (c)(1)(iii)(B)(*1*) through (*6*), paragraphs (c)(1)(iii)(C)(i) through (iii) as paragraphs (c)(1)(iii)(C)(*1*) through (*3*), paragraphs (c)(1)(iii)(D)(i) through (iv) as paragraphs (c)(1)(iii)(D)(*1*) through (*4*), and paragraphs (c)(1)(iii)(E)(i) through (v) as paragraphs (c)(1)(iii)(E)(*1*) through (*5*).

■ 18. By revising newly redesignated paragraphs (c)(1)(iii)(A)(*2*) and (c)(1)(iii)(B)(*2*) through (*6*).

■ 19. In newly redesignated paragraph (c)(1)(iii)(C)(*2*), by adding the words '', a taxable year that begins on January 1, 2021'' after the words ''at the beginning of Year 4''.

■ 20. By revising newly redesignated paragraphs (c)(1)(iii)(D)(*2*) through (*4*).

■ 21. By adding paragraph (c)(1)(iii)(D)(*5*).

■ 22. By revising newly redesignated paragraphs (c)(1)(iii)(E)(*2*) through (*5*).

■ 23. By adding paragraphs (c)(1)(iii)(E)(*6*) and (c)(1)(iii)(F).

■ 24. By revising paragraph (c)(2)(v).

■ 25. By revising paragraph (c)(2)(viii) introductory text,.

■ 26. In paragraph (c)(2)(viii), by designating *Examples 1* through *4* as paragraphs (c)(2)(viii)(A) through (D), respectively, and removing the period after each example number in the paragraph headings and replacing them with a colon.

■ 27. In newly designated paragraphs (c)(2)(viii)(A) through (D), by redesignating paragraphs (c)(2)(viii)(A)(i) through (vii) as paragraphs (c)(2)(viii)(A)(*1*) through (*7*), paragraphs (c)(2)(viii)(B)(i) through (iv) as paragraphs (c)(2)(viii)(B)(*1*) through (*4*), paragraphs (c)(2)(viii)(C)(i) through (iii) as paragraphs (c)(2)(viii)(C)(*1*) through (*3*), and paragraphs (c)(2)(viii)(D)(i) and (ii) as paragraphs (c)(2)(viii)(D)(*1*) and (*2*).

■ 28. In newly redesignated paragraphs (c)(2)(viii)(A)(*3*) through (*7*), the first

sentence of each, by adding the words ‘‘, including the limitation under paragraph (c)(1)(i)(E) of this section’’ after the words ‘‘under paragraph (c) of this section’’.

■ 29. In newly redesignated paragraph (c)(2)(viii)(B)(*1*), the first sentence, by adding the words ‘‘, none of which is a nonlife insurance company’’ after the text ‘‘S, T, P and M’’.

■ 30. In newly redesignated paragraph (c)(2)(viii)(B)(*1*), the fourth sentence, by adding the text ‘‘(a taxable year beginning after December 31, 2020)’’ after the language ‘‘Year 3’’.

■ 31. By revising newly designated paragraph (c)(2)(viii)(B)(*3*).

■ 32. By redesignating newly redesignated paragraph (c)(2)(viii)(B)(*4*) as paragraph (c)(2)(viii)(B)(*5*).

■ 33. By adding a new paragraph (c)(2)(viii)(B)(*4*).

■ 34. By revising newly redesignated paragraph (c)(2)(viii)(B)(*5*).

■ 35. By adding paragraph (c)(2)(viii)(B)(*6*).

■ 36. In paragraph (g)(5), by designating *Examples 1* through *9* as paragraphs (g)(5)(i) through (ix), respectively, and removing the period after each example number in the paragraph headings and replacing them with a colon.

■ 37. In newly redesignated paragraphs (g)(5)(i) through (ix), by redesignating paragraphs (g)(5)(i)(i) through (iv) as paragraphs (g)(5)(i)(A) through (D), paragraphs (g)(5)(ii)(i) through (iv) as paragraphs (g)(5)(ii)(A) through (D), paragraphs (g)(5)(iii)(i) through (iii) as paragraphs (g)(5)(iii)(A) through (C), paragraphs (g)(5)(iv)(i) through (iv) as paragraphs (g)(5)(iv)(A) through (D), paragraphs (g)(5)(v)(i) through (iv) as paragraphs (g)(5)(v)(A) through (D), paragraphs (g)(5)(vi)(i) through (iv) as paragraphs (g)(5)(vi)(A) through (D), paragraphs (g)(5)(vii)(i) through (vi) as paragraphs (g)(5)(vii)(A) through (F), paragraphs (g)(5)(viii)(i) through (v) as paragraphs (g)(5)(viii)(A) through (E), and paragraphs (g)(5)(ix)(i) through (vii) as paragraphs (g)(5)(ix)(A) through (G).

■ 38. By revising paragraph (h)(9).

■ 39. By adding paragraph (h)(10).

The revisions and additions read as follows:

§ 1.1502–21 Net operating losses.

(a) *Consolidated net operating loss deduction*—(1) *In general.* Subject to any limitations under the Internal Revenue Code or this chapter (for example, the limitations under section 172(a)(2) and paragraph (a)(2) of this section), the consolidated net operating loss deduction (or CNOL deduction) for any consolidated return year is the aggregate of the net operating loss carryovers and carrybacks to the year. The net operating loss carryovers and carrybacks consist of—

(i) Any CNOLs (as defined in paragraph (e) of this section) of the consolidated group; and

(ii) Any net operating losses (or NOLs) of the members arising in separate return years.

(2) *Application of section 172 for computing net operating loss deductions*—(i) *Overview.* For purposes of § 1.1502–11(a)(2) (regarding a CNOL deduction), the rules of section 172 regarding the use of net operating losses are taken into account as provided by this paragraph (a)(2) in calculating the consolidated taxable income of a group for a particular consolidated return year. More specifically, in computing taxable income for taxable years beginning after December 31, 2020, section 172(a) generally limits the deductibility of net operating losses arising in taxable years beginning after December 31, 2017 (post-2017 NOLs). However, these limitations do not apply to net operating losses arising in taxable years beginning before January 1, 2018 (pre-2018 NOLs). Therefore, in any particular consolidated return year beginning after December 31, 2020, the group's CNOL deduction includes CNOLs arising in taxable years beginning before January 1, 2018 (pre-2018 CNOLs), without limitation under section 172(a). Following the deduction of pre-2018 CNOLs, this paragraph (a)(2) applies to compute the maximum amount of CNOLs from taxable years beginning after December 31, 2017 (post-2017 CNOLs), that can be deducted against taxable income in a consolidated return year beginning after December 31, 2020 (post-2017 CNOL deduction limit). See section 172(a)(2)(A) and (B).

(ii) *Computation of the 80-percent limitation and special rule for nonlife insurance companies*—(A) *Determinations based on status of group members.* If a portion of a post-2017 CNOL is carried back or carried over to a consolidated return year beginning after December 31, 2020, whether the members of the group include nonlife insurance companies, other types of corporations, or both determines whether section 172(a) (including the limitation described in section 172(a)(2)(B)(ii) (80-percent limitation)), section 172(f) (providing special rules for nonlife insurance companies), or both, apply to the group for the consolidated return year.

(B) *Determination of post-2017 CNOL deduction limit.* The post-2017 CNOL deduction limit is determined under paragraph (a)(2)(iii) of this section by applying section 172(a)(2)(B)(ii) (that is, the 80-percent limitation), section 172(f) (that is, the special rule for nonlife insurance companies), or both, to the group's consolidated taxable income for that year.

(C) *Inapplicability of 80-percent limitation.* The 80-percent limitation does not apply to CNOL deductions taken in taxable years beginning before January 1, 2021, or to CNOLs arising in taxable years beginning before January 1, 2018 (that is, pre-2018 CNOLs). See section 172(a).

(iii) *Computations under sections 172(a)(2)(B) and 172(f).* This paragraph (a)(2)(iii) provides rules for applying sections 172(f) and 172(a)(2)(B) to consolidated return years beginning after December 31, 2020 (that is, for computing the post-2017 CNOL deduction limit). Section 172(f) applies to income of nonlife insurance company members, whereas section 172(a)(2)(B)(ii) applies to income of members that are not nonlife insurance companies. Thus, this paragraph (a)(2)(iii) provides specific rules for groups with no nonlife insurance company members, only nonlife insurance company members, or a combination of nonlife insurance company members and other members. For groups with both nonlife insurance company members and life insurance company members, see paragraph (b)(2)(iv)(E) of this section.

(A) *Groups without nonlife insurance company members.* If no member of a group is a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, section 172(a)(2)(B)(ii) (that is, the 80-percent limitation) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year is the lesser of—

(*1*) The aggregate amount of post-2017 NOLs carried to that year; or

(*2*) The amount determined by multiplying—

(*i*) 80 percent, by

(*ii*) Consolidated taxable income for the group for that year (determined without regard to any deductions under sections 172, 199A, and 250) less the aggregate amount of pre-2018 NOLs carried to that year.

(B) *Groups comprised solely of nonlife insurance companies.* If a group is comprised solely of nonlife insurance companies during a particular consolidated return year beginning after December 31, 2020, section 172(f) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year equals the lesser of—

(*1*) The aggregate amount of post-2017 NOLs carried to that year, or

(*2*) Consolidated taxable income less the aggregate amount of pre-2018 NOLs carried to that year.

(C) *Groups that include both nonlife insurance companies and other corporations*—(*1*) *General rule.* Except as provided in paragraph (a)(2)(iii)(C)(*5*) of this section, if a group has at least one member that is a nonlife insurance company and at least one member that is not a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year equals the lesser of—

(*i*) The aggregate amount of post-2017 NOLs carried to that year, or

(*ii*) The sum of the amounts in the income pools determined under paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section.

(*2*) *Residual income pool.* The amount determined under this paragraph (a)(2)(iii)(C)(*2*) (residual income pool) is eighty percent of the excess of—

(*i*) The consolidated taxable income of the group for a consolidated return year beginning after December 31, 2020, determined without regard to any income, gain, deduction, or loss of members that are nonlife insurance companies and without regard to any deductions under sections 172, 199A, and 250, over

(*ii*) The aggregate amount of pre-2018 NOLs carried to that year that are allocated to this income pool under paragraph (a)(2)(iii)(C)(*4*) of this section (that is, by applying the 80-percent limitation). See section 172(a)(2)(B)(ii).

(*3*) *Nonlife income pool.* The amount determined under this paragraph (a)(2)(iii)(C)(*3*) (nonlife income pool) is the consolidated taxable income of the group for a consolidated return year beginning after December 31, 2020, determined without regard to any income, gain, deduction, or loss of members included in the computation under paragraph (a)(2)(iii)(C)(*2*) of this section, less the aggregate amount of pre-2018 NOLs carried to that year that are allocated to this income pool under paragraph (a)(2)(iii)(C)(*4*) of this section. See section 172(f).

(*4*) *Pro rata allocation of pre-2018 NOLs between pools of income.* For purposes of paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section, the aggregate amount of pre-2018 NOLs carried to any particular consolidated return year beginning after December 31, 2020, is prorated between the residual income pool and the nonlife income pool based on the relative amounts of positive income of those two pools. For example, if $30 of pre-2018 NOLs is carried over to a consolidated return year in which the residual income pool contains $75 and the nonlife income pool contains $150, the residual income pool is allocated $10 of the pre-2018 NOLs ($30 × $75/($75 + $150), or $30 × ⅓), and the nonlife income pool is allocated the remaining $20 of pre-2018 NOLs ($30 × $150/($75 + $150), or $30 × ⅔).

(*5*) *Exception.* The post-2017 CNOL deduction limit for the group for a consolidated return year is determined under this paragraph (a)(2)(iii)(C)(*5*) if the amounts computed under paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section for that year are not both positive.

(*i*) *Positive residual income pool and negative nonlife income pool.* This paragraph (a)(2)(iii)(C)(*5*)(*i*) applies if the amount computed under paragraph (a)(2)(iii)(C)(*2*) of this section for the residual income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(*3*) of this section for the nonlife income pool is negative. If this paragraph (a)(2)(iii)(C)(*5*)(*i*) applies, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the lesser of the aggregate amount of post-2017 NOLs carried to that year, or 80 percent of the consolidated taxable income of the entire group (determined without regard to any deductions under sections 172, 199A, and 250) after subtracting the aggregate amount of pre-2018 NOLs carried to that year (that is, by applying the 80-percent limitation). See section 172(a)(2)(B).

(*ii*) *Positive nonlife income pool and negative residual income pool.* If the amount computed under paragraph (a)(2)(iii)(C)(*3*) of this section for the nonlife income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(*2*) of this section for the residual income pool is negative, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the lesser of the aggregate amount of post-2017 NOLs carried to that year, or the consolidated taxable income of the entire group less the aggregate amount of pre-2018 NOLs carried to that year. See section 172(f).

(b) * * *

(1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of, and are subject to any limitations under, section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, except as otherwise provided in this section, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL eligible for carryback or carryover that is attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. See, for example, section 382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See paragraph (c)(1)(iii)(B) of this section, (Example 2), for an illustration of pro rata absorption of losses subject to a SRLY limitation.

(2) * * *

(iv) *Operating rules.* (A) *Amount of CNOL attributable to a member.* The amount of a CNOL that is attributable to a member equals the product obtained by multiplying the CNOL and the percentage of the CNOL attributable to the member.

(B) *Percentage of CNOL attributable to a member*—(*1*) *In general.* Except as provided in paragraph (b)(2)(iv)(B)(*2*) of this section, the percentage of the CNOL for the consolidated return year attributable to a member equals the separate net operating loss of the member for the consolidated return year divided by the sum of the separate net operating losses for that year of all members having such losses for that year. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the consolidated return year (whether or not absorbed by the member).

(*2*) *Recomputed percentage.* If, for any reason, a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis (for example, under § 1.1502–11(b) or (c), paragraph (b)(2)(iv)(C) of this section, § 1.1502–28, or 1.1502–36(d), or as the result of a carryback to a separate return year), the percentage of the CNOL attributable to each member is recomputed. In addition, if a member with a separate net operating loss ceases to be a member, the percentage of the CNOL attributable to each remaining member is recomputed. The recomputed percentage of the CNOL attributable to each member equals the remaining

CNOL attributable to the member at the time of the recomputation divided by the sum of the remaining CNOL attributable to all of the remaining members at the time of the recomputation. For purposes of this paragraph (b)(2)(iv)(B)(*2*), a CNOL that is permanently disallowed or eliminated is treated as absorbed.

(C) *Net operating loss carryovers and carrybacks*—(*1*) *General rules.* Subject to the rules regarding allocation of special status losses under paragraph (b)(2)(iv)(D) of this section—

(*i*) *Nonlife insurance companies.* The portion of a CNOL attributable to any members of the group that are nonlife insurance companies is carried back or carried over under the rules in section 172(b) applicable to nonlife insurance companies.

(*ii*) *Corporations other than nonlife insurance companies.* The portion of a CNOL attributable to any other members of the group is carried back or carried over under the rules in section 172(b) applicable to corporations other than nonlife insurance companies.

(*2*) *Recomputed percentage.* For rules governing the recomputation of the percentage of a CNOL attributable to each remaining member if any portion of the CNOL attributable to a member is carried back under section 172(b)(1)(B) or (C) and absorbed on a non-pro rata basis, see paragraph (b)(2)(iv)(B)(*2*) of this section.

(D) *Allocation of special status losses.* The amount of the group's CNOL that is determined to constitute a farming loss (as defined in section 172(b)(1)(B)(ii)) or any other net operating loss that is subject to special carryback or carryover rules (special status loss) is allocated to each member separately from the remainder of the CNOL based on the percentage of the CNOL attributable to the member, as determined under paragraph (b)(2)(iv)(B) of this section. This allocation is made without regard to whether a particular member actually incurred specific expenses or engaged in specific activities required by the special status loss provisions. This paragraph (b)(2)(iv)(D) applies only with regard to losses for which the special carryback or carryover rules are dependent on the type of expense generating the loss, rather than on the special status of the entity to which the loss is allocable. See section 172(b)(1)(C) and paragraph (b)(2)(iv)(C)(*1*)(*i*) of this section (applicable to losses of nonlife insurance companies). This paragraph (b)(2)(iv)(D) does not apply to farming losses incurred by a consolidated group in any taxable year beginning after December 31, 2017, and before January 1, 2021.

(E) *Coordination with rules for life-nonlife groups under § 1.1502–47.* For groups that include at least one member that is a life insurance company and for which an election is in effect under section 1504(c)(2), any computation of the 80-percent limitation under paragraph (a)(2)(iii)(C) of this section is computed only with respect to items of income, gain, deduction, and loss of the members of the nonlife subgroup (as defined in § 1.1502–47(b)(9)). For rules regarding the use of CNOLs of the nonlife subgroup to offset life insurance company taxable income of the life subgroup (each as defined in § 1.1502–47(b)), or the use of CNOLs of the life subgroup to offset consolidated taxable income of the nonlife subgroup, see generally section 1503(c)(1) and § 1.1502–47.

(v) *Examples.* For purposes of the examples in this paragraph (b)(2)(v), unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, all losses are farming losses within the meaning of section 172(b)(1)(B)(ii), all taxable years begin after December 31, 2020, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this paragraph (b) are illustrated by the following examples:

* * * * *

(D) *Example 4: Allocation of a CNOL arising in a consolidated return year beginning after December 31, 2020.* (*1*) P is the common parent of a consolidated group that includes S. Neither P nor S is a nonlife insurance company. The P group also includes nonlife insurance companies PC1, PC2, and PC3. In the P group's 2021 consolidated return year, all members except S have separate net operating losses, and the P group's CNOL in that year is $40. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(*2*) Under paragraphs (b)(1) and (b)(2)(iv)(B)(*1*) of this section, for purposes of carrying losses to other taxable years, the P group's $40 CNOL is allocated pro rata among the group members that have separate net operating losses. Under paragraph (b)(2)(iv)(C) of this section, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) are carried back to each of the two preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C). The portion attributable to P (which is not a nonlife insurance company) may not be carried back but is carried over to future years. See section 172(b)(1)(A).

(E) *Example 5: Allocation of a CNOL arising in a consolidated return year beginning before January 1, 2021.* The facts are the same as in paragraph (b)(2)(v)(D)(*1*) of this section, except that the P group incurred the CNOL during the P group's 2020 consolidated return year. The allocation among the P group members of the CNOL described in paragraph (b)(2)(v)(D)(*2*) of this section would be the same. However, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) will be carried back to each of the five preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C) and section 172(b)(1)(D)(i). The portion attributable to P (which is not a nonlife insurance company) will be carried back to each of the five preceding taxable years and then carried over to future years. See section 172(b)(1)(A) and section 172(b)(1)(D)(i).

(F) *Example 6: CNOL deduction and application of section 172.* (*1*) P (a type of corporation other than a nonlife insurance company) is the common parent of a consolidated group that includes PC1 (a nonlife insurance company). P and PC1 were both incorporated in Year 1 (a year beginning after December 31, 2020). In Year 1, P and PC1 have separate taxable income of $20 and $25, respectively. As a result, the P group has Year 1 consolidated taxable income of $45. In Year 2, P has separate taxable income of $24, and PC1 has a separate taxable loss of $40, resulting in a P group CNOL of $16. Additionally, in Year 3, P has separate taxable income of $15, and PC1 has a separate taxable loss of $45, resulting in a P group CNOL of $30. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(*2*) Under paragraph (b)(2)(iv)(B) of this section, the P group's Year 2 CNOL and Year 3 CNOL are entirely attributable to PC1, a nonlife insurance company. Therefore, under section 172(b)(1)(C)(i), the entire amount of each of these CNOLs is eligible to be carried back to Year 1.

(*3*) Under paragraph (a)(2)(ii) of this section, the amount of the Year 2 CNOL that may be used by the P group in Year 1 is determined by taking into account the status (nonlife insurance company or other type of corporation) of the member that has separate taxable income composing in whole or in part

the P group's consolidated taxable income. Because the P group includes both a nonlife insurance company member and a member that is not a nonlife insurance company, paragraph (a)(2)(iii)(C) of this section applies to determine the computation of the post-2017 CNOL deduction limit for the group for Year 1. Therefore, the 80-percent limitation is applied to the residual income pool, which consists of the taxable income of P, a type of corporation other than a nonlife insurance company. Under the 80-percent limitation, the maximum amount of P's Year 1 income that may be offset by the P group's post-2017 CNOLs is $16, which equals 80 percent of the excess of P's taxable income for Year 1 ($20) over the aggregate amount of pre-2018 NOLs allocable to P ($0) (80 percent × ($20 − $0)). See paragraph (a)(2)(iii)(C)(*2*) and (a)(2)(iii)(C)(*4*) of this section. PC1 is a nonlife insurance company to which section 172(f), rather than the 80-percent limitation in section 172(a)(2)(B)(ii), applies. Therefore, the maximum amount of PC1's Year 1 income that may be offset by the P group's post-2017 CNOLs is $25, which equals the excess of PC1's taxable income for Year 1 ($25) over the aggregate amount of pre-2018 NOLs allocable to PC1 ($0). See paragraph (a)(2)(iii)(C)(*3*) and (*4*) of this section.

(*4*) Based on paragraph (a)(2)(iii)(C) of this section and the analysis set forth in paragraph (b)(2)(v)(F)(*3*) of this section, at the end of Year 2, the P group's post-2017 CNOL deduction limit for Year 1 is the lesser of the aggregate amount of post-2017 NOLs carried to Year 1 ($16), or $41 ($16 + $25). Therefore, the P group can offset $16 of its Year 1 income with its CNOL carryback from Year 2.

(*5*) When the Year 3 CNOL is carried back to Year 1, the P group's post-2017 CNOL deduction limit for Year 1 is the lesser of $46 (the aggregate amount of post-2017 NOLs carried to Year 1) or $41 ($16 + $25; see the computation in paragraph (b)(2)(v)(F)(*3*) of this section). Thus, the total amount of the P group's Year 1 income that may be offset by the P group's Year 2 and Year 3 CNOLs is $41 ($16 from Year 2 + $25 from Year 3). As a result, the P group reports $4 of income ($45 − $41) in Year 1 that is ineligible for offset by any other NOLs. The P group carries over its remaining $5 CNOL ($46 − $41) to future years.

(G) *Example 7: Pre-2018 and post-2017 CNOLs.* (*1*) P is the common parent of a consolidated group. No member of the P group is a nonlife insurance company or is engaged in a farming business, and no member of the P group has a loss that is subject to a SRLY limitation. The P group had the following consolidated taxable income or CNOL for the following taxable years:

TABLE 1 TO PARAGRAPH (b)(2)(v)(G)(*1*)

2014	2015	2016	2017	2018	2019	2020	2021
$60	$0	$0	($90)	$30	($40)	($100)	$120

(*2*) Under section 172(a)(1), all $30 of the P group's 2018 consolidated taxable income is offset by the 2017 CNOL carryover without limitation. The remaining $60 of the P group's 2017 CNOL is carried over to 2021 under section 172(b)(1)(A)(ii)(I).

(*3*) Under section 172(b)(1)(D)(i)(I), the P group's $40 2019 CNOL is carried back to the five taxable years preceding the year of the loss. Thus, the P group's $40 2019 CNOL is carried back to offset $40 of its 2014 consolidated taxable income.

(*4*) Under section 172(a)(2) and paragraph (a)(2)(i) of this section, the P group's CNOL deduction for 2021 equals the aggregate amount of pre-2018 NOLs carried to 2021 plus the group's post-2017 CNOL deduction limit. The P group has $60 of pre-2018 NOLs carried to 2021 ($90 − $30). Because no member of the P group is a nonlife insurance company, paragraph (a)(2)(iii)(A) of this section applies to determine the computation of the group's post-2017 CNOL deduction limit for 2021. See also section 172(a)(2)(B). Therefore, the post-2017 CNOL deduction limit of the P group for 2021 is $48, which equals the lesser of the aggregate amount of post-2017 NOLs carried to 2021 ($100), or 80 percent of the excess of the P group's consolidated taxable income for that year computed without regard to any deductions under sections 172, 199A, and 250 ($120) over the aggregate amount of pre-2018 NOLs carried to 2021 ($60) (that is, 80 percent × $60). Thus, the P group's CNOL deduction for 2021 equals $108 ($60 pre-2018 NOLs carried to 2021 + $48 post-2017 CNOL deduction limit). See section 172(a)(2) and paragraph (a)(2)(i) of this section. The P group offsets $108 of its $120 of 2021 consolidated taxable income, resulting in $12 of consolidated taxable income in 2021. The remaining $52 of the P group's 2020 CNOL ($100 − $48) is carried over to future taxable years. See section 172(b)(1)(A)(ii)(II).

(3) * * *

(ii) * * *

(C) *Waiver of carryback period for losses in taxable years to which statutorily amended carryback rules apply.* For further information, see § 1.1502–21T(b)(3)(ii)(C).

(D) *Examples.* For further information, see § 1.1502–21T(b)(3)(ii)(D).

* * * * *

(c) * * *

(1) * * *

(i) *General rule.* Except as provided in paragraph (g) of this section (relating to an overlap with section 382), the aggregate of the net operating loss carryovers and carrybacks of a member (SRLY member) arising (or treated as arising) in SRLYs (SRLY NOLs) that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate consolidated taxable income for all consolidated return years of the group determined by reference to only the member's items of income, gain, deduction, and loss (cumulative register). For this purpose—

* * * * *

(E) If a limitation on the amount of taxable income that may be offset under section 172(a) (see paragraph (a)(2) of this section) applies in a taxable year to a member whose carryovers or carrybacks are subject to a SRLY limitation (SRLY member), the amount of net operating loss subject to a SRLY limitation that is available for use by the group in that year is limited to the percentage of the balance in the cumulative register that would be available for offset under section 172(a) if the SRLY member filed a separate return and reported as taxable income in that year the amount contained in the cumulative register. For example, assume that a consolidated group has a SRLY member that is a corporation other than a nonlife insurance company, and that the SRLY member has a SRLY NOL that arose in a taxable year beginning after December 31, 2017 (post-2017 NOL). The group's consolidated taxable income for a consolidated return year beginning after December 31, 2020 is $200, but the cumulative register has a positive

balance of only $120 (and no other net operating loss carryovers or carrybacks are available for the year). Because the SRLY limitation would be $96 ($120 × 80 percent), only $96 of SRLY loss may be used, rather than $160 ($200 × 80 percent). In addition, to the extent that this paragraph (c)(1)(i)(E) applies, the cumulative register is decreased by the full amount of income required under section 172(a) to support the amount of SRLY NOL absorption. See, for example, paragraph (c)(1)(iii)(A) and (B) of this section for examples illustrating the application of this rule.

* * * * *

(iii) *Examples.* For purposes of the examples in this paragraph (c)(1)(iii), no corporation is a nonlife insurance company and, unless otherwise specified, all taxable years begin after December 31, 2020, and all CNOLs arise in taxable years beginning after December 31, 2020. The principles of this paragraph (c)(1) are illustrated by the following examples:

(A) * * *

(*2*) T's $100 net operating loss carryover from Year 1 arose in a SRLY. See § 1.1502–1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, the $100 net operating loss carryover is subject to the SRLY limitation in paragraph (c)(1) of this section. The positive balance of the cumulative register of T for Year 2 equals the consolidated taxable income of the P group determined by reference to only T's items, or $70. However, due to the 80-percent limitation and the application of paragraph (c)(1)(i)(E) of this section, the SRLY limitation is $56 ($70 × 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction ($300 × 80 percent = $240). Therefore, $56 of the SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for Year 2. Although only $56 is absorbed, the cumulative register of T is reduced by $70, the full amount of income necessary to support the $56 deduction after taking into account the 80-percent limitation ($70 × 80 percent = $56).

* * * * *

(B) * * *

(*2*) P's Year 1, Year 2, and Year 3 are not SRLYs with respect to the P group. See § 1.1502–1(f)(2)(i). Thus, P's $40 net operating loss arising in Year 1 and $120 net operating loss arising in Year 3 are not subject to the SRLY limitation under paragraph (c) of this section. Although the P group has $160 of taxable income in Year 4, the 80-percent limitation reduces the P group's net operating loss deduction in that year to $128 ($160 × 80 percent). Under the principles of section 172, paragraph (b) of this section requires that P's $40 loss arising in Year 1 be the first loss absorbed by the P group in Year 4. Absorption of this loss leaves $88 ($128 − $40) of the P group's Year 4 consolidated taxable income available for offset by loss carryovers.

(*3*) T's Year 2 and Year 3 are SRLYs with respect to the P group. See § 1.1502–1(f)(2)(ii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's $50 net operating loss arising in Year 2 and $60 net operating loss arising in Year 3 are subject to the SRLY limitation. The positive balance of the cumulative register of T for Year 4 equals the P group's consolidated taxable income determined by reference to only T's items, or $70. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is $56 ($70 × 80 percent). Therefore, the P group can absorb up to $56 of T's SRLY net operating losses in Year 4. Under the principles of section 172, T's $50 SRLY net operating loss from Year 2 is included under paragraph (a) of this section in the P group's CNOL deduction for Year 4. After absorption of this loss, under paragraph (c)(1)(i) of this section, $6 of SRLY limit remains in Year 4 ($56 − $50). Further, the total amount of Year 4 consolidated taxable income available for offset by other loss carryovers under section 172(a) is $38 ($88 − $50).

(*4*) P and T each carry over net operating losses to Year 4 from a taxable year ending on the same date (that is, Year 3). The losses carried over from Year 3 total $180. However, the remaining Year 4 SRLY limit is $6. Therefore, the total amount of loss available for absorption is $126 ($120 allocable to P and $6 allocable to T). Under paragraph (b) of this section, the losses available for absorption that are carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Thus, $36.19 of P's Year 3 loss is absorbed ($120/($120 + $6)) × $38 = $36.19. In addition, $1.81 of T's Year 3 loss is absorbed ($6/($120 + $6)) × $38 = $1.81.

(*5*) After deduction of T's SRLY net operating losses in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. A total of $51.81 of SRLY net operating losses were absorbed in Year 4 ($50 + $1.81). After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $64.76 ($64.76 × 80 percent = $51.81). Therefore, the cumulative register of T is decreased by $64.76, and $5.24 remains in the cumulative register ($70 − $64.76).

(*6*) P carries its remaining $83.81 ($120 − $36.19) Year 3 net operating loss and T carries its remaining $58.19 ($60 − $1.81) Year 3 net operating loss over to Year 5. Assume that, in Year 5, the P group has $90 of consolidated taxable income (computed without regard to the CNOL deduction). The P group's consolidated taxable income determined by reference to only T's items is a CNOL of $4. Therefore, the positive balance of the cumulative register of T in Year 5 equals $1.24 ($5.24 − $4). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is $0.99 ($1.24 × 80 percent). For Year 5, the total amount of Year 5 consolidated taxable income available for offset by loss carryovers as a result of the 80-percent limitation is $72 ($90 × 80 percent). Under paragraph (b) of this section, the losses carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Therefore, $71.16 of P's Year 3 loss is absorbed (($83.81/($83.81 + $0.99)) × $72 = $71.16). In addition, $0.84 of T's Year 3 losses is absorbed (($0.99/($83.81 + $0.99)) × $72 = $0.84).

* * * * *

(D) * * *

(*2*) Under § 1.1502–15(a), T's $100 of ordinary loss in Year 3 constitutes a built-in loss that is subject to the SRLY limitation under paragraph (c) of this section. The amount of the limitation is determined by treating the deduction as a net operating loss carryover from a SRLY. The built-in loss is therefore subject to both a SRLY limitation and the 80-percent limitation for Year 3. The built-in loss is treated as a net operating loss carryover solely for purposes of determining the extent to which the loss is not allowed by reason of the SRLY limitation, and for all other purposes the loss remains a loss arising in Year 3. See § 1.1502–21(c)(1)(i)(D). Consequently, under paragraph (b) of this section, the built-in loss is absorbed by the P group before the net operating loss carryover from Year 1 is absorbed. The positive balance of the cumulative register of T for Year 3 equals the P group's consolidated taxable income determined by reference to only T's items, or $60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation

for Year 3 is $48 ($60 × 80 percent). Therefore, $48 of the built-in loss is absorbed by the P group. None of T's $100 SRLY net operating loss carryover from Year 1 is allowed.

(*3*) After deduction of T's $48 SRLY built-in loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $60 ($60 × 80 percent = $48). Therefore, the cumulative register of T is decreased by $60, and zero remains in the cumulative register ($60 − $60).

(*4*) Under § 1.1502–15(a), the $52 balance of the built-in loss that is not allowed in Year 3 because of the SRLY limitation and the 80-percent limitation is treated as a $52 net operating loss arising in Year 3 that is subject to the SRLY limitation because, under paragraph (c)(1)(ii) of this section, Year 3 is treated as a SRLY. The built-in loss is carried to other years in accordance with the rules of paragraph (b) of this section. The positive balance of the cumulative register of T for Year 4 equals $40 (zero from Year 3 + $40). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 4 is $32 ($40 × 80 percent). Therefore, under paragraph (c) of this section, $32 of T's $100 net operating loss carryover from Year 1 is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(*5*) After deduction of T's $32 SRLY net operating loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $40 ($40 × 80 percent = $32). Therefore, the cumulative register is decreased by $40, and zero remains in the cumulative register ($40 − $40).

(E) * * *

(*2*) For Year 2, the P group computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group determines its ability to use its capital loss carryover before it determines its ability to use its ordinary loss carryover. Under section 1212, because the P group has no Year 2 capital gain, it cannot absorb any capital losses in Year 2. T's Year 1 net capital loss and the P group's Year 2 consolidated net capital loss (all of which is attributable to T) are carried over to Year 3.

(*3*) The P group's ability to deduct net operating losses in Year 2 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the group's limitation for Year 2 is $72 ($90 × 80 percent). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 2 equals the P group's consolidated taxable income determined by reference to only T's items, or $60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 2 is $48 ($60 × 80 percent). Therefore, only $48 of T's Year 1 SRLY net operating loss is absorbed by the P group in Year 2. T carries over its remaining $52 of its Year 1 loss to Year 3.

(*4*) After deduction of T's SRLY net operating losses in Year 2, the net operating loss cumulative register is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. The P group deducted $48 of T's SRLY net operating losses in Year 2. After taking into account the 80-percent limitation, the amount of taxable income necessary to support this deduction is $60 ($60 × 80 percent = $48). Therefore, the net operating loss cumulative register of T is decreased by $60, and zero remains in the net operating loss cumulative register ($60 − $60).

(*5*) For Year 3, the P group again computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group has consolidated net capital gain (without taking into account a net capital loss carryover deduction) of $30. Under § 1.1502–22(c), the aggregate amount of T's $50 capital loss carryover from Year 1 that is included in computing the P group's consolidated net capital gain for all years of the group (in this case, Years 2 and 3) may not exceed $30 (the aggregate consolidated net capital gain computed by reference only to T's items, including losses and deductions actually absorbed (that is, $30 of capital gain in Year 3)). Thus, the P group may include $30 of T's Year 1 capital loss carryover in its computation of consolidated net capital gain for Year 3, which offsets the group's capital gains for Year 3. T carries over its remaining $20 of its Year 1 capital loss to Year 4. Therefore, the capital loss cumulative register of T is decreased by $30, and zero remains in the capital loss cumulative register ($30 − $30). Further, because the net operating loss cumulative register includes all taxable income of T included in the P group, as well as all absorbed losses of T (including capital items), a zero net increase occurs in the net operating loss cumulative register. The P group carries over the Year 2 consolidated net capital loss to Year 4.

(*6*) The P group's ability to deduct net operating losses in Year 3 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the P group's taxable income for Year 3 that can be offset, before use of net operating losses, is $40 (80 percent × the sum of zero capital gain, after use of the capital loss carryover, plus $50 of ordinary income). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 3 equals the P group's consolidated taxable income determined by reference only to T's items, or $40. This amount equals the sum obtained by adding the zero carryover from Year 2, a net inclusion of zero from capital items implicated in Year 3 ($30 − $30), and $40 of taxable income in Year 3. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is $32 ($40 × 80 percent). Therefore, only $32 of the Year 1 net operating loss is absorbed by the P group in Year 3. T carries over its remaining $20 of its Year 1 loss to Year 4.

(F) *Example 6: Pre-2018 NOLs and post-2017 NOLs.* (*1*) Individual A owns P. On January 1, 2017, A forms T. P and T are calendar-year taxpayers. In 2017, T sustains a $100 net operating loss that is carried over. During 2018, 2019, and 2020, T deducts a total of $90 of its 2017 net operating loss against its taxable income, and T carries over the remaining $10 of its 2017 net operating loss. In 2021, T sustains a net operating loss of $50. On December 31, 2021, P acquires all the stock of T, and T becomes a member of the P group. The P group has $300 of consolidated taxable income in 2022 (computed without regard to the CNOL deduction). Such consolidated taxable income would be $70 if determined by reference to only T's items. The P group has no other SRLY net operating loss carryovers or CNOL carryovers.

(*2*) T's remaining $10 of net operating loss carryover from 2017 and its $50 net operating loss carryover from 2021 are both SRLY losses in the P group. See § 1.1502–1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's net operating loss carryovers are subject to the SRLY limitation in paragraph (c)(1) of this section. The SRLY limitation for the P group's 2022 consolidated return year is consolidated taxable income determined by reference to only T's $70 of items.

(*3*) Because T's oldest (2017) carryover was sustained in a year

beginning before January 1, 2018, its use is not subject to limitation under section 172(a)(2)(B). Therefore, all $10 of T's 2017 SRLY net operating loss (that is, a pre-2018 NOL) is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. After deduction of T's $10 SRLY net operating loss from 2017, the cumulative register of T is reduced on a dollar-for-dollar basis, pursuant to paragraph (c)(1)(i) of this section. Therefore, the cumulative register of T is decreased by $10, and $60 remains in the cumulative register ($70 − $10).

(*4*) The P group's deduction of T's 2021 net operating loss is subject to both a SRLY limitation and the 80-percent limitation under section 172(a)(2)(B)(ii). Therefore, the total limitation on the use of T's 2021 net operating loss in the P group is $48 (the remaining cumulative register of $60 × 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction ($290 × 80 percent = $232). Therefore, $48 of T's 2021 SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. The remaining $2 of T's 2021 SRLY net operating loss ($50 − $48) is carried over to the P group's 2023 consolidated return year.

(*5*) After deduction of T's $48 SRLY NOL in 2022, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $60 ($60 × 80 percent = $48). Therefore, the cumulative register of T is decreased by $60, and zero remains in the cumulative register ($60 − $60).

(2) * * *

(v) *Coordination with other limitations.* This paragraph (c)(2) does not allow a net operating loss to offset income to the extent inconsistent with other limitations or restrictions on the use of losses, such as a limitation based on the nature or activities of members. For example, a net operating loss may not offset income in excess of any limitations under section 172(a) and paragraph (a)(2) of this section. Additionally, any dual consolidated loss may not reduce the taxable income to an extent greater than that allowed under section 1503(d) and §§ 1.1503(d)–1 through 1.1503(d)–8. See also § 1.1502–47(k) (relating to preemption of rules for life-nonlife groups).

* * * * *

(viii) *Examples.* For purposes of the examples in this paragraph (c)(2)(viii), no corporation is a nonlife insurance company or has any farming losses. The principles of this paragraph (c)(2) are illustrated by the following examples:

* * * * *

(B) * * *

(*3*) In Year 4, the M group has $10 of consolidated taxable income (computed without regard to the CNOL deduction for Year 4). That consolidated taxable income would be $45 if determined by reference only to the items of P, S, and T, the members included in the SRLY subgroup with respect to P's loss carryover. Therefore, the positive balance of the cumulative register of the P SRLY subgroup for Year 4 equals $45 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is $36 ($45 × 80 percent). However, the M group has only $10 of consolidated taxable income in Year 4. Thus, due to the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of all net operating losses in Year 4 is limited to $8 ($10 × 80 percent). As a result, the M group deducts $8 of P's SRLY net operating loss carryover, and the remaining $37 is carried over to Year 5.

(*4*) After deduction of $8 of P's SRLY net operating loss in Year 4, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $10 ($10 × 80 percent = $8). Therefore, the cumulative register of the P SRLY subgroup is decreased by $10, and $35 remains in the cumulative register ($45 − $10).

(*5*) In Year 5, the M group has $100 of consolidated taxable income (computed without regard to the CNOL deduction for Year 5). None of P, S, or T has any items of income, gain, deduction, or loss in Year 5. Although the members of the P SRLY subgroup do not contribute to the $100 of consolidated taxable income in Year 5, the positive balance of the cumulative register of the P SRLY subgroup for Year 5 is $35 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is $28 ($35 × 80 percent). Because of the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of net operating losses in Year 5 is limited to $80 ($100 × 80 percent). Because the $28 of net operating loss available to be absorbed is less than 80 percent of the M group's consolidated taxable income, $28 of P's SRLY net operating loss is absorbed in Year 5, and the remaining $9 ($37 − $28) is carried over to Year 6.

(*6*) After deduction of $28 of P's SRLY net operating loss in Year 5, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $35 ($35 × 80 percent = $28). Therefore, the cumulative register of the P SRLY subgroup is decreased by $35, and zero remains in the cumulative register ($35 − $35).

* * * * *

(h) * * *

(9) For the applicability dates of paragraphs (b)(3)(ii)(C) and (b)(3)(ii)(D) of this section, see § 1.1502–21T(h)(9).

(10) The rules of paragraphs (a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E) of this section apply to taxable years beginning after December 31, 2020.

■ **Par. 4.** Section 1.1502–47 is amended:

■ 1. By revising paragraphs (a)(2)(i) and (ii).

■ 2. By removing paragraph (a)(3).

■ 3. By redesignating paragraph (a)(4) as paragraph (a)(3).

■ 4. By removing paragraphs (b) and (c).

■ 5. By redesignating paragraph (d) as paragraph (b).

■ 6. By revising newly redesignated paragraphs (b)(1), (2), (3), (4), (5), (10), (11), and (13).

■ 7. In newly redesignated paragraph (b)(14), by designating *Examples 1* through *14* as paragraphs (b)(14)(i) through (xiv), respectively.

■ 8. In newly redesignated paragraph (b)(14)(i), by adding a sentence at the end of the paragraph.

■ 9. By revising newly redesignated paragraph (b)(14)(ii).

■ 10. By removing newly redesignated paragraph (b)(14)(xiv).

■ 11. By redesignating paragraph (e) as paragraph (c).

■ 12. By removing newly redesignated paragraphs (c)(4) and (5).

■ 13. By redesignating paragraph (c)(6) as paragraph (c)(4).

■ 14. By redesignating paragraph (f) as paragraph (d).

■ 15. By revising newly redesignated paragraph (d)(5).

■ 16. By removing the last sentence of newly redesignated paragraph (d)(6).

■ 17. By removing newly redesignated paragraph (d)(7)(ii).

■ 18. By redesignating paragraph (d)(7)(iii) as paragraph (d)(7)(ii).

■ 19. By revising newly redesignated paragraph (d)(7)(ii).

■ 20. By redesignating paragraph (g) as paragraph (e).
■ 21. In newly redesignated paragraph (e)(2), by removing the language ''partial'' everywhere it appears.
■ 22. By removing newly redesignated paragraph (e)(3).
■ 23. By redesignating paragraph (h) as paragraph (f).
■ 24. By revising newly redesignated paragraph (f)(2)(iii).
■ 25. In newly designated paragraph (f)(2)(v), by removing the word ''partial'' everywhere it appears.
■ 26. In newly redesignated paragraph (f)(2)(v), by adding a sentence at the end of the paragraph.
■ 27. By revising newly redesignated paragraph (f)(2)(vi) and (vii).
■ 28. By removing newly redesignated paragraph (f)(3).
■ 29. By redesignating newly redesignated paragraph (f)(4) as paragraph (f)(3).
■ 30. By revising newly redesignated paragraph (f)(3)(ii).
■ 31. By adding a new paragraph (g).
■ 32. By removing paragraphs (j), (k), and (l).
■ 33. By redesignating paragraph (m) as paragraph (h), and redesignating paragraph (n) as paragraph (j).
■ 34. In newly redesignated paragraph (h), by removing the language ''partial'' everywhere it appears.
■ 35. In newly redesignated paragraph (h)(2)(ii), by adding a sentence at the end of the paragraph.
■ 36. In newly redesignated paragraph (h)(3)(iv), by adding a sentence at the end of the paragraph.
■ 37. In newly redesignated paragraph (h)(3)(viii), by removing the language ''common parent's election'' and adding in its place ''election by the agent for the group (within the meaning of § 1.1502–77)''.
■ 38. In newly redesignated paragraph (h)(3)(ix), by removing the last two sentences.
■ 39. By removing newly redesignated paragraph (h)(4).
■ 40. By redesignating newly redesignated paragraph (h)(5) as paragraph (h)(4).
■ 41. By revising newly redesignated paragraph (h)(4) introductory text.
■ 42. In newly redesignated paragraph (h)(4), by redesignating *Examples 1* through *6* as paragraphs (h)(4)(i) through (vi).
■ 43. By revising newly redesignated paragraphs (h)(4)(ii) and (iii).
■ 44. By removing newly redesignated paragraphs (h)(4)(v) and (vi).
■ 45. By revising redesignated paragraph (j)(2)(iii).
■ 46. By removing newly redesignated paragraph (j)(2)(v).
■ 47. By redesignating newly redesignated paragraph (j)(2)(vi) as paragraph (j)(2)(v).
■ 48. By revising newly redesignated paragraph (j)(3).
■ 49. By redesignating paragraphs (q), (r), and (s) as paragraphs (k), (l), and (m), respectively.
■ 50. By adding a new paragraph (n).
■ 51. By removing paragraphs (o), (p), and (t).
■ 52. In the following table, for each section designated or redesignated under these regulations (as indicated in the second column), removing the language in the third column and adding the language in the fourth column with the frequency indicated in the fifth column:

Paragraph	Redesignations	Remove	Add	Frequency
1.1502–47(a)(1)	N/A	section 802 or 821 (relating respectively to life insurance companies and to certain mutual insurance companies).	section 801 (relating to life insurance companies).	Once.
1.1502–47(a)(1)	N/A	life insurance companies and mutual insurance companies may.	life insurance companies may	Once.
1.1502–47(a)(1)	N/A	composition and its consolidated tax	composition, its consolidated taxable income (or loss), and its consolidated tax.	Once.
1.1502–47(a)(4)	1.1502–47(a)(3)	§§ 1.1502–1 through 1.1502–80	§§ 1.1502–0 through 1.1502–100	Once.
1.1502–47(a)(4)	1.1502–47(a)(3)	844	848	Once.
1.1502–47(d)(12)(i)(A), (d)(12)(i)(C), (d)(12)(i)(D), (d)(12)(iii), (d)(12)(iv), (d)(12)(v), (d)(12)(v)(B), (d)(12)(v)(C), (d)(12)(v)(D), (d)(12)(vi), (d)(12)(vii), and (d)(12)(viii)(F).	1.1502–47(b)(12)(i)(A), (b)(12)(i)(C), (b)(12)(i)(D), (b)(12)(iii), (b)(12)(iv), (b)(12)(v), (b)(12)(v)(B), (b)(12)(v)(C), (b)(12)(v)(D), (b)(12)(vi), (b)(12)(vii), and (b)(12)(viii)(F), respectively.	(d)(12)	(b)(12)	Each place it appears.
1.1502–47(d)(12)(iii)	1.1502–47(b)(12)(iii)	subdivision (iii)	paragraph (b)(12)(iii)	Once.
1.1502–47(d)(12)(iv)	1.1502–47(b)(12)(iv)	subdivision (iv)	paragraph (b)(12)(iv)	Once.
1.1502–47(d)(12)(v)(B)	1.1502–47(b)(12)(v)(B)	(*i.e.,* sections 11, 802, 821, or 831)	(for example, section 11, section 801, or section 831).	Once.
1.1502–47(d)(12)(vi)	1.1502–47(b)(12)(vi)	subdivision (vi)	paragraph (b)(12)(vi)	Once.
1.1502–47(d)(12)(vii)	1.1502–47(b)(12)(vii)	return year and even	return year even	Once.
1.1502–47(d)(12)(viii)(A)	1.1502–47(b)(12)(viii)(A)	(*i.e.,* total reserves in section 801(c))	(that is, total reserves in section 816(c), as modified by section 816(h)).	Once.
1.1502–47(d)(12)(viii)(D) and (F).	1.1502–47(b)(12)(viii)(D) and (F), respectively.	subdivision (viii)	paragraph (b)(12)(viii)	Once.
1.1502–47(d)(14)	1.1502–47(b)(14)	*Illustrations*	*Examples*	Once.
1.1502–47(d)(14)	1.1502–47(b)(14)	paragraph (d)	paragraph (b)	Once.
1.1502–47(d)(14), Example 1.	1.1502–47(b)(14)(i)	1913	2012	Once.
1.1502–47(d)(14), Examples 2 through 4, 8, 10, and 12.	1.1502–47(b)(14)(ii) through (iv), (viii), (x), and (xii), respectively.	1974	2012	Each place it appears.
1.1502–47(d)(14), Examples 1 through 3.	1.1502–47(b)(14)(i) through (iii), respectively.	1980	2018	Each place it appears.
1.1502–47(d)(14), Examples 1 through 5 and 8 through 13.	1.1502–47(b)(14)(i) through (v) and (viii) through (xiii), respectively.	1982	2020	Each place it appears.

Paragraph	Redesignations	Remove	Add	Frequency
1.1502–47(d)(14), Examples 5 through 7 and 9.	1.1502–47(b)(14)(v) through (vii) and (ix), respectively.	1983	2021	Each place it appears.
1.1502–47(d)(14), Examples 2 through 5 and 8 through 12.	1.1502–47(b)(14)(ii) through (v) and (viii) through (xii), respectively.	(d)(12)	(b)(12)	Each place it appears.
1.1502–47(d)(14), Examples 2, 3, and 12.	1.1502–47(b)(14)(ii), (iii), and (xii), respectively.	stock casualty	nonlife insurance	Each place it appears.
1.1502–47(d)(14), Example 3.	1.1502–47(b)(14)(iii)	subparagraph (d)(12)(v)(B) and (E)	paragraph (b)(12)(v)(B) and (D)	Once.
1.1502–47(d)(14), Example 3.	1.1502–47(b)(14)(iii)	*e.g.*	for example	Once.
1.1502–47(d)(14), Example 5.	1.1502–47(b)(14)(v)	*i.e.*	in other words	Once.
1.1502–47(d)(14), Example 12.	1.1502–47(b)(14)(xii)	casualty	nonlife insurance	Once.
1.1502–47(e)(1)	1.1502–47(c)(1)	life company or an ineligible mutual company.	life company	Once.
1.1502–47(e)(3)	1.1502–47(c)(3)	§ 1.1502–75(c) and paragraph (e)(4) of this section.	§ 1.1502–75(c)	Once.
1.1502–47(f)(3)	1.1502–47(d)(3)	1981	2019	Each place it appears.
1.1502–47(f)(3)	1.1502–47(d)(3)	1982	2020	Each place it appears.
1.1502–47(f)(3)	1.1502–47(d)(3)	applying §§ 1.1502–13, 1.1502–18, and 1.1502–19.	applying §§ 1.1502–13 and 1.1502–19	Once.
1.1502–47(f)(7)(i)	1.1502–47(d)(7)(i)	paragraph (g)	paragraph (e)	Once.
1.1502–47(f)(7)(i)	1.1502–47(d)(7)(i)	sections 802(a), 821(a), and 831(a)	sections 801(a) and 831(a)	Once.
1.1502–47(g)	1.1502–47(e)	three	two	Once.
1.1502–47(g)(1)	1.1502–47(e)(1)	paragraph (h)	paragraph (f)	Once.
1.1502–47(g)(1)	1.1502–47(e)(1)	paragraph (n)	paragraph (j)	Once.
1.1502–47(g)(1)	1.1502–47(e)(1)	paragraph (g)(1)	paragraph (e)(1)	Once.
1.1502–47(g)(2)	1.1502–47(e)(2)	paragraph (j)	paragraph (g)(1)	Once.
1.1502–47(g)(2)	1.1502–47(e)(2)	paragraph (m)	paragraph (h)	Once.
1.1502–47(g)(2)	1.1502–47(e)(2)	paragraph (g)(2)	paragraph (e)(2)	Once.
1.1502–47(h)(1)	1.1502–47(f)(1)	paragraph (h)	paragraph (f)	Once.
1.1502–47(h)(1)	1.1502–47(f)(1)	includes separate mutual insurance company taxable income (as defined in section 821(b)) and insurance company taxable income.	includes insurance company taxable income.	Once.
1.1502–47(h)(2)(i)	1.1502–47(f)(2)(i)	§§ 1.1502–21 or 1.1502–21A (as appropriate), the rules in this subparagraph (2).	§ 1.1502–21, the rules in this paragraph (f)(2).	Once.
1.1502–47(h)(2)(ii)	1.1502–47(f)(2)(ii)	§§ 1.1502–21(A)(f) or 1.1502–21(e) (as appropriate).	§ 1.1502–21(e)	Once.
1.1502–47(h)(2)(iv)	1.1502–47(f)(2)(iv)	year beginning after December 31, 1981, §§ 1.1502–21A or 1.1502–21 (as appropriate).	year, § 1.1502–21	Once.
1.1502–47(h)(2)(iv)	1.1502–47(f)(2)(iv)	nonlife loss	nonlife subgroup loss	Once.
1.1502–47(h)(2)(v)	1.1502–47(f)(2)(v)	subparagraph (2)	paragraph (f)(2)	Once.
1.1502–47(h)(4)(i)	1.1502–47(f)(3)(i)	§§ 1.1502–22 or 1.1502–22A (as appropriate).	§ 1.1502–22	Once.
1.1502–47(h)(4)(i)	1.1502–47(f)(3)(i)	subparagraph (4)	paragraph (f)(3)	Once.
1.1502–47(h)(4)(i)	1.1502–47(f)(3)(i)	§§ 1.1502–22 or 1.1502–22A(a) (as appropriate).	§ 1.1502–22	Once.
1.1502–47(h)(4)(iii)	1.1502–47(f)(3)(iii)	§§ 1.1502–22A(b)(1) or 1.1502–22(b)	§ 1.1502–22(b)	Once.
1.1502–47(h)(4)(iii)(A)	1.1502–47(f)(3)(iii)(A)	allowed under section 822(c)(6) or section 832(c)(5).	allowed under section 832(c)(5)	Once.
1.1502–47(m)	1.1502–47(h)	paragraph (g)	paragraph (e)	Each place it appears.
1.1502–47(m)	1.1502–47(h)	paragraph (h)	paragraph (f)	Each place it appears.
1.1502–47(m)	1.1502–47(h)	paragraph (l)	paragraph (g)	Each place it appears.
1.1502–47(m)	1.1502–47(h)	paragraph (m)	paragraph (h)	Each place it appears.
1.1502–47(m)(2)(ii)	1.1502–47(h)(2)(ii)	§§ 1502–21 or 1.1502–21A (as appropriate).	§ 1.1502–21	Once.
1.1502–47(m)(2)(ii)	1.1502–47(h)(2)(ii)	§§ 1.1502–22 or 1.1502–22A (as appropriate).	§ 1.1502–22	Once.
1.1502–47(m)(3)(i)	1.1502–47(h)(3)(i)	But see subdivision (ix) of this paragraph (m)(3).	But see paragraph (h)(3)(ix) of this section.	Once.
1.1502–47(m)(3)(i)	1.1502–47(h)(3)(i)	arising in separate return years ending after December 31, 1980.	arising in separate return years	Once.
1.1502–47(m)(3)(i)	1.1502–47(h)(3)(i)	and 1.1502–22 (or §§ 1.1502–21A and 1.1502–22A, as appropriate).	and 1.1502–22	Once.
1.1502–47(m)(3)(iii)	1.1502–47(h)(3)(iii)	consolidated LO	life consolidated net operating loss	Once.
1.1502–47(m)(3)(v)	1.1502–47(h)(3)(v)	GO or TII	taxable income	Once.
1.1502–47(m)(3)(v)	1.1502–47(h)(3)(v)	LICTI (as determined under paragraph (j) of this section) for any.	LICTI for any	Once.
1.1502–47(m)(3)(vi)(A)	1.1502–47(h)(3)(vi)(A)	subparagraph (3)	paragraph (h)(3)	Once.
1.1502–47(m)(3)(vii)(A)	1.1502–47(h)(3)(vii)(A)	notwithstanding § 1.1502–21A(b)(3)(ii) or 1.1502–21(b).	notwithstanding § 1.1502–21(b)	Once.
1.1502–47(m)(3)(vii)(A)	1.1502–47(h)(3)(vii)(A)	taxable income for that year	taxable income for that year, subject to the limitation in section 172(a).	Once.
1.1502–47(m)(3)(vii)(B)	1.1502–47(h)(3)(vii)(B)	(A) of this subdivision (vii)	paragraph (h)(3)(vii)(A) of this section	Once.
1.1502–47(m)(3)(viii)	1.1502–47(h)(3)(viii)	section 172(b)(3)(C)	section 172(b)(3)	Once.

Paragraph	Redesignations	Remove	Add	Frequency
1.1502–47(m)(3)(ix)	1.1502–47(h)(3)(ix)	243(b)(2)	243(b)(3)	Once.
1.1502–47(m)(3)(ix)	1.1502–47(h)(3)(ix)	return year ending after December 31, 1980.	return year	Once.
1.1502–47(m)(3)(x)	1.1502–47(h)(3)(x)	LICTI (as defined in paragraph (j) of this section) in the particular.	LICTI in the particular	Once.
1.1502–47(m)(3)(xii)	1.1502–47(h)(3)(xii)	carryback of a consolidated LO	carryback of a life consolidated net operating loss.	Once.
1.1502–47(m)(3)(xii)	1.1502–47(h)(3)(xii)	(2) or (4)	(2) or (3)	Once.
1.1502–47(m)(5), Examples 1 through 4.	1.1502–47(h)(4)(i) through (iv), respectively.	1982	2021	Each place it appears.
1.1502–47(m)(5), Examples 1 through 4.	1.1502–47(h)(4)(i) through (iv), respectively.	*i.e.*	that is	Each place it appears.
1.1502–47(m)(5), Example 1.	1.1502–47(h)(4)(i)	paragraph (d)(13)	paragraph (b)(13)	Once.
1.1502–47(m)(5), Example 1.	1.1502–47(h)(4)(i)	attributable to I (an ineligible member)	attributable to I (an ineligible member that is not a nonlife insurance company).	Once.
1.1502–47(m)(5), Example 1.	1.1502–47(h)(4)(i)	of this section. The result would be	of this section and section 172(a). The result would be.	Once.
1.1502–47(m)(5), Example 4.	1.1502–47(h)(4)(iv)	of this section or under § 1.1502–15A	of this section	Once.
1.1502–47(m)(5), Example 4.	1.1502–47(h)(4)(iv)	taxable income is $35	taxable income is $32.5	Once.
1.1502–47(m)(5), Example 4.	1.1502–47(h)(4)(iv)	30%	35%	Once.
1.1502–47(m)(5), Example 4.	1.1502–47(h)(4)(iv)	(15)	(17.5)	Once.
1.1502–47(m)(5), Example 4.	1.1502–47(h)(4)(iv)	(65)	(67.5)	Once.
1.1502–47(m)(5), Example 4.	1.1502–47(h)(4)(iv)	(85)	(82.5)	Once.
1.1502–47(n)	1.1502–47(j)	consolidated LO	life consolidated net operating loss and consolidated operations loss carryovers.	Each place it appears.
1.1502–47(n)(1)	1.1502–47(j)(1)	paragraph (g)(1)	paragraph (e)(1)	Once.
1.1502–47(n)(1)	1.1502–47(j)(1)	paragraph (n)(2) of this section	paragraph (j)(2) of this section, subject to the rules and limitations in paragraph (j)(3) of this section.	Once.
1.1502–47(n)(1)	1.1502–47(j)(1)	consolidated net capital loss (as determined under paragraph (l)(4) of this section).	consolidated net capital loss	Once.
1.1502–47(n)(2)	1.1502–47(j)(2)	paragraph (h)	paragraph (f)	Once.
1.1502–47(n)(2)	1.1502–47(j)(2)	paragraphs (m)(2) and (3)	paragraphs (h)(2) and (3)	Once.
1.1502–47(n)(2)(ii)	1.1502–47(j)(2)(ii)	consolidated partial LICTI	consolidated LICTI	Once.
1.1502–47(n)(2)(iv)	1.1502–47(j)(2)(iv)	Paragraphs (m)(3)(vi), (vii), (x), and (xi)	Paragraphs (h)(3)(vi), (vii), (x), and (xi)	Once.
1.1502–47(q)	1.1502–47(k)	§ 1.1502–1 through 1.1502–80	§§ 1.1502–0 through 1.1502–100	Once.
1.1502–47(q)	1.1502–47(k)	paragraph (m)(3)(vi)	paragraph (h)(3)(vi)	Once.
1.1502–47(q)	1.1502–47(k)	§§ 1.1502–21A(b)(3) and 1.1502–79A(a)(3) (or § 1.1502–21, as appropriate).	§ 1.1502–21	Once.
1.1502–47(r)	1.1502–47(l)	partial LICTI (or LO)	LICTI (or life consolidated net operating loss).	Once.
1.1502–47(r)	1.1502–47(l)	§§ 1.1502–0—1.1502–80	§§ 1.1502–0 through 1.1502–100	Once.
1.1502–47(s)(1)(iii)	1.1502–47(m)(1)(iii)	paragraphs (g), (m), and (n)	paragraphs (e), (h), and (j)	Once.
1.1502–47(s)(1)(iv)	1.1502–47(m)(1)(iv)	paragraph (h)	paragraph (f)	Once.
1.1502–47(s)(1)(v)	1.1502–47(m)(1)(v)	consolidated partial Life	consolidated Life	Once.
1.1502–47(s)(1)(v)	1.1502–47(m)(1)(v)	(as defined by paragraph (d)(3) of this section), determined under paragraph (j) of this section	or life consolidated net operating loss	Once.

The additions and revisions read as follows:

§ 1.1502–47 Consolidated returns by life-nonlife groups.

(a) * * *

(2) *General method of consolidation*—(i) *Subgroup method.* The regulations adopt a subgroup method to determine consolidated taxable income. One subgroup is the group's nonlife companies. The other subgroup is the group's life insurance companies. Initially, the nonlife subgroup computes nonlife consolidated taxable income and the life subgroup computes consolidated LICTI. A subgroup's income may in effect be reduced by a loss of the other subgroup, subject to the limitations in sections 172 and 1503(c). The life subgroup losses consist of life consolidated net operating loss, consolidated operations loss carryovers from taxable years beginning before January 1, 2018 (consolidated operations loss carryovers), and life consolidated net capital loss. The nonlife subgroup losses consist of nonlife consolidated net operating loss and nonlife consolidated net capital loss. Consolidated taxable income is therefore defined in pertinent part as the sum of nonlife consolidated taxable income and consolidated LICTI, reduced by life subgroup losses and/or nonlife subgroup losses.

(ii) *Subgroup loss.* A subgroup loss does not actually affect the computation of nonlife consolidated taxable income or consolidated LICTI. It merely constitutes a bottom-line adjustment in reaching consolidated taxable income. Furthermore, the amount of a subgroup's loss, if any, that is eligible to be carried back to a prior taxable year

first must be carried back against income of the same subgroup before it may be used as a setoff against the other subgroup's income in the taxable year the loss arose. (See sections 172(b)(1) and 1503(c)(1); see also § 1.1502–21(b).) The carryback of losses from one subgroup may not be used to offset income of the other subgroup in the year to which the loss is to be carried. This carryback of one subgroup's loss may ''bump'' the other subgroup's loss that, in effect, previously reduced the income of the first subgroup. The subgroup's loss that is bumped in appropriate cases may, in effect, reduce a succeeding year's income of either subgroup. This approach gives the group the tax savings of the use of losses, but the bumping rule assures that, insofar as possible, life deductions will be matched against life income and nonlife deductions against nonlife income.

* * * * *

(b) * * *

(1) *Life company.* The term *life company* means a life insurance company as defined in section 816 and subject to tax under section 801. Section 816 applies to each company separately.

(2) Nonlife *insurance company.* The term *nonlife insurance company* has the meaning provided in § 1.1502–1(k).

(3) *Life insurance company taxable income.* The term *life insurance company taxable income* or *LICTI* has the meaning provided in section 801(b).

(4) *Group.* The term *group* has the meaning provided in § 1.1502–1(a). Unless otherwise indicated in this section, a group's composition is determined without regard to section 1504(b)(2).

(5) *Member.* The term *member* has the meaning provided in § 1.1502–1(b). A life company is tentatively treated as a member for any taxable year for purposes of determining if it is an eligible corporation under paragraph (b)(12) of this section and, therefore, if it is an includible corporation under section 1504(c)(2). If such a company is eligible and includible (under section 1504(c)(2)), it will actually be treated as a member of the group.

* * * * *

(10) *Separate return year.* The term *separate return year* has the meaning provided in § 1.1502–1(e). For purposes of this paragraph (b)(10), the term *group* is defined with regard to section 1504(b)(2) for years in which an election under section 1504(c)(2) is not in effect. Thus, a separate return year includes a taxable year for which that election is not in effect.

(11) *Separate return limitation year.* Section 1.1502–1(f)(2) provides exceptions to the definition of the term separate return limitation year. For purposes of applying those exceptions to this section, the term *group* is defined without regard to section 1504(b)(2), and the definition in this paragraph (b)(11) applies separately to the nonlife subgroup in determining nonlife consolidated taxable income under paragraph (f) of this section and to the life subgroup in determining consolidated LICTI under paragraph (g) of this section. Paragraph (h)(3)(ix) of this section defines the term separate return limitation year for purposes of determining whether the losses of one subgroup may be used against the income of the other subgroup.

* * * * *

(13) *Ineligible corporation.* A corporation that is not an eligible corporation is ineligible. If a life company is ineligible, it is not treated under section 1504(c)(2) as an includible corporation. Losses of a nonlife member arising in years when it is ineligible may not be used under section 1503(c)(2) and paragraph (g) of this section to set off the income of a life member. If a life company is ineligible and is the common parent of the group (without regard to section 1504(b)(2)), the election under section 1504(c)(2) may not be made.

(14) * * *

(i) * * * S_2 must file its own separate return for 2020.

(ii) *Example 2.* Since 2012, L1 has been a life company owning all the stock of L2. In 2018, L1 transfers assets to S1, a new nonlife insurance company subject to taxation under section 831(a). For 2020, only L1 and L2 are eligible corporations. The tacking rule in paragraph (b)(12)(v) of this section does not apply in 2020 because the old corporation (L1) and the new corporation (S1) do not have the same tax character.

* * * * *

(d) * * *

(5) *Dividends received deduction*—(i) *Dividends received by an includible insurance company.* Dividends received by an includible member insurance company, taxed under either section 801 or section 831, from another includible member of the group are treated for Federal income tax purposes as if the group did not file a consolidated return. See sections 818(e)(2) and 805(a)(4) for rules regarding a member taxed under section 801, and see sections 832(g) and 832(b)(5)(B) through (E) for rules regarding a member taxed under section 831.

(ii) *Other dividends.* Dividends received from a life company member of the group that are not subject to paragraph (d)(5)(i) of this section are not included in gross income of the distributee member. See section 1504(c)(2)(B)(i). If the distributee corporation is a nonlife insurance company subject to tax under section 831, the rules of section 832(b)(5)(B) through (E) apply.

* * * * *

(7) * * *

(ii) Any taxes described in § 1.1502–2 (other than in § 1.1502–2(a)(1), (a)(6), and (a)(7)).

* * * * *

(f) * * *

(2) * * *

(iii) *Carrybacks.* The portion of the nonlife consolidated net operating loss for the nonlife subgroup described in paragraph (f)(2)(vi) of this section, if any, that is eligible to be carried back to prior taxable years under § 1.1502–21 is carried back to the appropriate years (whether consolidated or separate) before the nonlife consolidated net operating loss may be used as a nonlife subgroup loss under paragraphs (e)(2) and (h) of this section to set off consolidated LICTI in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the net operating loss of the nonlife subgroup may be made by the agent for the group within the meaning of § 1.1502–77.

* * * * *

(v) * * * For limitations on the use of nonlife carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see § 1.1502–21.

(vi) *Portion of nonlife consolidated net operating loss that is carried back to prior taxable years.* The portion of the nonlife consolidated net operating loss that (absent an election to waive carrybacks) is carried back to the two preceding taxable years is the sum of the nonlife subgroup's farming loss (within the meaning of section 172(b)(1)(B)(ii)) and the amount of the subgroup's net operating loss that is attributable to nonlife insurance companies (as determined under § 1.1502–21). For rules governing the absorption of net operating loss carrybacks, including limitations on the amount of net operating loss carrybacks that may be absorbed in prior taxable years, see § 1.1502–21(b).

(vii) *Example.* P, a holding company that is not an insurance company, owns all of the stock of S, a nonlife insurance company, and L1, a life insurance company. L1 owns all of the stock of L2, a life insurance company. Both L1 and

L2 satisfy the eligibility requirements of § 1.1502–47(b)(12). Each corporation uses the calendar year as its taxable year, and no corporation has incurred farming losses (within the meaning of section 172(b)(1)(B)(ii)). For 2021, the group first files a consolidated return for which the election under section 1504(c)(2) is effective. P and S filed consolidated returns for 2019 and 2020. In 2021, the P–S group sustains a nonlife consolidated net operating loss that is attributable entirely to S (see § 1.1502–21(b)). The election in 2021 under section 1504(c)(2) does not result under paragraph (d)(1) of this section in the creation of a new group or the termination of the P–S group. The loss is carried back to the consolidated return years 2019 and 2020 of P and S. Pursuant to § 1.1502–21(b), the loss may be used to offset S's income in 2019 and 2020 without limitation, and the loss may be used to offset P's income in those years, subject to the limitation in section 172(a) (see § 1.1502–21(b)). The portion of the loss not absorbed in 2019 and 2020 may serve as a nonlife subgroup loss in 2021 that may set off the consolidated LICTI of L1 and L2 under paragraphs (e)(2) and (h) of this section.

(3) * * *

(ii) *Additional principles.* In applying § 1.1502–22 to nonlife consolidated net capital loss carryovers and carrybacks, the principles set forth in paragraph (f)(2)(iii) through (v) of this section for applying § 1.1502–21 to nonlife consolidated net operating loss carryovers and carrybacks also apply, without regard to the limitation in paragraph (f)(2)(vi) of this section.

* * * * *

(g) *Consolidated LICTI*—(1) *General rule.* Consolidated LICTI is the consolidated taxable income of the life subgroup, computed under § 1.1502–11 as modified by this paragraph (g).

(2) *Life consolidated net operating loss deduction*—(i) *In general.* In applying § 1.1502–21, the rules in this paragraph (g)(2) apply in determining for the life subgroup the life net operating loss and the portion of the life net operating loss carryovers and carrybacks to the taxable year.

(ii) *Life CNOL.* The life consolidated net operating loss is determined under § 1.1502–21(e) by treating the life subgroup as the group.

(iii) *Carrybacks*—(A) *General rule.* The portion of the life consolidated net operating loss for the life subgroup, if any, that is eligible to be carried back under § 1.1502–21 is carried back to the appropriate years (whether consolidated or separate) before the life consolidated net operating loss may be used as a life subgroup loss under paragraphs (e)(1) and (j) of this section to set off nonlife consolidated taxable income in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the consolidated net operating loss of the life subgroup may be made by the agent for the group within the meaning of § 1.1502–77.

(B) *Special rule for life consolidated net operating losses arising in 2018, 2019, or 2020.* If a life consolidated net operating loss arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, is carried back to a life insurance company taxable year beginning before January 1, 2018, then such life consolidated net operating loss is treated as an operations loss carryback (within the meaning of section 810, as in effect prior to its repeal) of such company to such taxable year.

(iv) *Subgroup rule.* In determining the portion of the life consolidated net operating loss that is absorbed when the loss is carried back to a consolidated return year, § 1.1502–21 is applied by treating the life subgroup as the group. Therefore, the absorption is determined without taking into account any nonlife subgroup losses that were previously reported on a consolidated return as setting off life consolidated taxable income for the year to which the life subgroup loss is carried back.

(v) *Carryovers.* The portion of the life consolidated net operating loss that is not absorbed in a prior year as a carryback, or as a life subgroup loss that set off nonlife consolidated taxable income for the year the loss arose, constitutes a life carryover under this paragraph (g)(2) to reduce consolidated LICTI before that portion may constitute a life subgroup loss that sets off nonlife consolidated taxable income for that particular year. For limitations on the use of life carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see § 1.1502–21(b).

(3) *Life consolidated capital gain net income or loss*—(i) [Reserved].

(ii) *Life consolidated net capital loss carryovers and carrybacks.* The life consolidated net capital loss carryovers and carrybacks for the life subgroup are determined by applying the principles of § 1.1502–22 as modified by the following rules in this paragraph (g)(3)(ii):

(A) Life consolidated net capital loss is first carried back (or apportioned to the life members for separate return years) to be absorbed by life consolidated capital gain net income without regard to any nonlife subgroup capital losses and before the life consolidated net capital loss may serve as a life subgroup capital loss that sets off nonlife consolidated capital gain net income in the year the life consolidated net capital loss arose.

(B) If a life consolidated net capital loss is not carried back or is not a life subgroup loss that sets off nonlife consolidated capital gain net income in the year the life consolidated net capital loss arose, then it is carried over to the particular year under this paragraph (g)(3)(ii) first against life consolidated capital gain net income before it may serve as a life subgroup capital loss that sets off nonlife consolidated capital gain net income in that particular year.

(h) * * *

(2) * * *

(ii) * * * Additionally, the amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and § 1.1502–21).

* * * * *

(3) * * *

(iv) * * * The amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and § 1.1502–21).

* * * * *

(4) *Examples.* The following examples illustrate the principles of this paragraph (h). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

* * * * *

(ii) *Example 2.* (A) The facts are the same as in paragraph (h)(4)(i) of this section, except that, for 2021, S's separate net operating loss is $200. Assume further that L's consolidated LICTI is $200. Under paragraph (h)(3)(vi) of this section, the offsettable nonlife consolidated net operating loss is $100 (the nonlife consolidated net operating loss computed under paragraph (f)(2)(ii) of this section ($200), reduced by the separate net operating loss of I ($100)). The offsettable nonlife consolidated net operating loss that may be set off against consolidated LICTI in 2021 is $35 (35 percent of the lesser of the offsettable $100 or consolidated LICTI of $200). See section 1503(c)(1) and paragraph (h)(3)(x) of this section. S carries over a loss of $65, and I carries over a loss of $100, to 2022 under paragraph (f)(2) of this section to be used against nonlife consolidated taxable income (consolidated net

operating loss ($200) less amount used in 2021 ($35)). Under paragraph (h)(2)(ii) of this section, the offsettable nonlife consolidated net operating loss that may be carried to 2022 is $65 ($100 minus $35). The facts and results are summarized in the following table.

TABLE 1 TO PARAGRAPH (h)(4)(ii)(A)

[Dollars omitted]

	Facts (a)	Offsettable (b)	Limit (c)	Unused Loss (d)
1. P	100			
2. S	(200)	(100)		(65)
3. I	(100)			(100)
4. Nonlife Subgroup	(200)	(100)	(100)	(165)
5. L	200		200	
6. 35% of lower of line 4(c) or 5(c)			35	
7. Unused offsettable loss				(65)

(B) Accordingly, under paragraph (e) of this section, consolidated taxable income is $165 (line 5(a) minus line 6(c)).

(iii) *Example 3.* The facts are the same as in paragraph (h)(4)(ii) of this section, with the following additions for 2022. The nonlife subgroup has nonlife consolidated taxable income of $50 (all of which is attributable to I) before the nonlife consolidated net operating loss deduction under paragraph (f)(2) of this section. Consolidated LICTI is $100. Under paragraph (f)(2) of this section, $50 of the nonlife consolidated net operating loss carryover ($165) is used in 2022 and, under paragraph (h)(3)(vi) and (vii) of this section, the portion used in 2022 is attributable to I, the ineligible nonlife member. Accordingly, the offsettable nonlife consolidated net operating loss from 2021 under paragraph (h)(3)(ii) of this section is $65, the unused loss from 2021. The offsettable nonlife consolidated net operating loss in 2022 is $22.75 (35 percent of the lesser of the offsettable loss of $65 or consolidated LICTI of $100). Accordingly, under paragraph (e) of this section, consolidated taxable income is $77.25 (consolidated LICTI of $100 minus the offsettable loss of $22.75).

* * * * *

(j) * * *

(2) * * *

(iii) Substitute the term ''life consolidated net operating loss and consolidated operations loss carryovers'' for ''nonlife consolidated net operating loss'', and ''paragraph (g)'' for ''paragraph (f)''.

(3) *Examples.* The following examples illustrate the principles of this paragraph (j). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

(i) *Example 1.* P, S, L1 and L2 constitute a group that elects under section 1504(c)(2) to file a consolidated return for 2021. In 2021, the nonlife subgroup consolidated taxable income is $100 and there is $20 of nonlife consolidated net capital loss that cannot be carried back under paragraph (f) of this section to taxable years (whether consolidated or separate) preceding 2021. The nonlife subgroup has no carryover from years prior to 2021. The life consolidated net operating loss is $150, which under paragraph (g) of this section includes life consolidated capital gain net income of $25. Since life consolidated capital gain net income is zero for 2021 (see paragraph (h)(3)(iii) of this section), the nonlife capital loss offset is zero (see paragraph (h)(3)(ii) of this section). However, $100 of life consolidated net operating loss sets off the $100 nonlife consolidated taxable income in 2021. The life subgroup carries under paragraph (g)(2) of this section to 2022 $50 of the life consolidated net operating loss ($150 minus $100). The $50 carryover will be used in 2022 (subject to the limitation in section 172(a)) against life subgroup income before it may be used in 2022 to setoff nonlife consolidated taxable income.

(ii) *Example 2.* The facts are the same as in paragraph (j)(3)(i) of this section, except that, for 2021, the nonlife consolidated taxable income is $150 (this amount is entirely attributable to S and includes nonlife consolidated capital gain net income of $50), consolidated LICTI is $200, and a life consolidated net capital loss is $50. The $50 life consolidated net capital loss sets off the $50 nonlife consolidated capital gain net income. Consolidated taxable income under paragraph (e) of this section is $300 (nonlife consolidated taxable income ($150) minus the setoff of the life consolidated net capital loss ($50), plus consolidated LICTI ($200)).

(iii) *Example 3.* The facts are the same as in paragraph (j)(3)(ii) of this section, except that, for 2022, the nonlife consolidated net operating loss is $150. This entire amount is attributable to S; thus, it is eligible to be carried back to 2021 against nonlife consolidated taxable income under paragraph (f)(2) of this section and § 1.1502–21(b). If P, the agent for the group within the meaning of § 1.1502–77, does not elect to relinquish the carryback under section 172(b)(3), the entire $150 will be carried back, reducing 2021 nonlife consolidated taxable income to zero and nonlife consolidated capital gain net income to zero. Under paragraph (h)(3)(xii) of this section, the setoff in 2021 of the nonlife consolidated capital gain net income ($50) by the life consolidated net capital loss ($50) is restored. Accordingly, the 2021 life consolidated net capital loss may be carried over by the life subgroup to 2022. Under paragraph (e) of this section, after the carryback, consolidated taxable income for 2021 is $200 (nonlife consolidated taxable income ($0) plus consolidated LICTI ($200)).

(iv) *Example 4.* The facts are the same as in paragraph (j)(3)(iii) of this section, except that P elects under section 172(b)(3) to relinquish the carryback of $150 arising in 2022. The setoff in Example 2 is not restored. However, the offsettable nonlife consolidated net operating loss for 2022 (or that may be carried over from 2022) is zero. See paragraph (h)(3)(viii) of this section. Nevertheless, the $150 nonlife consolidated net operating loss may be

carried over to be used by the nonlife group.

(v) *Example 5.* P owns all of the stock of S1 and of L1. On January 1, 2017, L1 purchases all of the stock of L2. For 2021, the group elects under section 1504(c)(2) to file a consolidated return. For 2021, L1 is an eligible corporation under paragraph (b)(12) of this section but L2 is ineligible. Thus, L1 but not L2 is a member for 2021. For 2021, L2 sustains a net operating loss, which cannot be carried back (see section 172(b)). For 2021, L2 is treated under paragraph (d)(6) of this section as a member of a controlled group of corporations under section 1563 with P, S, and L1. For 2022, L2 is eligible and is included on the group's consolidated return. L2's net operating loss for 2021 that may be carried to 2022 is not treated under paragraph (b)(11) of this section as having been sustained in a separate return limitation year for purposes of computing consolidated LICTI of the L1–L2 life subgroup for 2022. Furthermore, the portion of L2's net operating loss not used under paragraph (g)(2) of this section against life subgroup income in 2022 may be included in offsettable life consolidated net operating loss under paragraph (j)(2) and (h)(3)(i) of this section that reduces in 2022 nonlife consolidated taxable income (subject to the limitation in section 172(a)) because L2's loss in 2021 was not sustained in a separate return limitation year under paragraph (j)(2) and (h)(3)(ix)(A) of this section or in a separate return year (2021) when an election was in effect under neither section 1504(c)(2) nor section 243(b)(3).

* * * * *

(n) *Effective/applicability dates.* The rules of this section apply to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply the rules of this section to taxable years beginning on or before December 31, 2020. If a taxpayer makes the choice described in the previous sentence, the taxpayer must apply those rules in their entirety and consistently with the provisions of subchapter L of the Internal Revenue Code applicable to the years at issue.

■ **Par. 5.** Section 1.1503(d)–4 is amended by:

■ 1. In paragraph (c)(3)(iii)(B), removing the period and adding in its place a semi-colon.

■ 2. In paragraph (c)(3)(iv), removing the period and adding in its place ''; and''.

■ 3. Adding paragraph (c)(3)(v).

The addition reads as follows:

§ 1.1503(d)–4 Domestic use limitation and related operating rules.

* * * * *

(c) * * *

(3) * * *

(v) The SRLY limitation is applied without regard to § 1.1502–21(c)(1)(i)(E) (section 172(a) limitation applicable to a SRLY member).

* * * * *

■ **Par. 6.** Section 1.1503(d)–8 is amended by adding paragraph (b)(8) to read as follows:

§ 1.1503(d)–8 Effective dates.

* * * * *

(b) * * *

(8) *Rule providing that SRLY limitation applies without regard to § 1.1502–21(c)(1)(i)(E).* Section 1.1503(d)–4(c)(3)(v) applies to any period to which § 1.1502–21(c)(1)(i)(E) applies.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 29, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–22974 Filed 10–23–20; 11:15 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to further implement portions of the President's foreign policy toward Cuba to deny the Cuban government access to funds in connection with remittances to Cuba.

DATES: This rule is effective November 26, 2020.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), on July 8, 1963, under various authorities, including the Trading With the Enemy Act (50 U.S.C. 4301–41). OFAC has amended the Regulations on numerous occasions, including to implement the President's foreign policy toward Cuba as set forth in National Security Presidential Memorandum-5, ''Strengthening the Policy of the United States Toward Cuba,'' signed by the President on June 16, 2017.

Today, OFAC, in consultation with the State Department, is taking additional action to implement the Administration's foreign policy toward Cuba, as set forth in more detail below. This rule provides for a 30-day implementation period before it is effective in order to allow for technical implementation of these additional restrictions.

Restrictions on Certain Remittance-Related Transactions To and From Cuba

OFAC is amending the Regulations to remove from the scope of certain remittance-related general authorizations any transactions involving entities or subentities identified on the Cuba Restricted List, as maintained by the State Department and published in the **Federal Register**. This action is intended to restrict such entities' and subentities' access to funds obtained in connection with remittance-related activities, including in their role as intermediaries or in their receipt of fees or commissions from processing remittance transactions. Specifically, OFAC is amending three general licenses in Subpart E of the Regulations to exclude from the scope of such authorizations any transaction involving any entity or subentity identified on the Cuba Restricted List: (i) § 515.570, which relates to remittances from persons subject to U.S. jurisdiction or from blocked accounts; (ii) § 515.572(a)(3), which relates to the provision of remittance forwarding services; and (iii) § 515.587, which relates to remittances from Cuban nationals to persons subject to U.S. jurisdiction. OFAC is also amending § 515.421, which provides interpretative guidance with respect to transactions ordinarily incident to a licensed transaction, to make clear that a transaction relating to the collection, forwarding, or receipt of remittances involving any entity or subentity

identified on the Cuba Restricted List is not authorized as an ordinarily incident transaction where the terms of the general or specific license expressly exclude any such transactions. Because the amendments to §§ 515.570, 515.572(a)(3), and 515.587 expressly exclude these remittance-related transactions involving any entity or subentity on the Cuba Restricted List, upon the effective date of this rule, such transactions will not be authorized as ordinarily incident to licensed transactions under those provisions. OFAC is also adding a clarifying note in § 515.209 consistent with the amended § 515.421.

Public Participation

Because the amendment of the Regulations involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–12) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations'') and § 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information are covered by the Office of Management and Budget under control numbers 1505–0164, 1505–0167, and 1505–0168. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banks, Banking, Blocking of assets, Cuba, Export, Financial transactions, Remittances, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301–4341; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 6021–6091; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

■ 2. Amend § 515.209 as follows:
■ a. Redesignate Note to § 515.209 as Note 1 to § 515.209.
■ b. Add new Note 2 to § 515.209.
The addition reads as follows:

§ 515.209 Restrictions on direct financial transactions with certain entities and subentities.

* * * * *

Note 2 to § 515.209: A transaction relating to the collection, forwarding, or receipt of remittances involving an entity or subentity identified on the Cuba Restricted List is not authorized as a transaction ordinarily incident to a licensed transaction where the terms of the applicable general or specific license expressly exclude any such transactions. *See* §§ 515.570, 515.572(a)(3), and 515.587.

Subpart D—Interpretations

■ 3. Amend § 515.421 as follows:
■ a. In paragraph (a)(5), remove ''or'' at the end of the paragraph.
■ b. In paragraph (a)(6), remove the period at the end of the paragraph and add in its place ''; or''.
■ c. Add paragraph (a)(7).
The addition reads as follows:

§ 515.421 Transactions ordinarily incident to a licensed transaction.

(a) * * *

(7) A transaction relating to the collection, forwarding, or receipt of remittances involving any entity or subentity identified on the Cuba Restricted List, as published in the **Federal Register** and maintained by the State Department and available at *https://www.state.gov/cuba-sanctions/cuba-restricted-list/,* where the terms of the applicable general or specific license expressly exclude any such transactions.

* * * * *

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

■ 4. Amend § 515.570 as follows:
■ a. Redesignate paragraph (j) as paragraph (k).
■ b. Add new paragraph (j).
The addition reads as follows:

§ 515.570 Remittances.

* * * * *

(j) *Remittance transactions with entities or subentities on the Cuba Restricted List prohibited.* Nothing in paragraphs (a) through (i) authorizes a transaction relating to the collection, forwarding, or receipt of remittances involving any entity or subentity identified on the Cuba Restricted List, as published in the **Federal Register** and maintained by the State Department and available at *https://www.state.gov/cuba-sanctions/cuba-restricted-list/.*

* * * * *

■ 5. In § 515.572 amend paragraph (a)(3) by adding a sentence at the end of the paragraph to read as follows:

§ 515.572 Provision of travel, carrier, other transportation-related, and remittance forwarding services.

(a) * * *

(3) * * * Nothing in this paragraph (a)(3) authorizes a transaction relating to the collection, forwarding, or receipt of remittances involving any entity or subentity identified on the Cuba Restricted List, as published in the **Federal Register** and maintained by the State Department and available at *https://www.state.gov/cuba-sanctions/cuba-restricted-list/.*''

* * * * *

■ 6. Amend § 515.587 by adding a sentence at the end of the section to read as follows:

§ 515.587 Remittances from Cuban nationals to persons subject to U.S. jurisdiction.

* * * Nothing in this paragraph authorizes a transaction relating to the collection, forwarding, or receipt of remittances involving any entity or subentity identified on the Cuba Restricted List, as published in the **Federal Register** and maintained by the State Department and available at *https://www.state.gov/cuba-sanctions/cuba-restricted-list/.*''

* * * * *

Dated: October 22, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–23725 Filed 10–23–20; 11:15 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0597]

RIN 1625–AA08

Special Local Regulation; Atlantic Intracoastal Waterway, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) for certain navigable waters of the Atlantic Intracoastal Waterway (AICW) and Beaufort Inlet in Morehead City, North Carolina. This SLR restricts vessel traffic on the AICW and Beaufort Inlet during high-speed boat races. The restriction of vessel traffic movement in the SLR protects participants and spectators from the hazards posed by these events. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

DATES: This rule is effective from 9 a.m. on October 23, 2020, to 5 p.m. to October 25, 2020. It will be enforced from 9 a.m. to 5 p.m. each day the rule is in effect.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0597 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Petty Officer Joshua O'Rourke, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone 910–772–2227, email *Joshua.P.Orourke@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a comment period for this rulemaking due to the short time period between event planners notifying the Coast Guard of the event and required publication of this rule. Immediate action is needed to protect persons and vessels from the hazards associated with this event. It is impracticable and contrary to the public interest to publish an NPRM because a final rule needs to be in place by October 23, 2020, to minimize potential danger to the participants and the public during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed to protect persons and vessels from the hazards associated with this event on October 23, 2020, and October 25, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The COTP North Carolina has determined that potential hazards associated with the Crystal Coast Grand Prix World Championship race scheduled for 9 a.m. through 5 p.m. on October 23, 2020, and October 25, 2020, is a safety concern for mariners during a high speed boat race on portions of the Alantic Intra Coastal Waterway (AICW) and Beaufort Inlet in Morehead City, North Carolina. This rule is necessary to protect safety of life from the potential hazards associated with the high-speed boat race.

IV. Discussion of the Rule

This rule establishes an SLR on a portion of the AICW and Beaufort Inlet from 9 a.m. on October 23, 2020 to 5 p.m. October 25, 2020. It will be enforced from 9 a.m. on October 23, 2020, and those same hours on October 25, 2020. The time of enforcement will be broadcast locally over VHF–FM marine radio. The SLR will include a race area on all navigable waters of the AICW and Beaufort Inlet, North Carolina, from approximate positions: Latitude 34°42′52″ N, longitude 076°43′16″ W, then east to latitude 34°42′52.2″ N, longitude 076°42′11.04″ W, then east to latitude 34°42′53.76″ N, longitude 076°41′38.04″ W, then southeast to latitude 34°42′10.8″ N, longitude 076°40′44.4″ W, then south to latitude 34°42′4.3″ N, longitude 076°40′48.1″ W, then northwest to latitude 34°42′47.34″ N, longitude 076°41′49″ W, then west to latitude 34°42′50″ N, longitude 076°43′16″ W, then north to the point of origin. This rule also temporarily establishes a portion of the AICW to be used as a spectator zone. The spectator area will be marked with temporary buoys and will be at least 100 yards from the race course, south of Sugarloaf Island, North Carolina, from approximate positions: Latitude 34°42′42″ N, longitude 076°43′15″ W, then east to latitude 34°42′41″ N, longitude 076°42′14″ W, then south to latitude 34°42′32″ N, longitude 076°42′14″ W, then west to latitude 34°42′32″ N, longitude 076°43′15″ W, then north to the point of origin. This rule also temporarily establishes a buffer area around the perimeter of the race area, from approximate positions: latitude 34°42′55″ N, longitude 076°43′15″ W, then east to latitude 34°42′56″ N, longitude 076°42′13″ W, then east to latitude 34°42′57″ N, longitude 076°41′41″ W, then east to latitude 34°42′57″ N, longitude 076°41′25″ W, then south east to latitude 34°42′23″ N, longitude 076°40′44″ W, then south to latitude 34°41′59″ N, longitude 076°40′43″ W, then north west to latitude 34°42′41″ N, longitude 076°42′05″ W, then west to latitude 34°42′42″ N, longitude 076°43′15″ W, then north to its point of origin.

The duration of this SLR is intended to protect participants and spectators on the navigable waters of the AICW and Beafort Inelt during the high-speed boat race. Vessels may request permission to pass through the SLR between race heats. No vessel or person will be permitted to enter the SLR without obtaining permission from the COTP North Carolina or a designated representative. The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the SLR. Vessel traffic will not be allowed to enter or transit a portion of the AICW or Beaufort Inlet during an active race event from 9 a.m. through 5 p.m. October 23, 2020, and October 25, 2020. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the enforcement period of the SLR. This rule allows vessels to request permission to pass through the regulated area between race heats.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an SLR in effect from 9 a.m. on October 23, 2020, to 5 p.m. on October 25, 2020, to be enforced during active race events from 9 a.m. to 5 p.m. on October 23, 2020, and October 25, 2020. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T500–0468 to read as follows:

§ 100.T500–0597 Crystal Coast Grand Prix World Championship, Morehead City, NC.

(a) *Regulated areas.* The regulations in this section apply to the following areas:

(1) The Race Area is designated as all navigable waters of the AICW and Beaufort Inlet, North Carolina, from approximate positions: Latitude 34°42′52″ N, longitude 076°43′16″ W, then east to latitude 34°42′52.2″ N, longitude 076°42′11.04″ W, then east to latitude 34°42′53.76″ N, longitude

076°41′38.04″ W, then southeast to latitude 34°42′10.8″ N, longitude 076°40′44.4″ W, then south to latitude 34°42′4.3″ N, longitude 076°40′48.1″ W, then northwest to latitude 34°42′47.34″ N, longitude 076°41′49″ W, then west to latitude 34°42′50″ N, longitude 076°43′16″ W, then north to the point of origin.

(2) The Spectator Area is designated as all waters of the AICW, North Carolina, from approximate positions: Latitude 34°42′42″ N, longitude 076°43′15″ W, then east to latitude 34°42′41″ N, longitude 076°42′14″ W, then south to latitude 34°42′32″ N, longitude 076°42′14″ W, then west to latitude 34°42′32″ N, longitude 076°43′15″ W, then north to the point of origin.

(3) The Buffer Area is designated as all waters of the AICW and Beaufort Inlet, North Carolina, from approximate positions: Latitude 34°42′55″ N, longitude 076°43′15″ W, then east to latitude 34°42′56″ N, longitude 076°42′13″ W, then east to latitude 34°42′57″ N, longitude 076°41′41″ W, then east to latitude 34°42′57″ N, longitude 076°41′25″ W, then south east to latitude 34°42′23″ N, longitude 076°40′44″ W, then south to latitude 34°41′59″ N, longitude 076°40′43″ W, then north west to latitude 34°42′41″ N, longitude 076°42′05″ W, then west to latitude 34°42′42″ N, longitude 076°43′15″ W, then north to its point of origin.

(b) *Definitions.* As used in this section—

Buffer Area is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants and spectator vessels or nearby transiting vessels. This area provides separation between a Race Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Regulations.* (1) Everyone other than participants are prohibited from entering, transiting through, anchoring in, or getting underway within the regulated area described in paragraph (a)(1) of this section unless authorized by the COTP North Carolina or their designated representative.

(2) Everyone other than particpants, including those engaged in spectating, may be directed by a designated representative to the regulated area described in section (a) of this section, where they must remain during the effective period unless otherwise authorized or directed by a designated representative.

(3) To seek permission to enter, contact the COTP by calling the Sector North Carolina Command Center at 910–343–3882 or contact the COTP's designated representative on Marine band Radio, VHF–FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This SLR will be enforced from 9 a.m. through 5 p.m. on October 23, 2020, and those same hours on October 25, 2020.

Dated: October 2, 2020.

Matthew J. Baer,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2020–22339 Filed 10–23–20; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0631]

RIN 1625–AA00

Safety Zone; Firestone Grand Prix of St. Petersburg, St. Petersburg, Florida

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters of Tampa Bay, in the vicinity of the St. Petersburg Municipal Yacht Basin, St. Petersburg, Florida during the Firestone Grand Prix of St. Petersburg. The temporary safety zone is needed to protect the safety of race participants, spectators, and vessels on the surrounding waterway during the race. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: This rule is effective daily from 6 a.m. until 10 p.m., on October 23, 2020 through October 25, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2020–0631 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Michael Shackleford, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Michael.D.Shackleford@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard received information regarding the need for a safety zone on October 2, 2020. Insufficient time remains to publish an NPRM and to receive public comments, as the event will occur before the rulemaking process would be completed. Because of the potential safety hazards associated with the race, the regulations is necessary to provide for the safety of race participants, spectators, and other vessels navigating the surrounding waterways. For those reasons, it would be impracticable to publish an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30

days after publication in the **Federal Register**, for the reasons discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port St. Petersburg has determined that potential hazards associated with the race, will be a safety concern for race participants, spectators, and vessels. This rule is needed to ensure the safety of life for vessels and persons within the navigable waters of the safety zone during the Firestone Grand Prix of St. Petersburg, Florida.

IV. Discussion of the Rule

This rule establishes a safety zone daily from 6:00 a.m. until 10:00 p.m., on October 23, 2020 through October 25, 2020. The safety zone will cover all navigable waters within a specified area of Tampa Bay, St. Petersburg, Florida. The duration of the zone is intended to ensure the safety of the public and designated navigable waters during the race event. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the Captain of the Port St. Petersburg or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and/or on-scene designated representatives.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration and available exceptions to the enforcement of the safety zone. The safety zone will be enforced for a limited period of time over the course of three days and is thus limited in duration. The safety zone is limited to only those areas in which race events will be occurring for the Firestone Grand Prix of St. Petersburg, Florida race event and is thus limited in size. Although persons and vessels are prohibited to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period. The rule allows for vessels to seek permission to enter the safety zone. The Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and/or Broadcast Notice to Mariners.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area during a three day high speed grand prix race event. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0631 to read as follows:

§ 165.T07 -0631 Safety Zone; Firestone Grand Prix of St. Petersburg, St. Petersburg, FL.

(a) *Location.* The following area is established as a safety zone. All waters of the Gulf of Mexico encompassed within the following points: 27°46′18″ N, 082°37′55.2″ W, thence to position 27°46′18″ N, 082°37′54.6″ W, thence to position 27°46′9.6″ N, 082°37′54.6″ W, thence to position 27°46′9.6″ N, 082°37′33″ W, thence to position 27°46′4.2″ N, 082°37′33″ W, thence to position 27°45′59.4″ N, 082°37′50.4″ W, thence to position 27°46′6.6″ N, 082°37′56.4″ W, thence to position 27°46′13.8″ N, 082°37′55.8″ W, thence back to the original position 27°46′18″ N, 082°37′55.2″ W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

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

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(d) *Enforcement Period.* This rule will be enforced daily from 6 a.m. until 10 p.m., on October 23, 2020 through October 25, 2020.

Dated: October 13, 2020.

Matthew A. Thompson,

Captain, U.S. Coast Guard, Captain of the Port Saint Petersburg.

[FR Doc. 2020–23065 Filed 10–23–20; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0642]

RIN 1625–AA00

Safety Zone; Electrical Cable Removal, Menominee River, Menominee, MI and Marinette, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters within 200 yards of a worksite removing overhead electrical cables along a line crossing the Menominee River in Menominee, MI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the removal of overhead electrical cables across the river. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: This rule is effective from 7 a.m. through 5 p.m. on October 27 and 28, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0642 in the ''SEARCH'' box, and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Jeromy.N.Sherrill@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision

authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard not made aware of the intended removal until October 13, 2020, and immediate action is needed to mitigate potential safety hazards associated with the process of removal, including the need to float the cables across the Menominee River. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to public interest by inhibiting the Coast Guard's ability to protect against the known and anticipated hazards.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to elapse would be impracticable because immediate action is needed to mitigate potential safety hazards associated with the removal of the overhead electrical cables crossing the Menominee River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Lake Michigan has determined that potential and actual safety hazards associated with the process of removing electrical cables from above the Menominee River will be a safety concern for anyone within 200 yards from the work site. This work is scheduled to take place on October 27 and October 28, 2020, on the Menominee River between Menominee, MI, and Marinette, WI. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while lines and electrical cables are being pulled across the river.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. through 5 p.m. on October 27 and October 28, 2020. The safety zone will cover all navigable waters of the Menominee River, between Menominee, MI and Marinette, WI, within 200 yards of a work site removing overhead electrical cables along a line crossing the river from coordinates 45.096326° N, 087.602092° W to 45.097197° N, 087.600601° W. The date and time of the enforcement period will be announced by the COTP Lake Michigan by Broadcast Notice to Mariners. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while lines and electrical cables are being pulled across the river. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the characteristics of the safety zone. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters. This rule will prohibit entry into certain navigable waters of the Menominee River at Menominee, MI and Marinette, WI and is not anticipated to exceed two 10-hour periods in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the COTP Lake Michigan.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting for a total of 20 hours that will prohibit entry within 200 yards of a worksite crossing the Menominee River for the removal of overhead electrical cables crossing the river. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0642 to read as follows:

§ 165.T09–0642 Safety Zone; Electrical Cable Removal, Menominee River, Menominee, MI and Marinette, WI.

(a) *Location.* All navigable waters of the Menominee River within 200 yards of a line crossing the river from coordinates 45.096326° N, 087.602092° W to 45.097197° N, 087.600601° W.

(b) *Enforcement period.* The regulated area described in paragraph (a) is effective from 7 a.m. through 5 p.m. on October 27 and October 28, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The ''designated representative'' of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone must contact the COTP or designated representative to obtain permission to do so. The COTP or designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or designated representative.

Dated: October 20, 2020.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2020–23650 Filed 10–26–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2019–0614; FRL–10013–53]

RIN 2070–AB27

Modification of Significant New Uses of Certain Chemical Substances (20–1.M)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending significant new use rules (SNURs) issued under the Toxic Substances Control Act (TSCA) for certain chemical substances, which were the subject of premanufacture notices (PMNs) and significant new use notices (SNUNs). As a result of EPA's review of SNUNs for these chemical substances and based on new and existing data, EPA is finalizing amendments to these SNURs. Specifically, this action amends the identified SNURs to allow certain new uses reported in the SNUNs without additional notification requirements and modify the significant new use notification requirements based on the actions and determinations for the SNUN submissions.

DATES: This rule is effective on December 28, 2020. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on November 10, 2020.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. 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:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, which would include the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and 40 CFR 721.20, and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0263, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

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.*

II. Background

A. What action is the Agency taking?

EPA is issuing amendments to the SNURs for certain chemical substances in 40 CFR part 721, subpart E. A SNUR for a chemical substance designates certain activities as a significant new use. Persons who intend to manufacture or process the chemical substance for the significant new use must notify EPA at least 90 days before commencing that activity. The required notification (*i.e.,* a SNUN) initiates EPA's evaluation of the intended use within the applicable review period. Manufacture and processing for the significant new use may not commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required with that determination.

Previously, in the **Federal Register** of April 1, 2020 (85 FR 18173; FRL–10004–51), EPA proposed amendments to the SNURs for these chemical substances and established the record for these SNUR amendments in the docket under docket ID number EPA–HQ–OPPT–2019–0614. That docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule (*i.e.,* a SNUR) after considering all relevant factors, including those listed in TSCA section 5(a)(2). EPA may also amend a SNUR promulgated under TSCA section 5(a)(2). Procedures and criteria for modifying or revoking SNUR requirements appear at 40 CFR 721.185.

C. How do the general SNUR provisions apply to this action?

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the final rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Considerations for Significant New Use Determinations

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining whether and how to modify the significant new uses for the chemical substances that are the subject of these SNURs, and as described in the preamble to the proposed rule, EPA considered relevant information about the toxicity of the chemical substance, likely human exposures and environmental releases associated with possible uses, and the four TSCA section 5(a)(2) factors listed in this unit.

B. Procedures for Significant New Uses Claimed as CBI

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a

procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received three public comments on the proposed amendments. The Agency's responses to these comments are provided in a separate Response to Public Comments document that is available in the docket for this rule. EPA made one change to the final rule amending 40 CFR 721.10663 based on one comment. Specifically, EPA added language used in previous SNURs for other carbon nanotube chemicals identifying criteria where SNUR requirements do not apply. EPA agrees with the commenter that when the chemical substance meets any of these criteria, there is no unreasonable risk from exposure to the substance.

V. Rationale of the Final Rule

These amendments are based on EPA's determination under 40 CFR 721.185(a)(3) following review of significant new use notices (SNUNs) for the chemical substances submitted to EPA. After reviewing the SNUNs, EPA concluded that there is no need to require additional notice from persons who propose to engage in identical or similar activities. In those instances where EPA expanded the scope of the significant new use, the Agency identified concerns during review of the SNUNs, as discussed in Unit IV. of the proposed rule, associated with certain potential new uses. In addition to considering the factors discussed in Unit IV. of the proposed rule, EPA determined that those uses could result in changes in the type or form of exposure to the chemical substance, increased exposures to the chemical substance, and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substance.

VI. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. EPA made this determination in issuing the original final rule for each chemical substance, and solicited additional comments on the proposed modifications to provide an opportunity for members of the public to indicate whether any of the uses which are not significant new uses under the current rules, but which would be regulated as ''significant new uses'' if the proposed rule is finalized, are ongoing. EPA received no comments that these uses were ongoing. Therefore, EPA concludes that the uses are not ongoing and designated April 1, 2020 (the date of publication of the proposed rule) as the cutoff date for determining whether the new use is ongoing.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of the cutoff date, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, that person would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 generally does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of an applicable rule, order or consent agreement under TSCA section 4, or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing.

Unit IV. of the proposed rule lists potentially useful information for all SNURs addressed in this final rule. Descriptions are provided for informational purposes. The information identified in Unit IV. of the proposed rule will be potentially useful to EPA's evaluation of a chemical substance in the event that someone submits a SNUN for a significant new use pursuant to the SNURs addressed in this final rule. Companies who are considering submitting a SNUN are encouraged, but are not required, to develop the potentially useful information on the substance.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing on vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialogue with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information identified in Unit IV. of the proposed rule may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN

submitters contact EPA early enough to provide time for conducting appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances; and
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN under 40 CFR part 720, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 721.25 and 720.40. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2019–0614.

X. Statutory and Executive Order Reviews

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

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

This action modifies SNURs for several chemical substances that were the subject of PMNs and SNUNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

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

This action is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017), because this action is not a significant regulatory action under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA (44 U.S.C. 3501 *et seq.*). Burden is defined in 5 CFR 1320.3(b). The information collection activities associated with new chemical SNURs have already been approved under OMB control number 2070–0012 (EPA ICR No. 0574). This action does not impose any burden requiring additional OMB approval.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320.

If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN. Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

D. Regulatory Flexibility Act (RFA)

Pursuant to the RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNUR modifications will not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new'' based on all information currently available to EPA, EPA has concluded that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, EPA received 7 SNUNs in Federal fiscal year (FY) 2013, 13 in FY2014, 6 in FY2015, 10 in FY2016, 14 in FY2017, and 11 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

E. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

F. Executive Order 13132: Federalism

This action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

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

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children. EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards and is therefore not subject to considerations under NTTAA section 12(d) (15 U.S.C. 272 note).

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

XI. Congressional Review Act (CRA)

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 14, 2020.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR part 721 as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Amend § 721.5185 by revising paragraphs (a)(1) and (a)(2)(i) and (iii) to read as follows:

§ 721.5185 2-Propen-1-one, 1-(4-morpholinyl)-.

(a) * * *

(1) The chemical substance identified as 2-propen-1-one, 1-(4-morpholinyl)- (PMN P–95–169; SNUN S–08–7; SNUN S–14–1; and SNUN S–17–10; CAS No. 5117–12–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the chemical substance after it has been completely reacted (cured) because 2-propen-1-one, 1-(4-morpholinyl)- will no longer exist.

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iv), (a)(3)(i) and (ii), (a)(6)(v), (b), and (c).

(A) Safety 4/4H EVOH/PE laminate, Ansell Edmont Neoprene number 865, and Solvex Nitrile Rubber number 275 gloves have been tested in accordance with the American Society for Testing Materials (ASTM) F739 method and found by EPA to satisfy the consent orders and § 721.63(a)(2)(i) requirements for dermal protection to 100 percent PMN substance. Gloves and other dermal protection may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. For additional dermal protection materials, a company must submit all test data to the Agency and must receive written Agency approval for each type of material tested prior to use of that material as worker dermal protection. However, for the purposes of determining the imperviousness of gloves, up to 1 year after the commencement of commercial manufacture or import, the employer may use the method described in § 721.63(a)(3)(ii), thereafter, they must use the method described in § 721.63(a)(3)(i). For purposes of § 721.63(b), the concentration is set at 1.0%.

(B) Additional requirements for use as a monomer for stereolithography: Requirements as specified in § 721.63(a)(4) and (5), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50.

* * * * *

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1). It is a significant new use to use the chemical substance for any use other than as a monomer for use in ultraviolet ink jet applications or stereolithography, unless the chemical substance is processed and used in an enclosed process.

* * * * *

■ 3. Amend § 721.10371 by revising paragraphs (a)(1) and (a)(2)(i) to read as follows:

§ 721.10371 Butanoic acid, 3-mercapto-,1,1′-[2-(hydroxymethyl)-2-(substituted-1-oxoalkoxy)methyl)-1,3-propanediyl] ester (generic).

(a) * * *

(1) The chemical substance identified generically as butanoic acid, 3-mercapto-,1,1′-[2-(hydroxymethyl)-2-(substituted-1-oxoalkoxy)methyl)-1,3-propanediyl] ester (PMN P–10–136 and

S–18–5, Chemical A) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as a monomer for acryl-based ultra-violet (UV)-curing coatings, inks, and adhesives or the confidential use described in the significant new use notice S–18–5.

* * * * *

■ 4. Amend § 721.10372 by revising paragraphs (a)(1) and (a)(2)(i) to read as follows:

§ 721.10372 Butanoic acid, 3-mercapto-,1,1′-[2,2-bis[(substituted-1-oxoalkoxy)methyl]-1,3-propanediyl] ester (generic).

(a) * * *

(1) The chemical substance identified generically as butanoic acid, 3-mercapto-,1,1′-[2,2-bis[(substituted-1-oxoalkoxy)methyl]-1,3-propanediyl] ester (PMN P–10–136 and SNUN S–18–5, Chemical B) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as a monomer for acryl-based ultra-violet (UV)-curing coatings, inks, and adhesives, or the confidential use described in the SNUN S–18–5.

* * * * *

■ 5. Amend § 721.10663 by revising paragraphs (a)(1), (a)(2)(i) and (ii), and (b)(1) to read as follows:

§ 721.10663 Functionalized multi-walled carbon nanotubes (generic).

(a) * * *

(1) The chemical substance identified generically as functionalized multi-walled carbon nanotubes (PMN P–12–44; SNUN S–18–4; and SNUN S–19–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance that have been completely reacted (cured); incorporated or embedded into a polymer matrix that itself has been completely reacted (cured); embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical process; or incorporated into an article.

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor of at least 50. For purposes of § 721.63(a)(6), the airborne form of the substance includes particulate. For purposes of § 721.63(b), concentration is set at 1.0%.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), and (x)(1). It is a significant new use to use the substance other than as a chemical additive for use in epoxy compounds for transportation, marine and industrial coatings, paints and manufactured goods, for the confidential use described in PMN P–12–44, or for the confidential use described in SNUN S–19–5.

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (f), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

■ 6. Amend § 721.10928 by revising paragraphs (a)(1) and (a)(2)(iii) to read as follows:

§ 721.10928 Coke (coal), secondary pitch; a carbon-containing residue from the coking of air blown pitch coke oil and/or pitch distillate; composed primarily of isotropic carbon, it contains small amounts of sulfur and ash constituents.

(a) * * *

(1) The chemical substance identified as coke (coal), secondary pitch. Definition: A carbon-containing residue from the coking of air blown pitch coke oil and/or pitch distillate; composed primarily of isotropic carbon, it contains small amounts of sulfur and ash constituents (PMN P–12–292, PMN P–17–217, and SNUN S–19–4; CAS No. 94113–91–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (p), and (y)(1) and (2). It is a significant new use to use the substance other than for the confidential use permitted by the Order for P–12–292, as a lubricating agent used in the production of automotive disc brakes, or to process as an additive for the manufacture of diesel particulate filters to increase the porosity of the filter. It is a significant new use to use the substance in an additive formulation to produce diesel particulate filters within the United States. For purposes of § 721.80, the aggregate volume is 2,500,000 kilograms.

* * * * *

[FR Doc. 2020–21464 Filed 10–26–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 201021–0276]

RIN 0648–BK15

Fisheries Off West Coast States; Emergency Action To Temporarily Extend the Primary Sablefish Fishery Season

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule temporarily extends the 2020 sablefish primary fishery from October 31, 2020 to December 31, 2020. This action is necessary to provide operational flexibility so that vessels in the sablefish primary fishery are able to fully harvest their tier limits despite high economic uncertainty in 2020. This action would also extend the incidental halibut retention allowance provision for the sablefish primary fishery from October 31, 2020 to November 15, 2020 and set the halibut retention limit during this time period at 250 pounds (113 kilograms) dressed weight of Pacific halibut for every 1,000 pounds (454 kilograms) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 250-pounds-per-1,000-pound limit per landing.

DATES: Effective October 27, 2020 until December 31, 2020. Comments must be submitted by November 27, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0133 by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0133,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Barry Thom, c/o Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic Access

This emergency rule and supporting documents, including a Supplemental Information Report prepared for this action, are accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are also available at the NMFS West Coast Region website at: *https://www.fisheries.noaa.gov/species/west-coast-groundfish* and at the Pacific Fishery Management Council's website at *https://www.pcouncil.org/managed_fishery/groundfish/.*

FOR FURTHER INFORMATION CONTACT: Keeley Kent, phone: 206–247–8252, or email: *Keeley.kent@noaa.gov.*

SUPPLEMENTARY INFORMATION: The primary sablefish fishery tier program is a limited access privilege program set up under Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP); which was approved by the Pacific Fishery Management Council (Council) in 2000 and was implemented by NMFS on August 2, 2001(66 FR 41152; August 7, 2001). Participants hold limited entry permits with a pot gear and/or longline gear endorsement and a sablefish endorsement.

Under Amendment 14, as set out in § 660.231, the permit holder of a sablefish-endorsed permit receives a tier limit, which is an annual share of the sablefish catch allocation to the primary fishery. NMFS sets three different tier limits through the biennial harvest specifications and management measures process (for the 2020 limits, see 83 FR 63970, December 12, 2018), and up to three permits may be stacked at one time on a vessel participating in the fishery. Stacked tier limits are combined to provide a cumulative catch limit for that vessel. After vessels have caught their full tier limits, they are allowed to move into other fisheries for sablefish, specifically the daily trip limit (DTL) fishery or the open access fishery, or fisheries for other species.

Under Amendment 14, the sablefish primary season has historically been open from April 1 through October 31 of each year, though individual permit holders may only fish up to their tier limits so may be required to cease fishing prior to October 31. These season dates were put into regulation during the development and implementation of the fishery under Amendment 14. Prior to the implementation of Amendment 14, the sablefish fishery had operated as a 'derby' style fishery, with a season length lasting a few weeks to a few days. Under Amendment 14, the fishery began operating under a 7-month season. The 7-month season structure, as opposed to a year-long season, was intended to allow for timely catch accounting so that the sector allocation was not exceeded.

Vessels in the primary fishery north of Point Chehalis, Washington are also allowed to retain incidentally caught Pacific halibut up to a specific limit specified at § 660.231(b)(3)(iv). Halibut are encountered regularly in the normal operation of the sablefish primary fishery due to the co-occurrence of halibut and sablefish in the same environments, and the design and function of fixed gear. This retention is allowed until the sablefish primary season ends and it contributes additional economic value to this sector. Additionally, many vessels in the primary sablefish fishery also participate in sablefish and Pacific halibut fisheries in Alaska.

2020 Fishery Outlook

At the September 2020 Council meeting, industry participants requested an extension to the 2020 sablefish primary fishery. The Council's Groundfish Management Team (GMT) provided analysis of the 2020 sablefish primary fishery participation and performance compared to prior years of the fishery. The GMT demonstrated in their analysis that from 2011 to 2019, annual attainment averaged over 90 percent of total sablefish tier allocations, with 65 percent harvested between April and mid-September. By contrast, the GMT showed the fishery in 2020 has only attained 33 percent of its allocation as of mid-September. This underattainment is attributed to delays experienced in the Alaska fisheries, in which many vessels in the sablefish primary fishery also participate. These delays are due to local travel restrictions, postponed season start dates, and quarantine requirements, all related to the ongoing COVID–19 pandemic. The GMT estimated that if the primary sablefish fishery season closed on October 31, 2020, the fishery would only attain 46 percent of its allocation, which equates to about $2.86 million in lost ex-vessel revenue and additional economic benefits for coastal communities.

The Council reviewed the information provided by the GMT and by fishery stakeholders and discussed options to provide relief to commercial fishermen in the primary sablefish fishery from economic losses as a result of the recent unforeseen events associated with COVID–19 that began in approximately March 2020. These unforeseen events have adversely affected commercial fishermen throughout the Council's jurisdiction for an extended period of time. Commercial stakeholders informed the Council that the recent events have caused many individuals, businesses and communities to suffer significant economic hardships from lost or reduced income and fishing opportunities. These events have also caused serious management problems by making it more difficult to achieve optimum yield (OY) for sablefish.

At its September 2020 meeting, after evaluating the information provided to it, the Council recommended that NMFS initiate an emergency action to extend the sablefish primary fishery season from October 31, 2020 to December 31, 2020, to allow participants more time to harvest their full tier limits. As part of the emergency action, the Council also recommended an extension of the incidental halibut retention allowance north of Point Chehalis, Washington to November 15, 2020, and setting the retention limit at 250 pounds (113 kg) dressed weight of Pacific halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 250-pounds-per-1,000-pound limit per landing. The retention allowance ensures additional economic benefits and reduces regulatory discards of commercially valuable incidental halibut.

Criteria and Justification for Emergency Action

Section 305(c) of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement temporary emergency regulations to address fishery emergencies. NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines limit emergency management actions to recent unforeseen events or recently discovered circumstances that present serious management problems in the fishery when the benefits of an emergency action outweigh the benefits of the normal rulemaking process.

NMFS has evaluated all relief mechanisms and, given the limited time remaining in the primary fishery season, an emergency action to extend the season is the only mechanism sufficient to provide participants access to their quota. NMFS is issuing this emergency rule in compliance with the NMFS guidelines to prevent significant direct economic loss and preserve economic opportunities that otherwise might be foregone.

This emergency action will help the fishery achieve, but not exceed, the allocation of sablefish to the primary sablefish fishery, and the sablefish annual catch limit. As such, in evaluating the anticipated effects of this emergency action, NMFS determined that the effects fall within those described in the Environmental Assessment for the 2019–2020 Groundfish Harvest Specifications and Management Measures; which is tiered from the Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter Final Environmental Impact Statement (EIS) which discloses the longer-term framework and environmental impacts of the biennial specifications process. NMFS documented this decision-making process in a Supplemental Information Report (see **ADDRESSES**).

Emergency Measures

Effective October 27, 2020, this action temporarily extends the 2020 sablefish primary season for vessels registered to limited entry fixed gear, sablefish-endorsed permits North of 36° N lat., from October 31, 2020 to December 31, 2020. This action includes a small administrative change to allow an additional transfer of sablefish-endorsed limited entry permits so that these permits may be transferred up to two times within a calendar year. This change will allow fishery participants to appropriately take advantage of the extended season.

This action also extends the incidental halibut retention allowance for the sablefish primary fishery North of Point Chehalis, Washington, to November 15, 2020, which is the latest date allowed by the International Pacific Halibut Commission. Under these emergency measures, the incidental retention allowance limit is set at 250 pounds (113 kg) of dressed halibut per 1,000 pounds (454 kg) of dressed sablefish and up to 2 additional Pacific halibut in excess of the 250-pounds-per-1,000-pound limit per landing. After November 15, any incidental halibut would need to be discarded as a prohibited species.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the PCGFMP, Section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), the Northern Pacific Halibut Act of 1982, and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds good cause to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

The Council did an emergency modification to their September 2020 meeting agenda to consider taking emergency action in response to requests from industry representatives, the Groundfish Advisory Subpanel, and the public. These entities raised concerns that many vessels would be unable to harvest their allocations before the primary season closed due to unforeseen issues resulting from restrictions associated with the COVID–19 pandemic. The Council considered and ultimately recommended NMFS initiate this action on September 17th, with less than 6 weeks remaining before the closure of the sablefish primary season on October 31. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to provide relief for a time-sensitive management problem. Further delays to extend the season through emergency action would jeopardize the ability of sablefish primary fishery participants to land allocations, and avoid economic hardship. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on these emergency measures.

Additionally, this rule is exempt from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it relieves a restriction that would place fishery participants at an economic disadvantage. Waiving the 30-day delayed effectiveness for this rule is necessary to allow participants in the sablefish primary fishery under emergency rules to continue fishing operations with minimal interruption beyond the status quo closure date of October 31. Not extending the sablefish primary fishery season past October 31 would present immediate serious economic impacts without contributing to the economic goals of the sablefish tier program. Because this rule alleviates a restriction, which if continued would otherwise have serious and unnecessary economic harm on tier fishery vessels, it is not subject to the 30-day delayed effectiveness provision of the APA.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review. This rule is not significant.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This emergency rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: October 21, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—-FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.25, add paragraphs (b)(4)(vii)(B)(*1*) and (*2*) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(vii) * * *

(B) * * *

(*1*) Under emergency measures effective October 27, 2020 until December 31, 2020, Sablefish-endorsed limited entry fixed gear permits

(without MS/CV or C/P endorsements) may be registered for use with a different vessel up to twice per calendar year.

(*2*) [Reserved]

* * * * *

■ 3. In § 660.213, revise paragraph (d)(2) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

* * * * *

(d) * * *

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through October 31 (unless otherwise provided for at § 660.231(b)(1)(i)) or, for an individual vessel owner, when the tier limit for the permit(s) registered to the vessel has been reached, whichever is earlier.

* * * * *

■ 4. In § 660.231, revise paragraph (b)(1), add paragraphs (b)(3)(iv)(A), and (B) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(1) *Season dates.* North of 36° N lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on October 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

(i) Under emergency measures effective October 27, 2020 until December 31, 2020, notwithstanding any other section of these regulations, North of 36° N lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels closes at 12 noon local time on December 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

(ii) [Reserved]

* * * * *

(3) * * *

(iv) * * *

(A) Under emergency measures effective October 27, 2020, until November 15, 2020, notwithstanding any other section of these regulations, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N lat.) may possess and land up to 250 pounds (113 kg) dressed weight of Pacific halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 250-pounds-per-1,000-pound limit per landing. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

(B) [Reserved]

* * * * *

[FR Doc. 2020–23700 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 208
Tuesday, October 27, 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 915

[Doc. No. AMS–SC–20–0064; SC20–915–1 CR]

Avocados Grown in South Florida; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of avocados grown in South Florida to determine whether they favor continuance of the marketing order regulating the handling of avocados produced in the production area.

DATES: The referendum will be conducted from November 30 through December 21, 2020. Only current growers of Florida avocados within the production area that produced avocados during the period April 1, 2019, through March 31, 2020, are eligible to vote in this referendum.

ADDRESSES: Copies of the marketing order may be obtained from the Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375; or from the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; or on the internet: *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@usda.gov* or *Christian.Nissen@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 915, as amended (7 CFR part 915), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by growers. The referendum shall be conducted from November 30 through December 21, 2020, among Florida avocado growers in the production area. Only current Florida avocado growers who were engaged in the production of Florida avocados grown in the production area, during the period of period April 1, 2019, through March 31, 2020, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. The Order will continue in effect if two-thirds of the growers that cast votes, or growers representing two-thirds of the volume of Florida avocados voted in the referendum, cast ballots in favor of continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding the operation of the Order and relative benefits and disadvantages to growers, handlers, and consumers in determining whether continued operation of the Order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballots used in the referendum have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189, Fruit Crops. It has been estimated it will take an average of 20 minutes for each of the approximately 325 growers of Florida avocados to cast a ballot. Participation is voluntary. Ballots postmarked after December 21, 2020, will not be included in the vote tabulation.

Abigail Campos, Dolores Lowenstine, and Christian D. Nissen of the Southeast Marketing Field Office, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or their appointees.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–23348 Filed 10–26–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010 and 1020

[Docket No. FINCEN–2020–0002 ; RIN 1506–AB41]

Threshold for the Requirement To Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States, and Clarification of the Requirement To Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status

AGENCY: Board of Governors of the Federal Reserve System (''Board''); Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Board and FinCEN (collectively, the ''Agencies'') are issuing this proposed rule to modify the threshold in the rule implementing the

Bank Secrecy Act (''BSA'') requiring financial institutions to collect and retain information on certain funds transfers and transmittals of funds. The proposed modification would reduce this threshold from $3,000 to $250 for funds transfers and transmittals of funds that begin or end outside the United States. FinCEN is likewise proposing to reduce from $3,000 to $250 the threshold in the rule requiring financial institutions to transmit to other financial institutions in the payment chain information on funds transfers and transmittals of funds that begin or end outside the United States. The Agencies are also proposing to clarify the meaning of ''money'' as used in these same rules to ensure that the rules apply to domestic and cross-border transactions involving convertible virtual currency (''CVC''), which is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. The Agencies further propose to clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status.

DATES: Written comments on this proposed rule may be submitted on or before November 27, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Board: You may submit comments, identified by Docket No. R–1726; RIN 7100–AF97, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FinCEN:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2020–0002 and the specific RIN number 1506–AB41 the comment applies to.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2020–0002 and the specific RIN number.

FOR FURTHER INFORMATION CONTACT:

Board: Jason Gonzalez, Assistant General Counsel (202) 452–3275 or Evan Winerman, Senior Counsel (202) 872–7578, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

FinCEN: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''USA PATRIOT Act'') (Pub. L. 107–56) and other legislation, is the legislative framework commonly referred to as the BSA. The Secretary of the Treasury (''Secretary'') has delegated to the Director of FinCEN (''Director'') the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[1] Pursuant to this authority, FinCEN may require financial institutions to keep records and file reports that the Director determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or counterintelligence matters to protect against international terrorism.[2]

The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550) (''Annunzio-Wylie'') amended the BSA framework. Annunzio-Wylie authorizes the Secretary and the Board to jointly issue regulations requiring insured depository institutions to maintain records of domestic funds transfers.[3] The Secretary, but not the Board, is authorized to promulgate recordkeeping requirements for domestic wire transfers by nonbank financial institutions.[4] In addition, Annunzio-Wylie authorizes the Secretary and the Board, after consultation with state banking supervisors, to jointly issue regulations requiring insured depository institutions and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.[5] Annunzio-Wylie requires the Secretary and the Board, in issuing regulations for international funds transfers and transmittals of funds, to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of the payments system.[6] FinCEN can continually monitor the benefits of such regulations through its extensive liaison activity with federal and state law enforcement and financial regulatory entities, and the Board can assess costs through its regulatory oversight of financial institutions under its jurisdiction.

On January 3, 1995, the Agencies jointly issued a recordkeeping rule (the ''Recordkeeping Rule'') that requires banks and nonbank financial institutions to collect and retain information related to funds transfers and transmittals of funds in amounts of $3,000 or more.[7] The Recordkeeping Rule is intended to help law enforcement and regulatory authorities

[1] Treasury Order 180–01 (Jan. 14, 2020).

[2] 31 U.S.C. 5311.

[3] 12 U.S.C. 1829b(b)(2).

[4] 12 U.S.C. 1953.

[5] 12 U.S.C. 1829b(b)(3). The terms ''funds transfer,'' ''originator,'' ''beneficiary,'' and ''payment order'' apply only in the context of banks. The term ''transmittal of funds'' includes a funds transfer and its counterpart in the context of nonbank financial institutions. *See* 31 CFR 1010.100(ddd). Transmittors, recipients, and transmittal orders in the context of nonbank financial institutions play the same role as originators, beneficiaries, and payment orders in the context of banks.

[6] 12 U.S.C. 1829b(b)(3).

[7] 60 FR 220 (Jan. 3, 1995). Through a separate rulemaking, the Board added on January 3, 1995 a new subpart B to 12 CFR part 219 (Regulation S), which cross-references the substantive requirements in the Recordkeeping Rule. *See* 60 FR 231–01 (Jan. 3, 1995). As noted above, the Board (unlike FinCEN) is not authorized to promulgate recordkeeping requirements for domestic wire transfers by nonbank financial institutions. Accordingly, for purposes of Regulation S, the provisions of the Recordkeeping Rule with respect to nonbank financial institutions apply only to international transmittals of funds. 12 CFR 219.23(b).

detect, investigate, and prosecute money laundering, and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

At the same time, FinCEN issued a separate rule—the ''Travel Rule''—that requires banks and nonbank financial institutions to transmit information on certain funds transfers and transmittals of funds to other banks or nonbank financial institutions participating in the transfer or transmittal.[8] The Travel Rule and the Recordkeeping Rule complement each other: Generally, as noted below, the Recordkeeping Rule requires financial institutions to collect and retain the information that, under the Travel Rule, must be included with transmittal orders, although the Recordkeeping Rule also has other applications apart from ensuring that information is available to include with funds transfers. FinCEN issued the Travel Rule pursuant to statutory authority that permits the Treasury to require domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with the BSA or to guard against money laundering, and to establish anti-money laundering programs.[9]

This proposed rule would amend both the Recordkeeping Rule and the Travel Rule. The Recordkeeping Rule is codified at 31 CFR 1020.410(a) and 1010.410(e)[10] and the Travel Rule is codified at 31 CFR 1010.410(f).[11] Consistent with its rulemaking authority in the BSA, as amended by Annunzio-Wylie, the Board is proposing the amendments to § 1010.100(ll) and § 1020.410(a) only to the extent the amendments apply to funds transfers by insured depository institutions, and is proposing the amendments to § 1010.100(eee) and § 1010.410(e) only to the extent the amendments would apply to international transmittals of funds by financial institutions other than insured depository institutions. Because the Board's Regulation S generally cross-references those portions of the Recordkeeping Rule promulgated jointly by the Board and FinCEN, it is unnecessary to propose conforming amendments to Regulation S.

B. Information Required To Be Collected, Retained, and Transmitted Under the Recordkeeping and Travel Rules

The Recordkeeping Rule and Travel Rule collectively require banks and nonbank financial institutions to collect, retain, and transmit information on funds transfers and transmittals of funds in amounts of $3,000 or more.

Under the Recordkeeping Rule, the originator's bank or transmittor's financial institution must collect and retain the following information: (a) Name and address of the originator or transmittor; (b) the amount of the payment or transmittal order; (c) the execution date of the payment or transmittal order; (d) any payment instructions received from the originator or transmittor with the payment or transmittal order; and (e) the identity of the beneficiary's bank or recipient's financial institution. In addition, the originator's bank or transmittor's financial institution must retain the following information if it receives that information from the originator or transmittor: (a) Name and address of the beneficiary or recipient; (b) account number of the beneficiary or recipient; and (c) any other specific identifier of the beneficiary or recipient. The originator's bank or transmittor's financial institution is required to verify the identity of the person placing a payment or transmittal order if the order is made in person and the person placing the order is not an established customer.[12] Similarly, should the beneficiary's bank or recipient's financial institution deliver the proceeds to the beneficiary or recipient in person, the bank or nonbank financial institution must verify the identity of the beneficiary or recipient—and collect and retain various items of information identifying the beneficiary or recipient—if the beneficiary or recipient is not an established customer. Finally, an intermediary bank or financial institution—and the beneficiary's bank or recipient's financial institution—must retain originals or copies of payment or transmittal orders.

Under the Travel Rule, the originator's bank or transmittor's financial institution is required to include information, including all information required under the Recordkeeping Rule, in a payment or transmittal order sent by the bank or nonbank financial institution to another bank or nonbank financial institution in the payment chain. An intermediary bank or financial institution is also required to transmit this information to other banks or nonbank financial institutions in the payment chain, to the extent the information is received by the intermediary bank or financial institution.

II. Lowering of Threshold From $3,000 to $250 for Funds Transfers and Transmittals of Funds by Financial Institutions That Begin or End Outside the United States

The existing requirements in 31 CFR 1020.410(a) and 31 CFR 1010.410(e) and (f) to collect, retain, and transmit information on funds transfers and transmittals of funds currently apply only to funds transfers and transmittals of funds in amounts of $3,000 or more. The Agencies are proposing to lower the threshold under the Recordkeeping Rule, and FinCEN is proposing to lower the threshold under the Travel Rule, to $250 for funds transfers and transmittals of funds that begin or end outside the United States.[13] In proposing these modifications, the Agencies considered the usefulness of transaction information associated with smaller-value cross-border transfers and transmittals of funds in criminal, tax, or regulatory investigations or proceedings, and in intelligence or counterintelligence activities to protect against international terrorism, as well as the effect on the payments system of requiring information collection and retention for these transactions. The following two sections lay out, respectively, (A) the potential benefits to national security and law enforcement from reducing the Recordkeeping Rule and Travel Rule thresholds for funds transfers and transmittals of funds that begin or end outside the United States, and (B) the potential effect these new requirements would have on the cost and efficiency of the payments system.

A. Benefit to National Security and Law Enforcement

Information available to the Agencies indicates that malign actors are using smaller-value cross-border wire transfers to facilitate or commit terrorist financing, narcotics trafficking, and other illicit activity, and that increased recordkeeping and reporting concerning these transactions would be valuable to

[8] 60 FR 234 (Jan. 3, 1995).

[9] *Id.; see also* 31 U.S.C. 5218(a)(2) and (h).

[10] As explained in n. 6, *supra*, the Board separately promulgated subpart B to Regulation S, which cross-references the requirements of 31 CFR 1020.410(a) and 1010.410(e).

[11] Recordkeeping requirements for banks are set forth in 31 CFR 1020.410(a). Recordkeeping requirements for nonbank financial institutions are set forth in 31 CFR 1010.410(e). The Travel Rule—codified at 31 CFR 1010.410(f)—applies by its terms to both bank and nonbank financial institutions.

[12] The term ''established customer'' is defined at 31 CFR 1010.100(p).

[13] The ''United States'' includes the States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States. 31 CFR 1010.100(hhh).

law enforcement and national security authorities. In proposing to lower the current threshold under the Recordkeeping and Travel Rules, the Agencies have specifically considered Suspicious Activity Reports (''SARs'') filed by money transmitters, which indicate that a substantial volume of potentially illicit funds transfers and transmittals of funds occur below the $3,000 threshold; evidence used in recent criminal prosecutions; and the views of law enforcement partners and the Financial Action Task Force (''FATF'') [14] on the utility of mandating information collection for smaller-value wire transfers.

First, FinCEN analyzed data derived from approximately 2,000 SARs filed by money transmitters between 2016 and 2019 related to potential terrorist financing-related transmittals of funds.[15] These SARs referenced approximately 1.29 million underlying transmittals of funds, approximately 99 percent of which began or ended outside the United States (only approximately 17,000 of the approximately 1.29 million transactions included within its terrorist-financing analysis dataset involved domestic-only transactions). The mean and median dollar-value of transmittals of funds mentioned in those SARs were approximately $509 and $255, respectively. Approximately 71 percent of those 1.29 million transmittals (more than 916,000) were at or below $500, totaling more than $179 million. Approximately 57 percent of those transmittals (more than 728,000) were at or below $300, totaling more than $103 million. As noted in the 2015 National Terrorism Finance Risk Assessment, terrorist financiers and facilitators are creative and will seek to exploit vulnerabilities in the financial system to further their unlawful aims, including, as the above analysis indicates, through the use of low-dollar transactions.[16]

FinCEN also reviewed a separate subset of 363 SARs filed by a money transmitter for the period between 2012 and 2018 that FinCEN determined to be potentially related to fentanyl trafficking.[17] These SARs referenced approximately 78,000 transmittals of funds, over 82% of which began or ended outside the United States. The mean and median dollar-value of transmittals of funds mentioned in these SARs were approximately $588 and $283, respectively. Approximately 67 percent of those 78,000 transmittals (more than 52,000) were at or below $500, totaling more than $10 million. Approximately 52 percent of those transmittals (more than 40,000) were at or below $300, totaling more than $5.7 million.

In the 1995 rulemaking implementing the Travel Rule, the Treasury noted that it would monitor the effectiveness of financial institutions' suspicious transaction reporting protocols to determine whether potentially illicit transactions below the $3,000 threshold were being reported (and thus whether it might be unnecessary, from a law enforcement perspective, to lower the threshold).[18] FinCEN has been able to analyze some records of transmittals of funds below $3,000, as noted above, because money transmitters have retained records for those transmittals of funds after recognizing the underlying activity as suspicious. However, the Agencies believe that lowering the threshold to capture smaller-value cross-border funds transfers and transmittals of funds would be valuable for law enforcement and national security authorities, despite financial institutions' suspicious activity reporting programs, because some financial institutions may not recognize or retain records for all suspicious activity below the $3,000 threshold or the suspicious pattern may not become clear until the records are aggregated. This could inhibit law enforcement from promptly investigating and mapping illicit networks.

Second, recent prosecutions show that individuals are sending and receiving funds to finance terrorist activity in amounts below (and in some cases, well below) the current $3,000 recordkeeping threshold. Those cases involved persons providing material support for terrorist activity to a designated Foreign Terrorist Organization (''FTO''). In one such case, during 2013, the defendant allegedly sent $1,500 to a co-defendant's financial account within the United States; the co-defendant was collecting money from his co-conspirators in support of an FTO fighter in Syria, ultimately transmitting those funds through money remitting businesses and intermediaries overseas.[19] In another case, a man was prosecuted for meeting with an FTO recruiter in 2015, wiring funds in the amount of $250 to an FTO, and attempting to leave the United States with the intent of joining the FTO in Libya.[20] Another example of small dollar funds transfers made in support of terrorism involved an individual in the United States who received several cash transfers in 2015 from FTO affiliates, totaling about $8,700 and sent primarily in sums of less than $3,000.[21] One such transfer in 2016 was from a person located in Egypt, in the amount of $1,000, and sent through a U.S. money transmitter.[22] The subject later admitted to law enforcement that the money was to be used to finance a terrorist attack in the United States, and the subject was subsequently convicted of providing material support to an FTO.[23]

Third, the Money Laundering and Asset Recovery Section (''MLARS'') of the Criminal Division of the Department of Justice (''DOJ'') has advised the Agencies that it supports lowering the dollar threshold for the Recordkeeping and Travel Rules. In 2006, MLARS (previously known as the Asset Forfeiture and Money Laundering Section) submitted a public comment to the Agencies in response to an Advance Notice of Proposed Rulemaking (''2006 ANPRM'') in which the Agencies sought comments on lowering the thresholds of the Recordkeeping and Travel Rules.[24] MLARS's public comment included a

[14] The FATF is an international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system.

[15] FinCEN determined that these SARs were potentially related to terrorist financing based on the application of certain search terms and analytic methods developed by FinCEN. FinCEN shared its analysis with law enforcement. FinCEN is aware, based on feedback from domestic and foreign law enforcement partners, that those partners have used information contained in terrorism-related SARs in their investigations.

[16] *See* Dep't of the Treasury, 2015 National Terrorism Finance Risk Assessment, at 2 (June 2015), *https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Terrorist%20Financing%20Risk%20Assessment%20-%2006-12-2015.pdf.*

[17] FinCEN determined that these SARs were potentially related to fentanyl trafficking based on the application of certain search terms and analytic methods developed by FinCEN, including through FinCEN's work with law enforcement. FinCEN shared its analysis with law enforcement.

[18] 60 FR 234, 236 (Jan. 3, 1995).

[19] *See United States* v. *Harcevic,* 2015 WL 1821509, at *1 (E.D. Mo. Apr. 21, 2015); *United States* v. *Hodzic,* 2016 WL 11578530, at *1 (E.D. Mo. Aug. 22, 2016), *report and recommendation adopted,* 355 F. Supp. 3d 825 (E.D. Mo. 2019); *see also* Press Release, Department of Justice, ''Missouri Man Pleads Guilty to Providing Material Support to Terrorists,'' 2019 WL 1472565 (Apr. 3, 2019).

[20] *See* Press Release, Department of Justice, ''Columbus Man Sentenced to 80 Months in Prison for Attempting to Provide Material Support to ISIS'' (July 6, 2019), *https://www.justice.gov/usao-sdoh/pr/columbus-man-sentenced-80-months-prison-attempting-provide-material-support-isis; see also United States* v *Daniels,* 2:2016–cr–222 (ECF No. 7 at 2) (filed Nov. 10, 2016).

[21] *See United States* v. *Elshinawy,* No. CR ELH–16–009, 2018 WL 1521876, at *17–18 (D. Md. Mar. 28, 2018), *aff'd,* 781 F. App'x 168 (4th Cir. 2019).

[22] *Id.* at *17.

[23] *Id.* at *8.

[24] 71 FR 119 (June 21, 2006).

synthesis of comments from agents and prosecutors at several federal law enforcement agencies who use this information, including the Federal Bureau of Investigation (''FBI''), the United States Drug Enforcement Administration (''DEA''), the Internal Revenue Service (''IRS''), the United States Secret Service (''USSS''), and U.S. Immigration and Customs Enforcement. While not the official comment of each such agency, the agents and prosecutors specializing in money laundering cases and who routinely use wire transfer information supported lowering or eliminating altogether the reporting threshold to disrupt illegal activity and increase its cost to the perpetrators. At the same time, MLARS identified two potential concerns—first, that some criminals would structure transactions to evade the lower threshold, and second, if such structuring occurred, those smaller dollar transactions would be difficult to distinguish from legitimate wire transfers. Ultimately, in spite of these concerns, MLARS supported a lower, uniform recordkeeping threshold.

More recently, MLARS has advised the Agencies that it continues to support lowering the threshold, particularly if doing so would bring the Recordkeeping Rule and Travel Rule in line with international standards (which are further described immediately below). MLARS indicated that its views apply equally to funds transfers by banks and transmittals of funds by nonbank financial institutions. The DEA, the IRS, and the USSS have similarly expressed support for lowering the reporting threshold for purposes of the Recordkeeping Rule and Travel Rule.

Finally, the FATF has indicated that records of smaller-value transactions are valuable to law enforcement, particularly with respect to terrorist financing investigations.[25] The FATF recommends that ''basic information'' concerning the originator and beneficiary of wire transfers be immediately available to appropriate government authorities, including law enforcement and financial intelligence units, as well as to financial institutions participating in the transaction.[26] For cross-border wire transfers, the FATF recommends that countries provide for the collection and transmission throughout the payment chain of the originator's name, account number, and address, and the name of the beneficiary and their account number.[27] The FATF further states that countries may adopt a *de minimis* threshold of no higher than USD/EUR 1,000 for cross-border wire transfers, below which the name and account numbers of the originator and beneficiary should be collected and transmitted but need not be verified for accuracy unless there is a suspicion of money laundering or terrorist financing.[28] The FATF recommends that countries minimize this and other thresholds to the extent practicable, after taking into account the risk of ''driving transactions underground'' and the ''importance of financial inclusion.''[29] The 1,000 USD/EUR *de minimis* cross-border threshold specified in the FATF Recommendations has been adopted by the European Union and by the vast majority of jurisdictions around the world.

Accordingly, the Agencies believe that mandating the collection, retention, and transmission of information for funds transfers and transmittals of funds of at least $250 that originate or terminate outside the United States would likely lead to the preservation of information that would benefit law enforcement and national security investigations. Given the usefulness of this information and the potential that financial institutions may not correctly identify a transaction as suspicious, as noted previously, the Agencies believe that it is appropriate to propose lowering the threshold of the Recordkeeping Rule, and FinCEN concludes that it is appropriate to propose lowering the threshold of the Travel Rule, even though financial institutions are subject to SAR reporting requirements through which they may report certain of these smaller-value transactions that fall below the current threshold.

B. Effect on Financial Institutions and the Payments System

The Agencies believe that the effect of lowering the $3,000 threshold on financial institutions and on the cost and efficiency of the payments system is likely to be low. As demonstrated by the SARs described in the preceding section, some financial institutions are already collecting information on at least a portion of transactions taking place under the current threshold for purposes of reporting suspicious transactions to FinCEN. FinCEN is also aware that some financial institutions already collect information on the originator and beneficiary for transmittals below the $3,000 threshold for reasons separate from reporting suspicious transactions to FinCEN, for instance because it is cost-effective to maintain a single set of processes for all transactions..

The Agencies note that in completing the 1995 rulemakings implementing the Recordkeeping and Travel Rules, and in obtaining comments from the industry in connection with the 2006 ANPRM, some financial institutions advised that they were already collecting information for smaller-value transmittals and that mandating recordkeeping requirements for such transactions would not have a material impact on the payment system. At the same time, other financial institutions expressed concern that imposing information collection requirements (especially for smaller-value transmittals) could increase regulatory compliance costs by mandating the use of new technologies and processes to collect the information, and that these costs could be passed on to consumers.

In deciding on a threshold of $3,000 in 1995, the Agencies balanced the value of data on funds transfers and transmittals of funds with the burden that the Recordkeeping Rule and Travel Rule imposed on both bank and nonbank financial institutions. The Agencies are proposing to lower the threshold because the current threshold may no longer represent the appropriate balance for transmittals originating or terminating outside the United States. As noted in the 2006 ANPRM, subsequent to 1995, the responsibilities of financial institutions under the BSA have expanded. For example, an MSB must now report suspicious transactions[30] and implement anti-money laundering programs for ensuring compliance with the BSA.[31] MSBs may collect and retain information on transmittals of funds as a means of ensuring compliance with the requirement to report suspicious transactions. The requirement for MSBs to report suspicious transactions likely means that reducing or eliminating the threshold for transmittals would impose less of an incremental cost. Further, the

[25] *See* Recommendation 16 and Interpretive Note to FATF Recommendation 16, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation—The FATF Recommendations, at 15–16, 73–77 (June 2019), *available at www.fatf-gafi.org/recommendations.html*).

[26] *See id.* at 73 (Interpretive Note to FATF Recommendation 16).

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See* 31 CFR 1022.320(a)–(f). The requirement applies to transactions occurring after December 31, 2001. The threshold for the requirement to report suspicious transactions is $2,000.

[31] *See* 31 CFR 1022.210(a)–(e). An MSB must implement the program on or before the later of July 24, 2002 and the end of the 90-day period beginning on the day following the date the business is established.

Agencies note that technology has advanced significantly since the issuance of the 2006 ANPRM. Among other things, data storage costs have gone down, and accordingly it is likely that financial institutions generally use less expensive or more efficient means of electronic storage and retrieval. The Agencies believe there has been an increase in the ability of small institutions to rely on third-party vendors to reduce their costs of handling compliance with a revised threshold.

III. Application of the Recordkeeping and Travel Rules to CVC and Digital Assets That Have Legal Tender Status

A. The Meaning of ''Money'' as Applicable to the Recordkeeping and Travel Rules

The Recordkeeping Rule applies to funds transfers (*i.e.,* transactions involving banks) and transmittals of funds (*i.e.,* transactions involving nonbank financial institutions). The term ''funds transfer'' is defined, as in Article 4A of the Uniform Commercial Code (''UCC''), to include ''[t]he series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order.'' [32] The Recordkeeping Rule in turn defines ''payment order'' similarly to the UCC Article 4A definition, stating that a payment order is ''[a]n instruction of a sender to a receiving bank . . . to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of *money* to a beneficiary.'' [33] (Emphasis added.)

The Recordkeeping Rule's definition of ''transmittal of funds'' parallels the UCC Article 4A definition of ''funds transfer,'' with minor adjustments that allow the definition to apply to nonbank financial institutions. Specifically, the Recordkeeping Rule defines transmittal of funds as ''[a] series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient. . . .'' [34] The Recordkeeping Rule's definition of ''transmittal order'' in turn parallels the UCC Article 4A definition of payment order, stating that ''[t]he term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution . . . to pay, a fixed or determinable amount of *money* to a recipient . . . .'' [35] (Emphasis added.)

Accordingly, funds transfers and transmittals of funds involve an instruction to pay a ''fixed or determinable amount of money.'' The Recordkeeping Rule does not explicitly define the word ''money.'' However, in the preamble to the **Federal Register** document adopting the Recordkeeping Rule, the Agencies explained that ''terms . . . that are not defined specifically in the regulation, but are defined in relevant provisions of the UCC, will have the meaning given them in the UCC, unless otherwise indicated.'' [36] Under the UCC, the term ''money'' is defined as ''a medium of exchange currently authorized or adopted by a domestic or foreign government.'' [37]

In guidance issued in November 2010, FinCEN similarly explained that the Travel Rule ''uses terms that are intended to parallel those used in UCC Article 4A, but that are applicable to all financial institutions, as defined within the Bank Secrecy Act's implementing regulations.'' Similar to the Recordkeeping Rule, FinCEN's implementing regulations explain that a transmittal order ''includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient[.]'' [38]

B. FinCEN's Prior Guidance on CVC, and This Proposed Rule's Further Clarification of the Definition of ''Money'' as Applicable to the Recordkeeping and Travel Rules

Since the Agencies issued the Recordkeeping Rule, and FinCEN issued the Travel Rule, a number of CVCs, such as Bitcoin and Ethereum, have been created. CVC is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. Generally, CVCs can be exchanged instantaneously anywhere in the world through peer-to-peer payment systems (a distributed ledger) that allow any two parties to transact directly with each other without the need for an intermediary financial institution. However, in practice, many persons hold and transmit CVC using a third-party financial institution such as a ''hosted wallet'' or an exchange.

Public use of CVCs has grown significantly in recent years. Estimated transactions in Bitcoin alone were approximately $366 billion dollars in 2019 and $312 billion through in 2020 through August.[39] Furthermore, the market capitalization of Bitcoin alone was approximately $216 billion as of August 2020.[40]

The Treasury, including FinCEN, has closely monitored illicit finance risks posed by CVCs. The Agencies note that malign actors have used CVCs to facilitate international terrorist financing, weapons proliferation, sanctions evasion, and transnational money laundering, as well as to buy and sell controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals.[41] For example, North Korean cyber actors, such as the Lazarus Group, have continuously engaged in efforts to steal and extort CVC as a means of generating and laundering large amounts of revenue for the regime.[42]

To mitigate illicit finance risks posed by CVC, the FATF has advised that countries should consider so-called virtual assets as ''property,'' ''proceeds,''

[32] 31 CFR 1010.100(w); *see also* U.C.C. 4A–104(a).

[33] 31 CFR 1010.100(ll); *see also* U.C.C. 4A–103(a)(1).

[34] 31 CFR 1010.100(ddd).

[35] 31 CFR 1010.100(eee).

[36] 60 FR 220, 222 (Jan. 3, 1995).

[37] U.C.C. 1–201(b)(24) (2001); *see also* U.C.C. 4A–105(d) (2012) (stating that Article 1 general definitions are applicable throughout Article 4A).

[38] 31 CFR 1010.100(eee).

[39] Estimates based on data from blockchain.com, *https://www.blockchain.com/charts/estimated-transaction-volume-usd.*

[40] *See* Coingecko, Top 100 Coins by Market Capitalization, *https://www.coingecko.com/en.*

[41] *See, e.g., United States.* v. *Cazes,* No. 1:17CR–00144, Indictment ¶ 2 (E.D. Ca. filed June 1, 2017) (alleging that ''AlphaBay [was] a dark-web marketplace designed to enable users to buy and sell illegal goods, including controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals . . . AlphaBay required its users to transact in digital currencies, including Bitcoin, Monero, and Ethereum.''); Dep't of the Treasury Press Release—Remarks of Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence (May 13, 2019), *https://home.treasury.gov/news/press-releases/sm687;* Press Release, Dep't of Justice, ''Two Chinese Nationals Charged with Laundering Over $100 Million in Cryptocurrency from Exchange Hack'' at 1 (Mar. 2, 2020) (''North Korea continues to attack the growing worldwide ecosystem of virtual currency as a means to bypass the sanctions imposed on it by the United States and the United Nations Security Council.''), *https://www.justice.gov/opa/pr/two-chinese-nationals-charged-laundering-over-100-million-cryptocurrency-exchange-hack.* For vulnerabilities of digital assets to securities fraud, see SEC—Investor Alert: Ponzi Schemes Using Virtual Currencies, SEC Pub. No. 153 (7/13), *http://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf* (accessed June 23, 2020); CFTC—Investor Alert: Watch Out for Fraudulent Digital Asset and ''Crypto'' Trading websites, *https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/watch_out_for_digital_fraud.html* (accessed Aug. 28, 2020).

[42] Dep't of the Treasury Press Release—Remarks of Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence (May 13, 2019), *https://home.treasury.gov/news/press-releases/sm687.*

''funds,'' ''funds or other assets,'' or other ''corresponding value'' and, consequently, should apply relevant FATF anti-money laundering/counter-terrorist-financing measures to virtual assets.[43] Consistent with the FATF guidance, in May 2019, FinCEN issued guidance advising that CVC-based transfers effectuated by a nonbank financial institution may fall within the Recordkeeping and Travel Rules, on the grounds that such transfers involve the making of a ''transmittal order'' by the sender—*i.e.,* an instruction to pay ''a determinable amount of money to a recipient''—a criterion for application of the rules.[44] However, FinCEN understands that at least one industry group has asserted that the Recordkeeping and Travel Rules do not apply to transactions involving CVC, in part because the group asserts that CVC is not ''money'' as defined by the rules.

In addition to CVCs, foreign governments—including Iran, Venezuela, and Russia—have created or expressed interest in creating digital currencies that could be used to engage in sanctions evasion. For example, the Venezuelan government developed a state-backed digital currency called the ''petro,'' which the government publicly indicated was designed for the purpose of evading U.S sanctions.[45] The President subsequently issued Executive Order 13827, prohibiting any U.S. persons from involvement in the petro digital currency.

This proposed rule would define ''money'' in 31 CFR 1010.100(ll) and (eee) to make explicitly clear that both payment orders and transmittal orders include any instruction by the sender to transmit CVC or any digital asset having legal tender status to a recipient.[46] The proposed rule would therefore supersede the UCC's definition of ''money'' for purposes of the Recordkeeping and Travel Rules. The Agencies believe this action is appropriate to provide clarity concerning the application of the Recordkeeping and Travel Rules.

FinCEN is aware that the CVC industry is working on developing systems and processes to achieve full compliance with the Travel Rule as applied to virtual currency transactions as a result of the distinctive characteristics of CVCs. The Agencies welcome comment on these efforts and any costs related thereto.

IV. Section-by-Section Analysis

A. Recordkeeping Rule and Travel Rule Thresholds

This proposed rule would lower the Recordkeeping Rule and Travel Rule thresholds set forth in 31 CFR 1020.410 and 31 CFR 1010.410(e) and (f) for financial institutions. The thresholds would be lowered from $3,000 to $250, but only with respect to funds transfers and transmittals of funds that begin or end outside the United States. As set forth in the proposed revised sections below, a funds transfer or transmittal of funds would be considered to begin or end outside the United States if the financial institution knows or has reason to know that the transmittor, transmittor's financial institution, recipient, or recipient's financial institution is located in, is ordinarily resident in, or is organized under the laws of a jurisdiction other than the United States or a jurisdiction within the United States.

For this purpose, a financial institution would have ''reason to know'' that a transaction begins or ends outside the United States only to the extent such information could be determined based on the information the financial institution receives in the transmittal order, collects from the transmittor to effectuate the transmittal of funds, or otherwise collects from the transmittor or recipient to comply with regulations implementing the BSA.

Financial institutions are already required to retain the address of the transmittor and recipient under the Recordkeeping Rule for transactions subject to the current threshold, and may, as a matter of their own business practices, retain the addresses of other participants in a funds transfer or transmittal of funds. This proposed rule would not impose any new requirements to retain address information, other than those resulting from a change to the applicable thresholds.

B. Definition of ''Money''

This proposed rule also would revise the definitions of payment order and transmittal order set forth in the BSA regulations so that the Recordkeeping Rule and Travel Rule would explicitly apply to domestic and cross-border transactions in CVC and digital assets having legal tender status.

Both the Recordkeeping Rule and Travel Rule refer to a ''payment order'' (in the case of banks) and a ''transmittal order'' (in the case of financial institutions other than banks). These terms, in turn, use the term ''money.'' This proposed rule would clarify the meaning of money in 31 CFR 1010.100(ll) (payment order) and 1010.100(eee) (transmittal order), explaining that money includes (1) a medium of exchange currently authorized or adopted by a domestic or foreign government, including any digital asset that has legal tender status in any jurisdiction[47] and (2) CVC. The proposed rule would define CVC as a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.[48]

V. Request for Comment

The Agencies welcome comment on all aspects of this proposed rule. The Agencies encourage all interested parties to provide their views.

With respect to the effect of lowering the threshold for the requirement in 31 CFR 1020.410 and 31 CFR 1010.410(e) and (f) to collect, retain, and transmit information on funds transfers and transmittals of funds that begin or end outside the United States, the Agencies in particular request comment on the following questions from financial institutions and members of the public:

(1) To what extent would the proposed rule impose a burden on financial institutions, including with respect to information technology implementation costs? To what extent would the burden be different for thresholds such as $0, $500, or $1,000 for funds transfers and transmittals of funds that begin or end outside the United States? What would be the

[43] Interpretive Note to FATF Recommendation 15 at 70.

[44] FinCEN Guidance—Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies at 11–12 (May 9, 2019); *see also* 31 CFR 1010.100(eee) (defining transmittal order) *and* 31 CFR 1010.410(e) and (f).

[45] E.O. 13827, Taking Additional Steps to Address the Situation in Venezuela, (March 19, 2018); see also FinCEN Advisory—Updated Advisory on Widespread Public Corruption in Venezuela at 11 (May 3, 2019), *https://www.fincen.gov/sites/default/files/advisory/2019-05-03/Venezuela%20Advisory%20FINAL%20508.pdf.*

[46] The regulatory definitions of ''money'' and ''convertible virtual currency'' that this rulemaking proposes to add to the definitions of ''payment order'' and ''transmittal order'' at 31 CFR 1010.100(ll) and (eee) are specific to those provisions and not intended to have any impact on, inter alia, the definition of ''currency'' in 31 CFR 1010.100(m). Furthermore, nothing in this document shall constitute a determination that any asset that is within the regulatory definitions of ''money'' or ''convertible virtual currency'' that this rulemaking proposes to add to the definitions of ''payment order'' and ''transmittal order'' is currency for the purposes of the federal securities laws, 15 U.S.C. 78c(47), or the federal derivatives laws, 7 U.S.C. 1–26, and the regulations promulgated thereunder.

[47] ''Money'' would also include a monetary unit of account established by an intragovernmental organization or by agreement between two or more countries.

[48] CVC is therefore a type of ''value that substitutes for currency.'' *See* 31 CFR 1010.100(ff)(5)(i)(A).

impact on the burden if the proposed threshold change were extended to all transactions, including domestic transactions?

(2) To what extent would the burden of the proposed rule on financial institutions and the public be mitigated were the Agencies to select a threshold of $250 but not require nonbank financial institutions to collect a social security number or employer identification number (''EIN'') for non-established customers engaging in transmittals of funds between $250 and $3,000 that begin or end outside the United States?

(3) To what extent would the burden of the proposed rule be reduced if the Agencies issued specific guidance about appropriate forms of identification to be used in conjunction with identity verification, including in regards to whether there are circumstances in which verification may be done remotely and what documents are acceptable as proof?

(4) To what extent would the burden of the proposed rule on financial institutions and the public be mitigated if the Agencies were to include in the regulation the standard described in Section IV.A for determining when an institution would be subject to the $250 threshold for cross-border transfers, *i.e.,* that ''reason to know'' that a transaction begins or ends outside the United States exists when such information could be determined based on the information the financial institution receives in the transmittal order, collects from the transmittor to effectuate the transmittal of funds, or otherwise collects from the transmittor or recipient to comply with regulations implementing the BSA?

The Agencies request comment from law enforcement with respect to the following related questions:

(1) To what extent would the proposed rule benefit law enforcement? To what extent would these benefits be different for thresholds such as $0, $500, or $1,000 for funds transfers and transmittals of funds that begin or end outside the United States? What would be the impact on the benefits to law enforcement if the proposed threshold change were extended to all transactions, including domestic transactions?

(2) To what extent would the benefit of the proposed rule to law enforcement be compromised were the Agencies to select a threshold of $250 but not require that nonbank financial institutions collect a social security number or EIN for non-established nonbank customers engaging in transmittals of funds between $250 and $3,000 that begin or end outside the United States?

With respect to the effect of clarifying the meaning of ''money'' in the definitions of ''payment order'' and ''transmittal order'' in 31 CFR 1010.100, the Agencies in particular request comment on the following questions from law enforcement, financial institutions, and members of the public:

(1) Describe the additional costs, if any, from complying with the Recordkeeping Rule and Travel Rule in light of the clarification included in the proposed rule, including with respect to information technology costs.

(2) What mechanisms have persons that engage in CVC transactions developed to comply with the Recordkeeping Rule and Travel Rule and what is the impact of adopting these solutions on the CVC industry, including on other BSA compliance efforts?

VI. Regulatory Analysis

A. Executive Orders 13563, 12866, and 13771

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (''OMB'').

FinCEN believes the primary cost of complying with the proposed rule is captured in its Paperwork Reduction Act (44 U.S.C. 3507(d)) (''PRA'') burden estimates described in detail below, which amount to 3,315,844 hours. FinCEN estimated in its recent OMB control number renewal for SAR requirements that the average labor cost of storing SARs and supporting documentation, weighed against the relevant labor required, was $24 per hour.[49] FinCEN assesses that this is a reasonable estimate for the labor cost of the requirements imposed by this rule. Therefore a reasonable minimum estimate for the burden of administering the proposed rule is approximately $79.58 million annually (3,315,844 hours multiplied by $24 per hour). However, the PRA burden does not include certain costs, such as information technology implementation costs solely resulting from the need to comply with this proposed rule. FinCEN specifically requests comment regarding the costs associated with implementing these requirements.

The benefits from the proposed rule include enhanced law enforcement ability to investigate, prosecute and disrupt the financing of international terrorism and other priority transnational security threats, as well as other types of transnational financial crime. The cost of terrorist attacks can be immense. For instance, one public report estimated the cost of terrorism globally at $33 billion in 2018, though this cost was primarily borne outside the United States.[50] The cost of a major terrorist attack, such as the September 11 attacks, can reach tens of billions of dollars.[51] Of course, it is difficult to quantify the contribution of a particular rule to a reduction in the risk of a terrorist attack. However, even if the proposed rule produced very small reductions in the probability of a major terrorist attack, the benefits would exceed the costs. For instance, if the proposed rule reduced by 0.26 percent the annual probability of a major terrorist attack with an economic impact of $30 billion, the benefits would be greater than the PRA burden costs described above.

Of course, the proposed rule would not simply reduce the probability of terrorism but also would contribute to the ability of law enforcement to investigate a wide array of other priority transnational threats and financial crimes, including proliferation financing, sanctions evasion, and money laundering.

FinCEN considered several alternatives to the proposed rule. First, FinCEN considered the possibility of modifying the proposed rule by applying the FATF's suggested *de minimis* threshold of $1,000 to transactions that begin or end outside the United States. However, this threshold would exclude over 88 percent of the transactions in FinCEN's

[49] 85 FR 31598, at 31604 and 31607 (May 26, 2020).

[50] *See* Institute for Econoimcs and Peace, Global Terrorsim Index, 2019 (Nov. 2019), *http://visionofhumanity.org/app/uploads/2019/11/GTI-2019web.pdf.*

[51] For example, the New York Comptroller estimated in 2002 that the direct physical and human cost of the September 11 attacks on New York was over $30.5 billion. *See* City of New York Comptroller, One Year Later: The Fiscal Impact of 9/11 on New York City (Sept. 4, 2002), *https://comptroller.nyc.gov/wp-content/uploads/documents/impact-9-11-year-later.pdf.*

dataset of transactions potentially linked to terrorism. Given the intended goal of the proposed rule to increase the availability of information to address priority transnational threats, including terrorism, FinCEN believes a lower threshold would be appropriate.

Second, FinCEN considered the possibility of implementing the proposed rule with a threshold of $0 for transactions beginning or ending outside of the United States. FinCEN's terrorism-related transaction analysis suggests that transactions potentially related to terrorism occur at values below the $250 level. Although FinCEN believes that a $0 threshold would lead to enhanced benefits in terms of capturing a larger universe of transactions, requiring collection and verification of transaction information for low-value transactions could impose a substantial burden on small financial institutions, such as small money services businesses. Nonetheless, FinCEN will carefully consider comments to determine whether a $0 threshold would be appropriate in a final rule. FinCEN will also consider in a final rule the extent to which the burden could be minimized by providing guidance on appropriate verification procedures for lower-value transactions.

Third, FinCEN considered applying the requirements of the proposed rule to all transactions, including those that begin and end within the United States. However, FinCEN's analysis identified that only approximately 17,000 of the approximately 1.29 million transactions included within its terrorism analysis dataset involved domestic-only transactions. Applying the requirements to all domestic transactions would therefore capture a relatively small number of additional transactions while resulting in significant additional recordkeeping burden for financial institutions. FinCEN believes that, at this time, it would therefore be appropriate to limit the proposed rule to transactions that begin or end outside the United States. Again, based on comments received, FinCEN will consider in a final rule the extent to which the benefits of extending the scope of the changes to the thresholds of the Recordkeeping Rule and Travel Rule to include domestic transactions would exceed the burdens.

With respect to the clarification of the definition of ''money,'' FinCEN considered the alternative of leaving the regulation as it was, but believed doing so would perpetuate uncertainty about the applicability of the Recordkeeping and Travel Rules to transactions involving CVC.

FinCEN requests comment on the benefits, and any estimates of costs, associated with the requirements of the proposed rule and the proposed alternatives.

Executive Order 13771 requires an agency to identify at least two existing regulations to be repealed whenever it publicly proposes for notice and comment or otherwise promulgates a new regulation. As described above, the proposed amendments to the Recordkeeping Rule and Travel Rule involve a national security function. Therefore, Executive Order 13771 does not apply.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant impact on a substantial number of small entities. This proposed regulation on its face would apply to all financial institutions. However, because of the nature of the requirements contained therein, only banks (including credit unions), money transmitters, and other MSBs would be impacted. Although the Agencies believe that the proposed regulatory changes would affect a substantial number of small entities, the Agencies also believe these changes would be unlikely to have a significant economic impact on such entities. The Agencies, however, recognize the limitations in readily available data about potential costs and benefits and have prepared an initial regulatory flexibility analysis pursuant to the RFA. The Agencies welcome comments on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the comment period.

i. Statement of the Need for, and Objectives of, the Proposed Regulation

The proposed changes to the Recordkeeping Rule and Travel Rule would reduce from $3,000 to $250 the threshold for the requirement to collect, retain, and transmit information on funds transfers and transmittal of funds for transactions that begin or end outside the United States. These changes are necessary because funds transfers and transmittals of funds related to terrorist financing, narcotics trafficking, and other crimes are occurring well below the current $3,000 threshold. It therefore would benefit law enforcement for this additional information to be collected, retained, and transmitted by financial institutions.

The clarifications regarding the meaning of ''money'' in the definitions of ''payment order'' and ''transmittal order'' in 31 CFR 1010.100 address urgent concerns regarding illicit finance, including the financing of international terrorism, sanctions evasion, and weapons proliferation through CVC. In the absence of clarification, some entities may not be aware of or may choose not to comply with the Recordkeeping Rule and the Travel Rule when engaging in transactions involving CVC. The Agencies are also clarifying that ''money'' includes digital assets with legal tender status.

ii. Small Entities Affected by the Proposed Regulation

The proposed changes to the Recordkeeping Rule and Travel Rule would apply to all financial institutions regulated under the BSA.[52] However, as a practical matter, because the requirements of this proposed rule are only triggered by funds transfers and transmittals of funds, the proposal would impact mostly banks and money transmitters. As described in the PRA section that follows, based upon current data there are 5,306 banks, 5,236 credit unions, and 12,692 money transmitters that would be impacted by the proposed rule changes. Based upon current data, for the purposes of the RFA, there are at least 3,817 small Federally-regulated banks and 4,681 small credit unions.[53] The Agencies believe that most money transmitters are small entities.[54] Because the proposed rule would apply to all of these small financial

[52] 31 CFR 1010.400 notes that ''[e]ach financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional recordkeeping requirements. Unless otherwise indicated, the recordkeeping requirements contained in this subpart D apply to all financial institutions.'' *See* 31 CFR 1020.410 (banks), 31 CFR 1022.410 (dealers in foreign exchange), 31 CFR 1022.400 (MSBs), 31 CFR 1023.410 (broker dealers in securities), 31 CFR 1024.410 (mutual funds), 31 CFR 1025.410 (insurance), 31 CFR 1026.410 (futures commission merchants and introducing brokers in commodities), 31 CFR 1027.410 (dealers in precious metals, precious stones, or jewels), 31 CFR 1028.410 (operators of credit card systems), 31 CFR 1029.400 (loan or finance companies), and 31 CFR 1030.400 (housing government sponsored entities).

[53] The Small Business Administration (''SBA'') defines a depository institution (including a credit union) as a small business if it has assets of $600 million or less. The information on small banks is published by the Federal Deposit Insurance Corporation (''FDIC'') and was current as of March 31, 2020.

[54] The SBA defines an entity engaged in ''Financial Transactions Processing, Reserve, and Clearinghouse Activities'' to be small if it has assets of $41.5 million or less. FinCEN assesses that money transmitters most closely align with this SBA category of entities.

institutions, the Agencies conclude that this proposed rule would apply to a substantial number of small entities.

Although the proposed changes would apply to a substantial number of small entities, the Agencies believe that the changes would not have a significant economic impact on such entities for the reasons noted below. In the first year, the Agencies expect additional expense of time and resources to read and understand the regulations and train staff and implement technological changes.

In 2006, the Agencies solicited public comment on the potential benefits and burdens of reducing the threshold for the Recordkeeping Rule and Travel Rule requirements.[55] Based on the comments received at that time, it appears that almost all banks, regardless of size, maintain records of all funds transfers and transmittals of funds regardless of the dollar amount, including those transfers/transmittals below the $3,000 regulatory threshold. Similarly, in 2006, many money transmitters indicated that they maintained records of transfers/transmittals at approximately the $1,000 level. Since 2006 there have been significant advances in technology, likely allowing small entities to comply with regulatory recordkeeping requirements at a lower cost.

As noted previously, in May 2019, FinCEN issued guidance advising that CVC-based transfers effectuated by a nonbank financial institution may fall within the Recordkeeping and Travel Rules, on the grounds that such transfers involve the making of a ''transmittal order'' by the sender—*i.e.,* an instruction to pay ''a determinable amount of money to a recipient''—a criterion for application of the rules.[56] Therefore, the proposed rule would codify FinCEN's existing expectation. In addition, FATF's international standards now call for jurisdictions to apply their rules equivalent to the Recordkeeping and Travel Rule to virtual assets.[57] Therefore, U.S. financial institutions engaged in CVC transactions with an international nexus would likely need to adopt such compliance measures regardless of the applicable U.S. rules, as other countries have aligned or are aligning their regulatory regimes with the FATF recommendations.

As described above, the proposed rule would also clarify the Agencies' existing interpretation that the Recordkeeping and Travel Rules apply to transactions involving a digital asset with legal tender status. The Agencies do not believe that any financial institutions currently facilitate transactions involving sovereign digital currencies.

iii. Compliance Requirements

Compliance costs for entities that would be affected by these regulations are generally, reporting, recordkeeping, and information technology implementation and maintenance costs. Data are not readily available to determine the costs specific to small entities and the Agencies invite comments about compliance costs, especially those affecting small entities.

These proposed changes (a) reduce the threshold for the Recordkeeping and Travel Rule requirements to collect, retain, and transmit information on funds transfers and transmittals of funds for transactions that begin or end outside the United States; and (b) clarify the application of the Recordkeeping and Travel Rule requirements to transactions involving CVC or digital assets with legal tender status. Banks and other financial institutions therefore would need to collect and retain the following information on funds transfers and transmittals of funds in amounts at or above the applicable threshold, including with respect to transactions involving CVC or digital assets with legal tender status: The name and address of the originator or transmittor; the amount and date of the transaction; any payment instructions received; and the identity of the beneficiary's bank or recipient's financial institution. In addition, for transactions at or above the applicable threshold, including with respect to transactions involving CVC or digital assets with legal tender status, an originator's bank or transmittor's financial institution would be required to verify the identity of the person placing a payment or transmittal order if the order is made in person and the person placing the order is not an established customer. An intermediary bank or intermediary financial institution, and the beneficiary's bank or recipient's financial institution, also would be required to retain originals or copies of payment or transmittal orders.

For funds transfers and transmittals of funds at or above the applicable threshold, including with respect to transactions involving CVC or digital assets with legal tender status, the originator's bank or transmittor's financial institution also would be required to include information, including all information required under the Recordkeeping Rule, in a payment or transmittal order sent by the bank or nonbank financial institution to another bank or nonbank financial institution in the payment chain. An intermediary bank or financial institution would also be required to transmit information to other banks or nonbank financial institutions in the payment chain, to the extent the information is received by the intermediary bank or financial institution.

iv. Duplicative, Overlapping, or Conflicting Federal Rules

The Agencies are unaware of any Federal rules that duplicate, overlap with, or conflict with the proposed changes to the Recordkeeping and Travel Rules, except that some financial institutions may already collect some of the information required by the proposed modifications as part of their existing implementation of their risk-based AML programs under the BSA and its implementing regulations.

v. Significant Alternatives to the Proposed Regulations

The Agencies considered several alternatives to the proposed regulatory changes. First, the Agencies considered the possibility of modifying the proposed rule by applying the FATF's suggested *de minimis* threshold of $1,000 to transactions that begin or end outside the United States. However, this threshold would exclude an unacceptably large percentage of transactions. It is unclear what impact this alternative would have on small entities and it might not reduce the impact on affected small entities in a meaningful way.

Second, the Agencies considered the possibility of implementing the proposed rule with a threshold of $0 for transactions that begin or end outside of the United States. Although this would expand the data available to law enforcement, and the Agencies will carefully consider comments to determine whether a $0 threshold would be appropriate in a final rule, the Agencies believed that a $0 threshold might impose a significant burden on small financial institutions and therefore are not proposing a $0 threshold at this time.

Third, the Agencies considered exempting small banks from the lower threshold requirement entirely. However, the Agencies believe that the number of transactions beginning or ending outside the United States is relatively low for most small banks, which should substantially reduce the burden on them from the proposed change in the threshold.

[55] 71 FR 35564 (June 21, 2006).

[56] FinCEN Guidance—Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies at 11–12 (May 9, 2019); *see also* 31 CFR 1010.100(eee) (defining transmittal order) *and* 31 CFR 1010.410(e) and (f).

[57] Interpretive Note to FATF Recommendation 15.

Finally, the Agencies considered the possibility of waiving the requirement that financial institutions obtain a social security number or EIN for funds transfers or transmittals of funds below a certain threshold by non-established customers. Adopting this alternative would primarily impact MSBs, many of which are small and more likely to deal with non-established customers. The Agencies have not adopted this alternative at this time because it would increase the likelihood of criminals using false identities to transmit funds. Although the Agencies have not adopted this alternative at this time, this proposed rule requests comment on the benefits and drawbacks of waiving the requirement to obtain a social security number or EIN below some threshold.

The Agencies welcome comment on the overall regulatory flexibility analysis, especially information about compliance costs and alternatives.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. See section VI.A for a discussion of the economic impact of this proposed rule.

D. Paperwork Reduction Act

The recordkeeping requirements contained in this proposed rule (31 CFR 1010.410 and 31 CFR 1020.410) have been submitted by FinCEN to OMB for review in accordance with the PRA. Written comments and recommendations for the proposed information collection can be submitted by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular document by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Comments are welcome and must be received by November 27, 2020. In accordance with requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following information concerning the collections of information are presented to assist those persons wishing to comment on the information collections.

Currently, financial institutions must collect, retain, and transmit certain information as part of funds transfers or transmittals of funds involving $3,000 or more (31 CFR 1020.410(a) and 31 CFR 1010.410(e) and (f)). This proposed rule would modify the thresholds in the rules implementing the BSA requiring financial institutions to collect and retain information on certain funds transfers and transmittals of funds. The modifications would reduce the threshold from the current $3,000 to $250 for funds transfers and transmittals of funds that begin or end outside the United States. The proposed rule likewise would modify the threshold in the rule requiring financial institutions to transmit to other financial institutions in the payment chain information on funds transfers and transmittals of funds from $3,000 to $250 for funds transfers and transmittals of funds that begin or end outside the United States. The proposed rule would also clarify the meaning of ''money,'' making more clear the transactions in relation to which financial institutions must comply with the Recordkeeping Rule and the Travel Rule.

Since FinCEN has authority to implement the Recordkeeping Rule and Travel Rule with respect to all respondents, FinCEN will be responsible for the entire paperwork burden associated with this information collection.

i. Threshold Changes to the Recordkeeping and Travel Rules

This proposed rule would reduce from $3,000 to $250 the threshold for the requirement to collect, retain, and transmit information on funds transfers and transmittals of funds that begin or end outside the United States. This threshold change is necessary because funds transfers and transmittals of funds related to terrorist financing, drug trafficking, and other crimes often occur well below the current threshold. It therefore would benefit law enforcement for this additional financial information to be collected, retained, and transmitted by financial institutions.

1. 31 CFR 1010.410(e)

This proposed rule would reduce the threshold for the requirement to collect and retain information on transmittals of funds conducted by nonbank financial institutions that begin or end outside the United States.

Description of Recordkeepers: Financial institutions other than banks that conduct transmittals of funds in an amount between $250 and $3,000 that begin or end outside the United States. Although the proposed rule on its face would apply to all nonbank financial institutions, because of the nature of the requirements contained therein, mostly money transmitters and other MSBs that conduct transmittals of funds that begin or end outside the United States would be impacted.

Estimated Number of Recordkeepers: 12,692 money transmitters. As of June 2020, there were 12,692 MSBs registered with FinCEN that indicated they were conducting money transmission.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours would vary depending on the number of transmittals of funds conducted by a nonbank financial institution between $250 and $3,000 that begin or end outside the United States. Under OMB control number 1506–0058, FinCEN estimates that the recordkeeping burden per recordkeeper to maintain records of all transmittals of funds of $3,000 or more is 16 hours a year. FinCEN estimates that twice as many transmittals of funds conducted by nonbank financial institutions are between $250 and $3,000, and begin or end outside the United States, in comparison to all transmittals of funds over $3,000. For that reason, FinCEN estimates that the proposed rule would add an additional 32 hours of burden per recordkeeper a year.[58]

Estimated Total Additional Annual Burden Hours: 406,144 hours. (12,692 money transmitters multiplied by 32 hours).

2. 31 CFR 1010.410(f)

This proposed rule would reduce the threshold for the requirement to transmit information on funds transfers and transmittals of funds conducted by financial institutions acting as the transmitting financial institution or the intermediary financial institution in funds transfers and transmittals of funds that begin or end outside the United States.

Description of Recordkeepers: Financial institutions, including banks and credit unions, that are the transmitting or intermediary financial institution in a transmittal of funds in an amount between $250 and $3,000 that begin or end outside the United States. Although the proposed rule on its face would apply to all financial institutions, because of the nature of the requirements contained therein, only

[58] FinCEN estimates that the costs of the Recordkeeping Rule scale linearly with the number of transactions, though there may well be economies of scale that reduce the burden. This observation applies to the other burden estimates in this section as well.

banks, credit unions, money transmitters, and other MSBs that conduct transmittals of funds that begin or end outside the United States would be impacted.

Estimated Number of Recordkeepers: 23,234 financial institutions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions.[59] As of June 2020, there were 12,692 MSBs registered with FinCEN that indicated they were conducting money transmission.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of transmittals of funds conducted by banks, credit unions, and money transmitters between $250 and $3,000 that begin or end outside the United States. Under OMB control number 1506–0058, FinCEN estimates that the recordkeeping burden per recordkeeper to transmit information relating to all transmittals of funds of $3,000 or more is 12 hours a year. FinCEN estimates that twice as many transmittals of funds conducted by banks, credit unions, and money transmitters are between $250 and $3,000, and begin or end outside the United States, in comparison to all transmittals of funds over $3,000. For that reason, FinCEN estimates that the proposed rule would add an additional 24 hours of burden per recordkeeper a year.

Estimated Total Additional Annual Burden Hours: 557,616 hours. (23,234 financial institutions multiplied by 24 hours).

3. 31 CFR 1020.410

This proposed rule would reduce the threshold for the requirement to collect and retain information on funds transfers conducted by a bank acting as the transmitting, intermediary, or recipient bank when the funds transfer begins or ends outside the United States.

Description of Recordkeepers: Banks that are the originator's bank, the intermediary bank, or the beneficiary's bank with respect to funds transfers in an amount between $250 and $3,000 that begin or end outside the United States.

Estimated Number of Recordkeepers: 10,542 banks and credit unions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of funds transfers conducted by banks and credit unions between $250 and $3,000 that begin or end outside the United States. Under OMB control number 1506–0059, FinCEN estimates that the recordkeeping burden per recordkeeper to maintain records of all funds transfers of $3,000 or more is 100 hours a year. FinCEN estimates that on average twice as many funds transfers conducted by banks and credit unions are between $250 and $3,000 and begin or end outside the United States, in comparison to all transmittals of funds over $3,000. For that reason, FinCEN estimates that the proposed rule would add an additional 200 hours of burden per recordkeeper a year.

Estimated Total Additional Annual Burden Hours: 2,108,400 hours. (10,542 banks and credit unions multiplied by 200 hours).

4. Total Burden Resulting From Threshold Changes to the Recordkeeping and Travel Rules

Total Estimated Annual Burden Increase Because of Threshold Reduction in the Recordkeeping and Travel Rules: 31 CFR 1010.410(e) [406,144 hours] + 31 CFR 1010.410(f) [557,616 hours] + 31 CFR 1020.410 [2,108,400 hours] = 3,072,160 hours.

ii. Clarification of the Meaning of ''Money'' in the Recordkeeping Rule and the Travel Rule

This proposed rule also would clarify the meaning of ''money'' as used in the Recordkeeping Rule and the Travel Rule. Specifically, the proposed rule would explicitly clarify that these rules apply to transactions involving (1) CVC, or (2) any digital asset having legal tender status. The clarification related to such transactions is necessary because many of these transactions present heightened terrorist financing, weapons proliferation, sanctions evasion, and money laundering risks due to their global nature, distributed structure, limited transparency, and speed. While these transactions pose some of the same risks as those made in traditional financial systems, in addition, a combination of features unique to CVC allows individual users to move value nearly instantaneously to anywhere in the world without ever having to pass through a regulated financial institution, thus increasing such risks. Although the clarification is consistent with FinCEN's interpretation of existing rules, the estimates below analyze the costs of compliance with this clarification against a baseline in which financial institutions are not complying with FinCEN's interpretation of the Recordkeeping Rule and Travel Rule for such transactions.

1. 31 CFR 1010.410(e)

This proposed rule would explicitly include within the requirement to collect and retain information on transmittals of funds conducted by nonbank financial institutions transactions involving (1) CVC, or (2) any digital asset having legal tender status.

Description of Recordkeepers: Financial institutions other than banks that conduct transmittals of funds involving CVCs or digital assets with legal tender status. Although the proposed rule on its face applies to all nonbank financial institutions, this provision would only impact money transmitters and other MSBs that conduct transmittals of funds involving CVC or digital assets with legal tender status.

Estimated Number of Recordkeepers: 530 money transmitters and other MSBs engaged in CVC transactions, which FinCEN assesses is a reasonable estimate of the number of MSBs engaging in transactions involving CVC. As of June 2020, there were 12,692 MSBs registered with FinCEN that indicated they were conducting money transmission. Of those 12,692 MSBs, FinCEN estimates that 530 engage in CVC transactions. The FinCEN MSB registration form does not require that companies disclose whether they engage in CVC transactions. This estimate is therefore based on adding the number of MSBs that indicated they engage in CVC transactions in an optional field on the MSB registration form, and the number that did not so indicate but which, based on FinCEN's research, FinCEN believes engage in CVC transactions. FinCEN does not believe that any nonbank financial institutions currently facilitate transactions involving sovereign digital currencies.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of transmittals of funds conducted by a nonbank financial institution engaged in CVC transactions. Under OMB control number 1506–0058, FinCEN estimates that the recordkeeping burden per recordkeeper to maintain records of traditional transmittals of funds of

[59] According to the FDIC there were 5,103 FDIC-insured banks as of March 31, 2020. According to the Board, there were 203 other entities supervised by the Board or other Federal regulators, as of June 16, 2020, that fall within the definition of bank. (20 Edge Act institutions, 15 agreement corporations, and 168 foreign banking organizations). According to the National Credit Union Administration, there were 5,236 federally regulated credit unions as of December 31, 2019.

$3,000 or more is 16 hours a year. Above, FinCEN estimated that the additional burden from complying with the $250 threshold imposed by the proposed rule is 32 hours, for a total burden of 48 hours. Because of the large volume of CVC transactions, FinCEN estimates that a nonbank financial institution engaged in CVC transactions conducts five times as many transmittals of funds in CVC in comparison to the number of non-CVC transactions that will be conducted by MSBs as a result of the threshold change. For that reason, FinCEN estimates that the proposed rule would add an additional 240 hours of burden per recordkeeper a year (five multiplied by the new baseline of 48 hours), although this is a conservative estimate because the recordkeeping is likely less costly for transactions involving CVCs since it is likely to be electronic and possible to automate.

Estimated Total Additional Annual Burden Hours: 127,200 hours. (530 money transmitters and other MSBs engaged in CVC transactions multiplied by 240 hours).

2. 31 CFR 1010.410(f)

This proposed rule would explicitly include within the requirement to transmit information on funds transfers and transmittals of funds conducted by financial institutions acting as the transmittor's financial institution or an intermediary financial institution, funds transfers and transmittals of funds transactions involving (1) CVC, or (2) any digital asset having legal tender status.

Description of Recordkeepers: Financial institutions, including banks, that are the transmittor's financial institution or an intermediary financial institution in a transmittal of funds involving CVCs or digital assets with legal tender status. Although the proposed rule on its face applies to all financial institutions, this provision would only impact financial institutions that conduct transmissions of funds involving such CVC. FinCEN does not believe that any financial institutions currently facilitate transactions involving sovereign digital currencies.

Estimated Number of Recordkeepers: 11,072 financial institutions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions. FinCEN assesses that all of these banks and credit unions engage in transactions involving CVCs. As assessed above, 530 MSBs engaged in CVC transactions and would be impacted by this rule (5,306 + 5,236 + 530 = 11,702).

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of transmittals of funds conducted by banks, credit unions, and MSBs involving CVCs below the applicable threshold. Under OMB control number 1506–0058, FinCEN estimates that the recordkeeping burden per recordkeeper to transmit information relating to traditional transmittals of funds of $3,000 or more is 12 hours a year. FinCEN assessed above that the imposition of the $250 threshold for transactions that begin or end outside the United States adds an additional 24 hours of burden per recordkeeper a year, for a total of 36 hours of burden per recordkeeper.

FinCEN understands that banks, including credit unions, currently engage in very few, if any, funds transfers involving CVCs. For that reason, FinCEN therefore estimates that the proposed rule would add only 1 additional hour of burden per bank recordkeeper a year.

Because of the large volume of CVC transactions, FinCEN estimates that the 530 MSBs will process five times the volume of transmittals of funds involving CVC in comparison to the number of non-CVC transactions that will be conducted by MSBs as a result of the change in the threshold. For that reason, FinCEN estimates that the proposed rule would add an additional 180 hours of burden per nonbank recordkeeper a year (five multiplied by the new baseline of 36 hours).

Estimated Total Additional Annual Burden Hours: 95,400 hours (530 money transmitters and other MSBs engaged in CVC transactions multiplied by 180 hours per recordkeeper) plus 10,542 hours (10,542 banks and credit unions multiplied by 1 hour per recordkeeper), for a total additional annual burden of 105,942 hours.

3. 31 CFR 1020.410

This proposed rule would explicitly include transactions involving CVC or digital assets with legal tender status within the requirement to collect and retain information on funds transfers conducted by banks acting as the originator's bank, intermediary bank, or beneficiary's bank.

Description of Recordkeepers: Banks that are the originator's bank, the intermediary bank, or the beneficiary's bank with respect to funds transfers involving CVC or digital assets with legal tender status.

Estimated Number of Recordkeepers: 10,542 banks and credit unions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of funds transfers involving CVC or digital assets with legal tender status conducted by banks and credit unions. Under OMB control number 1506–0059, FinCEN estimates that the recordkeeping burden per recordkeeper to maintain records of funds transfers of $3,000 or more is 100 hours a year. FinCEN understands that banks, including credit unions, currently engage in very few, if any, funds transfers involving CVC. FinCEN does not believe that any banks currently facilitate transactions involving sovereign digital currencies. For that reason, FinCEN therefore estimates that the proposed rule would add only 1 additional hour of burden per bank or credit union recordkeeper a year.

Estimated Total Additional Annual Burden Hours: 10,542 hours. (10,542 banks and credit unions multiplied by 1 hour).

4. Total Burden Resulting From Inclusion of CVC Transactions in the Recordkeeping and Travel Rules

Total Estimated Annual Burden Increase Because of Inclusion of CVC Transactions in the Recordkeeping and Travel Rules: 31 CFR 1010.410(e) [127,200 hours] + 31 CFR 1010.410(f) [105,942 hours] + 31 CFR 1020.410 [10,542 hours] = 243,684 hours.

iii. Total Annual Burden Hours Estimate as a Result of This Proposed Rule

3,072,160 hours (lower threshold) + 243,684 hours (CVC transactions) = 3,315,844 hours.

The current estimated total burden hours for OMB control number 1506–0058 is 2,150,200 hours. 31 CFR 1010.410(e) and (f) are both included in OMB control number 1506–0058. The total estimated increase in burden hours as a result of this proposed rulemaking for this control number is 1,196,902 hours. (533,344 hours (31 CFR 1010.410(e)) + 663,558 hours (31 CFR 1010.410(f)).[60] The new estimated total burden hours for OMB control number 1506–0058 would be 3,347,102 hours.

The current estimated total burden hours for OMB control number 1506–0059 is 2,290,000 hours. 31 CFR 1020.410 is included in OMB control number 1506–0059. The total estimated

[60] This estimated increase is further broken down as follows: 31 CFR 1010.410(e) (threshold changes 406,144 + CVC transactions 127,200 = 533,344), and 31 CFR 1010.410(f) (threshold changes 557,616 + CVC transactions 105,942 = 663,558).

increase in burden hours as a result of this proposed rulemaking for this control number is 2,118,942 hours. (2,108,400 threshold change + 10,542 CVC transactions). The new estimated total burden hours for OMB control number 1506–0059 would be 4,408,942 hours.

iv. Questions for Comment

In addition to the questions listed above, FinCEN specifically invites comment on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of FinCEN, including whether the information will have practical utility; (b) the accuracy of the estimated burden associated with the proposed collection of information; (c) how the quality, utility, and clarity of the information to be collected may be enhanced; and (d) how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

List of Subjects in 31 CFR Parts 1010 and 1020

Administrative practice and procedure, Banks, Banking, Currency, Foreign banking, Foreign currencies, Investigations, Penalties, Reporting and recordkeeping requirements, Terrorism.

For the reasons set forth in the preamble, Parts 1010 and 1020 of Chapter X of Title 31 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; Title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 1010.100, revise paragraphs (ll) and (eee) to read as follows:

§ 1010.100 General definitions.

* * * * *

(ll) *Payment order.* (1) An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(2) For purposes of this paragraph (ll), money means:

(i) A medium of exchange currently authorized or adopted by a domestic or foreign government, including any digital asset that has legal tender status in any jurisdiction. The term includes a monetary unit of account established by an intragovernmental organization or by agreement between two or more countries; or

(ii) A convertible virtual currency.

(3) For purposes of this paragraph (ll), convertible virtual currency means a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.

* * * * *

(eee) *Transmittal order.* (1) The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(i) The instruction does not state a condition to payment to the recipient other than time of payment;

(ii) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(2) For purposes of this paragraph (eee), the term ''money'' means:

(i) A medium of exchange currently authorized or adopted by a domestic or foreign government, including any digital asset that has legal tender status in any jurisdiction. The term includes a monetary unit of account established by an intragovernmental organization or by agreement between two or more countries; or

(ii) A convertible virtual currency.

(3) For purposes of this paragraph (eee), convertible virtual currency means a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.

* * * * *

■ 3. In § 1010.410, revise the introductory text of paragraphs (e) and (f) to read as follows:

§ 1010.410 Records to be made and retained by financial institutions.

* * * * *

(e) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (e) with respect to a transmittal of funds in the amount of $3,000 or more. A financial institution other than a bank also is subject to the requirements of this paragraph (e) with respect to a transmittal of funds in the amount of $250 or more that begins or ends outside the United States. For purposes of this paragraph (e), a transmittal of funds will be considered to begin or end outside the United States if a financial institution other than a bank knows or has reason to know that the transmittor, transmittor's financial institution, recipient, or recipient's financial institution is located in, is ordinarily resident in, or is organized under the laws of a jurisdiction other than the United States or a jurisdiction within the United States.

* * * * *

(f) Any transmittor's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of $3,000 or more, information as required in this paragraph (f). A financial institution also is subject to the requirements of this paragraph (f) with respect to a transmittal of funds in the amount of $250 or more that begins or ends outside the United States. For purposes of this paragraph (f), a transmittal of funds will be considered to begin or end outside the United States if a financial institution knows or has reason to know that the transmittor, transmittor's financial institution, recipient, or recipient's financial institution is located in, is ordinarily resident in, or is organized under the laws of a jurisdiction other than the United States or a jurisdiction within the United States.

* * * * *

PART 1020—RULES FOR BANKS

■ 4. The authority citation for part 1020 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 5. In § 1020.410, revise the introductory text of paragraph (a) to read as follows:

§ 1020.410 Records to be made and retained by banks.

(a) Each agent, agency, branch, or office located within the United States of a bank is subject the requirements of this paragraph (a) with respect to a funds transfer in the amount of $3,000 or more. A bank also is subject to the requirements of this paragraph (a) with respect to a funds transfer in the amount of $250 or more that begins or ends outside the United States. For purposes of this paragraph, a funds transfer will be considered to begin or end outside the United States if a bank knows or has reason to know that the originator, originator's bank, beneficiary, or beneficiary's bank is located in, is ordinarily resident in, or is organized under the laws of a jurisdiction other than the United States or a jurisdiction within the United States. For funds transfers subject to the requirements of this paragraph (a), each agent, agency, branch, or office located within the United States of a bank is required to retain either the original or a copy or reproduction of each of the following:

* * * * *

In concurrence: By the Department of the Treasury.

Michael G. Mosier,

Deputy Director, Financial Crimes Enforcement Network.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–23756 Filed 10–23–20; 11:15 am]

BILLING CODE 4810–02–P; 6210–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0513]

RIN 1625–AA09

Drawbridge Operation Regulation; River Rouge, Detroit, MI

AGENCY: Coast Guard, DHS

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the National Steel Corporation Railroad Bridge, mile 0.40, the Delray Connecting Railroad Bridge, mile 0.34, and the Delray Connecting Railroad Bridge, mile 0.80. Delray Connecting Railroad Company, the owner and operator of these three bridges, has requested to stop continual drawtender service and to operate the two bridges only while trains are crossing the bridge, and one bridge upon signal if a 4-hour advance notice is received.

DATES: Comments and related material must reach the Coast Guard on or before December 28, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0513 using Federal e-Rulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Delray Connecting Railroad requested to reduce drawtender staffing at their three bridges at Zug Island. The National Steel Corporation Railroad Bridge, mile 0.40, the Delray Connecting Railroad Bridge, mile 0.34, and the Delray Connecting Railroad Bridge, mile 0.80, currently open on signal and are required to be manned by a drawtender at each bridge. The reason for the request to stop continual drawtender service is that the primary customer, a steel mill on Zug Island, has been placed into caretaker status, significantly decreasing the rail traffic across these bridges. The operation of the bridges should however remain transparent to the vessels navigating the waterway.

The River Rouge is a commercial waterway that serves several heavy industries near the city of Detroit, MI. The U.S. Army Corps of Engineers in cooperation with the U.S. Environmental Protection Agency are currently improving the width and depth of the Rouge River, where both the swing and the bascule Delray Bridges are located. Originally, the River Rouge navigated two ninety-degree bends through the area that is referred to as the Old Channel before emptying into the Detroit River. In 1888 the Zug Island Improvement Company cut a channel through the south section of Zug Island locally called the Short Cut Channel creating Zug Island and allowing vessels to bypass the two ninety-degree bends in the Old Channel. This Short Cut Channel is the preferred path for large vessels. Currently the waterway is used by large commercial freighters and several tug and barge vessels. Recreational use of the waterway is very limited. There are twelve bridges across the River Rouge.

The National Steel Corporation Railroad Bridge, mile 0.40, is a single leaf bascule bridge, that provides an unlimited clearance in the open position and a vertical clearance of six feet above LWD in the closed position. The Delray Connecting Railroad Bridge, mile 0.34, is a single leaf bascule bridge, that provides an unlimited clearance in the open position and a vertical clearance of seven feet above LWD in the closed position. The Delray Connecting Railroad Bridge, mile 0.80, is a swing bridge that provides an unlimited clearance in the open position and a vertical clearance of seven feet above LWD in the closed position. All three bridges are owned by the Delray Connecting Railroad who is requesting the change.

III. Discussion of Proposed Rule

The proposed rule will establish the procedures to move the bridge to allow rail traffic to cross the bridge while giving notice to the vessels transiting the waterway that the bridge will be lowering. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, one last SECURITE call will be made that the bridge will be lowering for rail traffic five minutes before lowering. Once the drawtender is satisfied that it is safe the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge will be raised and locked in the fully open to navigation position.

The Delray Connecting Railroad Bridge, mile 0.34, has had limited requests for openings and provides

access to Zug Island for vehicles and rail traffic. The owner of the railroad states the bridge has been operating with advance notice illegally without complaints for several years.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge and the only change is the drawtender will only be in attendance to lower the bridge to allow rail traffic to cross and to raise the bridge after rail traffic has cleared the bridge.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://*

www.regulations.gov, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. Revise § 117.645 to read as follows:

§ 117.645 River Rouge

(a) The Delray Connecting Railroad Bridge, mile 0.34, need not have a drawtender in continued attendance at the bridge and shall open on signal if a 4-hour advance notice is provided.

(b) The Delray Connecting Railroad Bridge, mile 0.80, over the Old Channel need not have a drawtender in continued attendance at the bridge. The bridge will remain open ten minutes before the bridge is lowered for train traffic. A crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, another SECURITE call shall be made on VHF–FM Marine Channel 16 that the bridge will be lowering for rail traffic five minutes before lowering. Once the draw tender is satisfied that it is safe, the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge shall be raised and locked in the fully open to navigation position.

(c) The National Steel Corporation Railroad Bridge, mile 0.40, need not have a drawtender in continual attendance at the bridge. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, another SECURITE call shall be made on VHF–FM Marine Channel 16 that the bridge will be lowering for rail traffic five minutes before lowering. Once the drawtender is satisfied that it is safe, the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge shall be raised and locked in the fully open to navigation position.

(d) The draw of the Conrail Bridge, mile 1.48, is remotely operated, is required to operate a radiotelephone, and shall open on signal.

D.L. Cottrell,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2020–22993 Filed 10–26–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0611; FRL–10015–44–Region 6]

Air Plan Approval; Texas; Interstate Visibility Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to disapprove elements of two State Implementation Plan (SIP) submissions from the State of Texas for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) and the 2015 Ozone NAAQS. These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2012 $PM_{2.5}$ and 2015 Ozone NAAQS (infrastructure SIP or i-SIP). The i-SIP requirements are to ensure that the Texas SIP is adequate to meet the state's responsibilities under the CAA for these NAAQS. Specifically, this proposed disapproval addresses the interstate visibility transport requirements of the i-SIP for the 2012 $PM_{2.5}$ and 2015 Ozone NAAQS under CAA section 110(a)(2)(D)(i)(II). In addition to this proposed disapproval, however, we are proposing to find that the requirements of those i-SIP elements are met through the Federal Implementation Plans (FIPs) in place for the Texas Regional Haze program, and no further federal action is required.

DATES: Comments must be received on or before November 27, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0611, at *https://www.regulations.gov* or via email to *huser.jennifer@epa.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 Jennifer Huser, 214–665–7347, *huser.jennifer@epa.gov.* 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.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Jennifer Huser, EPA Region 6 Office, Regional Haze and SO_2 Section, 214–665–7347, *huser.jennifer@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the

public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

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. One of the elements of an infrastructure SIP is found within section 110(a)(2)(D)(i)(II), often referred to as prong 4 or visibility transport. Prong 4 requires states to demonstrate that their SIP has adequate provisions in place to prohibit emissions from any source within a state from interfering with visibility protection measures of other states. In EPA's 2013 guidance for states regarding i-SIPs,[1] EPA discussed its interpretation of prong 4 and its relationship to the Regional Haze program under CAA sections 169A and 169B. EPA suggested two options states may have to demonstrate that the requirements of prong 4 are met. One way in which prong 4 may be satisfied for any relevant NAAQS is through confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. Alternatively, states may submit a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. The demonstration must show that the state has sufficient measures that have been approved into its SIP that prevent emissions within its jurisdiction from interfering with the visibility protection plans of other states.

A. Texas' Infrastructure SIP Submittals for 2012 $PM_{2.5}$ and 2015 Ozone NAAQS

EPA has regulated particulate matter (PM) since 1971, when we published the first NAAQS for PM (36 FR 8186 (April 30, 1971)). Most recently, by notice dated January 15, 2013, following a periodic review of the NAAQS for fine particulate matter ($PM_{2.5}$), EPA revised the primary annual $PM_{2.5}$ NAAQS to 12.0 μg/m³ and retained the secondary $PM_{2.5}$ annual standard of 15 μg/m³ as well as the 24-hour $PM_{2.5}$ primary and secondary standards of 35 μg/m³ (2012 $PM_{2.5}$ NAAQS).[2] The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare. On December 1, 2015, the Chairman of the Texas Commission on Environmental Quality (TCEQ) submitted a SIP revision to address certain 2012 $PM_{2.5}$ NAAQS infrastructure SIP elements. On June 5, 2018, we approved all elements of the this i-SIP submission, except for the interstate visibility transport sub-element under CAA section 110(a)(2)(D)(i)(II) upon which we took no action.[3]

EPA has regulated ozone since 1971, when we published the first NAAQS for Photochemical Oxidants (36 FR 8186 (April 30, 1971)). Most recently, following a periodic review of the 2008 NAAQS for ozone, EPA revised the primary and secondary ozone NAAQS to 0.070 ppm.[4] In 2015, the EPA promulgated a revision to the ozone NAAQS lowering the level of both the primary and secondary standards to 0.070 parts per million (80 FR 65292 (October 2015)). On August 17, 2018, the Chairman of the TCEQ submitted a SIP revision to meet certain 2015 ozone NAAQS infrastructure requirements. On September 23, 2019, we approved certain elements of the 2015 ozone i-SIP submission, but did not act on the interstate visibility transport sub-element under CAA section 110(a)(2)(D)(i)(II).[5]

B. Regional Haze and Visibility Transport in Texas

On March 31, 2009, Texas submitted a regional haze SIP (the 2009 Regional Haze SIP) to the EPA that included reliance on Texas' participation in trading programs under the Clean Air Interstate Rule (CAIR) as an alternative to BART for sulfur dioxide (SO_2) and nitrogen oxide (NO_X) emissions from EGUs.[6] This reliance was consistent with the EPA's regulations at the time that Texas developed its 2009 Regional Haze SIP.[7] However, at the time that Texas submitted this SIP to the EPA, the D.C. Circuit had remanded CAIR (without vacatur).[8] The court left CAIR and our CAIR FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until we could, by rulemaking, replace CAIR consistent with the court's opinion. The EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR in 2011[9] and revised it several times in 2011 and 2012.[10] CSAPR established FIP requirements for sources in a number of states, including Texas, to address the states' interstate transport obligations under CAA section 110(a)(2)(D)(i)(I). CSAPR addresses interstate transport of fine particulate matter and ozone by requiring affected EGUs in these states to participate in one or more of the CSAPR trading programs, which establish emissions budgets that apply to electric generating units' (EGUs') collective annual emissions of SO_2 and NO_X (to address $PM_{2.5}$ transport), as well as EGUs' emissions of NO_X during ozone season (to address ozone transport).[11]

Following issuance of CSAPR, EPA determined that CSAPR would achieve greater reasonable progress towards improving visibility than would source-specific BART in CSAPR states (a determination often referred to as ''CSAPR Better-than-BART'').[12] In the same action, we revised the Regional Haze Rule to allow states whose sources participate in the CSAPR trading programs to rely on such participation in lieu of requiring BART-eligible EGUs in the state to install BART controls as to the relevant pollutant.

In the same action that EPA determined that states could rely on CSAPR to address the BART requirements for EGUs, EPA issued a limited disapproval of a number of states' regional haze SIPs, including the 2009 Regional Haze SIP submittal from Texas, due to the states' reliance on

[1] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Section 110(a)(1) and 110(a)(2).'' Memorandum to EPA Air Division Directors, Regions 1 through 10, September 13, 2013 (hereinafter ''2013 I–SIP Guidance'').

[2] 78 FR 3085 (Jan. 15, 2013).

[3] 83 FR 25920.

[4] 82 FR 65291 (Oct. 26, 2015). Additional information on the history of the NAAQS for ozone is available at *https://www.epa.gov/ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs.*

[5] See 84 FR 49663 (September 23, 2019).

[6] CAIR required certain states, including Texas, to reduce emissions of SO_2 and NO_X that significantly contribute to downwind nonattainment of the 1997 NAAQS for fine particulate matter and ozone. *See* 70 FR 25152 (May 12, 2005).

[7] *See* 70 FR 39104 (July 6, 2005).

[8] *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *as modified,* 550 F.3d 1176 (D.C. Cir. 2008).

[9] 76 FR 48207 (Aug. 8, 2011).

[10] CSAPR was amended three times in 2011 and 2012 to add five states to the seasonal NO_X program and to adjust certain state budgets. 76 FR 80760 (Dec. 27, 2011); 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012).

[11] The ozone season for CSAPR purposes is May 1 through September 30.

[12] 77 FR 33641 (June 7, 2012). This determination was upheld by the D.C. Circuit. *See Util. Air Regulatory Grp.* v. *EPA,* 885 F.3d 714 (D.C. Cir. 2018).

CAIR, which had been replaced by CSAPR.[13] The EPA did not immediately promulgate a FIP to address those aspects of the 2009 Regional Haze SIP submittal subject to the limited disapproval in order to allow more time for the EPA to assess the remaining elements of the 2009 Texas SIP submittal.

In December 2014, we proposed an action to address the remaining regional haze obligations for Texas.[14] In that action, we proposed, among other things, to rely on our CSAPR FIP requiring Texas sources' participation in the CSAPR trading programs to satisfy the NO_X and SO_2 BART requirements for Texas' BART-eligible EGUs; we also proposed to approve the portions of the 2009 Regional Haze SIP addressing PM BART requirements for the state's EGUs. Before that rule was finalized, however, the D.C. Circuit issued a decision on a number of challenges to CSAPR, denying most claims, but remanding the CSAPR SO_2 and/or seasonal NO_X emissions budgets of several states to the EPA for reconsideration, including the Phase 2 SO_2 and seasonal NO_X budgets for Texas.[15] Due to the uncertainty arising from the remand of Texas' CSAPR budgets, we did not finalize our December 2014 proposal to rely on CSAPR to satisfy the SO_2 and NO_X BART requirements for Texas EGUs.[16] Additionally, because our proposed action on the PM BART provisions for EGUs was dependent on how SO_2 and NO_X BART were satisfied, we did not take final action on the PM BART elements of the 2009 Texas' Regional Haze SIP.[17] In January 2016, we finalized action on the remaining aspects of the December 2014 proposal.[18] This final action disapproved, among other things, Texas' Reasonable Progress Goals for the Big Bend and Guadalupe Mountains Class I areas in Texas, Texas' reasonable progress analysis and Texas' long-term strategy. EPA promulgated a FIP establishing a new long-term strategy that consisted of SO_2 emission limits for 15 coal-fired EGUs at eight power plants. That rulemaking was judicially challenged, however, and in July 2016, the Fifth Circuit granted the petitioners' motion to stay the rule pending review.[19] On March 22, 2017, following the submittal of a request by the EPA for a voluntary remand of the parts of the rule under challenge, the Fifth Circuit Court of Appeals remanded the rule in its entirety.[20]

On October 26, 2016, the EPA finalized an update to CSAPR to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (CSAPR Update).[21] The EPA also responded to the D.C. Circuit's remand in *EME Homer City II* of certain CSAPR seasonal NO_X budgets in that action. As to Texas, the EPA withdrew Texas' seasonal NO_X budget finalized in CSAPR to address the 1997 ozone NAAQS. However, in that same action, the EPA promulgated a FIP with a revised seasonal NO_X budget for Texas to address transport requirements under the 2008 ozone NAAQS.[22] Accordingly, Texas sources remain subject to CSAPR seasonal NO_X requirements.

On November 10, 2016, in response to the D.C. Circuit's remand of Texas' CSAPR SO_2 budget, we proposed to withdraw the FIP provisions that required EGUs in Texas to participate in the CSAPR trading programs for annual emissions of SO_2 and NO_X.[23] We also proposed to reaffirm the EPA's 2012 analytical demonstration that CSAPR provides greater reasonable progress than BART, despite changes in CSAPR's geographic scope to address the *EME Homer City II* remand, including removal of Texas' EGUs from the CSAPR trading program for SO_2 emissions. On September 29, 2017, we finalized the withdrawal of the FIP provisions for annual emissions of SO_2 and NO_X for EGUs in Texas[24] and affirmed our proposed finding that the EPA's 2012 analytical demonstration remains valid and that participation in the CSAPR trading programs as they now exist meets the Regional Haze Rule's criteria for an alternative to BART. (We refer to this as the ''2017 CSAPR Better-than-BART affirmation finding'' throughout this proposed rule.) As discussed in Section I.D below, certain environmental organizations filed a petition for reconsideration of this finding in November 2017.

On October 17, 2017, we finalized our January 2017 proposed determination that Texas' participation in CSAPR's trading program for ozone-season NO_X qualifies as an alternative to source-specific NO_X BART. We determined that the SO_2 BART requirements for all BART-eligible coal-fired units and a number of BART-eligible gas- or gas/fuel oil-fired units are satisfied by a BART alternative for SO_2—specifically, a new intrastate trading program that we established addressing emissions of SO_2 from certain EGUs in Texas. The remaining BART-eligible EGUs not covered by the SO_2 BART alternative were previously determined to be not subject to BART based on screening methods using model plants and CALPUFF[25] modeling as described in our proposed rule and BART Screening technical support document (TSD).[26] Finally, because both NO_X and SO_2 were now being addressed by a BART alternative, we approved the 2009 Regional Haze SIP's determination, based on a pollutant-specific screening analysis, that Texas' EGUs are not subject to BART for PM. With respect to interstate visibility transport obligations, we determined that the BART alternative to address SO_2 and Texas sources' participation in CSAPR's trading program for ozone-season NO_X to address NO_X BART at Texas' EGUs fully addresses Texas' obligations for six NAAQS.

In June 2020, we affirmed our finding that Texas' participation in CSAPR to satisfy NO_X BART and our SO_2 intrastate trading program, as amended, fully address Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone; (2) 1997 $PM_{2.5}$ (annual and 24 hour); (3) 2006 $PM_{2.5}$ (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO_2; and (6) 2010 1-hour SO_2.[27] We determined in the October 2017 FIP that the regional haze measures in place for Texas are

[13] 77 FR 33641.

[14] 79 FR 74818 (Dec. 16, 2014).

[15] *EME Homer City Generation, L.P.* v. *EPA* (*EME Homer City II*), 795 F.3d 118, 132 (D.C. Cir. 2015).

[16] *See* 81 FR 296, 301–02 (Jan. 5, 2016).

[17] *Id.*

[18] 81 FR 296 (Jan. 5, 2016).

[19] *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016).

[20] Order, *Texas* v. *EPA,* 16–60118 (5th Cir. Mar. 22, 2017).

[21] 81 FR 74504 (Oct. 26, 2016).

[22] *Id.* 74524–25.

[23] 81 FR 78954 (Nov. 10, 2016).

[24] 82 FR 45481 (Sept. 29, 2017). As explained above, Texas sources continue to be subject to the CSAPR Update FIP, under which they participate in a CSAPR trading program for ozone season NO_X.

[25] CALPUFF (California Puff Model) is a multi-layer, multi-species non-steady-state puff dispersion modeling system that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, transformation, and removal. CALPUFF is intended for use in assessing pollutant impacts at distances greater than 50 kilometers to several hundreds of kilometers. It includes algorithms for calculating visibility effects from long range transport of pollutants and their impacts on Federal Class I areas. EPA previously approved the use of the CALPUFF model in BART related analyses. *See* Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations; Final Rule; 70 FR 39104 (July 6, 2005). For instructions on how to download the appropriate model code and documentation that are available from Exponent (Model Developer/Owner) at no cost for download, see EPA's website: *https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models#calpuff.*

[26] See document at docket identification number EPA–R06–OAR–0611–0005.

[27] See final rule at 85 FR 49170, at 49187 (August 12, 2020); see also supplemental proposed rule at 84 FR 61850 (November 14, 2019) and affirmation proposed rule at 83 FR 43586 (August 27, 2018).

adequate to ensure that emissions from the State do not interfere with measures to protect visibility in nearby states, because the emission reductions are consistent with the level of emissions reductions relied upon by other states during interstate consultation under 40 CFR 51.308(d)(3)(i)–(iii) and when setting their reasonable progress goals.[28] As discussed in our August 2018 affirmation proposal, the 2009 Texas Regional Haze SIP relied on participation in CAIR to meet SO_2 and NO_X BART requirements for Texas EGUs. Under CAIR, Texas EGU sources were projected to emit approximately 350,000 tons of SO_2 annually.[29] These are the 2018 EGU emission projections used by CENRAP for Texas that other states relied on in their regional haze SIPs for the first planning period.[30] While CAIR is no longer in operation, and therefore cannot be relied upon to satisfy BART requirements, the emissions projections based on CAIR used in interstate consultation remain valid as benchmarks for assessing states' impacts on other states' Class I areas. As we explained in our June 2020 final affirmation of the Texas BART alternative FIP for SO_2, annual SO_2 emissions for sources covered by the Texas SO_2 Trading Program will be constrained by the annual budgets and an assurance level [31] of 255,083 tons. Including an estimated 35,000 tons per year of emissions from units not covered by the Texas SO_2 Trading Program yields 290,083 tons of SO_2, which is well below the 350,000-ton emissions projection for 2018 for Texas sources under CAIR or the 317,100-ton emissions level assumed for Texas sources under CSAPR participation in the BART alternative sensitivity analysis utilized for the 2012 CSAPR Better-than-BART determination. Additionally, the October 2017 FIP relies on CSAPR for ozone season NO_X as an alternative to EGU BART for NO_X. The ozone season NO_X emission reductions achieved by CSAPR exceed the emission reductions that would have been realized from Texas EGUs under CAIR and that other states relied upon during interstate consultation for the first planning period.[32] Because the revisions to the Texas SO_2 Trading Program ensure emission reductions consistent with and below the emission levels relied upon by other states during interstate consultation, we determined that the BART alternative for SO_2 in the October 2017 FIP, as amended by the June 2020 affirmation, as well as Texas' EGUs' continuing participation in the CSAPR Update for ozone season NO_X, result in emission reductions adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to interstate visibility transport for the six identified NAAQS.

II. Texas Infrastructure SIP Submittals

On December 1, 2015, TCEQ submitted a SIP revision to address the infrastructure and transport requirements for the 2012 $PM_{2.5}$ NAAQS. In its evaluation, TCEQ asserted that its March 19, 2009 regional haze SIP met all of the requirements for approval.

On August 17, 2018, TCEQ submitted a SIP revision to address the CAA section 110(a)(1) and 110(a)(2) infrastructure and transport requirements for the 2015 ozone NAAQS. In its evaluation, TCEQ acknowledged that it does not have a SIP-approved regional haze program but asserted that EPA's October 17, 2017 FIP to address best available retrofit technology (BART) requirements for Texas EGUs sufficiently meets the requirements for visibility transport. In that October 17, 2017 action, EPA included a disapproval of Texas' interstate visibility transport SIP submittals for the 1997 eight-hour ozone, 1997 $PM_{2.5}$ (annual and 24-hour), 2006 $PM_{2.5}$ (24-hour), 2008 eight-hour ozone, 2010 one-hour nitrogen dioxide, and 2010 one-hour SO_2 NAAQS (82 FR 48324). However, EPA also made a finding that the BART alternatives adopted in the FIP meet the interstate visibility transport requirements for these NAAQS under CAA section 110(a)(2)(D)(i)(II).

Texas relied on the following points to support its conclusion that Texas meets the visibility transport provision for the 2015 ozone NAAQS: (1) EPA's finding that the October 2017 BART FIP meets the visibility transport provision for these other NAAQS; (2) the modeling analysis in the State's interstate transport SIP revision (as to ''prongs 1 and 2'' under section 110(a)(2)(D)(i)(I)) purportedly demonstrating that Texas does not significantly contribute to nonattainment or maintenance in another state for the 2015 ozone NAAQS; (3) the fact that the EPA has not established a separate visibility standard for ozone; and (4) Texas' inclusion in the Cross-State Air Pollution Rule (CSAPR) Update ozone season NO_X trading program.

III. The EPA's Evaluation

Our 2013 infrastructure SIP guidance addresses the requirements for prong 4 and lays out two ways in which a state's infrastructure SIP submittal may satisfy these requirements.[33] One way is through a state's confirmation in its infrastructure SIP submittal that it has a fully approved regional haze SIP in place. As previously discussed, EPA promulgated a limited disapproval of the 2009 Texas Regional Haze SIP in 2012 because the visibility improvement plan relied on CAIR emission reductions to satisfy BART requirements for EGUs for SO_2 and NO_X emissions.[34] Texas has not submitted a SIP revision to address this deficiency and remove reliance on CAIR for Regional Haze. The 2009 Texas Regional Haze SIP cannot be relied upon to meet its interstate visibility transport obligations for the 2012 PM and the 2015 ozone NAAQS.

In the absence of a fully approved Regional Haze SIP, the second method provided by the guidance to meet these

[28] See 2009 Texas Regional Haze SIP, section 4.3 titled ''Consultations On Class I Areas In Other States.'' The submittal can be found at *www.regulations.gov,* Docket ID EPA–R06–OAR–2016–0611, Document ID EPA–R06–OAR–2016–0611–0002.

[29] See section 10 of the 2009 Texas Regional Haze SIP. Table 10–7 shows that under CAIR, the 2018 emission from Texas EGUs were projected to be approximately 350,000 tons SO_2. The SIP submittal can be found in *www.regulations.gov,* Docket ID EPA–R06–OAR–2016–0611, Document ID EPA–R06–OAR–2016–0611–0002.

[30] To develop its 2009 Regional Haze SIP, TCEQ worked through its regional planning organization, the Central Regional Air Planning Association (CENRAP), to develop strategies to address regional haze, which at that time were based on emissions reductions from CAIR. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the CENRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The CENRAP states then relied on this modeling in setting their respective reasonable progress goals.

[31] An assurance level is the total level of annual emissions above which units in the program would be penalized with a higher allowance surrender ratio (*i.e.,* a three-to-one rate) than the one-to-one ratio that applies to emissions below the assurance level.

[32] Under CAIR, Texas had an annual 2009 CAIR Phase 1 budget of 181,017 tons of NO_X and an annual 2015 CAIR Phase 2 budget of 150,845 tons of NO_X. See Section 11, Table 11–15 of the 2009 Texas Regional Haze SIP. The SIP submittal can be found at *www.regulations.gov,* Docket ID EPA–R06–OAR–2016–0611, document ID EPA–R06–OAR–2016–0611–0002. The 2018 EGU emission projections for NO_X used by CENRAP for Texas, which other states potentially impacted by emissions from Texas sources agreed upon during interstate consultation and relied on in their regional haze SIPs, were approximately 160,000 tons. In contrast, under the CSAPR ozone season NO_X trading program, Texas' 2017 NO_X ozone season budget is 52,301 tons of NO_X. See 81 FR 74504, 74508 (Oct. 26, 2016). In 2018, Texas reported to CAMD, for all sources in Texas, approximately 107,000 tons of NOx emissions, and approximately 96,000 tons in 2019, well below the 160,000-ton emissions projection for 2018 assumed for Texas sources under CAIR and used in interstate consultation.

[33] *See* 2013 I–SIP Guidance at 32–35.

[34] 77 FR 33641.

requirements is a demonstration that emissions within a state's jurisdiction do not interfere with other states' plans to protect visibility. EPA interprets prong 4 to be pollutant-specific such that the state need only address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies.[35] According to the guidance, such a demonstration for the first planning period should establish or identify the measures in the approved SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform with any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.[36] As explained below, the TCEQ did not make such a demonstration in their infrastructure SIPs.

A. Analysis of Texas' 2015 Prong 4 Submittal for the 2012 $PM_{2.5}$ NAAQS

The 2015 i-SIP submittal for the 2012 $PM_{2.5}$ NAAQS relied on Texas' 2009 Regional Haze SIP submittal. As explained above, the prong 4 requirements are pollutant specific. The portions of Texas' 2009 Regional Haze SIP that address PM BART have been approved, but portions of the SIP that address PM and PM precursor emissions have not been approved and thus cannot be relied upon to satisfy the prong 4 requirements. Some PM emissions are emitted directly from sources, but PM can also form in the atmosphere as a result of complex reactions of other pollutants such as SO_2 and NO_X, which are visibility impairing pollutants themselves and are required to be addressed under regional haze. The 2015 i-SIP submittal does not provide any additional information to demonstrate that the measures in the SIP are sufficient to prohibit emissions from sources within Texas from interfering with measures that have been developed by other states to protect visibility. EPA cannot approve the interstate visibility transport portion of this i-SIP submittal without additional analysis that demonstrates that there are SIP-approved measures that prevent emissions within its jurisdiction from interfering with the visibility protection plans of other states. We therefore propose to disapprove the interstate visibility transport portion of the 2015 Texas i-SIP submittal for the 2012 $PM_{2.5}$ NAAQS.

B. Analysis of Texas' 2018 Prong 4 Submittal for the 2015 Ozone NAAQS

In Texas's 2018 i-SIP submittal for the 2015 Ozone NAAQS, TCEQ acknowledges the limited disapproval of its 2009 Regional Haze SIP submittal but explains that EPA's October 17, 2017 FIP to address BART requirements for Texas EGUs sufficiently meets the requirements for interstate visibility transport for the 2015 ozone NAAQS. However, the BART-alternative emission limitations in the FIP are not part of the approved *SIP* and thus cannot be relied upon by the State to address visibility transport requirements. Infrastructure SIPs are intended to be a means by which both states and the EPA can ensure that the state has sufficient measures in their SIP to meet the requirements in CAA section 110(a) for newly promulgated NAAQS. The Act requires that the *state* submit implementation plans that ''contain'' the listed requirements under section 110(a)(2)(D). As such, states cannot rely upon measures in FIPs to meet these requirements.[37]

Texas points to its 2015 ozone NAAQS i-SIP submittal that purports to find that Texas emissions do not significantly contribute to nonattainment or interfere with maintenance in another state under section 110(a)(2)(D)(i)(I). The analysis in that SIP submittal focuses on the potential impact of ozone-precursor emissions at certain ozone monitor locations in other states as related to the attainment and maintenance of the ozone NAAQS and does not provide an analysis of *visibility* impacts at Class I areas due to emissions of ozone precursors as visibility pollutants.[38] This basis for approval is inadequate.

Texas stated that the EPA has not established a separate visibility transport standard for ozone because ozone does not directly impair visibility or substantially produce or contribute to the production of the secondary air contaminants that cause visibility impairment or regional haze. The visibility transport requirement found in CAA section 110(a)(2)(D)(i)(I) applies to all pollutants (including precursors) for which EPA has promulgated a NAAQS. As such, Texas is required to demonstrate to EPA that it has approved measures in its SIPs that ensure that ozone-precursor emissions within its jurisdiction do not interfere with other states' visibility protection plans. While it is true that ozone itself does not directly impair visibility or contribute to the production of secondary air contaminants that cause visibility impairment, ozone precursors (NO_X and in some cases volatile organic compounds (VOCs)) do contribute to visibility impairment.

Texas also points to the fact that they are included in the CSAPR Update for ozone season NO_X.[39] However, as described above, this is currently implemented as a FIP in Texas, both as to interstate ozone transport (for the 2008 ozone NAAQS) under section 110(a)(2)(D)(i)(I) and as a BART alternative. Texas has not used its SIP planning authority to submit a SIP revision to establish reliance on this CSAPR program to address regional haze requirements. Therefore, because the Texas Regional Haze SIP is not fully approved and Texas has not provided a demonstration that shows that its SIP contains measures that are sufficient to prevent emissions within its jurisdiction from interfering with the visibility protection measures of other states, we propose to disapprove the 2018 i-SIP submittal addressing interstate visibility transport for the 2015 Ozone NAAQS.

C. EPA's Proposed Finding That Prong 4 Obligations Are Satisfied

In October 2017, EPA promulgated a BART FIP, as amended and affirmed in June 2020. In that FIP, EPA has established emission limitations under the Texas SO_2 Trading Program—including the assurance provisions. As explained in section I.B. of this proposed rule, these emission limitations that were established in the FIP result in SO_2 emission levels that are lower than the levels that were projected for Texas during the Regional Haze consultation process. Thus, the Texas SO_2 emission levels achieved by the FIP's emission limitations[40] are lower than the levels that states relied on in developing their Regional Haze

[35] *See* 2013 I–SIP Guidance at 33.

[36] *See* 2013 I–SIP Guidance at 34. *See also* 76 FR 22036 (April 20, 2011) (containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP).

[37] *See also id.* at 34 (''A number of air agencies do not have fully approved regional haze SIPs in place and instead have FIPs in place, which cannot be relied upon to satisfy prong 4.'').

[38] *See id.* at 33 (''The EPA interprets [prong 4] to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.'')

[39] 81 FR 74504 (October 26, 2016).

[40] The Act defines an emissions limitation as a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under Chapter 85 of Title 42. Trading programs like the ones in the FIPs that fulfill Texas' regional haze requirements fall within the Act's definition of emissions limitations.

SIPs. Additionally, this FIP relies on CSAPR as an alternative to EGU BART for NO_X, which exceeds the emissions reductions relied upon by other states during consultation. Consistent with our previous action (detailed above) to disapprove Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone; (2) 1997 $PM_{2.5}$ (annual and 24 hour); (3) 2006 $PM_{2.5}$ (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO_2; and (6) 2010 1-hour SO_2, and finding that the FIP addresses these requirements, we continue to find that the existing FIP is adequate to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states with respect to the 2012 $PM_{2.5}$ NAAQS and the 2015 Ozone NAAQS.

Texas' obligations under prong 4 are being addressed through the October 2017 BART FIP, as amended and affirmed in June 2020 for the first planning period. This ensures that emissions from sources within Texas are not interfering with measures required to be included in other air agencies' plans to protect visibility. Under EPA's 2013 guidance, this is sufficient to satisfy prong 4 requirements for the first planning period. *See* Guidance at 33. Thus, there are no additional practical consequences from this disapproval for the state, the sources within its jurisdiction, or the EPA. *See* Guidance at 34–35. EPA finds its prong 4 obligations for the 2012 $PM_{2.5}$ and the 2015 ozone NAAQS are satisfied.

IV. Proposed Action

We are proposing to disapprove the interstate visibility transport elements of two SIP submissions from the State of Texas: One for the 2012 $PM_{2.5}$ NAAQS and the other for 2015 Ozone NAAQS. We are simultaneously exercising our authority under section 110(c) of the Act, and we are proposing to find that the prong 4 requirements that were intended to be addressed by those infrastructure SIPs are met through the BART-alternative FIP already in place for the Texas Regional Haze program, and no further action is required.

V. Statutory and Executive Order Reviews

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 for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. 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 merely proposes to disapprove a SIP submission as not meeting the CAA.

D. 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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. 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.

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

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that 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 it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. 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.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

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. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Visibility transport.

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

Dated: October 9, 2020.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2020–22846 Filed 10–26–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0613; FRL–10015–83–Region 4]

Air Plan Approval; NC: Revisions to Annual Emissions Reporting

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 State of North Carolina, through the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), on July 10, 2019. The SIP revision seeks to modify the State's annual emissions reporting regulation by removing the annual emissions reporting requirement for certain non-Title V facilities in geographic areas that have been redesignated to attainment for the 1979 1-hour ozone national ambient air quality standards (''NAAQS'' or ''standards'') and in the areas listed in the rule that have been redesignated to attainment for the 1997 8-hour ozone

NAAQS, with the exception of the geographic areas that have been redesignated to attainment for the 2008 8-hour ozone NAAQS. The SIP revision also makes minor changes that do not significantly alter the meaning of the regulation. EPA is proposing to approve this revision pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before November 27, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0613 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1979, EPA promulgated a NAAQS for ozone, setting the standard at 0.12 parts per million (ppm) averaged over a 1-hour time frame. *See* 44 FR 8202 (February 8, 1979). In 1997, EPA promulgated a revised NAAQS for ozone, setting the standard at 0.08 ppm averaged over an 8-hour time frame. *See* 62 FR 38856 (July 18, 1997).[1] In 2008, EPA revised the level of the 8-hour ozone standard to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). The promulgation of a new or revised NAAQS triggers a CAA requirement for EPA to designate as nonattainment any area that violates the NAAQS or contributes to a violation in a nearby area.

On November 6, 1991, EPA published designations and classifications for the 1979 1-hour ozone NAAQS.[2] *See* 56 FR 56694. EPA initially published designations and classifications for the revised 1997 8-hour and revised 2008 8-hour ozone standards on April 30, 2004 (69 FR 23858) and May 21, 2012 (77 FR 30088), respectively. The geographic areas designated as nonattainment in North Carolina for the 1997 8-hour ozone standard included the Charlotte-Gastonia-Rock Hill, NC–SC Area (the North Carolina portion is hereinafter the ''1997 Charlotte Area'').[3] The geographic areas designated as nonattainment in North Carolina for the 2008 ozone standard are part of an area known as the Charlotte-Rock Hill, NC–SC Area (the North Carolina portion is hereinafter the ''2008 Charlotte Area'').[4] EPA redesignated North Carolina's 1979 ozone nonattainment areas to attainment in a series of actions from 1993 to 1995,[5] redesignated the 1997 Charlotte Area to attainment on December 2, 2013 (78 FR 72036), and redesignated the 2008 Charlotte Area to attainment on July 28, 2015 (80 FR 44873).

North Carolina was required to develop nonattainment SIP revisions addressing the CAA requirements for its ozone nonattainment areas. Among other things, North Carolina was required to address the annual emissions reporting requirement in CAA section 182(a)(3)(B), which requires each state with an ozone nonattainment area to submit a SIP revision requiring stationary sources that emit 25 tons per year (tpy) or more of nitrogen oxides (NO_X) or volatile organic compounds (VOC) within the nonattainment area to provide certified annual emissions statements to the state showing actual annual NO_X and VOC emissions from the source.

On August 1, 1997 (62 FR 41277), EPA approved the State's annual emissions reporting requirement at 15A NCAC Subchapter 02Q Section .0207,[6] *Annual Emissions Reporting,* into the North Carolina SIP for the geographic areas designated as nonattainment for the 1979 ozone NAAQS.[7] On January 31, 2008, North Carolina submitted a SIP revision adding the 1997 Charlotte Area to its annual emissions reporting requirement as a result of EPA's nonattainment designations for the 1997 8-hour ozone standard.[8] On April 24, 2012 (77 FR 24382), EPA approved that SIP revision and added the 1997 Charlotte Area to the annual emissions reporting requirement in the North Carolina SIP to meet the requirements of CAA section 182(a)(3)(B).

Paragraph (c) of Section .0207 lists the geographic areas in North Carolina where owners or operators of certain non-title V facilities with actual emissions of 25 tons per year or more of NO_X or VOC are required to report by June 30th of each year the actual emissions of NO_X and VOC during the previous year. Paragraph (d) identifies the date that the annual reporting requirement in paragraph (c) shall begin.

[1] EPA has revoked the 1979 and 1997 ozone standards. *See* 69 FR 23951 (April 30, 2004) and 80 FR 12264 (March 6, 2015), respectively.

[2] EPA designated the following geographic areas in North Carolina as nonattainment for the 1979 ozone standard: Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, and Wake Counties, the Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River.

[3] The geographic areas designated as nonattainment in North Carolina for the 1997 ozone standard included all geographic areas designated as nonattainment for the 1979 ozone standard as well as additional areas. The 1997 Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson Township and Coddle Creek Township in Iredell County.

[4] The 2008 Charlotte Area is a subset of the 1997 Charlotte Area and consists of Central Cabarrus Township, Concord Township, Georgeville Township, Harrisburg Township, Kannapolis Township, Midland Township, Mount Pleasant Township, New Gilead Township, Odell Township, Poplar Tent Township, and Rimertown Township in Cabarrus County; Crowders Mountain Township, Dallas Township, Gastonia Township, Riverbend Township, and South Point Township in Gaston County; Davidson Township and Coddle Creek Township in Iredell County; Catawba Springs Township, Ironton Township, and Lincolnton Township in Lincoln County; Atwell Township, China Grove Township, Franklin Township, Gold Hill Township, Litaker Township, Locke Township, Providence Township, Salisbury Township, Steele Township, and Unity Township in Rowan County; and Goose Creek Township, Marshville Township, Monroe Township, Sandy Ridge Township, and Vance Township in Union County.

[5] *See* 58 FR 47391 (November 9, 1993), 59 FR 18300 (April 18, 1994), and 60 FR 34859 (July 5, 1995).

[6] In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC Subchapter 02Q is referred to as ''Subchapter 2Q Air Quality Permits.''

[7] Section .0207 also contains an annual reporting requirement at paragraph (a) for owners and operators of title V facilities in the State.

[8] The SIP revision added Cabarrus, Lincoln, Rowan, and Union Counties and Davidson Township and Coddle Creek Township in Iredell County to the emissions reporting requirement.

II. Analysis of North Carolina's Submittal

North Carolina's July 10, 2019, SIP revision [9] updates Section .0207 in several ways. First, the SIP revision proposes to revise paragraph (c) by removing the annual emissions reporting requirement for certain non-Title V facilities located in geographic areas that were previously designated nonattainment for the 1979 1-hour ozone standards and in the redesignated 1997 Charlotte Area, with the exception of the geographic areas that are in the redesignated 2008 Charlotte Area.[10] The SIP revision retains the annual emissions reporting requirement for certain non-Title V facilities located in the geographic areas that comprise the redesignated 2008 Charlotte Area by listing those specific areas in paragraph (c). The SIP revision also makes changes to paragraph (d) by removing specific counties and townships and replacing them with a cross-reference to paragraph (c).

Currently, 55 facilities are required under paragraph (c) to submit annual emissions statements to North Carolina DAQ by June 30th of each year. The proposed rule change would remove the reporting requirement for 43 of these 55 facilities, thus reducing administrative reporting requirements for the 43 affected facilities. These facilities are still required to comply with their operating permits.

Section 110(l) of the CAA prevents EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement. EPA proposes to determine that the changes described above are approvable because they would not interfere with attainment or maintenance of any NAAQS and because the geographic areas removed from the rule have been redesignated to attainment and are therefore no longer required to meet the emissions statement requirements in section 182(a)(3)(B) of the CAA.

Second, North Carolina's July 10, 2019, SIP revision makes changes to paragraph (d) of Section .0207 to update the calendar year that the emissions reporting requirement begins from 2007 to 2017 to coincide with the year during which North Carolina adopted the rule changes. EPA proposes to approve this change because it is administrative in nature.

Finally, the SIP revision makes minor grammatical changes in paragraphs (a) and (b) of Section .0207 and adds a citation in paragraph (e) that identifies the DAQ Director's statutory authority to require reporting. EPA proposes to approve these edits because they are minor changes that do not alter the meaning of the regulation.

III. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 15A NCAC Subchapter 02Q Section .0207, *Annual Emissions Reporting,* state effective April 1, 2018, which removes annual emissions reporting requirement for certain non-Title V facilities; updates the calendar year when the annual emissions reporting requirement begins; and makes several minor editorial changes. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the North Carolina SIP revision submitted on July 10, 2019, revising 15A NCAC Subchapter 02Q Section .0207, *Annual Emissions Reporting.* Specifically, EPA is proposing to approve removal of the annual emissions reporting requirement for certain non-Title V facilities in geographic areas that have been redesignated to attainment for the 1979 1-hour ozone NAAQS and in the redesignated 1997 Charlotte Area, while retaining the requirement for the redesignated 2008 Charlotte Area. Additionally, EPA is proposing to approve the change in paragraph (d) that updates the calendar year that the emissions reporting requirement begins from 2007 to 2017 and several minor editorial changes to the rule.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

[9] The State submitted the SIP revision following the readoption of several air regulations, including 15A NCAC Subchapter 02Q .0207, pursuant to North Carolina's 10-year regulatory readoption process at North Carolina General Statute 150B–21.3A.

[10] As noted above, the 2008 Charlotte Area is a subset of the 1997 Charlotte Area.

Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 20, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–23660 Filed 10–26–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0127; FRL–10015–74-Region 3]

Air Plan Approval; Maryland; Ozone Interprecursor Trading Program

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 State of Maryland. This revision pertains to the expansion in the use of Emission Reduction Credits (ERCs) when new or modified major stationary sources of ozone precursors are required to obtain emission offsets within the State of Maryland. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 27, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0127 at *https://www.regulations.gov,* or via email to *opila.marycate@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: Cynthia Stahl, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2180. Ms. Stahl can also be reached via electronic mail at *stahl.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2020, the State of Maryland submitted a revision to its SIP to allow the use of interprecursor trading (IPT) within the state to satisfy the emission offset requirements for new or modified major stationary sources under the New Source Review (NSR) program pertaining to ground level ozone. Volatile Organic Compound (VOC) and Nitrogen Oxide (NO_X) are ozone precursor pollutants. The Maryland SIP revisions would allow for new or modified major stationary sources seeking emission offsets to obtain either VOC or NO_X offsets provided that these are obtained within Maryland and in an area designated with the same or greater stringency as the area in which the new or modified source is located.

I. Background

The revision consists of amendments to Code of Maryland Regulations (COMAR) 26.11.17, Nonattainment Provisions for Major New Sources and Major Modifications, Sections .01, Definitions, and .04, Creating Emission Reduction Credits, Air Quality. The revision is applicable to major new sources and major modifications of sources whose potential VOC and/or NO_X emissions trigger the emission offset requirements under COMAR 26.11.17. Maryland contains the Baltimore Ozone Nonattainment area but is also entirely within the Ozone Transport Region (OTR). The Clean Air Act requires that areas within the OTR must meet ozone nonattainment area requirements that would apply if they were classified as moderate ozone nonattainment areas. For both of these types of ozone nonattainment areas, in accordance with current requirements, sources would need to offset each ton of VOC or NO_X with more than one ton of ERCs. This greater than one-for-one offset requirement would continue to apply under the Maryland IPT program.

On December 6, 2018, EPA finalized its ozone implementation rule pertaining to the 2015 Ozone NAAQS (83 FR 62998). With this rule, among other provisions, EPA described a discretionary IPT program that would allow any new or modified major stationary source located in an ozone nonattainment area to satisfy the nonattainment NSR emission offset requirements for ozone with emission reductions from VOC or NO_X, interchangeably. These requirements are codified at 40 CFR 51.165(a)(11). Under this program, the IPT ratio, substantiated by EPA approved air quality modeling, is required to be established to ensure that an equivalent or greater air quality benefit is obtained to achieve reasonable further progress toward attainment of the ozone standard for the designated ozone nonattainment area.

II. Summary of SIP Revision and EPA Analysis

Maryland's revision to COMAR 26.11.17.01 adds the definition for interprecursor trading, which includes a reference to the new COMAR 26.11.17.04 regulation. Maryland's revision to COMAR 26.11.17.04 pertains to its Nonattainment New Source Review (NNSR) program, which requires that facilities obtain ERCs. COMAR 26.11.17.04 requires that the facilities seeking the option of IPT must meet the current requirements for ERCs including those pertaining to location, determination of the amount of ERCs needed for the new source via the baseline to actual emissions calculations, and eligibility determined by the date of creation of the ERCs. COMAR 26.11.17.04 further specifies that the IPT ratio must be determined by an approved EPA air quality modeling methodology and the IPT ratio cannot be less than the emission offset ratio specified in COMAR 26.11.17.03B(3). The approving authority for the interprecursor trade is the Maryland Department of the Environment and such approval is granted on a case-by-case and a permit specific basis.

EPA has reviewed the Maryland revisions to COMAR 26.11.17.01 and .04 and determined that they meet the EPA 2015 ozone implementation final rule published in the **Federal Register** at 83 FR 62998, December 6, 2018.

III. Proposed Action

EPA's review of this material indicates the Maryland amendments to COMAR 26.11.17.01 and .04, Air Quality: Nonattainment Provisions for Major New Sources and Major Modifications pertaining to

interprecursor trading meets the requirements at 40 CFR 51.165(a)(11). EPA is proposing to approve the Maryland Department of the Environment's SIP revision to add the definition of interprecursor trading to COMAR 26.11.17.01 and to add the requirements for the IPT program through COMAR 26.11.17.04. EPA is proposing to approve Maryland's NNSR IPT program, which was submitted on January 31, 2020. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference COMAR 26.11.17.01, effective on April 9, 2018, and COMAR 26.11.17.04, effective on December 30, 2019 described in Sections II and III of this preamble. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 it is not a significant regulatory action 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, addressing the ozone interprecursor trading requirements in Maryland, 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: October 9, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–23225 Filed 10–26–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0053; FRL–10015–86]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (September 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 27, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* 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.*

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), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 and/or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

Notice of Filing—New Tolerance Exemptions for Inerts (Except PIPS)

PP IN–11383. (EPA–HQ–OPP–2020–0243). Spring Regulatory Sciences (6620 Cypresswood Dr, Suite 250, Spring, TX 77379) on behalf of Sasol Chemicals (USA) LLC (12120 Wickchester Lane, Houston, TX 77224) requests to establish an exemption from the requirement of a tolerance for residues of isooctanol (CAS Reg. No. 26952–21–6); nonanol, branched and linear (CAS Reg. No. 68515–81–1); undecanol, branched and linear (CAS Reg. No. 128973–77–3); undecanol, branched (CAS Reg. No. 203743–00–4); 2-Butyl-1-octanol (CAS Reg. No. 3913–02–8); isotridecanol (CAS Reg. No. 27458–92–0); alcohols C10–C16 (CAS Reg. No. 67762–41–8); alcohols, C12–C13 branched and linear (CAS Reg. No. 740817–83–8); 2-Hexyl-1-decanol (CAS Reg. No. 2425–77–6); alcohols, C14–18 (CAS Reg. No. 67762–30–5); alcohols, C14–C15 branched and linear (CAS Reg. No. 120944–67–4); alcohols, C16–18 (CAS Reg. No. 67762–27–0); alcohols, C16–C17 branched and linear (CAS Reg. No. 1334422–17–1); 2-Octyl-1-decanol (CAS Reg. No. 45235–48–1); 2-Hexyl-1-dodecanol (CAS Reg. No. 110225–00–8); 2-Octyl-1-dodecanol (CAS Reg. No. 5333–42–6); 2-Decyl-1-tetradecanol (CAS Reg. No. 58670–89–6); 2-Dodecyl-1-hexadecanol (CAS Reg. No. 72388–18–2); 2-Tetradecyl-1-octadecanol (CAS Reg. No. 32582–32–4) when used as inert ingredients (carrier/adjuvant and coating agent/binder) in pesticide formulations applied to growing crops pre- and post-harvest under 40 CFR 180.910, in/on animals under 40 CFR 180.930 and in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

Notice of Filing—New Tolerances for Non-Inerts

1. *PP 0F8836.* (EPA–HQ–OPP–2020–0449). Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide florylpicoxamid in or on barley, bran at 0.2 parts per million (ppm); barley, grain at 0.05 ppm; barley, hay at 2.0 ppm; barley, straw at 0.9 ppm; beans, dried shelled (except soybean), subgroup 6C, straw at 0.9 ppm; beet, sugar, dried pulp at 0.4 ppm; beet, sugar, roots at 0.05 ppm; beet, sugar, tops at 0.3 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.02 ppm; pea, dried shelled, hay at 8.0 ppm; pea, dried shelled, vines at 3.0 ppm; rapeseed subgroup 20A, fodder/straw at 2.0 ppm; rapeseed subgroup 20A, seed at 0.04 ppm; wheat, aspirated grain fractions at 0.1 ppm; wheat, bran at 0.05 ppm; wheat, forage at 2.0 ppm; wheat, grain at 0.02 ppm; wheat, hay at 4.0 ppm; wheat, straw at 0.3 ppm and in or on the raw agricultural commodity cattle, fat at 0.02 ppm; cattle, meat at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; egg at 0.02 ppm; goat, fat at 0.02 ppm; goat, meat at 0.02 ppm; goat, meat byproducts at 0.02 ppm; hog, fat at 0.02 ppm; hog, meat at 0.02 ppm; hot, meat byproduct at 0.02 ppm; horse, fat at 0.02 ppm; horse, meat at 0.02 ppm; horse, meat byproduct at 0.02 ppm; milk at 0.02 ppm; poultry, fat at 0.02 ppm; poultry,

liver at 0.02 ppm; poultry, muscle at 0.02 ppm; sheep, fat at 0.02 ppm; sheep, meat at 0.02 ppm; sheep, meat byproducts at 0.02 ppm. The analytical method 181487, ''Validation of Multiresidue Method for XDE–659 and its Metabolite (X12485649) in Crop and Animal Tissues'', is used to measure and evaluate the chemical florylpicoxamid for enforcement purposes and the data generating method 190564, ''An Analytical Method for the Determination of XDE–659 and its Metabolites X12485649, X12563767, X12641685 and X12717067 in Crop Matrices'', was validated for use on processed fractions within the individual magnitude of residue studies. *Contact:* RD.

2. *PP 0F8869.* (EPA–HQ–OPP–2020–0511). McLaughlin Gormley King Company D/B/A MGK, 8810 10th Avenue North, Minneapolis, MN 55427–4319, requests to establish a tolerance for residues of the insecticide clothianidin in or on Food Handling Establishments at 0.01 ppm. Detailed analytical methods can be found in the Determination of Pesticide Residues in Food Commodities Following ULV Fogging Treatment of a Simulated Food Processing Facility. *Contact:* RD.

3. *PP 0F8870.* (EPA–HQ–OPP–2020–0512). McLaughlin Gormley King Company D/B/A MGK, 8810 10th Avenue North, Minneapolis, MN 55427–4319, requests to establish tolerances for residues of the insecticide pyriproxyfen in or on eggs at 0.01 ppm; poultry (except poultry fat) at 0.01 ppm; and poultry, fat at 0.04 ppm. Detailed analytical methods can be found in the Determination of Pesticide Residues in Eggs and Tissues of Laying Hens Following Indoor Fogging Administration. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: October 9, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–23089 Filed 10–26–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 208

Tuesday, October 27, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

[OMB Control No. 3090–XXXX; Docket No. 2020–0001; Sequence No. 11]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: U.S. Agency for International Development.

ACTION: Notice; request for comment.

SUMMARY: The U.S. Agency for International Development (USAID) as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

DATES: *Submit comments on or before:* December 28, 2020.

ADDRESSES: Submit comments identified by Information Collection 3090–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *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.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–XXXX, A–11 Section 280 Improving Customer Experience.

Instructions: Please submit comments only and cite Information Collection 3090–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Melissa Taylor via email to *meltaylor@usaid.gov;* or by phone 202–712–5307.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the PRA, (44 U.S.C. 3501–3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, GSA is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. USAID will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

USAID will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. USAID may also utilize observational techniques to collect this information.

Data

Form Number(s): None.

Type of Review: New.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 2,001,550.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 1.5 hours to participate in an interview.

Estimated Total Annual Burden Hours: 101,125.

Estimated Total Annual Cost to Public: $0.

C. Public Comments

USAID invites 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 20, 2020.

Aubra Anthony,

Strategy & Research Lead, Center for Digital Development, USAID Global Development Lab.

[FR Doc. 2020–23629 Filed 10–26–20; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Public Availability of FY 2018 Service Contract Inventory

AGENCY: Department of Agriculture, Office of the Secretary.

ACTION: Notice of public availability of FY 2018 Service Contract Inventories.

SUMMARY: In accordance with Section 743, Division C of the Consolidated Appropriations Act of 2010, the Department of Agriculture is publishing this notice to advise the public of access to the FY 2018 Service Contract Inventory.

FOR FURTHER INFORMATION CONTACT: Contact Crandall Watson, Office of Contracting & Procurement, at (202) 720–7529, or *Crandall.Watson@usda.gov* with questions, comments, or additional information request. Please cite 2018 Service Contract Inventory in all correspondence.

SUPPLEMENTARY INFORMATION: This inventory provides information on FY 2018 Service Contract actions with a dollar value above $150,000. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory was developed in accordance with guidance issued on September 7, 2018, by the Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP). The Department of Agriculture has posted its inventory at the Office of Contracting and Procurement homepage. The 2018 inventory is accessible at the following link: *https://www.dm.usda.gov/procurement/actdetails.htm.*

Stephen L. Censky,

Deputy Secretary.

[FR Doc. 2020–23755 Filed 10–26–20; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Interagency Generic Clearance for Federal Land Management Agencies Collaborative Visitor Feedback Surveys on Recreation and Transportation Related Programs and Systems

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and entities on the renewal of a currently approved information collection, Generic Clearance for Recreation and Transportation.

DATES: Comments must be received in writing by December 28, 2020.

ADDRESSES: Send comments to USDA Forest Service, National Forest System, Pacific-Northwest Office, Attention: Eric M. White, Social Science and Economics Lead (Acting), Ecosystem Management System, 1220 SW 3rd Avenue, Suite 310, Portland, OR 97204. Comments also may be submitted via email to *eric.m.white@usda.gov.* All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may review comments at: *http://www.regulations.gov.*

The public may inspect comments received at USDA Forest Service, Pacific North West-Portland Office during normal business hours. Visitors are encouraged to call ahead to facilitate entry to the building at (503) 808–2468.

FOR FURTHER INFORMATION CONTACT: Eric M. White, Social Science and Economics Lead (Acting), Ecosystem Management System, National Forest Systems by telephone at (360) 999–0580 or by email at *eric.m.white@usda.gov.*

Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at 800–877–8339 between 8 a.m. and 8 p.m. eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Interagency Generic Clearance for Federal Land Management Agencies Collaborative Visitor Feedback Surveys on Recreation and Transportation Related Programs and Systems.

OMB Number: 0596–0236.

Expiration Date of Approval: November 30, 2020.

Type of Request: Renewal with Revisions.

Type of Respondents: Individuals, businesses, and non-federal governmental entities.

Abstract: Federal Land Management Agencies (FLMAs) need to acquire visitor and user feedback about site- or area-specific services, facilities, road and/or travel systems, needs, programs, demographics, management of FLMA lands, and/or other quantitative information on FLMA lands in cross-jurisdictional landscapes. FLMAs include, but are not limited, to: USDA Forest Service; National Park Service; Bureau of Land Management; U.S. Fish & Wildlife Service; U.S. Geological

Survey; U.S. Army Corps of Engineers; Presidio Trust; and Bureau of Reclamation.

This direct feedback is vital to establish or revise goals and objectives for FLMA recreation-related transportation system programs, inform land management plans, and facilitate interagency coordination across multijurisdictional landscapes. As a result of using this feedback, FLMAs are better able to meet the needs of the public and more effectively utilize the resources under FLMA management.

The benefits of an FLMA interagency generic information collection (IC) include significant public and agency time and cost savings. If multiple FLMAs in an area work jointly on one visitor feedback information collection under a generic clearance from OMB, there would be significant savings in government time and costs related to survey development, administration, and data processing. The public burden would be diminished as the public would only need to respond to one, jointly-sponsored, survey.

There are several authorities that obligate participating FLMAs to solicit public input to improve public lands management to better serve the public, including:

1. Forest Service Administration Organic Act of 1897 (16 U.S.C. 473–478, 479–482, and 551) as amended by the Transfer Act of 1905 (16 U.S.C. 472, 524, 554);
2. National Forest Management Act of 1976 (Pub. L. 94–588, 2(3), 6(d)), as amended;
3. Government Performance and Results Act of 1993 (Pub. L. 103–62) as amended;
4. National Park Services Act of 1916;
5. National Wildlife Refuge System Administration Act of 1966;
6. National Wildlife Refuge System Centennial Act (Pub. L. 106–408);
7. The Federal Land Policy and Management Act (FLPMA) of 1976; and
8. National Environmental Policy Act of 1969.

Respondents include visitors and potential visitors to FLMA units and residents of communities in or near FLMA units. Additionally, respondents may include state or local agency/organization staff who are involved with public lands management, as well as businesses near FLMA lands. Because many of the FLMA information collections may be similar in terms of the populations being surveyed, types of questions addressed, research methodologies, and data applications, the Forest Service is requesting renewal of this generic Interagency IC clearance from OMB to obtain quantitative and qualitative visitor and user feedback through surveys, focus groups, and/or interviews.

Information collection could occur at one location, several locations, across FLMA units, across regions, across the nation, and could be multi-jurisdictional at any of these levels. Information collection activities could occur once, could occur as iterative collections over a short time period, or could occur over long periods of time at some periodic, planned time interval. Individual, agency/organization, or business feedback could be collected through facilitated focus groups, surveys, individual interviews (qualitative or quantitative), and comment cards with information electronically-recorded or hand-written, via telephone, via mail-back survey, or via electronic means (*e.g.,* QR codes on Smartphones or via social media engagement). Potential participants would be contacted at pertinent sites, including FLMA access points. Information could be gathered pre- or post-visit.

In general, questions will relate to the recreation experience at one or more specific locations (*e.g.,* one or more FLMA's lands) and could address one or more of the following key categories:

1. Mobility and access (for example, different transportation modes used to access sites;
2. Satisfaction with transportation related services and facilities; use and satisfaction with traveler information; reasons for non-visitation);
3. Resource management (for example, support for different management approaches);
4. Safety (for example, safety-related incidents that occurred);
5. Environment (for example, visitor priorities with respect to natural and cultural resources; perceptions related to sound);
6. Economic development (for example, amount of money visitors spend within the area);
7. Trip characteristics (for example, length of trip, trip purpose, activities, and destinations); and
8. Visitor/user demographics (for example, home city and state, age group, gender, race, and number of people/vehicles in party).

Should any personally identifiable information (PII) be collected, to ensure anonymity, PII will not be stored with contact information at any time, and contact information will be redacted from researcher's files once data collections are completed.

Participation will be strictly voluntary. The information could be collected and analyzed by FLMA personnel, private contractors, other government agency partners, or universities or other educational institutions conducting the information collection on behalf of the FLMAs. All results will be aggregated so specific responses cannot be connected to specific respondents. The data collected would provide managers with statistically reliable visitor data necessary to help FLMA units provide their customers with better service and coordinate more effectively across jurisdictions. More specifically, the collected information can better inform strategic planning; allocations of physical, fiscal, or human resources; modification or refinement of various program management goals and objectives or management plan revisions; and future planning efforts focused on developing more effective and efficient delivery of program services, whether on one or several unit(s) or at an interagency, cross-jurisdictional scope. This information may also help FLMAs respond to queries from the general public and organizations including Congressional staffs, newspapers, magazines, and transportation or recreational trade organizations.

Without these joint, coordinated information collections, the FLMAs will lack the information necessary to identify and implement feasible and publicly accepted transportation, facility, and service improvements that protect public land resources and enhance visitor experience. These joint information collections will become more important as demand for access to FLMA recreation sites and opportunities continues to grow. Information from these collections will improve management of FLMA resources and visitor experiences while helping the FLMAs meet their various resource, recreation, and transportation management mandates.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours for surveys, 1.5 hours for focus groups, 1 hour for interviews, and 0.05 hours for comment cards.

Respondents: Respondents would include visitors and potential visitors to FLMA units or subunits, and residents of communities in or near FLMA units. Additionally, respondents may include state or local agency/organization staff who are involved with public lands, as well as, businesses near FLMA lands.

Affected Public: Individuals and Households, Businesses and Non-Profit Organizations, and/or State, Local or Tribal Government.

Estimated Number of Respondents: The estimated total number of respondents and non-respondent contacts over three years is 139,875.

Estimated Number of Responses per Respondent and non-respondent contact: 1.

Estimated Total Annual Burden over three years on Respondents and non-respondent contacts: 16,830 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Christopher B. French,

Deputy Chief, National Forest System.

[FR Doc. 2020–23758 Filed 10–26–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture's Rural Utilities Service (RUS), invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by December 28, 2020.

FOR FURTHER INFORMATION CONTACT: Kimble Brown, Management Analyst, Innovation Center, USDA Rural Development, 1400 Independence Avenue SW, Washington, DC 20250–1522. Telephone: (202) 720–6780, Email: *kimble.brown@usda.gov.*

SUPPLEMENTARY INFORMATION: The OMB regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an existing information collection that the Agency is submitting to OMB for extension. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent through the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search'' box, enter the Docket ID No ''RUS–20–ELECTRIC–0041'' to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''Help'' button at the top of the page.

Title: Accounting Requirements for Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Utilities Service is a credit agency of the USDA which makes direct and guaranteed loans to finance electric and telecommunications facilities in rural areas. Accounting requirements that are unique to RUS borrowers are contained in 7 CFR parts 1767 and 1770 which establish basic accounting requirements for the recording of financial information that must be available to the management, investors, and lenders of any business enterprise. This collection is primarily a record keeping requirement, although the Agency is requiring borrowers to establish an index of records. The hours of burden to maintain this index are directly related to the portions of the accounting system that are unique to the Agency. There are many important financial considerations for retention and preservation of accounting records. One of the most important considerations to RUS is that documentation be available so that the borrower's records may be audited for proper disbursements of funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents and Recordkeepers: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Hours per Recordkeeper: 24 hours.

Estimated Total Annual Burden on Respondents: 2,000 Hours.

Estimated Total Annual Burden on Recordkeepers: 25,000 hours.

Copies of this information collection can be obtained from Kimble Brown, Management Analyst, Innovation Center, Regulations Management Division, at (202) 720–6780; 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.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020–23691 Filed 10–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

[Docket Number: 201022–0278]

RIN 0605–XD012

Industry Day for Space Policy Directive-3: Open Architecture Data Repository; Meeting

AGENCY: Office of Space Commerce, Department of Commerce.

ACTION: Notice of a meeting.

SUMMARY: The Office of Space Commerce (OSC) in the U.S. Department of Commerce announces an event to solicit input from the commercial space industry and the related information technology sector regarding the design, development, operation and governance for Space Policy Directive-3 (SPD–3): National Space Traffic Management Policy's Open Architecture Data Repository (OADR) requirement. The OADR will assist with managing the integrity of the space operating environment by

improving Space Situational Awareness coverage and accuracy through greater data sharing with satellite operators, and with enabling the commercial development of enhanced space safety services.

DATES: The West Coast Day meeting will be held on Monday, 23 November 2020 and the East Coast Day meeting will be held on Tuesday, 24 November 2020.

ADDRESSES: Prior registration through the event website is required at this link: *https://docs.google.com/forms/d/1LcLkuSI3RTxDGN--Y_lpZnK_Ueja9G1-WOR6J-e4e-U/edit.*

FOR FURTHER INFORMATION CONTACT: Mary Cull, Office of Space Commerce, U.S. Department of Commerce, Washington, DC 20030, phone 202–763–4051, or email *mary.cull@noaa.gov.* For inquiries specifically related to press and/or media, please contact Chelsey Neuhaus at *cneuhaus@doc.gov.*

SUPPLEMENTARY INFORMATION: Space Policy Directive–3, National Space Traffic Management Policy (83 FR 28969) places responsibility for addressing commercial space situational awareness (SSA) and space traffic management (STM) services upon the Department of Commerce. To this end, the Department of Commerce announces an event to solicit input from the commercial space industry and the related information technology sector regarding the design, development, operation and governance for SPD–3 National Space Traffic Management Policy's Open Architecture Data Repository (OADR) requirement.

The event will be open to the public, up to the capacity of the virtual meeting hosting service that will be used for the event. Prior registration through the event website is required at this link: *https://docs.google.com/forms/d/1LcLkuSI3RTxDGN--Y_lpZnK_Ueja9G1-WOR6J-e4e-U/edit.*

It is recommended that confirmed attendees plan to log on a few minutes in advance.

The event will be organized as two days of meetings, as follows:

West Coast Day, Monday, 23 November 2020

- 1:00 p.m. to 3:00 p.m. (Eastern Standard Time): Two-hour general session with a presentation by OSC representatives and time for questions and answers about SSA and STM and the OADR.
- 3:30 p.m. to 6:30 p.m. (Eastern Standard Time): Three-hour session with nine 15-minute one-on-one sessions between OSC representatives and industry stakeholders.

East Coast Day, Tuesday, 24 November 2020

- 10:00 a.m. to 12:00 p.m. (Eastern Standard Time): Two-hour general session with a presentation by OSC representatives and time for questions and answers about SSA and STM and the OADR.
- 12:30 p.m. to 3:30 p.m. (Eastern Standard Time): Three-hour session with nine 15-minute one-on-one sessions between OSC representatives and industry stakeholders.

The agenda for the meetings will include the following topics:

- Space Situational Space Flight Safety Overview
- Space Policy Directive 3: National Space Traffic Management
- The Office of Space Commerce
- The Open Architecture Data Repository
- Input from Industry

Dated: October 22, 2020

Kevin O'Connell,

Director, Office of Space Commerce, U.S. Department of Commerce.

[FR Doc. 2020–23771 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

Performance Review Board Membership

AGENCY: Office of the Under Secretary for Economic Affairs, Department of Commerce.

ACTION: Notice.

SUMMARY: The Office of the Under Secretary for Economic Affairs (OUSEA) announces the appointment of members who will serve on the OUSEA Performance Review Board (PRB). The PRB is responsible for reviewing the appraisals and ratings recommended by the senior employees' supervisors and written responses from the senior employee, if any, as well as any other reviews requested, to ensure that recommended ratings are supported and appropriate in the OUSEA, Bureau of Economic Analysis and the US Census Bureau. The PRB provides recommendations to the Appointing Authority regarding the objectives and operation of the SES and ST performance appraisal and reward systems, as required. The purpose of the PRB is to provide fair and impartial review of senior executive service and senior professional performance ratings, bonus and pay adjustment recommendations and Presidential Rank Award nominations. The term of each PRB member will expire on December 31, 2021.

DATES: The effective date of service of appointees to the OUSEA Performance Review Board is based upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Angela Jones-Wilson, Acting Program Manager, Executive Resources Office, Human Resources Division, Census Bureau, 4600 Silver Hill Road, Washington, DC 20233, 301–763–6302.

SUPPLEMENTARY INFORMATION:

The names and position titles of the members of the PRB are set forth below:

John M. Abowd, Associate Director for Research and Methodology, Census Bureau
Ali M. Ahmad, Associate Director for Communications, Census Bureau
Mary E. Bohman, Deputy Director, Bureau of Economic Analysis
Gregory Capella, Deputy Director, National Technical Information Service
Paul Farello, Associate Director for International Economics, BEA
Albert Fontenot, Jr., Associate Director for Decennial Census, Census Bureau
Laura K. Furgione, Chief Administrative Officer, Census Bureau
Thomas F. Howells III, Associate Director for Industry Accounts, BEA
Kathleen James, Chief Administrative Officer, BEA
Ron Jarmin, Deputy Director, Census Bureau
Enrique Lamas, Senior Advisor to the Deputy Director, Census Bureau
Edith J. McCloud, Associate Director for Management, Minority Business Development Agency
Timothy Olson, Associate Director for Field Operations, Census Bureau
Nick Orsini, Associate Director for Economic Programs, Census Bureau
Benjamin J. Page, Chief Financial Officer, Census Bureau
Jeremy Pelter, Acting Deputy Under Secretary, Bureau of Industry and Security
Joel D. Platt, Associate Director for Regional Economics, BEA
Joseph Semsar, Deputy Under Secretary, International Trade Administration
Kevin Smith, Chief Information Officer, Census Bureau
Erich Strassner, Associate Director for National Economic Accounts, BEA
Victoria Velkoff, Associate Director for Demographic Programs, Census Bureau
David R. Ziaya, Chief, Office of Program, Performance and Stakeholder Performance, and Stakeholder Integration, Census Bureau

(Authority: 5 U.S.C. 4314(c)(4))

Mary E. Bohman,

Deputy Director, Bureau of Economic Analysis, Chair, OUS/EA Performance Review Board.

[FR Doc. 2020–23692 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–43–2020]

Foreign-Trade Zone (FTZ) 61—San Juan, Puerto Rico; Authorization of Limited Production Activity; HP International Trading B.V. (Puerto Rico Branch), LLC (Inkjet Ink and 3D Printing Fluids (Bulk and Cartridges) and Related Subassemblies), Aguadilla, Puerto Rico

On June 24, 2020, HP International Trading B.V. (Puerto Rico Branch), LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 61V, in Aguadilla, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 44275–44276, July 22, 2020). On October 22, 2020, the applicant was notified of the FTZ Board's decision that further review of part of the proposed activity is warranted. The FTZ Board authorized the production activity described in the notification on a limited basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a restriction requiring admission of the following components in privileged foreign status (19 CFR 146.41): Pigment green 7; pigment blue 15, 15:1, 15:2, 15:3, 15:4, 15:6; pigment orange 43; and, magenta pigment (pigment red 122/pigment violet 19).

Dated: October 22, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–23745 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–42–2020]

Foreign-Trade Zone (FTZ) 219—San Luis, Arizona; Authorization of Production Activity; Barco Stamping Co., Inc. (Stamped Lighting Fixture Components), Yuma, Arizona

On June 24, 2020, the Greater Yuma Economic Development Corporation, grantee of FTZ 219, submitted a notification of proposed production activity to the FTZ Board on behalf of Barco Stamping Co., Inc. (Barco), within FTZ 219, in Yuma, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 39880, July 2, 2020). On October 22, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: October 22, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–23744 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–184–2020]

Foreign-Trade Zone 273—West Memphis, Arkansas; Application for Subzone; Robert Bosch Tool Corporation, West Memphis, Arkansas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of West Memphis, Arkansas Public Facilities Board, grantee of FTZ 273, requesting subzone status for the facility of Robert Bosch Tool Corporation, located in West Memphis, Arkansas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on October 22, 2020.

The proposed subzone (50 acres) is located at 2700 College Boulevard, West Memphis, Arkansas. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 273.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 7, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 21, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: October 22, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–23743 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–857]

Certain Oil Country Tubular Goods From India: Correction to Notice of Final Results of Antidumping Duty Administrative Review and Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the final results of the administrative review of the antidumping duty order on certain oil country tubular goods (OCTG) from India. The period of review (POR) is September 1, 2018 through August 31, 2019.

DATES: Applicable October 27, 2020.

FOR FURTHER INFORMATION CONTACT: Kathryn Turlo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3870.

SUPPLEMENTARY INFORMATION:

Correction

On September 11, 2020, Commerce published in the **Federal Register** the

Final Results of this administrative review.[1] Subsequent to the publication of the notice in the **Federal Register**, we identified an inadvertent error in the *Final Results.* Commerce made an error in the ''Assessment Rates'' and ''Cash Deposit Requirements'' sections of the notice, by inadvertently including an incorrect all-others rate for exporters and/or manufacturers not covered by the review for which the *Final Results* were published. Specifically, the all-others rate should have been listed as 0.60 percent, as reflected in the *Amended Order* issued pursuant to litigation.[2] For reference, below are the corrected paragraphs regarding the all-others rate discussed in the *Final Results.*

Assessment Rates

Commerce determines, and U.S. Customs Border and Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review.[3] Consistent with Commerce's clarification to its assessment practice, because we determined that Jindal SAW Ltd. (JSL) had no shipments of subject merchandise to the United States during the POR, for entries of subject merchandise during the POR produced by JSL, for which this company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate any entries at the all-others rate (*i.e.,* 0.60 percent)[4] if there is no rate for the intermediate company(ies) involved in the transaction.[5]

We intend to issue instructions to CBP 15 days after the date of the publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for JSL will remain unchanged from the rate assigned to them in the most recently completed segment for the company;[6] (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in a prior review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 0.60 percent, the all-others cash deposit rate established in the less-than-fair-value investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Conclusion

Commerce clarifies that the ''Assessment Rates'' and ''Cash Deposit Requirements'' sections of the *Final Results* inadvertently listed the all-others rate as zero percent and that the correct all-others rate is 0.60 percent. Commerce intends to issue revised instructions to CBP for entries made during the POR, which include the corrected all-others rate.

Dated: October 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–23741 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Oil Country Tubular Goods from India: Final Results of Antidumping Duty Administrative Review and Determination of No Shipments; 2018–2019,* 85 FR 56213 (September 11, 2020) (*Final Results*).

[2] *See Certain Oil Country Tubular Goods from India: Notice of Correction to the Amended Final Determination and Amendment of the Antidumping Duty Order,* 83 FR 59360 (November 23, 2018) (*Amended Order*).

[3] *See* 19 CFR 351.212(b).

[4] *See Amended Order,* 83 FR at 59361.

[5] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[6] *See Amended Order,* 83 FR at 59361.

[7] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–873]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Partial 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, in part, of the antidumping duty order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India for the period June 1, 2019, through May 31, 2020.

DATES: Applicable October 27, 2020.

FOR FURTHER INFORMATION CONTACT: Alexis Cherry or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0607 or 202–482–2285 respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2020, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on cold-drawn mechanical tubing from India for the period June 1, 2019, through May 31, 2020.[1] On June 30, 2020, the petitioners[2] filed a timely request for review with respect to Goodluck India Limited (Goodluck) and Tube Products of India, Ltd., a unit of Tube Investments of India Limited (collectively, TPI).[3] Goodluck and Pennar Industries Limited (Pennar) timely requested reviews of themselves.[4] Based on these requests, on August 6, 2020, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on cold-drawn mechanical tubing from India covering the period June 1, 2019, through May 31, 2020.[5]

On October 7, 2020, Pennar withdrew its request for administrative review of itself.[6] No other interested parties

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 33628 (June 2, 2020).

[2] The petitioners are ArcelorMittal Tubular Products LLC, Michigan Seamless Tube, LLC, Plymouth Tube Co., PTC Alliance Corp., Webco Industries Inc., and Zekelman Industries.

[3] *See* the Petitioner's Letter, ''Cold-Drawn Mechanical Tubing from India—Domestic Industry's Request for Second Administrative Review of the Antidumping Duty Order,'' dated June 30, 2020.

[4] *See* Goodluck India's Letter, ''Request for Administrative Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel,'' dated June 30, 2020. *See also* Pennar Industries' Letter, ''Request for Administrative Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel for the POR: June 1, 2019 to May 31, 2020,'' dated June 30, 2020.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 47731 (August 6, 2020) (*Initiation Notice*).

[6] *See* Pennar's Letter, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from

Continued

requested an administrative review with respect to Pennar.

Partial 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 that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review.

Because Pennar's request for administrative review of itself was withdrawn within 90 days of the date of publication of the *Initiation Notice,* and no other interested party requested a review of this company, Commerce is rescinding this review with respect to Pennar, in accordance with 19 CFR 351.213(d)(1). The administrative review remains active with respect to the two remaining companies for which a review was initiated, *i.e.,* Goodluck [7] and TPI.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of cold-drawn mechanical tubing from India at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period June 1, 2019, through May 31, 2020, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to 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(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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: October 21, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–23740 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–DS–P

India/Withdrawal of Request for the Antidumping Duty of Pennar Industries Limited,'' dated October 7, 2020.

[7] Commerce is only reviewing entries that were produced, but not exported, by Goodluck, and/or entries that were exported, but not produced, by Goodluck.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA588]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, November 12, 2020 at 9:00 a.m. via webinar.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at *https://attendee.gotowebinar.com/register/8322631630838474251.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee will discuss Framework 33; in particular review results of 2020 scallop surveys, and preliminary projections. The primary focus of this meeting will be to develop input on the range of potential specification alternatives for FY 2021 and FY 2022. Framework 33 will set specifications including ABC/ACLs, days-at-sea, access area allocations, total allowable catch for the Northern Gulf of Maine (NGOM) management area, targets for General Category incidental catch, General Category access area trips and trip accounting, and set-asides for the observer and research programs for fishing year 2020 and default specifications for fishing year 2021. Other business may be discussed, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: October 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23735 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA585]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Monday, November 16, 2020, from 9 a.m. to 3 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via webinar, which can be accessed at: *http://mafmc.adobeconnect.com/fsb_mc_nov2020/.* Meeting audio can also be accessed via telephone by dialing 1–800–832–0736 and entering room number 5765379.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet to develop recommendations for 2021 federal waters recreational management measures (*i.e.,* possession limits, fish size limits, and/or open and closed seasons) for all three species.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23736 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA583]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's is convening its Scientific and Statistical Committee (SSC) via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, November 12, 2020 at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/2884421831199107854.* Call in information: +1 (914) 614–3221, Access Code 611–762–686.

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee will meet to review recent stock assessment information from the 2020 management track assessments for northern and southern stocks of red hake and silver hake including offshore hake and information provided by the Council's Whiting Plan Development Team. Based on this information, it will recommend the overfishing limit (OFL) and acceptable biological. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23737 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA597]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) Ecosystem Committee will meet via webconference on November 12, 2020.

DATES: The meeting will be held on Thursday, November 12, 2020, from 9 a.m. to 4 p.m., Alaska time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *http://meetings.npfmc.org/Meeting/Details/1744.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under Supplementary Information, below.

FOR FURTHER INFORMATION CONTACT: Steve MacLean, Council staff; phone: (907) 271–2809 and email: *steve.maclean@noaa.gov.* For technical support, please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, November 12, 2020

The agenda will include: (a) An update on the Local Knowledge, Traditional Knowledge, and Subsistence (LKTKS) Task Force; (b) an update on an EFH consultation for Norton Sound mining operations; (c) a summary of the Deep-Sea Coral three year research program for Alaska; (d) discussion of the committee tasks for the upcoming year; and (e) other business. The agenda is subject to change, and the latest version will be posted at *http://meetings.npfmc.org/Meeting/Details/1744* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *http://meetings.npfmc.org/Meeting/Details/1744.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *http://meetings.npfmc.org/Meeting/Details/1744.*

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

Dated: October 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23733 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA347]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to State Route 520 Pontoon Pile Removal Project, Aberdeen, Grays Harbor County, Washington

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Washington State Department of Transportation (WSDOT) for authorization to take marine mammals incidental to State Route 520 Pontoon Construction Site—Marine Piling Removal Project in Aberdeen, Grays Harbor County, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than November 27, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.DeJoseph@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On November 20, 2019, NMFS received a request from WSDOT for an IHA to take marine mammals incidental to the removal of 19-steel piles by vibratory pile driving at the mouth of the Chehalis River where it enters Grays Harbor, WA. WSDOT submitted four revisions. Three between November 2019 and July 2020 and the last on August 17, 2020, subsequent to it being deemed adequate and complete on July 30, 2020. Their request is for take of a small number of Pacific harbor seals

(*Phoca vitulina*); California sea lions (*Zalophus californianus*); Steller sea lions (*Eumetopias jubatus*); gray whales (*Eschrichtius robustus*); and harbor porpoises (*Phocoena phocoena*) by Level B harassment only. Neither WSDOT nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

WSDOT proposes to remove 19 steel piles and associated barge launch guide appurtenances from the footprint of the casting basin launch channel within the Washington State Department of Natural Resources (DNR) aquatic easement lease area in Grays Harbor (Figures 1 and 2). WSDOT must remove the 19 steel piles on state owned aquatic lands to comply with the terms and conditions of the lease agreement with the Washington DNR. The piles were used to guide completed pontoons out of the casting basin and into Grays Harbor for transport to Lake Washington for the replacement of the SR520 floating-bridge.

A vibratory extractor on a crane will be used to remove the piles over a six-day period with one day for mobilization and another day for demobilization on either end, for a total of eight days of in-water work. The crane will be located on a barge or flexi float, positioned near the piles. Sound in the water from vibratory pile driving may result in behavioral disturbance (or Level B harassment) of five marine mammal species.

Dates and Duration

WSDOT reports in-water work at the project location is limited by the seasonal presence of ESA-listed fishes. Pile removal is estimated to take 14.75 hours over a six-day period with one day for mobilization and another day for demobilization on either end, for a total of eight days (Table 1). The proposed IHA would be effective for one year from date of issuance.

Specific Geographic Region

The proposed project site is in Grays Harbor County, Washington (Figure 1), near where the Chehalis River enters Grays Harbor. Grays Harbor is an estuarine bay located in the Chehalis River Valley; 45 miles (mi) (72 kilometers (km)) north of the mouth of the Columbia River, on the Southwest Pacific coast of Washington state.

Grays Harbor is a large estuary fed by a 6734 square kilometers (km^2) (2,600 square miles (mi^2)) drainage basin formed by sedimentation and erosion caused by the Chehalis River, which enters the east end of the harbor, and the Pacific Ocean, which connects with the harbor to the west through a 2.9 km (1.8 mi) wide inlet. Grays Harbor is approximately 24 km (15 mi) long and 21 km (13 mi) across at its widest point, narrowing to fewer than 91.4 m (300 feet (ft)) in some places. River-borne sediments and marine deposits fill the harbor and compose the marsh and sheltered tidal flats of the harbor's interior shorelines.

The average water depth in Grays Harbor is less than 6.1 m (20 ft). However, depths up to 24.4 m (80 ft) have been measured at the mouth of the harbor. Grays Harbor has three main channels: the north channel, middle channel, and south channel. The north channel contains the Grays Harbor Navigation Channel, a 44 km (27.5 mi) channel that extends from the Pacific Ocean to Cosmopolis. The middle and south channels remain shoaled by erosion and sediment deposits. Numerous shallow channels created by ebb tide flows and river discharges are present throughout the harbor (Northwest Area Committee 2013). Net surface flow is seaward and dominated by tidal currents, with a mean tide rise of about 2.7 m (9 ft) (NOAA 2015). Tides of this height typically cover up to 94 square miles in Grays Harbor, while at mean lower low water, low tides typically cover fewer than 38 square miles, exposing large areas of mudflats, sandbars, and low islands dissected by multiple shallow channels (U.S. Army Corps of Engineers 2014 (ACE)). High flows on the Chehalis River can control currents in the upper portion of the harbor, especially during the winter when storms increase the flow in rivers and streams that feed Grays Harbor.

The form and structure of Grays Harbor are largely determined by differences in the capacity of harbor inflows (flood currents) and ocean waves that transport sediment into the harbor and outflows (ebb currents) that transport sediment out of the harbor. Sediment accumulation in the seaward portion of the harbor is controlled primarily by redistribution of harbor silt by wind and waves and deposition of ocean sands by tidal action; sediment accumulations in the interior harbor are controlled by river inputs (U.S. ACE 2014). Beyond the harbor to the west, the connection to the Pacific Ocean extends between two low-lying peninsulas. The ocean side of the inlet is protected by two rock jetties (north and south) that include above-water and submerged sections.

The inner harbor is heavily industrialized with major port facilities, an airport, pulp mills, landfills, sewage treatment plants, and log storage facilities. Grays Harbor provides commercial shipping access to cities and ports up the Chehalis River. Land use in the Aberdeen area is a mix of residential, commercial, industrial, and open space and/or undeveloped lands (Figure 1).

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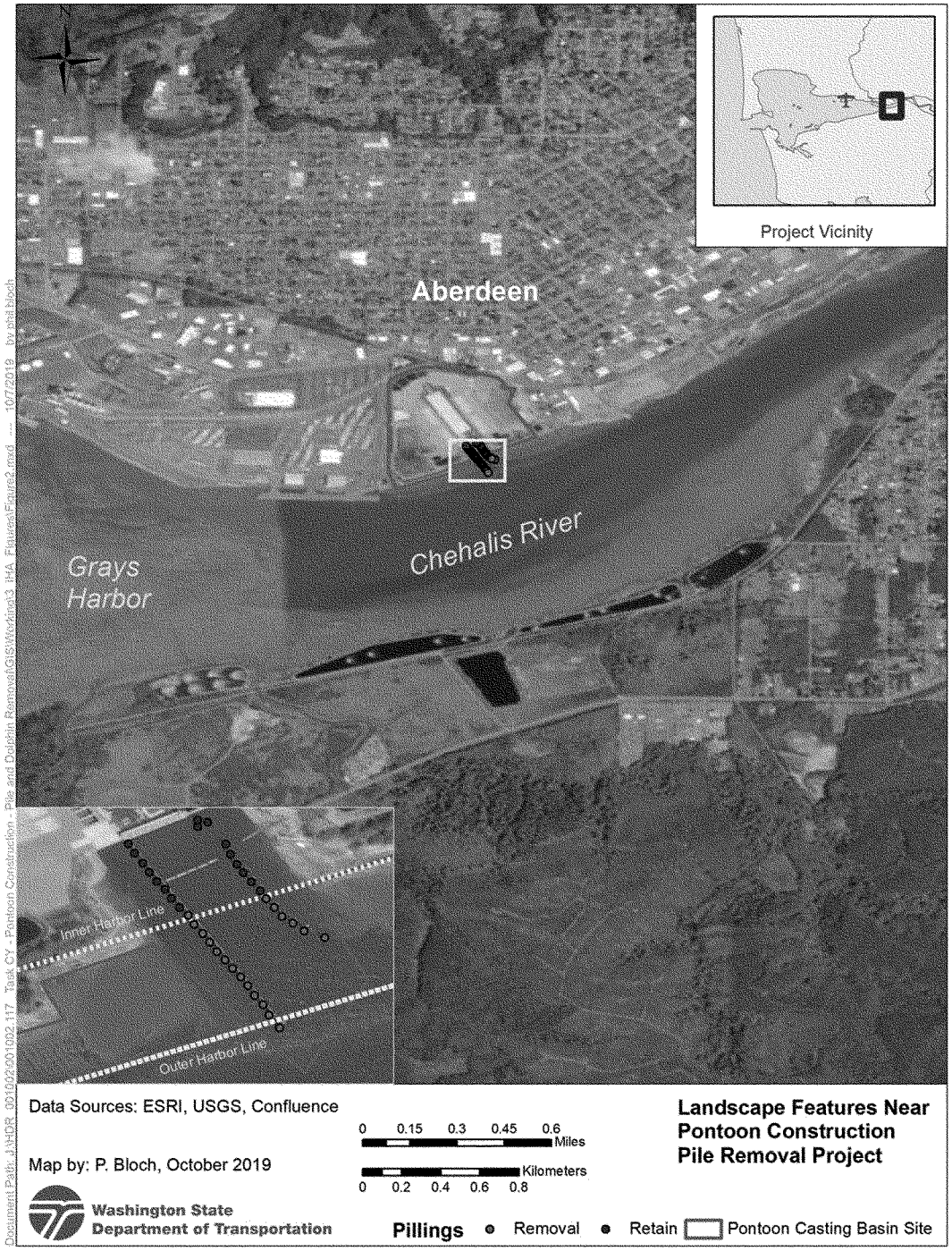

Figure 1. Project Location – Detailed.

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Detailed Description of Specific Activity

The proposed project will remove 19 steel piles and associated launch guide appurtenances from the casting basin launch channel within the DNR aquatic easement lease area of Grays Harbor (Table 1). The piles are various sizes (18-, 24 and 48-inch) and are located immediately waterward of the pontoon casting basin at water depths ranging from –3.1 to –9.9 ft mean lower low water (MLLW). A crane will be operated from a barge or flexi float positioned near the piles. The barge will be prohibited from disturbing the river substrate; it will be positioned in approximately 1.2—3.4 m (4—11 ft) of water during low tides, depending upon pile location. Piles will be removed with a single vibratory hammer rig on the barge and recovered to the same barge. See Table 1 for a detailed summary of pile activities. One day for mobilization and demobilization may be added on either end for a total of nine days of in-water work. Weather, unforeseen issues and shut-downs due to marine mammals entering the work site could also result in the pile removal activities extending beyond 7 days.

TABLE 1—SUMMARY OF PILE DRIVING ACTIVITIES

Method	Pile type	Estimated noise level *	Number of piles	Minutes per pile	Total time (hours)	Piles per day	Time per day (hours)	Activity period (days) **
Vibratory Removal	48-inch steel pile	171 dB_{RMS}	1	45	0.75	1	0.75	1
Vibratory Removal	24-inch steel pile	162 dB_{RMS}	17	45	12.75	4	3	5
Vibratory Removal	18-inch steel pile	162 dB_{RMS}	1	45	0.75	1	0.75	1
Total			19	45	14.25	6	14.25	7

* Origin of project sound source levels discussed in Estimated Take section.
** Pile removal activities will be conducted across 11-hour (at maximum) work days, but a ''day'' of work may not require 11 hours. NMFS increased the estimated removal time of the 18 and 48-inch piles from 0.5 day, as proposed by WSDOT, to 1 day, to reflect a more realistic representation of the potential schedule; *i.e.,* the potential that the two piles maybe removed on separated days.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments)* and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific SARs (*e.g.,* Carretta, *et al.,* 2020). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 SARs (Carretta, *et al.,* 2020) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE STUDY AREAS

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	139
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena*	Northern OR/WA Coast	-, -, N	21,487 (0.44, 15,123, 2011)	151	≥3.0
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A,233,515, 2014)	14,011	>320
Steller sea lion	*Eumetopias jubatus*	Eastern	-, -, N	43,201 [4] (see SAR, 43,201, 2017).	2,592	113
Family Phocidae (earless seals).						
Harbor Seal	*Phoca vitulina richardii*	Oregon/Washington Coastal	-, -, N	24,732 [5] (UNK, UNK, 1999)	UND	10.6

[1] Endangered Species Act (ESA) status: Endangered I, Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] NEST is the best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys.

[5] Abundance estimate for this stock is not considered current. PBR is therefore considered undetermined, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimate, as it represents the best available information for use in this document.

As indicated above, all five species (with five managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. All species that could potentially occur in the proposed survey areas are included in Table 3–1 of the IHA application.

Gray Whale

Gray whales occur along the eastern and western margins of the North Pacific. From mid-February to May, the Eastern North Pacific stock of gray whales can be seen migrating northward with newborn calves along the west coast of the United States In the fall, gray whales migrate from their summer feeding grounds, heading south along the coast of North America to spend the winter in their breeding and calving areas off the coast of Baja California, Mexico. During summer and fall, most whales in the Eastern North Pacific stock feed in the Chukchi, Beaufort and northwestern Bering Seas (Carretta *et al.,* 2020), with the exception of a relatively small number of whales (~200 individuals) that summer and feed along the Pacific coast between Kodiak Island, Alaska and northern California, known as the known as the Pacific Coast Feeding Group (PCFG) (Calambokidis *et al.,* 2002).

It is believed that some of the gray whale sightings in Grays Harbor are from the PCFG. Calambokidis and Quan's (1997) 1996 survey reported 27 gray whales in the harbor. A 13-year (1998–2010) collaborative study reported the most sightings in Grays Harbor and its surrounding coastal waters during the months of April and October, 40 and 27, respectively (Calambokidis *et al.,* 2012). A review of existing data (Calambokidis *et al.,* 2015) corroborates Grays' Harbor as one of 28 Biologically Important Areas (BIA) for gray whales in U.S. waters along the West Coast. This is based on 183 sightings primarily occurring from April to November for 17 years. Calambokidis *et al.,* (2019) used photographic identification from small boat surveys over a 22 year time span (1996–2017) to report 99 unique gray whales in the Grays Harbor area from June through November.

Harbor Porpoise

Harbor porpoise occur along the U.S. West Coast from southern California to the Bering Sea (Carretta *et al.,* 2019). They inhabit both coastal and inland waters; primarily in water depths less than approximately 200 m and are most abundant from shore to about the 92 m (50-fathom) isobath (Barlow 1988; Forney *et al.,* 1991; Carretta *et al.,* 2001, 2009). They rarely occur in waters warmer than 62.6 degrees Fahrenheit (17 degrees Celsius; Read 1990) and are most often observed in small groups of one to eight animals (Baird 2003). Furthermore, they are known to be particularly sensitive to anthropogenic impacts such as bycatch in fisheries and disturbance by vessel traffic or underwater noise (Calambokidis *et al.,* 2015).

NMFS conducted aerial line-transect surveys between 2007 and 2012 (Forney *et al.,* 2014). The NMSDD (2019) used the sighting data to geographically stratify line-transect density estimates for harbor porpoise offshore Washington.

Adams *et al.,* (2014) completed the Pacific Continental Shelf Environmental Assessment (PaCSEA) during 2011 and 2012, which included replicated surveys over the continental shelf slope from shore to the 2000 m isobaths along 32 broad-scale transects from Fort Bragg, California (39° N) through Grays Harbor, Washington (47° N). Finer scale surveys were also conducted over the continental shelf within six designated focal areas, including Grays Harbor. Harbor porpoises were found to be present year-round (164 sightings of 270 individuals) and most frequently sighted within the inner-shelf domain throughout the entire study area in all seasons with noteworthy aggregations within the Eureka, Siltcoos, and Grays Harbor Focal Areas. Calambokidis *et al.,* (2015) reported a primary occurrence of 183 sightings of gray whales in Grays Harbor from April to November over 17 years of sightings.

California Sea Lion

California sea lions occur from Vancouver Island, British Columbia, to the southern tip of Baja California. Sea lions breed on the offshore islands of southern and central California from May through July (Heath & Perrin 2008). During the non-breeding season, adult and sub adult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.,* 1993). They return south the following spring (Heath & Perrin 2008; Lowry & Forney 2005). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.,* 1990; Melin *et al.,* 2008).

Pupping occurs primarily on the California Channel Islands from late May until the end of June (Peterson & Bartholomew 1967). Weaning and mating occur in late spring and summer during the peak upwelling period (Bograd *et al.,* 2009). After the mating season, adult males migrate northward to feeding areas as far away as the Gulf of Alaska (Lowry *et al.,* 1992), and they remain away until spring (March–May), when they migrate back to the breeding colonies. Adult females generally remain south of Monterey Bay, California throughout the year, feeding in coastal waters in the summer and offshore waters in the winter, alternating between foraging and nursing their pups on shore until the next pupping/breeding season (Melin & DeLong 2000; Melin *et al.,* 2008).

Since the mid-1980s, increasing numbers of California sea lions have been documented feeding on fish along the Washington coast and, more recently, in the Columbia River as far upstream as Bonneville Dam, 233 km (145 mi) from the river mouth. All age classes of males are seasonally present in Washington waters (Jeffries *et al.,* 2000). Jeffries *et al.,* (2015) sighted 113 sea lions during four aerial surveys in Grays Harbor from November 2014 to March 2015. The nearest documented California sea lion haul-out sites to the project site are at the Westport Docks, approximately 23 km (14 mi) west of the project site near the entrance to Grays Harbor (Jeffries *et al.,* 2015), and a haulout observed in 1997 referred to as the Mid-Harbor flats located approximately 10 km (6 mi) west of the project site (WDFW 2020).

California sea lions do not avoid areas with heavy or frequent human activity, but rather may approach certain areas to investigate. This species typically does not flush from a buoy or haulout if approached.

Steller Sea Lion

Steller sea lions occur along the North Pacific Rim from northern Japan to California (Loughlin *et al.,* 1984). Their range comprises the coasts to the outer shelf from northern Japan through the Kuril Islands and Okhotsk Sea, through the Aleutian Islands, central Bering Sea, southern Alaska, and south to California (NOAA 2019d). Two stocks of Steller sea lions are recognized, Western and Eastern stocks, divided at 144° W longitude (Muto *et al.,* 2020). Only individuals from the Eastern stock are

expected to occur in the proposed project area.

The eastern stock of Steller sea lions has historically bred on rookeries located in Southeast Alaska, British Columbia, Oregon, and California. However, within the last several years a new rookery has become established on the outer Washington coast (at the Carroll Island and Sea Lion Rock complex), with >100 pups born there in 2015 (Muto *et al.,* 2018). Breeding adults occupy rookeries from late-May to early-July (NMFS 2008). Non-breeding adults use haulouts or occupy sites at the periphery of rookeries during the breeding season (NMFS 2008).

Pupping occurs from mid-May to mid-July (Pitcher & Calkins 1981) and peaks in June (Pitcher *et al.,* 2002). Territorial males fast and remain on land during the breeding season (NMFS 2008). Females with pups generally stay within 30 km of the rookeries in shallow (30–120 m) water when feeding (NMFS 2008). Tagged juvenile Steller sea lions showed localized movements near shore (Briggs *et al.,* 2005) and Loughlin *et al.,* (2003) reported that most (88 percent) at-sea movements of juvenile Steller sea lions were short (< 15 km), foraging trips. Although Steller sea lions are not considered migratory, foraging animals can travel long distances (Loughlin *et al.,* 2003; Raum-Suryan *et al.,* 2002). During the summer, they mostly forage within 60 km from the coast, whereas in winter they can range up to 200 km from shore (Ford 2014).

Twenty-two haulouts (excluding most navigation buoys) occur in Washington. They are mainly distributed along the state's outer coast on offshore rocks, coastal islands, and jetties. Steller sea lions were not surveyed in Jeffries *et al.* (2015) 2014–2015 aerial surveys of Grays Harbor. However, they were observed on the Westport docks during six surveys. The range of annual maximum numbers of Steller sea lions present on other nearby haul-out sites from 1976–2014 include the following: Split Rock/Rock 535, 56 km (35 mi) north of the entrance to Grays Harbor (100–500 individuals); at the mouth of the Columbia River, 74 km (46 mi) south of the entrance to Grays Harbor (100–2,000 individuals); and the Bodelteh Island area, 154 km (95 mi) north of Grays Harbor, is the most populated (150–2,000 individuals) of the seven haul-out sites in the northern Olympic Coast (Wiles 2015). Additionally, the NOAA Marine Mammal Stranding database (NMMSD, 2020) documented 77 Steller sea lions strandings in Grays Harbor and adjacent coastal area from June 2010 to February 2020. The closest stranding was located in Aberdeen, approximately 1.86 km (1.6 mi) from the project site.

The Navy adjusted the 2017 projected abundances of Steller sea lions to account for time spent hauled out in order to calculate the density of sea lions off the Washington coast. In the fall sea lions are anticipated to be in the water 53 percent of the time, and 64 percent of the time in the spring and winter (NMSDD 2019).

Pacific Harbor Seals

Five stocks of harbor seals (*Phoca vitulina richardii*) are recognized within U.S. West Coast waters: (1) Southern Puget Sound; (2) Washington Northern Inland Waters; (3) Hood Canal; (4) Oregon/Washington Coast; and (5) California. The Oregon/Washington coast stock occurs in the proposed project area.

Harbor seals are the most abundant breeding pinniped species in the Pacific Northwest (Peterson *et al.,* 2012). Abundance in Washington increased from the 1970s through the 1990s and then stabilized at near carrying-capacity levels (Calambokidis *et al.,* 1985; Jeffries *et al.,* 2003) after a drastic reduction by a bounty program in the Pacific Northwest from 1914 until June 1964 (Zier & Gaydos 2014). In 1999 aerial surveys were flown at midday low tides during pupping season to determine the distribution and abundance of harbor seals in Washington—the last in a 22-year time series of systematic surveys (Jefferies *et al.,* 2003).

Harbor seals mate at sea, and females give birth during the spring and summer, although, the pupping season varies with latitude. Pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Nursery areas in Grays Harbor are located in areas around Whitcomb Flats, Mid-Harbor Flats, Sand Island shoals, Sand Island, Goose Island, Chenoise Creek channels, and in North Bay. Peak harbor seal abundances occur during the pupping season (mid-April through June) and the annual molt (July through August) (Jeffries *et al.,* 2000).

With the exception of long-distance travels recorded by males belonging to the Washington Inland stock, adult harbor seals have been considered to have highsite fidelity. Specifically, those in the Pacific Northwest typically remain within <30 km of their primary haul-out site (Peterson *et al.,* 2012).

Hundreds of harbor seal haul-out sites have been identified along Washington's coastal and inland waters, including intertidal sand bars and mudflats in estuaries, intertidal rocks and reefs, sandy, cobble, and rocky beaches, islands, log booms, docks, and floats in all marine areas of the state. Fifteen are located on the intertidal mudflats and sand bars of Grays Harbor (Jeffries *et al.,* 2000). The closest recognized harbor seal haul-out site to the project site is Mid-harbor Flats, a low-tide haulout located approximately 10 km (6 mi) west of the project site.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok & Ketten 1999; Au & Hastings 2008). To reflect this, Southall *et al.,* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.,* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth & Holt 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Five marine mammal species (2 cetacean and 3 pinniped (2 otariid and 1 phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, one is classified as a low-frequency cetacean (*i.e.,* all mysticete species) and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The WSDOT's proposed activities using in-water pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.* 2007).

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kilohertz (kHz)), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran & Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak–to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating exposure. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of root-mean-square (rms) SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. Therefore, based on these studies, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt 2010; Finneran *et al.,* 2002; Kastelein & Jennings 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious

impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, exposure to noise could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by *odontocetes* (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). The noises from WSDOT's vibratory pile removal activities contribute to the elevated ambient noise levels in the project area; thus, increasing potential for or severity of masking.

Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). For the WSDOT's construction activities, only continuous noise is considered for effects analysis because WSDOT plans to use vibratory pile removal.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 meters (m) of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities, habitat, and some of same species involved, we expect similar behavioral responses of marine mammals to Gray Harbor's specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements).

Marine Mammal Habitat Effects

WSDOT's construction activities could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During vibratory pile driving, elevated levels of underwater noise would ensonify a small section of Grays Harbor where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 7.6 m (25 ft) radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Strong water flow from the Chehalis River into the channels of Grays Harbor is anticipated to disperse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

Grays Harbor is an established food habitat for marine mammals, including as a BIA for gray whales. However, the project area is outside of their range at the back of the harbor where the mouth

of the Chehalis River conjoins with the harbor, and the ensonified area is a small portion of the harbor. Furthermore, their seasonal migration pattern takes them to breeding and calving areas off the coast of Baja California for winter; hence, even the PCFG is expected to be further south during the project's timeline. Overall, the total benthic area affected by pile removal is a very small area compared to the vast foraging area available to marine mammals in Grays Harbor, and no areas of particular importance to marine mammals will be impacted by the action. However, pile removal will remove substrate for invertebrate prey that have populated them over the years.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In-Water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick & Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik & Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell & McCauley 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson & Gyselman 2009; Cott *et al.,* 2012).

The most likely impact to fish from pile removal activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish and juvenile salmonid out migratory routes in the project area. Both herring and salmon form a significant prey base for many marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 3 m (10 ft) or less) of construction activities. Given the limited area affected and high tidal and river flow dilution rates any effects on forage fish and salmon are expected to be minor or negligible.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile removal activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound from vibratory pile removal. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the

received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (root mean square (rms)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

WSDOT's proposed activity includes the use of a continuous source (vibratory pile removal); therefore, the 120 dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). WSDOT's proposed activity includes the use of non-impulsive (vibratory pile removal) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1* $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	*Cell 2* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3* $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	*Cell 4* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5* $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	*Cell 6* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7* $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	*Cell 8* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9* $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	*Cell 10* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by vibratory pile removal.

Vibratory hammers produce constant sound when operating, and produce vibrations between 1,200 and 2,400 vibrations per minute that liquefy the sediment surrounding the pile, allowing it to be removed with an upward lift from the crane. The actual duration to remove each pile depends on the type and size of the pile, sediment characteristics, etc.

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods. NMFS derived the project sound source levels from reviewing vibratory pile driving source levels in the Naval Base Kitsap at Bangor Trident Support Facilities EHW–2 Project Acoustic Monitoring Report (2013), CALTRANS Compendium (2015), and Naval Base Kitsap at Bangor Test Pile Program Acoustic Monitoring Report (I&R 2012) (See Table 5). Since adequate data was not available for 18-inch steel piles the vibratory pile driving of 24-inch steel pile, with more than 100 data points, with a source level of 162 dB RMS was used as a proxy. NMFS believes the available data for 48-inch steel piles may be underestimated in comparison to more robust data for 30 and 36-inch steel piles. Hence, the 75th percentile of the sample was used rather than the median noise level (165 dB RMS) to ensure the selected source level is adequately representative of actual source levels.

TABLE 5—PROJECT SOUND SOURCE LEVELS

Pile driving activity		Source level
Hammer type	Pile type	dB RMS
Vibratory Removal	18-inch steel pile	162
	24-inch steel pile	162
	48-inch steel pile	171

Note: Estimated sound source level at 10 meters without attenuation.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is: TL = B * Log10 (R1/R2), where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for WSDOT's proposed activity.

Using the practical spreading model, WSDOT determined underwater noise would fall below the behavioral effects threshold of 120 dB rms for marine mammals. NMFS independently estimated the Level B harassment areas using geographic information system (GIS) tools to eliminate land masses and other obstacles that block sound propagation at high tide. Such topographic barriers limit the maximum distance from being attained in all directions as shown by the actual ensonified areas calculated (Figure 2). The estimated Level B harassment distances and associated areas (as limited by topographic barriers), summarized in Table 6, determines the maximum potential Level B harassment zones for the project.

TABLE 6—LEVEL B ISOPLETHS FOR EACH PILE TYPE.

Vibratory pile type	Level B isopleth (m)	Area (km^2)
18-inch steel pile	6,310	9.1
24-inch steel pile	6,310	9.1
48-inch steel pile	25,120	15.35

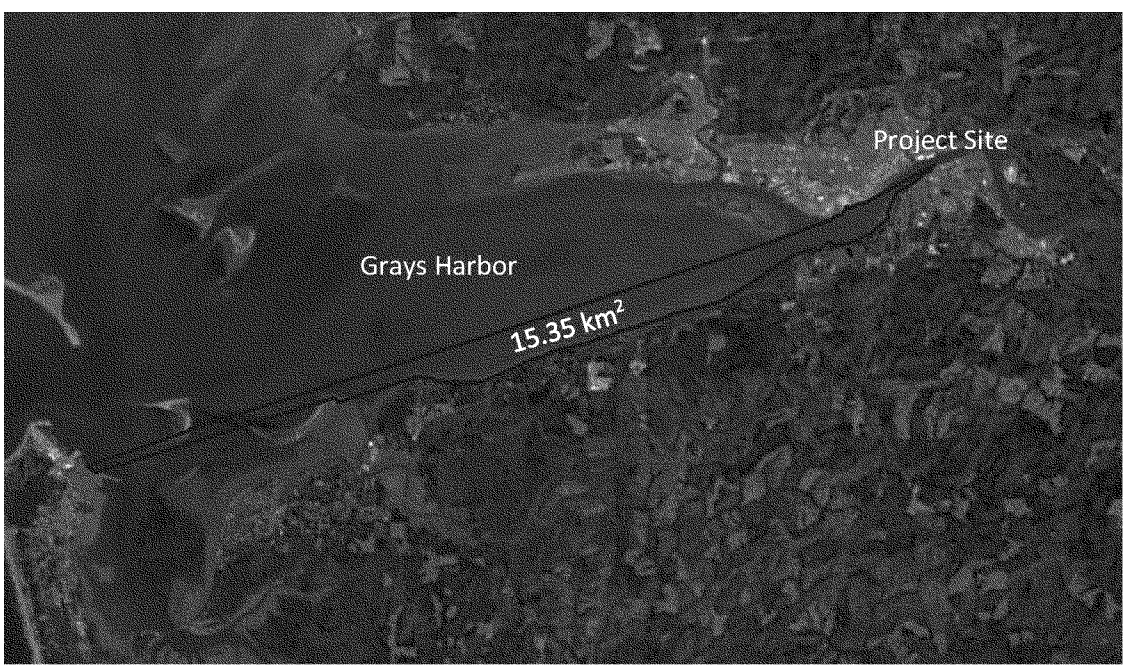

Figure 2. Estimated Area to be Ensonified to Level B Harassment Threshold for 48-inch Steel Piles.

Level A Harassment Zones

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory pile removal, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below (Tables 7 and 8).

TABLE 7—NMFS TECHNICAL GUIDANCE USER SPREADSHEET INPUT TO CALCULATE LEVEL A HARASSMENT ISOPLETHS

Method	Vibratory removal		
Pile Type	48-inch steel pile	24-inch steel pile	18-inch steel pile.
Source Level (RMS SPL)	171 dB_{RMS}	162 dB_{RMS}	162 dB_{RMS}.
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5.
Number of Piles per day	1	4	1.
Duration to drive a single pile (min)	45	45	45.
Distance of source level measurement (m)	10	10	10.

The above input scenarios lead to PTS isopleth distances (Level A thresholds) of 0.3 to 39 meters (128 ft), depending on the marine mammal group and scenario (Table 8).

TABLE 8—CALCULATED DISTANCES (M) TO LEVEL A HARASSMENT ISOPLETHS DURING PILE REMOVAL PER HEARING GROUP

Pile Type	Level A harassment zone (m)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
48-inch steel pile	26	2	39	16	1
24-inch steel pile	17	1	24	10	1
18-inch steel pile	7	1	10	4	0

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Gray Whale

Photo identification, monitoring data, and stranding data corroborates the presence of gray whales in Grays Harbor and the adjacent coastal waters, as described in the Description of Marine Mammals in the Area of Specified Activities section above. Yet, these sources do not provide density data specific to Grays Harbor. Calambokidis *et al.,* (1997, 2015, 2019) is a collection of more than 20 years of photo identification data, but it does not provide enough information suitable for derivation of a density value. The U.S. 101/Chehalis River Bridge Scour Repair Project Marine Mammal Monitoring Report (WSDOT 2019) showed no observations of this species. Approximately 29 gray whale strandings were documented in Grays Harbor and adjacent coastal area from February 2010 to August 2019 (NMMSD 2020); the closest to the project was found in mudflats near the tip of Bowerman Airfield, ~9.82 km (6.10 mi) from the project site, in 2018. The NMSDD (2019) estimated the offshore density of gray whales from July to December to be 0.020167 gray whales/km². Using it in estimated take calculations yielded a low value for gray whales (<2) in Grays Harbor that, in NMFS' estimation, did not properly reflect the variability of group sizes and the real likelihood of encounter.

Their group size is known to fluctuate by activity, which in turn correlates to season. During migration, they are solo or in small groups. On the feeding grounds, whales are customarily seen solo or in small, widely dispersed groups. Larger, loosely formed aggregations do occur on feeding and breeding grounds, but are in constant flux (Wursig *et al.,* 2018). Gray whale occurrence off the Washington coast is expected to consist primarily of PCFG whales from July–November, feeding from five BIAs before migrating to the southern breeding grounds for winter (NMSDD 2019).

Harbor Porpoise

Without the species count breakdown of aerial surveys in Grays Harbor (Adam *et al.,* 2014) or information necessary to derive density values from photo identification data (Calambokidis *et al.,* 2015), the NMSDD (2019) annual value for harbor porpoises offshore of Grays Harbor, 0.467/km² is the most appropriate data source to calculate take.

California Sea Lion

The closest of the 116 California sea lion strandings reported in Grays Harbor and adjacent coastal area from August 2010 to February 2020, was located in Aberdeen, approximately 1.86 km (1.6 mi) from the project site (NMMSD 2020). Without a correction factor to incorporate those sea lions in the water during aerial haulout surveys of Grays Harbor (Jeffries *et al.,* 2015), the density of only individuals hauled out from

November to March is 0.12 seal lions/km². Since the appropriate data is not available to calculate the accurate density of all individuals using Grays Harbor, the offshore density of 0.5573 sea lions/km² during September through November (NMSDD 2019) was used.

Steller Sea Lion

Because density data is not available for Grays Harbor, the NMSDD (2019) fall offshore density of 0.139 Steller sea lions/km² is used.

Harbor Seal

Because aerial surveys of harbor seals on land only produce a minimum assessment of the population a correction factor to account for the missing animals is necessary to estimate total abundance. The total counts from 2014 Grays Harbor aerial surveys (Jeffries *et al.,* 2015) were multiplied by the regional correction factor of 1.43 (Huber *et al.,* 2001) to yield the estimated harbor seal abundance. The average survey count (7495 seals/survey) was used to calculate density by dividing by the area of Grays Harbor:

$$\frac{(10483 \text{ total count} * 1.43)/(2 \text{ surveys})}{243 \text{ km}^2} = 30.85 \text{ km}^2$$

The density data specific to Grays Harbor (Jeffries *et al.,* 2015) is preferred over the NMSDD's (2019) estimated density for waters offshore Washington, 0.3424 harbor seals/km².

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Level A harassment take is not likely because of the small injury zones; the largest Level A harassment distance is 40 m (131 ft) from the source for high-frequency cetaceans (harbor porpoise). NMFS considers that WSDOT can effectively monitor such small zones to implement shutdown measures and avoid Level A harassment takes, and that harbor porpoise in particular are more likely to avoid the construction activity than remain within the zone for the full duration necessary to accumulate sufficient energy to incur injury. Therefore, no Level A harassment take of marine mammals is proposed or authorized.

Take numbers were calculated using the information aggregated in the NMSDD (U.S. Navy, 2019) for the harbor porpoise, California sea lion, and Steller sea lion. Where a low to high range of densities is given for a species, the high-end density value was used in the applicable season (*i.e.,* fall/winter). In these cases, take numbers were calculated as:

Total Take = marine mammal density × ensonified area × pile removal days

Specific adjustments for calculating take numbers for gray whales and harbor seals are provided below.

- Evaluated use of data value (offshore) and result is what we consider underestimate of value. Because recent data for gray whales in Grays Harbor does not provide enough information to derive a density value, and because the Level B harassment zone stretches across the length of Grays Harbor, and the flexible group size correlated to season, we propose Level B harassment take of 1 gray whale per day of construction activity 1 × 7 days = 7 gray whales.
- The density of harbor seals in Grays Harbor based on Jeffries' *et al.,* (2015) aerial surveys (described above) replaces the NMSDD density value in the Total Take equation above.

TABLE 9—INPUT FOR LEVEL B HARASSMENT TAKE CALCULATIONS PER SPECIES

Species	Density (#/km²)	Level B area 48-in (km²)	Level B area 18/24-in (km²)	#Days 48-in *	#Days 24-in	#Days 18-in **	Level B take 48-in	Level B take 24-in	Level B take 18-in
Gray Whale	*0.020	15.35	9.1	1	5	1	0.31	0.7	0.2
Harbor Porpoise	0.467	15.35	9.1	1	5	1	7	17	4
CA Sea Lion	0.557	15.35	9.1	1	5	1	9	20	5
Steller Sea Lion	0.139	15.35	9.1	1	5	1	2	5	1
Harbor Seal	30.85	15.35	9.1	1	5	1	473	1123	281

*Density was not used in the calculation of estimated take for gray whales.

TABLE 10—PROPOSED AUTHORIZED LEVEL B HARASSMENT TAKE, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Proposed take level B	% Population	Percent of stock
Gray Whale	7	0.03	<0.1
Harbor Porpoise	28	0.13	0.1
CA Sea Lion	34	0.013	<0.1
Steller Sea Lion	8	0.02	<0.1
Harbor Seal	1877	7.59	7.6

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for

incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are proposed in the IHA:

Temporal and Seasonal Restrictions

Timing restrictions would be used to avoid in-water work when ESA-listed salmonids are most likely to be present. Furthermore, work is planned to occur only during daylight hours, when visual monitoring of marine mammals can be effectively conducted (30 minutes after sunrise to 30 minutes before sunset).

Establishment of Shutdown Zone

WSDOT will establish a shutdown zone for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (Error! Reference source not found.4). The largest shutdown zones are generally for high frequency cetaceans, as shown in Table 11.

TABLE 11—SHUTDOWN ZONES DURING PILE DRIVING ACTIVITIES

Pile type	Low-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
48-inch steel pile	30	40	20	10
24-inch steel pile	20	30	15	10
18-inch steel pile	10	10	10	10

For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions. WSDOT must also implement shutdown measures if the cumulative total number of individuals observed within the Level B harassment monitoring zones for any particular species reaches the number authorized under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B Harassment zone during in-water construction activities.

Monitoring for Level B Harassment

WSDOT will monitor the Level B harassment and the Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of Protected Species Observers (PSO) will allow PSOs to observe marine mammals within the Level B harassment zones.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, operations cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.

Non-Authorized Take Prohibited

If a species enters or approaches the Level B harassment zone and that species is not authorized for take, pile driving and removal activities must shut down immediately. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed.

Based on our evaluation of the applicant's mitigation measures, NMFS has preliminarily determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS

should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Monitoring section of the application and Section 5 of the IHA. Marine mammal monitoring during pile removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

• Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;

• At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

• Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

• WSDOT must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Two PSOs will be employed. PSO locations will provide an unobstructed view of all water within the shutdown zone, and as much of the Level B harassment zones as possible. PSO locations are as follows:

(1) At the pile driving site or best vantage point practicable to monitor the shutdown zones; and

(2) On shore, south of Mid-harbor Flats or best vantage point to monitor the harbor seal haul-out site during construction activities.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including how many and what type of piles were removed;

• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance (if less than the harassment zone distance);

• The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;

• Age and sex class, if possible, of all marine mammals observed;

• PSO locations during marine mammal monitoring;

• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

• Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

• Number of marine mammals detected within the harassment zones, by species;

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and

• Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, WSDOT shall report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. If the

death or injury was clearly caused by the specified activity, WSDOT must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid redundancy this introductory discussion of our analyses applies to all of the species listed in Error! Reference source not found.0, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Pile removal activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment from underwater sounds generated from pile removal. Potential takes could occur if individuals are present in the Level B harassment zone when these activities are underway.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No takes by Level A harassment are anticipated or authorized. Takes by Level B harassment constitute less than 8 percent of the best available abundance estimates for all stocks;
- Take would occur over a short timeframe (6 days of active pile removal) during the IHA effective period) and not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat;
- Stock is not known to be declining or suffering from known contributors to decline (*e.g.,* unusual mortality event (UME), oil spill effects); and
- Monitoring reports from similar work from the Chehalis River Bridge Scour Repair Project have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize of all species or stocks is below one third of the estimated stock abundance (in fact, take of individuals is less than 8 percent of the abundance for all affected stocks). These are all likely conservative estimates because they assume all takes are of different individual animals which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or

expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WSDOT for conducting State Route 520 Pontoon Pile Removal Project, Aberdeen, Grays Harbor County, Washington over approximately six days, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed removal of pilings. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: October 21, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–23697 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA564]

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

ACTION: Notice of SEDAR 68 Discard Mortality Webinar II for Gulf of Mexico and Atlantic scamp.

SUMMARY: The SEDAR 68 assessment of Gulf of Mexico and Atlantic scamp will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 68 Discard Mortality Webinar II will be held on November 12, 2020, from 1 p.m. to 3 p.m. Eastern.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion for the webinar are as follows:

- Participants will discuss data available to inform discussions of discard mortality for use in the assessment of Gulf of Mexico and Atlantic scamp.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice

that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23738 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA563]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a meeting of the South Atlantic Selectivity Workgroup via webinar to address gear selectivity for fishery stock assessments for species managed by the Council.

DATES: The South Atlantic Selectivity Workgroup meeting will be held via webinar on Thursday, November 12, 2020, from 9 a.m. until 2 p.m.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Information, including a link to webinar registration and meeting materials will be posted on the Council's website at: *https://safmc.net/safmc-meetings/other-meetings/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Chip Collier, Deputy Director for Science, SAFMC; phone: (843) 302–8444 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *chip.collier@safmc.net.*

SUPPLEMENTARY INFORMATION: The South Atlantic Selectivity Workgroup consists of scientists with expertise in selectivity or gears used in fisheries in the South Atlantic region including members of the Council's Scientific and Statistical Committee chosen to participate. The Workgroup will provide recommendations on selectivity for species managed by the Council for consideration in upcoming stock assessments.

Agenda items include:

1. Provide recommendations on selectivity for Red Snapper, Vermilion Snapper; and Black Sea Bass;
2. Complete addressing the Terms of Reference for the Workgroup;
3. Review sections of the Workgroup report; and
4. Approve Workgroup report.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23739 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID O648–XA591]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Bluefish Advisory Panel will hold a public meeting.

DATES: The meeting will be held on Thursday, November 12, 2020, from 10 a.m. to 11:30 a.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar, which can be accessed at: *http://mafmc.adobeconnect.com/bf_ap_rm_nov_2020/.* Meeting audio can also be accessed via telephone by dialing 1–800–832–0736 and entering room number 5068609.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The Bluefish Advisory Panel will meet to comment on the current recreational management measures and offer on-the-water observations for discussion at the upcoming Monitoring Committee and Council meetings.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23734 Filed 10–26–20; 8:45 am]

BILLING CODE 3510–22–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–007]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is creating a new information collection for OMB review and approval and requests public review and comment on the submission. We received 1 set of comments and 7 changes were made to the form as a result. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy

of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: DFC intends to begin use of this collection on December 22, 2020.

Comments must be received by November 27, 2020.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

• *Mail:* Joanna Reynolds, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.

• *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Joanna Reynolds, (202) 357–3979.

SUPPLEMENTARY INFORMATION: This notice informs the public that DFC will submit to OMB a request for approval of the following information collection.

The agencies received comments in response to the sixty (60) day notice published in **Federal Register** volume 85 page 41573 on July 10, 2020. In response to these comments, DFC modified the collection to:

• Attach documentation on the Project's plans;

• clarify which language their policies and plans are in;

• clarify if the Project is associated with an OECD National Contact Point complaint;

• explain if the Project has a protocol to address threats of retaliation against grievance mechanism complaints;

DFC also made additional minor changes to the language and scope of questions and sections.

Summary Form Under Review

Title of Collection: Impact Assessment Questionnaire.

Type of Review: Revision of a currently approved information collection.

Agency Form Number: DFC–007.

OMB Form Number: 3015–0009.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 250.

Estimated Time per Respondent: 2.5 hours.

Total Estimated Number of Annual Burden Hours: 625 hours.

Abstract: The DFC Impact Assessment Questionnaire is the principal document used by the agency's application process to initiate the assessment of a potential project's predicted development impact, as well as the project's ability to comply with environmental and social policies, including labor and human rights, as consistent with the agency's authorizing legislation.

Dated: October 19, 2020.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2020–23702 Filed 10–26–20; 8:45 am]

BILLING CODE 3210–02–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–008]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of Information Collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is creating a new information collection for OMB review and approval and requests public review and comment on the submission. We received 1 set of comments and 9 changes were made to the form as a result. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: DFC intends to begin use of this collection on December 22, 2020.

Comments must be received by November 27, 2020.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

• *Mail:* Joanna Reynolds, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.

• *Email: fedreg@dfc.gov*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Joanna Reynolds, (202) 357–3979.

SUPPLEMENTARY INFORMATION: This notice informs the public that DFC will submit to OMB a request for approval of the following information collection.

The agencies received comments in response to the sixty (60) day notice published in **Federal Register** volume 85 page 41573 on July 10, 2020. In response to these comments, DFC modified the collection to:

• Include information about past and ongoing complaints from the Project's grievance mechanism;

• clarify questions regarding Project compliance with contract conditions or local law to include social impacts and human rights;

• clarify if the Project is associated with an OECD National Contact Point complaint.

• explain if the Project has a protocol to address threats of retaliation against grievance mechanism complaints;

• clarify if the Project is associated with an OECD National Contact Point complaint;

DFC also made additional minor changes to the language and scope of questions and sections.

Summary Form Under Review

Title of Collection: Development Outcomes Survey (DOS).

Type of Review: New information collection.

Agency Form Number: DFC–008.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project per year.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 800.

Estimated Time per Respondent: 2.0 hours.

Total Estimated Number of Annual Burden Hours: 1600 hours.

Abstract: The Development Outcomes Survey (DOS) is the principal document used by the DFC to review and update a client's developmental impact profile and determine the project's compliance with environmental, labor, and economic policies, as consistent with DFC's authorizing legislation. It will be a comprehensive survey designed to track project performance as compared to their baseline data collected during the application process.

Dated: October 15, 2020.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2020–23703 Filed 10–26–20; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0166]

Agency Information Collection Activities; Comment Request; Family Educational Rights and Privacy Act (FERPA) Regulatory Requirements

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before December 28, 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–0166. 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 PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Dale King, 202–453–5934.

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: Family Educational Rights and Privacy Act (FERPA) Regulatory Requirements.

OMB Control Number: 1880–0543.

Type of Review: Extension of a currently approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20,293,021.

Total Estimated Number of Annual Burden Hours: 1,914,593.

Abstract: The Family Educational Rights and Privacy Act (FERPA) requires that subject educational agencies and institutions notify parents and students of their rights under FERPA and requires that they record disclosures of personally identifiable information from education records, with certain exceptions.

Dated: October 22, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–23746 Filed 10–26–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Senior Executive Service Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of Performance Review Board Chair.

SUMMARY: This notice provides the Performance Review Board Chair designee for the Department of Energy. This listing supersedes all previously published lists of Performance Review Board Chair.

DATES: This appointment is effective as of September 30, 2020.

SUPPLEMENTARY INFORMATION: Dennis M. Miotla

Signing Authority

This document of the Department of Energy was signed on October 9, 2020, by Patricia Barfield, Acting Director for Office of Corporate Executive Management, Office of the Chief Human Capital Officer, 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 October 21, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–23698 Filed 10–26–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

DATES: This appointment is effective as of September 30, 2020.

Black, Steven

Boston, Robert

Carter, Brian

DeHaven, Darrel

Flohr, Connie

Greenaugh, Kevin

Isom, Pamela

Johnson Jr., Thomas

Kim, Dong

Klausing, Kathleen

Konieczny, Katherine

Kremer, Kevin

Lee, Terri

Lippold, David

Marlay, Robert

Monroe, Lewis

O'Konski, Peter

Satyapal, Sunita

West, William

Signing Authority

This document of the Department of Energy was signed on October 9, 2020, by Patricia Barfield, Acting Director for Office of Corporate Executive Management, Office of the Chief Human Capital Officer, 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 October 21, 2020

Treena V. Garrett,

Federal Register Liaison Officer,U.S. Department of Energy.

[FR Doc. 2020–23699 Filed 10–26–20; 8:45 am]

BILLING CODE 6450–01–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: RP19–1291–000.
Applicants: Paiute Pipeline Company.
Description: Report Filing: Refund Report.
Filed Date: 10/13/20.
Accession Number: 20201013–5186.
Comments Due: 5 p.m. ET 10/26/20.

Docket Numbers: RP21–66–000.
Applicants: Garden Banks Gas Pipeline, LLC.
Description: § 4(d) Rate Filing: Garden Banks LINK URL Conversion Filing to be effective 11/20/2020.
Filed Date: 10/20/20.
Accession Number: 20201020–5008.
Comments Due: 5 p.m. ET 11/2/20.

Docket Numbers: RP21–67–000.
Applicants: Bobcat Gas Storage.
Description: § 4(d) Rate Filing: Bobcat LINK URL Conversion Filing to be effective 11/15/2020.
Filed Date: 10/20/20.
Accession Number: 20201020–5011.
Comments Due: 5 p.m. ET 11/2/20.

Docket Numbers: RP21–68–000.
Applicants: Big Sandy Pipeline, LLC.
Description: § 4(d) Rate Filing: Big Sandy LINK URL Conversion Filing to be effective 11/23/2020.
Filed Date: 10/20/20.
Accession Number: 20201020–5015.
Comments Due: 5 p.m. ET 11/2/20.

Docket Numbers: RP21–69–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Tracker Filing 10/20/20 to be effective 12/1/2020.
Filed Date: 10/20/20.
Accession Number: 20201020–5017.
Comments Due: 5 p.m. ET 11/2/20.

Docket Numbers: RP21–70–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing on 10–20–20 to be effective 11/19/2020.
Filed Date: 10/20/20.
Accession Number: 20201020–5032.
Comments Due: 5 p.m. ET 11/2/20.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23730 Filed 10–26–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10896–025]

City of Danville, Virginia; Northbrook Virginia Hydro, LLC; Notice of Application for Partial Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On October 14, 2020, the City of Danville, Virginia (City) and Northbrook Virginia Hydro, LLC (Northbrook) filed jointly an application for partial transfer of license for the Pinnacles Hydroelectric Project No. 10896. The project is located on the Dan River, Patrick County, Virginia.

The applicants seek Commission approval to partially transfer the license for the Pinnacles Hydroelectric Project from the City as sole licensee to the City and Northbrook as co-licensees.

Applicants Contact: (For the City of Danville, Virginia) Mr. Ken Larking, City Manager, 427 Patton Street, Danville, Virginia 24541, Phone: (434) 799–5100, Email: *klarking@danvilleva.gov,* with a copy to: Mr. Jason Grey, Director, Danville Utilities, P.O. Box 3300, Danville, VA 24543, Email: *greyjc@danvilleva.gov.*

For Northbrook Virginia Hydro, LLC: Mr. Kyle Kroeger, Co-President, Northbrook Virginia Hydro, LLC, c/o North Sky Capital, 33 South 6th Street, Suite 4646, Minneapolis, MN 55402, Phone: (612) 435–7150, Email: *kkroeger@northskycapital.com,* with copy to Mr. John C. Ahlrichs, 14550 N. Frank Lloyd Wright Blvd., Suite 210, Scottsdale, AZ 85260, Phone: (480) 551–1221, Email: *cahlrichs@nbenergy.com.*

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 Days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–10896–025. Comments emailed to Commission staff are not considered part of the Commission record.

In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–10896). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19) issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3673 or (202) 502–8659 (TTY).

Dated: October 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23728 Filed 10–26–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–527–000]

Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Columbia Gulf Transmission, LLC East Lateral Xpress Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the East Lateral XPress Project involving construction and operation of facilities by Columbia Gulf Transmission, LLC (Columbia Gulf) in St. Mary, Lafourche, Jefferson, and Plaquemines Parishes, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as scoping. The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and the Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 20, 2020. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on September 24, 2020, you will need to file those comments in Docket No. CP20–527–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Columbia Gulf provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to

assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–527–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Columbia Gulf proposes to construct and operate two new compressor stations, a new meter station, and other appurtenant facilities. The East Lateral XPress Project would create about 183 million standard cubic feet per day of incremental natural gas capacity. According to Columbia Gulf, the purpose of the proposed project is to provide a total of 725 million standard cubic feet per day of firm transportation capacity, through a combination of incremental and existing capacity on Columbia Gulf's interstate natural gas pipeline system, to supply feed gas for Venture Global LNG's Plaquemines LNG facility in Plaquemines Parish.

The East Lateral XPress Project would consist of the following facilities:

- 8.1 miles of 30-inch-diameter pipeline lateral within Barataria Bay in Jefferson and Plaquemines Parish, Louisiana;
- a new 23,470-horsepower (hp) compressor station at an existing Columbia Gulf abandoned compressor station site in St. Mary Parish, Louisiana (Centerville Compressor Station);
- a new 23,470-hp compressor station adjacent to an existing tie-in facility in Lafourche Parish, Louisiana (Golden Meadow Compressor Station);
- one new delivery meter station;
- one new tie-in facility in Barataria Bay; and
- two new mainline valves.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 744 acres of land for the aboveground facilities and the pipeline. Construction of the compressor stations would require a total of 29.3 acres of land, and construction of the pipeline facilities in Barataria Bay would require a total of 714.6 acres of open water/seafloor. Following construction, Columbia Gulf would maintain about 500 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- air quality and noise; and
- reliability and safety.

Commission staff have already identified issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia Gulf. This preliminary list of issues may change based on your comments and our analysis:

- Water resources; and
- essential fish habitat.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an EA* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency

Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

responsibilities are at Title 40, Code of Federal Regulations, Section 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: October 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23726 Filed 10–26–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–507–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Schedule for Environmental Review of the VR–22 to Shore Abandonment Project

On August 6, 2020, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP20–507–000 requesting authorization pursuant to Section 7(b) of the Natural Gas Act to abandon certain natural gas pipeline facilities. The proposed project is known as the VR–22 to Shore Abandonment Project (Project) and consists of abandoning approximately 12.6 miles of 24-inch-diameter pipeline in Vermilion Parish, Louisiana, and in offshore waters of Louisiana State and Federal offshore waters.

On August 17, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA February 18, 2021
90-day Federal Authorization Decision Deadline May 19, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Transco proposes to abandon approximately 12.6 miles of 24-inch-diameter natural gas transmission pipeline in Vermilion Parish, Louisiana, and in offshore waters of Louisiana State and Federal offshore waters. Of the 12.6 miles, Transco proposes to abandon approximately 9.9 miles in place, and abandon about 2.7 miles of pipeline by removal. Additionally, Transco would remove equipment associated with meter station 2278 and meter station 4640, located on the Vermilion Block 39 Platform and the VR–22 B Platform offshore, respectively. According to Transco, the facilities proposed for abandonment have not been utilized since 2019 and it does not anticipate that any additional gas flow through these facilities will occur in the future.

Background

On August 26, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed VR–22 to Shore Abandonment Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We received no comments on the NOI.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs

at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the *eLibrary* link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP20–507), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.*

The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23731 Filed 10–26–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–11–000]

Southern Illinois Power Cooperative; Notice of Petition for Limited Waiver

Take notice that on October 20, 2020, pursuant to section 292.402(a) of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations,[1] Southern Illinois Power Cooperative on its own behalf and on behalf of its members Clay Electric Co-operative, Clinton County Electric Cooperative, Monroe County Electric Cooperative and Tri-County Electric Cooperative (Petitioners) filed a petition for limited waiver of certain obligations imposed by 18 CFR Sections 292.303(a) and 292.303(b) that implement section 210 of the Public Utility Regulatory Policies Act of 1978, as amended (PURPA),[2] all as more fully explained in the petition.

Any person desiring to intervene or to protest in the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioners. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Petitioners.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852. 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 should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426.

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.

Comment Date: 5:00 p.m. Eastern Time on November 9, 2020.

Dated: October 21, 2020

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23727 Filed 10–26–20; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 292.402.

[2] 16 U.S.C. 824a–3.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–10–000.
Applicants: NextEra Energy Transmission, LLC, GridLiance West LLC, GridLiance High Plains LLC, GridLiance HeartLand LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of NextEra Energy Transmission, LLC, et al.
Filed Date: 10/20/20.
Accession Number: 20201020–5121.
Comments Due: 5 p.m. ET 11/10/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2757–001.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2020–10–21 Compliance Filing FERC Order No. 831 to be effective 3/21/2021.
Filed Date: 10/21/20.
Accession Number: 20201021–5078.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER20–2360–001.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2020–10–21 Compliance Filing—CCDEBE to be effective 12/31/9998.
Filed Date: 10/21/20.
Accession Number: 20201021–5081.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–160–000.
Applicants: Duke Energy Florida, LLC.
Description: Tariff Cancellation: DEF—Cancellations of Rate Schedule Nos. 220, 219, 126 and 194 to be effective 1/1/2021.
Filed Date: 10/20/20.
Accession Number: 20201020–5084.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: ER21–161–000.
Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.
Description: § 205(d) Rate Filing: 2020–10–20_MidAmerican ADIT Proration Filing to be effective 1/1/2021.
Filed Date: 10/20/20.
Accession Number: 20201020–5091.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: ER21–162–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PJM submits Revisions to OATT and OA re:

Economic Planning Process to be effective 12/21/2020.

Filed Date: 10/20/20.

Accession Number: 20201020–5100.

Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: ER21–163–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5830; Queue No. AF2–268 to be effective 9/21/2020.

Filed Date: 10/21/20.

Accession Number: 20201021–5027.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–164–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5826; Queue No. AF2–215 to be effective 9/21/2020.

Filed Date: 10/21/20.

Accession Number: 20201021–5035.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–165–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3127R2 Montana-Dakota Utilities Co. NITSA and NOA to be effective 10/1/2020.

Filed Date: 10/21/20.

Accession Number: 20201021–5037.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–166–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Oncor Electric Delivery Company 4th A&R Interconnection Agreement to be effective 10/10/2020.

Filed Date: 10/21/20.

Accession Number: 20201021–5053.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–167–000.

Applicants: Montour, LLC.

Description: Tariff Cancellation: Notice of Cancellation of Superseded Certificates of Concurrence to be effective 9/30/2020.

Filed Date: 10/21/20.

Accession Number: 20201021–5060.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–168–000.

Applicants: Montour, LLC.

Description: Tariff Cancellation: Notice of Cancellation of Superseded Certificates of Concurrence to be effective 9/30/2020.

Filed Date: 10/21/20.

Accession Number: 20201021–5061.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–169–000.

Applicants: Montana-Dakota Utilities Co., Basin Electric Power Cooperative, Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc.

Description: Compliance filing: Amendment No. 1 to Partial Settlement in ER14–2850–006 and ER14–2851–006 to be effective N/A.

Filed Date: 10/21/20.

Accession Number: 20201021–5075.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–170–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: RS 319 Suppl 5 PSCo-TriState PTSA to be effective 1/1/2021.

Filed Date: 10/21/20.

Accession Number: 20201021–5083.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–171–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: Service Agreement for Firm Long Term Transmission Service to be effective 9/21/2020.

Filed Date: 10/21/20.

Accession Number: 20201021–5091.

Comments Due: 5 p.m. ET 11/12/20.

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: October 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23729 Filed 10–26–20; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 20–158; DA 20–1138; FRS 17176]

Termination of Dormant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau announces the availability of the FCC order terminating, as dormant, certain docketed Commission proceedings.

DATES: The dockets are terminated as of October 27, 2020.

FOR FURTHER INFORMATION CONTACT: Zac Champ of the Consumer and Governmental Affairs Bureau, at (202) 418–1495 or at *zac.champ@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission's Order, *Eighth Dormant Proceedings Termination Order,* DA 20–1138, adopted on September 28, 2020 and released on September 28, 2020, is available in CG Docket No. 20–158. The full text of document DA 20–1138 and the spreadsheet associated with document DA 20–158 listing the proceedings terminated as dormant are available for public inspection on the Commission's website at *https://www.fcc.gov/document/eighth-dormant-proceedings-termination-order.* The full text of these documents and any documents filed in this matter may also be found by searching ECFS at: *https://www.fcc.gov/ecfs.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Federal Communications Commission.

Suzanne Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2020–23680 Filed 10–26–20; 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 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 November 27, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Oklahoma State Bancshares, Inc., Vinita, Oklahoma;* to acquire Lakeside Holding Company, and thereby indirectly acquire Lakeside State Bank, both in Oologah, Oklahoma.

Board of Governors of the Federal Reserve System, October 21, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–23689 Filed 10–26–20; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearance for information collection requirements in Trade Regulation Rule entitled Labeling and Advertising of Home Insulation (R-value Rule or Rule). That clearance expires on January 31, 2021.

DATES: Comments must be received on or before December 28, 2020.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''R-value Rule; PRA Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Room CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Title: R-value Rule, 16 CFR part 460.

OMB Control Number: 3084–0109.

Type of Review: Extension of a currently approved collection.

Likely Respondents: Insulation manufacturers, installers, home builders, home sellers, insulation sellers.

Estimated Annual Hours Burden: 132,707 hours.

Estimated Annual Cost Burden: $2,732,510 (solely related to labor costs).

Abstract: The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Commission's R-value Rule.

R-value Rule Burden Statement

Estimated annual hours burden: 132,707 hours.

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotional materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 Insulation manufacturers and their testing laboratories; (2) 1,615 installers who sell home insulation; (3) 125,000 new home builders/sellers of site-built homes and approximately 5,500 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

(1) Manufacturers

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. Based on past industry input, staff estimates that the test takes approximately two hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. Their total annual testing burden is therefore approximately 30 hours.

Staff further estimates that most manufacturers require an average of approximately 20 hours per year regarding third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours [(144 manufacturers × 20 hours) + (6 manufacturers × 80 hours)].

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related records in the ordinary course of business. Staff estimates that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

(2) Installers

Installers are required to show the manufacturers' insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. Staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 2,000,000 retrofit insulations (an industry source's estimate) are installed by approximately 1,615 installers per year, and, thus, the related annual burden total is approximately 66,667 hours (2,000,000 sales transactions × 2 minutes). Staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,615 hours per year. In addition, installers must keep records that

indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal—approximately 5 minutes per year per installer—for a total of approximately 135 hours.

(3) New Home Sellers

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. Staff estimates that no more than 30 seconds per sales transaction is required to comply with this requirement, for a total annual burden of approximately 10,750 hours (an estimated 1,290,000 new home sales per year [1] × 30 seconds). New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Staff believes that the 30 seconds covering disclosures would also encompass this recordkeeping element.

(4) Retail Sellers

The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 25,000 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is de minimis. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule imposes a total of 132,707 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 135 recordkeeping and 68,282 disclosure hours for installers; 10,750 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. The estimated total burden is approximately 132,707 burden hours.

Estimated annual cost burden: $2,732,510 (solely related to labor costs).

The total annual labor cost for the Rule's information collection requirements is approximately $2,732,510, derived as follows: approximately $896 for testing, based on 30 hours for manufacturers (30 hours × $29.87 per hour for skilled technical personnel); $4,742 for manufacturers' and installers' compliance with the Rule's recordkeeping requirements, based on 285 hours (285 hours × $16.64 per hour for clerical personnel); $55,910 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $16.64 per hour for clerical personnel); and $2,670,962 for disclosure compliance by installers, new home sellers, and retailers (129,032 hours × $20.70 per hour for sales persons).[2]

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before December 28, 2020.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before December 28, 2020. Write ''R-value Rule; PRA Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''R-value Rule; PRA Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information

[1] See Table 3b on housing starts for privately owned units for 2019 at *https://www.census.gov/construction/nrc/pdf/newresconst_202006.pdf.*

[2] The wage rates for engineering technologists and technicians, except drafters (skilled technical personnel), file clerks (clerical personnel), and sales and related occupations (sales persons) are based on recent data from the Bureau of Labor Statistics Occupational Employment Statistics Survey.

which . . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 28, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2020–23764 Filed 10–26–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0089]

Privacy Act of 1974; System of Records

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying a system of records maintained by the Centers for Disease Control and Prevention (CDC), 09–20–0170, National Select Agent Registry (NSAR)/Select Agent Transfer and Entity Registration Information System (SATERIS), HHS/CDC/COTPER. SATERIS is a national database registry containing the name of and location information about individuals possessing, using, or transferring select agents and toxins and characterization information about the agents and toxins, as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. HHS/CDC is changing the name of the system of records to ''Electronic Federal Select Agent Program Portal (eFSAP Portal)'' and making other updates, some of which result from an information technology (IT) system upgrade.

DATES: The modified system of records is applicable October 27, 2020, subject to a 30-day period in which to comment on the routine uses. Written comments must be received on or before November 27, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0089 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Beverly Walker, Chief Privacy Officer, CDC Privacy Unit, CyberSecurity Program Office (CSPO), Centers for Disease Control and Prevention, 4770 Buford Hwy, Mailstop S101, Atlanta, GA 30341.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *https://regulations.gov,* including any personal information provided. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: General questions about the modified system of records may be submitted to Beverly Walker, Chief Privacy Officer, CDC Privacy Unit, CyberSecurity Program Office (CSPO), Centers for Disease Control and Prevention, 4770 Buford Hwy, Mailstop S101, Atlanta, GA 30341, (770) 488–8524.

SUPPLEMENTARY INFORMATION:

I. Background on the Federal Select Agent Program and eFSAP Portal IT System

HHS/CDC and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) jointly manage the Federal Select Agent Program (FSAP). FSAP oversees the possession, use, and transfer of biological select agents and toxins (BSAT), as outlined in the select agent regulations (42 CFR part 73, 9 CFR part 121, and 7 CFR part 331). BSAT have the potential to pose a severe threat to public, animal or plant health or to animal or plant products.

BSAT are divided into four categories based on whether an agent causes disease in humans, animals, plants, or a combination of humans and animals. HHS/CDC regulates the possession, use, and transfer of BSAT that have the potential to pose a severe threat to public health and safety. USDA/APHIS regulates the possession, use, and transfer of BSAT that pose a severe threat to animal or plant health or products. HHS/CDC and USDA/APHIS regulate overlapping BSAT that have the potential to pose a severe threat to both public health and safety and to animal health or products.

The information that FSAP collects in order to track possession, use, and transfer of BSAT includes: Registration records about a registered entity or individual, identifying BSAT at each of the registrant's locations or facilities and the individuals approved for access to BSAT at each location or facility; laboratory biosafety and security information for BSAT; information about transfers of BSAT; identification and final disposition of any BSAT contained in a specimen presented for diagnosis, verification, or proficiency testing; observations from the inspections of each registered individual or entity; and reports of any theft, loss, or release of BSAT.

The IT system used by FSAP to track possession, use, and transfer of BSAT has been upgraded to allow the regulated community to report required information or make requests to FSAP electronically, via a single web portal known as the eFSAP portal. The eFSAP portal is a single web-based information management system shared by HHS/CDC and USDA/APHIS.

As upgraded, the IT system will continue to utilize a secure database environment and to contain the same information that was included in SATERIS. Allowing electronic submissions from the regulated community will enable the regulated community to interact with FSAP more

efficiently, allow for better and faster reporting of potential losses, reduce program burdens and reliance on labor-intensive and paper-based processes, and enable HHS/CDC and USDA/APHIS to more rapidly provide regulatory responses and guidance and respond to emergency events involving BSAT that may impact public health and safety.

II. Modifications Made to System of Records 09–20–0170

HHS/CDC has made the following modifications to the system of records:

- Changed the name of the system of records to Electronic Federal Select Agent Program Portal (eFSAP Portal).
- Updated the System Location and System Manager information.
- Updated the Authority section to add ''Subtitle A, Title II'' and ''42 U.S.C. 262a'' before and after ''Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188),'' and to remove ''The Agricultural Bioterrorism Protection Act of 2002'' which authorizes maintenance of related USDA/APHIS records but not the HHS/CDC records covered in this system of records.
- Shortened and simplified the Purpose description.
- Revised the Categories of Individuals section by adding individual or sole proprietor applicants/registrants.
- Reorganized and expanded the Categories of Records section to list each category of record with a description or list of data elements specific to that category.
- Expanded the Record Source Categories section to include all applicable sources.
- Added five new routine uses.
  - New routine use 1 authorizes disclosures to USDA to provide comprehensive and effective oversight of BSAT, compliance with select agent regulations, and administration of FSAP.
  - New routine use 4 authorizes disclosures to agricultural authorities for the purpose of dealing more effectively with outbreaks of animal and plant diseases or other conditions of agricultural significance.
  - New routine use 8 authorizes disclosures of records that indicate a violation, or possible violation, of law to relevant law enforcement authorities. This routine use is necessary to cover instances in which the law enforcement agency is unaware of the violation or potential violation, so is unable to initiate a request for the records under subsection (b)(7) of the Privacy Act (5 U.S.C. 552a(b)(7)).
  - New routine use 9 authorizes disclosures to relevant government agencies and jurisdictions for the purpose of investigating potential fraud, waste, and abuse.
  - New routine use 10 authorizes disclosures to the National Archives and Records Administration (NARA) for records management inspections.
- Revised four routine uses.
  - Routine use 2, which authorizes disclosures to FSAP contractors, no longer mentions certain duties a contractor would perform but describes them as ''the functions listed in the Purpose section.''
  - Routine use 3 now authorizes disclosures to ''federal law enforcement authorities'' (in addition to public health and cooperating medical authorities, previously the only authorities identified) for the purpose of dealing more effectively with ''emergency events involving BSAT that may impact public health and safety'' (rather than ''outbreaks and conditions of public health significance'').
  - Routine use 5, which authorizes disclosures to assist federal agencies in determining an individual's trustworthiness to access biological select agents and toxins (BSAT), now uses the broader term ''BSAT'' instead of ''select agents'' and omits, as unnecessary, the word ''recipient'' before ''federal agencies.''
  - Routine use 6 now permits disclosures not only to the Department of Justice but also to ''a court or other adjudicative body,'' for use not only in litigation but also in ''other proceedings,'' when relevant and necessary to the proceedings.
- Changed the description in the Storage section to state that the oldest inactive records are in paper form and that all other records are stored electronically, instead of describing particular storage media (''file folders, computer tapes and disks, CD–ROMs'').
- Updated the Retention section to identify the current disposition schedule, DAA–0442–2019–001, instead of the previous schedule cited, N1–442–06–01; and to move descriptions of secure destruction methods to the Safeguards section.
- Updated the Safeguards section to refer to current governing statutes, policies and guidelines, including the description of secure destruction methods, and to include additional safeguards (*e.g.,* encryption, firewalls, and intrusion detection systems, and reviewing security controls on an ongoing basis).
- Updated the Access, Amendment, and Notification Procedures sections to allow a requester to provide a written certification to verify the requester's identity, and to state that an accounting of disclosures may also be requested.

Because some of these changes are significant, HHS provided advance notice of the modified system of records to the Office of Management and Budget and Congress as required by 5 U.S.C. 552a(r) and OMB Circular A–108.

Dated: October 22, 2020.

Suzi Connor,

Chief Information Officer, Centers for Disease Control and Prevention.

SYSTEM NAME AND NUMBER:

Electronic Federal Select Agent Program Portal (eFSAP Portal), 09–20–0170.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the HHS component responsible for this system of records is: Division of Select Agents and Toxins (DSAT), Center for Preparedness and Response, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE, Atlanta, GA 30329.

SYSTEM MANAGER(S):

The System Manager is: Director, Division of Select Agents and Toxins (DSAT), Center for Preparedness and Response, CDC, 1600 Clifton Rd. NE, Atlanta, GA 30329, (404) 718–2000, *lrsat@cdc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subtitle A, Title II, Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188 (42 U.S.C. 262a).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to cover records about individuals, retrieved by personal identifier, that HHS/CDC uses in managing the Federal Select Agent Program (FSAP) to track the possession, use, and transfer of biological select agents and toxins (BSAT), in order to ensure that BSAT are managed appropriately to prevent potential threats to public health.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about these categories of individuals:

- Individuals who in an individual (*i.e.,* sole proprietorship) capacity have applied for or received a certificate of registration from FSAP.
- Individuals designated as an entity applicant's Responsible Official and Alternate Responsible Official.
- Other individuals identified in an application as requesting or needing

access to BSAT under 42 CFR part 73, otherwise known as the HHS select agent regulations. The FSAP approves, or disapproves, these individuals to possess, use, and transfer BSAT based on the security risk assessments performed by the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), Bioterrorism Risk Assessment Group (BRAG).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes these categories of records, some of which are forms approved by the Office of Management and Budget (OMB):

• *Request for Exclusion:* This type of request is submitted to the FSAP by an individual or entity applicant or registrant to seek a determination by the HHS Secretary that an attenuated strain or modified toxin does not pose a severe threat to public health and safety (see 42 CFR 73.3(e) and 73.4(e)).

• *Report of Identification of Select Agent or Toxin (APHIS/CDC Form 4).* This form is used by a clinical or diagnostic laboratory to notify the FSAP that BSAT has been identified as the result of diagnosis, verification, or proficiency testing or has been disposed of or transferred in accordance with regulatory requirements (see 42 CFR 5(a)–(b) and 6(a)–(b)).

• *Request for Exemption (APHIS/CDC Form 5).* This form is used by an individual or entity registrant or applicant seeking an exemption on the basis that it is using an investigational product that is, bears, or contains BSAT (see 42 CFR 5(d) and 6(d)).

• *Application for Registration (APHIS/CDC Form 1).* This form is used by an individual or entity to apply for a certificate of registration from the FSAP. The applicant completes the form by providing location or facility information; a list of BSAT in use, possession, or for transfer by the applicant; characterization of each BSAT the applicant will possess; the name, date of birth, and job title of each individual who needs access to BSAT; and laboratory information such as biosafety level, building and room location (see 42 CFR 7(d)). FSAP assigns a DOJ identification number for each individual associated with application so that individuals can submit information to BRAG for security risk assessment. This form is also used by an applicant or registrant to amend the registration if any changes occur in the information submitted (see 42 CFR 7(h)(1)).

• *Security Risk Assessment.* BRAG uses the information the applicant provides in the Application for Registration about each individual needing access to BSAT to perform a security risk assessment of each individual and provides the assessments to the FSAP. FSAP uses the information to approve individuals to access BSAT following a security risk assessment (see 42 CFR 10(a)).

• *Documentation of Inspection:* Prior to issuance of a certificate of registration, the FSAP will inspect the applicant's locations or facilities to ensure compliance with the select agent regulations and will document the inspection, including the applicant's responses to any written requests from the FSAP (see 42 CFR 18).

• *Request for Expedited Review:* An individual or entity applicant or registrant may apply to the HHS Secretary or APHIS Administrator for an expedited review (*i.e.,* an expedited security risk assessment) by the Attorney General of an individual identified as needing access to BSAT. The request is made by submitting a request in writing to the HHS Secretary establishing the need for such action (see 42 CFR 10(e)).

• *Security Plan:* An individual or entity required to register with the FSAP must develop and implement a written security plan, which must be sufficient to safeguard BSAT against unauthorized access, theft, loss, or release (see 42 CFR 11(a)). As a condition of registration, an individual or entity is required to provide a copy of the plan to the FSAP.

• *Biosafety Plan:* An individual or entity required to register with the FSAP must develop and implement a written biosafety plan that is commensurate with the risk of BSAT, given its intended use. The biosafety plan must contain sufficient information and documentation to describe the biosafety and containment procedures for each BSAT the individual or entity will possess, including any animals (including arthropods) or plants intentionally or accidentally exposed to or infected with a select agent (see 42 CFR 12(a)). As a condition of registration, an individual or entity is required to provide a copy of the plan to the FSAP.

• *Request Regarding a Restricted Experiment:* An individual or entity may not conduct, or possess products resulting from certain experiments unless approved by and conducted in accordance with the conditions prescribed by the HHS Secretary; these requests to seek such approval to conduct restricted experiments are maintained by FSAP (see 42 CFR 13(a)).

• *Incident Response Plan:* An individual or entity required to register under this part must develop and implement a written incident response plan based upon a site-specific risk assessment. The incident response plan must be coordinated with any entity-wide plans, be kept in the workplace, and be available to employees for review (see 42 CFR 14(a)). As a condition of registration, an individual or entity is required to provide a copy of the plan to the FSAP.

• *Training Record:* A registered individual, or a registered entity's Responsible Official, must ensure training is provided to each individual with access to BSAT and each escorted individual (*e.g.,* laboratory workers, visitors, etc.) and that a record of the training is maintained. The record must include the name of each such individual, the date of the training, a description of the training provided, and the means used to verify that the individual understood the training (see 42 CFR 15(d)), and a copy of the training record may be requested by FSAP.

• *Request to Transfer Select Agent or Toxin (APHIS/CDC Form 2).* This form is used by a registered individual or entity to request pre-authorization from FSAP to receive or send a specific BSAT (see 42 CFR 16).

• *Other Records:* An individual or entity required to register with the FSAP must maintain complete records relating to the activities covered by the select agent regulations, any of which may be requested by FSAP (see 42 CFR 17(a)).

• *Report of Potential Theft, Loss, or Release of Select Agent or Toxin form (APHIS/CDC Form 3).* This form is completed by a registered individual or entity to report any theft, loss, or release of BSAT to FSAP (see 42 CFR 19(a)–(b)).

RECORD SOURCE CATEGORIES:

The records in the system of records are obtained from the individuals and entities applying for or receiving a certificate of registration from FSAP to possess, use, and transfer BSAT or permit individuals to access BSAT; or from FSAP, or from BRAG.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(1) and (2) and (b)(4) through (11), HHS may disclose records about a subject individual from this system of records to parties outside HHS as described in these routine uses, without the individual's prior written consent.

1. Records may be disclosed to USDA to provide comprehensive and effective oversight of BSAT, compliance with select agent regulations, and administration of FSAP.

2. Records may be disclosed to contractors engaged to assist FSAP with performing the functions listed in the Purpose section above. Contractors are required to maintain Privacy Act safeguards with respect to such records.

3. Records may be disclosed to state health departments and other public health, cooperating medical or federal law enforcement authorities to deal more effectively with emergency events involving BSAT that may impact public health and safety.

4. Records may be disclosed to state agriculture departments and other agriculture cooperating authorities to deal more effectively with outbreaks of animal and plant diseases or other conditions of agriculture significance.

5. Personal information from this system of records may be disclosed as a routine use, to assist in making a determination concerning an individual's trustworthiness to access BSAT, to any federal or state agency where the purpose in making the disclosure is to prevent access to BSAT for use in domestic or international terrorism or for any criminal purpose; or to any federal or state agency to protect the public, animal, and plant health and public safety with regard to the possession, use, or transfer of BSAT.

6. Information may be disclosed to the Department of Justice (DOJ) or to a court or other adjudicative body in litigation or other proceedings when:

a. HHS or any of its components thereof, or

b. any employee of HHS acting in the employee's official capacity, or

c. any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee, or

d. the United States Government, is a party to the proceeding or has an interest in such proceeding and, by careful review, HHS determines that the records are both relevant and necessary to the proceeding.

7. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

8. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, Tribal, local, territorial, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

9. For the purpose of combatting fraud, waste, and abuse, records may be disclosed to a relevant federal agency or instrumentality of any governmental jurisdiction within or under the control of the United States for the purpose of investigating potential fraud, waste, or abuse.

10. Records may be disclosed to representatives of the National Archives and Records Administration (NARA) in records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

11. Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12. Records may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The oldest inactive records are in paper form; all other records are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by the subject individual's name or DOJ identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained for 10 years, or until such time as the records are no longer needed for litigation or other records purposes and are then disposed of in accordance with FSAP disposition schedule DAA–0442–2019–0001. Records are transferred to a federal records center for storage when no longer in active use. Final disposition of records stored offsite at the federal records center is accomplished by a controlled process requesting final disposition approval from the HHS record owner prior to any destruction to ensure the records are not needed for litigation or other records purposes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards conform to the HHS Information Security and Privacy Program, *http://www.hhs.gov/ocio/securityprivacy/index.html,* the HHS Information Security and Privacy Policy (IS2P), and applicable federal laws, rules and policies, including: The E-Government Act of 2002, which includes the Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. 3541–3549, as amended by the Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551–3558; all pertinent National Institutes of Standards and Technology (NIST) publications; and OMB Circular A–130, Managing Information as a Strategic Resource.

ADMINISTRATIVE AND TECHNICAL SAFEGUARDS:

- Security measures are implemented on government computers to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed by FSAP on a regular basis. Individuals who have routine access to these records are limited to staff (FTEs and contractors having security clearances at T3 (Non-Critical Sensitive positions requiring Secret clearance) or T4 (Non-Sensitive High Risk (Public Trust)) levels) who have responsibility for conducting regulatory oversight.
- Protection for computerized records includes programmed verification of valid user identification code and password prior to logging on to the system; mandatory password changes, limited number of log-in attempts, virus protection, encryption, firewalls, and intrusion detection systems, and user rights/file attribute restrictions. Password protection imposes username and password log-in requirements to prevent unauthorized access. Each username is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures, and backup files are securely stored off-site.

Security controls are reviewed on an ongoing basis.

• Knowledge of individual tape passwords is required to access backups, and access to the system is limited to users obtaining prior supervisory approval. To avoid inadvertent data disclosure, a special additional procedure is performed to ensure that all Privacy Act data are removed from computer hard drives. Additional safeguards may also be built into the program by the system analyst as warranted by the sensitivity of the data set.

• FTEs and contractor employees who maintain records are instructed in specific procedures to protect the security of records and are to check with the system manager prior to making disclosure of data. When individually identifiable data are used in a room, admittance at either federal or contractor sites is restricted to specifically authorized personnel.

• Appropriate Privacy Act provisions and breach notification provisions are included in applicable contracts, and the CDC Project Director, contract officers, and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to federal government or destroyed, as specified by the contract that includes breach notifications.

• Records that are eligible for destruction are disposed of using destruction methods prescribed by NIST SP 800–88. Hard copy records are placed in a locked container or designated secure storage area while awaiting destruction. Records are destroyed in a manner that precludes its reconstruction, such as secured cross shredding. Utilizing the HHS Security Rule Guidance Material found at *https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html,* electronic information will be deleted or overwritten using Department of Defense National Institute of Standards and Technology/General Services Administration (NIST/GSA) approved overwriting software that wipes the entire physical disk and not just the virtual disk. In addition, the physical destruction is obtained by using a National Security Agency/Central Security Service (NSA/CSS) approved degaussing device.

PHYSICAL SAFEGUARDS:

• Paper records are maintained in locked cabinets in restricted areas to which access is controlled by an electronic cardkey system and is limited to staff who have responsibility for conducting regulatory oversight.

• Electronic data files are stored in a restricted access location. The computer room is protected by an automatic sprinkler system and numerous automatic sensors (*e.g.,* water, heat, smoke, etc.) which are monitored, and a proper mix of portable fire extinguishers is located throughout the computer room. Computer workstations, lockable personal computers, and automated records are located in secured areas.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about that individual in this system of records must submit a written access request to the System Manager, identified in the ''System Manager'' section of this SORN. The request must contain the requester's full name, address, and signature, and DOJ identification number if known. To verify the requester's identity, the signature must be notarized or the request must include the requester's written certification that the requester is the individual who the requester claims to be and that the requester understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000. An accounting of disclosures that have been made of the records, if any, may also be requested.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about that individual in this system of records must submit an amendment request to the System Manager identified in the ''System Manager'' section of this SORN, containing the same information required for an access request. The request must include verification of the requester's identity in the same manner required for an access request; must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about that individual should submit a notification request to the System Manager identified in the ''System Manager'' section of this SORN. The request must contain the same information required for an access request and must include verification of the requester's identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

72 FR 35993 (July 2, 2007); 76 FR 4483 (Jan. 25, 2011), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2020–23770 Filed 10–26–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0030]

Memorandum of Understanding Addressing Certain Distributions of Compounded Human Drug Products Between the State Board of Pharmacy or Other Appropriate State Agency and the Food and Drug Administration; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; withdrawal.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a final standard memorandum of understanding (MOU) entitled ''Memorandum of Understanding Addressing Certain Distributions of Compounded Human Drug Products Between the [insert State Board of Pharmacy or Other Appropriate State Agency] and the U.S. Food and Drug Administration'' (final standard MOU). The final standard MOU describes the responsibilities of a State Board of Pharmacy or other appropriate State agency that chooses to sign the MOU in investigating and responding to complaints related to drug products compounded in such State and distributed outside such State and in addressing the interstate distribution of inordinate amounts of compounded human drug products.

DATES: The announcement of the MOU is published in the **Federal Register** on October 27, 2020. FDA is withdrawing its revised draft standard MOU that published on September 10, 2018 (83 FR 45631), as of October 27, 2020.

ADDRESSES: Submit electronic comments on the final standard MOU to Docket No. FDA–2015–N–0030. Submit written comments on the final standard MOU to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm.

1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the final standard MOU to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft document.

FOR FURTHER INFORMATION CONTACT: Alexandria Fujisaki, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5169, Silver Spring, MD 20993–0002, 240–402–4078.

SUPPLEMENTARY INFORMATION:

I. Background

Section 503A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353a) describes the conditions that must be satisfied for drug products compounded by a licensed pharmacist or licensed physician to be exempt from the following sections of the FD&C Act: (1) Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice (CGMP) requirements), (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use), and (3) section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications or abbreviated new drug applications).

One of the conditions to qualify for the exemptions listed in section 503A of the FD&C Act is that (1) the drug product is compounded in a State that has entered into an MOU with FDA that addresses the distribution of inordinate amounts of compounded drug products interstate and provides for appropriate investigation by a State agency of complaints relating to drug products distributed outside such State; or (2) if the drug product is compounded in a State that has not entered into such an MOU, the licensed pharmacist, pharmacy, or physician does not distribute, or cause to be distributed, compounded drug products out of the State in which they are compounded in quantities that exceed 5 percent of the total prescription orders dispensed or distributed by such pharmacy or physician (5 percent limit) (see section 503A(b)(3)(B)(i) and (ii) of the FD&C Act). Another condition to qualify for the exemptions listed in section 503A of the FD&C Act is that the drug is compounded for an identified individual patient based on the receipt of a valid prescription order or a notation, approved by the prescribing practitioner, on the prescription order that a compounded product is necessary for the identified patient (section 503A(a) of the FD&C Act). This MOU does not alter this condition.

Section 503A(b)(3)(B) of the FD&C Act directs FDA to develop, in consultation with the National Association of Boards of Pharmacy (NABP), a standard MOU for use by the States in complying with section 503A(b)(3)(B)(i).

FDA is withdrawing the revised draft standard MOU entitled ''Memorandum of Understanding Addressing Certain Distributions of Compounded Drug Products Between the State of [insert State] and the U.S. Food and Drug Administration,'' which was issued in September 2018 (2018 revised draft standard MOU). The 2018 revised draft standard MOU is superseded by the final standard MOU.

II. Previous Efforts To Develop a Standard MOU

In the **Federal Register** of January 21, 1999 (64 FR 3301), FDA announced the availability for public comment of a draft standard MOU, developed in consultation with NABP (1999 draft standard MOU). Over 6,000 commenters submitted comments on the 1999 draft standard MOU. Because of litigation over the constitutionality of the advertising, promotion, and solicitation provision in section 503A of the FD&C Act,[1] the draft standard MOU was not completed. In 2013, section 503A of the FD&C Act was amended by the Drug Quality and Security Act (DQSA) (Pub. L. 113–54) to remove the advertising, promotion, and solicitation provisions that were held unconstitutional, and FDA took steps to implement section 503A, including to continue to develop the standard MOU. In the **Federal Register** of February 19, 2015 (80 FR 8874), FDA withdrew the 1999 draft standard MOU and issued the 2015 draft standard MOU for public comment. FDA received more than 3,000 comments on the 2015 draft standard MOU. In the **Federal Register** of September 10, 2018 (83 FR 45631), FDA withdrew the 2015 draft standard MOU and issued the 2018 revised draft standard MOU for public comment. FDA received 38 comments during the comment period on the 2018 revised draft standard MOU. By this notice, FDA is withdrawing the 2018 revised draft standard MOU and issuing a final standard MOU, which the Agency developed in consultation with NABP for use by the States in complying with section 503A(b)(3)(B).

III. Final Standard MOU

In consultation with NABP, FDA has developed a final standard MOU. FDA considered the comments submitted on the 2015 draft standard MOU and 2018 revised draft standard MOU, as well as comments on the MOU provisions it received in connection with a draft guidance on section 503A of the FD&C Act entitled ''Pharmacy Compounding of Human Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act'' (2013 draft 503A guidance) (see 78 FR 72901, December 4, 2013). Below, FDA has summarized and discussed key provisions of the final standard MOU and, where appropriate, summarized changes that the Agency made in the final standard MOU. Drug products intended for veterinary use, repackaged drug products, biological products subject to licensure through a biologics license application under section 351 of the Public Health Service Act (42 U.S.C. 262), and drug products compounded by outsourcing facilities under section 503B of the FD&C Act are not the subject of the final standard MOU.

A. Investigation of Complaints Relating to Compounded Human Drug Products Distributed Outside the State

The final standard MOU provides that a State Board of Pharmacy or other appropriate State agency that enters into the MOU agrees to:

- Investigate complaints of adverse drug experiences and product quality issues relating to human drug products compounded at a pharmacy in the State and distributed outside the State. Investigations performed by the State Board of Pharmacy or other appropriate State agency under this MOU will include taking steps to assess whether there is a public health risk associated with the compounded drug product and whether such risk is adequately contained. Investigations will be performed pursuant to the State Board of Pharmacy's or other appropriate State agency's established investigatory policies and procedures, including those related to prioritizing complaints, provided they are not in conflict with the terms of the MOU;

[1] The conditions of section 503A of the FD&C Act originally included restrictions on the advertising or promotion of the compounding of any particular drug, class of drug, or type of drug and the solicitation of prescriptions for compounded drugs. These provisions were challenged in court and held unconstitutional by the U.S. Supreme Court in 2002. See *Thompson* v. *Western States Med. Ctr.,* 535 U.S. 357 (2002).

• If the complaint is substantiated, take action that the State Board of Pharmacy or other appropriate State agency considers to be appropriate and warranted, in accordance with and as permitted by State law, to ensure that the relevant pharmacy investigates the root cause of the problem that is the subject of the complaint and undertakes sufficient corrective action to address any identified public health risk relating to the problem, including the risk that future similar problems may occur;

• Maintain records of the complaints it receives regarding adverse drug experiences or product quality issues relating to human drug products compounded at a pharmacy, the investigation of each complaint, and any response to or action taken as a result of a complaint, beginning when the State Board of Pharmacy or other appropriate State agency receives notice of the complaint. The State Board of Pharmacy or other appropriate State agency will maintain these records for at least 3 years. The 3-year period begins on the date of final action on a complaint, or the date of a decision that the complaint requires no action.

• Notify FDA by submission to an Information Sharing Network or by email to *StateMOU@fda.hhs.gov* as soon as possible, but no later than 5 business days, after receiving a complaint involving a serious adverse drug experience or serious product quality issue relating to a human drug product compounded at a pharmacy and distributed outside the State, and provide FDA with certain information about the complaint, including the following: name and contact information of the complainant, if available; name and address of the pharmacy that is the subject of the complaint; and a description of the complaint, including a description of any compounded human drug product that is the subject of the complaint;

• Share with FDA, as permitted by State law, the results of the investigation of a complaint after the State Board of Pharmacy or other appropriate State agency concludes its investigation of a complaint assessed to involve a serious adverse drug experience or serious product quality issue. This information includes the following: The State Board of Pharmacy's or other appropriate State agency's assessment of whether the complaint was substantiated, if available; and a description and the date of any actions the State Board of Pharmacy or other appropriate State agency has taken to address the complaint;

• Notify the appropriate regulator of physicians within the State of complaints of which the State Board of Pharmacy or other appropriate State agency receives that involve an adverse drug experience or product quality issue relating to human drug products compounded by a physician and distributed outside the State. The State Board of Pharmacy or other appropriate State agency will also notify FDA by submission to an Information Sharing Network or by email to *StateMOU@fda.hhs.gov* as soon as possible, but no later than 5 business days, after receiving the complaint of the following information, if available: Name and contact information of the complainant; name and address of the physician that is the subject of the complaint; and description of the complaint, including a description of any compounded human drug product that is the subject of the complaint.

The types of complaints of compounded drug products that should be investigated include any adverse drug experience and product quality issues. Even non-serious adverse drug experiences and product quality issues can be indicative of problems at a compounding facility that could result in product quality defects leading to serious adverse drug experiences if not corrected. For example, inflammation around the site of an injection can indicate drug product contamination from inadequate sterile practices at the compounding pharmacy. If the pharmacy or physician has inadequate sterile practices, other more serious contamination could result in serious adverse drug experiences.

The final standard MOU does not include specific directions to the State Boards of Pharmacy or other appropriate State agencies relating to how to conduct their investigation of complaints. Rather, as recommended by comments submitted to FDA previously, the details of such investigations are left to the State Board of Pharmacy's or other appropriate State agency's discretion. For example, a State Board of Pharmacy or other appropriate State agency may review an incoming complaint describing an adverse drug experience and determine that such a complaint does not warrant further investigation. In other cases, a State Board of Pharmacy or other appropriate State agency may determine that an incoming complaint contains insufficient information and investigate further to determine appropriate action.

The State Board of Pharmacy or other appropriate State agency signing the final standard MOU would agree to notify FDA about certain complaints and provide FDA with certain information about the complaints so FDA could investigate the complaints itself, or take other appropriate action. The 2018 revised draft standard MOU provided that notification would occur as soon as possible, but no later than 3 business days of receipt of the complaint. The final standard MOU provides that notification will occur as soon as possible, but no later than 5 business days after the State Board of Pharmacy or other appropriate State agency receives the complaint. This period will continue to facilitate early Federal/State collaboration on serious adverse drug experiences and serious product quality issues that have the potential to affect patients in multiple States, while providing for notification in a timeframe that is more feasible for the State Boards of Pharmacy or other appropriate State agencies. FDA increased the time for notifying FDA in the final standard MOU in response to comments expressing concern about having sufficient time to process complaints and notify FDA. We note that FDA has staff on call 24 hours a day to receive information in emergency situations.

Comments on the 2015 draft MOU expressed concern with certain provisions regarding States entering into the MOU and agreeing to take action not permitted by State law or implying that, after taking action, the State made a legal determination that a complaint had been resolved. The revised draft standard MOU clarified that the State should investigate and take action that the State considers to be appropriate with respect to the complaint in accordance with and as permitted by State law. FDA also clarified that, by signing the MOU, the State agrees to take steps to assess whether there is a public health risk associated with the compounded drug product and whether such risk is adequately contained rather than make definitive determinations of risk or confirm containment. The final standard MOU retains these revisions that addressed the concerns from comments on the 2015 draft.

B. Distribution of Inordinate Amounts of Compounded Human Drug Products Interstate

For purposes of the final standard MOU, a pharmacy has distributed an inordinate amount of compounded human drug products interstate if the number of prescription orders for compounded human drug products that the pharmacy distributed interstate during any calendar year is greater than 50 percent of the sum of the number of prescription orders for compounded human drug products that the pharmacy sent out of (or caused to be sent out of)

the facility in which the drug products were compounded during that same calendar year and the number of prescription orders for compounded human drug products that were dispensed (*e.g.,* picked up by a patient) at the facility in which they are compounded during that same calendar year (Fig. 1). This concept is called the 50 percent threshold.

Figure 1. Calculating an Inordinate Amount

$$\frac{A}{B} = X, \text{ where:}$$

A = Number of prescription orders for compounded human drug products that the pharmacy distributed interstate during any calendar year

B = The sum of the number of prescription orders for compounded human drug products (i) that the pharmacy sent out of (or caused to be sent out of) the facility in which the drug products were compounded during that same calendar year; plus (ii) the number of prescription orders for compounded human drug products that were dispensed (e.g., picked up by a patient) at the facility in which they were compounded during that same calendar year

If *X* is greater than 0.5, it is an inordinate amount and is a threshold for certain information identification and reporting under the MOU.

The final standard MOU provides that State Boards of Pharmacy or other appropriate State agencies that enter into the MOU will agree to:

- On an annual basis, identify, using surveys, reviews of records during inspections, data submitted to an Information Sharing Network, or other mechanisms available to the State Board of Pharmacy or other appropriate State agency, pharmacies that distribute inordinate amounts of compounded human drug products interstate.
- For pharmacies that have been identified as distributing inordinate amounts of compounded human drug products interstate during any calendar year, the State Board of Pharmacy or other appropriate State agency will identify, using data submitted to the Information Sharing Network or other available mechanisms, during that same calendar year:
  - The total number of prescription orders for sterile compounded human drug products distributed interstate;
  - The names of States in which the pharmacy is licensed;
  - The names of States into which the pharmacy distributed compounded human drug products; and,
  - Whether the State inspected for and found during its most recent inspection that the pharmacy distributed compounded human drug products without valid prescription orders for individually identified patients.
- Within 30 business days of identifying a pharmacy that has distributed inordinate amounts of compounded human drug products interstate, the State Board of Pharmacy or other appropriate State agency will notify FDA, by submission to an Information Sharing Network or by email to *StateMOU@fda.hhs.gov,* and will include the following information:
  - Name and address of the pharmacy that distributed inordinate amounts of compounded human drug products interstate;
  - The number of prescription orders for compounded human drug products that the pharmacy sent out of (or caused to be sent out of) the facility in which the drug products were compounded during that same calendar year;
  - The number of prescription orders for compounded human drug products that were dispensed (*e.g.,* picked up by a patient) at the facility in which they are compounded during that same calendar year;
  - Total number of prescription orders for compounded human drug products distributed interstate during that same calendar year;
  - Total number of prescription orders for sterile compounded human drug products distributed interstate during that same calendar year;
  - The names of States in which the pharmacy is licensed as well as the names of States into which the pharmacy distributed compounded human drug products during that same calendar year; and
  - Whether the State Board of Pharmacy or other appropriate State agency inspected for and found during its most recent inspection that the pharmacy distributed compounded human drug products without valid prescriptions for individually identified patients during that same calendar year.
- If the State Board of Pharmacy or other appropriate State agency becomes aware of a physician who is distributing any amount of compounded human drug products interstate, it will notify the appropriate regulator of physicians within the State. The State Board of Pharmacy or other appropriate State agency will, within 30 days of identifying a physician who is distributing any amount of compounded human drug products interstate, also notify FDA by submission to an Information Sharing Network or by email to *StateMOU@fda.hhs.gov.*

Section 503A of the FD&C Act reflects Congress' recognition that compounding may be appropriate when it is based on receiving a valid prescription order or notation approved by the prescribing practitioner for an identified individual patient. However, drug products compounded under section 503A are not required to demonstrate that they are safe or effective, have labeling that bears adequate directions for use, or

conform to CGMP. Congress, therefore, imposed strict limitations on the distribution of drug products compounded under section 503A to protect the public health and the integrity of the drug approval process.

In particular, Congress did not intend for compounders operating under these statutory provisions to grow into conventional manufacturing operations making unapproved drugs, operating a substantial proportion of their business interstate, without adequate oversight. Although other provisions of the FD&C Act (*e.g.,* the adulteration provisions regarding drugs prepared, packed, or held under insanitary conditions) apply to drugs compounded by State-licensed pharmacies and physicians that may qualify for the exemptions under section 503A of the FD&C Act, and although FDA may take action in appropriate cases against compounders whose drugs violate these provisions or that operate outside of the conditions in section 503A, Congress recognized that these compounders are primarily overseen by the States. However, if a substantial proportion of a compounder's drug products are distributed outside a State's borders, adequate regulation of those drug products poses significant challenges to State regulators. States face logistical, regulatory, and financial challenges inspecting compounders located outside of their jurisdiction. In addition, if a compounder distributes drug products to multiple States, it can be very difficult to gather the scattered information about possible adverse drug experiences or product quality issues associated with those drug products, connect them to the compounder, and undertake coordinated action to address a potentially serious public health problem.

Therefore, as a baseline measure, section 503A(b)(3)(B)(ii) of the FD&C Act limits the distribution of compounded drug products outside of the State in which they are compounded to 5 percent of the total prescription orders dispensed or distributed by a licensed pharmacist, pharmacy, or physician. It then directs FDA, in consultation with NABP, to develop a standard MOU that addresses the distribution of inordinate amounts of compounded drug products interstate and provides for appropriate investigation by a State agency of complaints relating to drug products compounded in and distributed outside such State. Development of the standard MOU involves FDA describing what inordinate amounts means and providing a mechanism for addressing distribution of inordinate amounts of compounded human drug products interstate, as long as the State agrees to appropriately investigate complaints relating to drug products compounded in and distributed out of the State. The 5 percent limitation in section 503A(b)(3)(B)(ii) does not apply to drug products compounded in a State that has entered into the standard MOU under section 503A(b)(3)(B)(i).

In the 2015 draft standard MOU, FDA proposed that distribution interstate up to a 30 percent limit would not be inordinate, and that States entering into the MOU would agree to take action regarding pharmacists, pharmacies, or physicians that distribute inordinate amounts of compounded drug products interstate. FDA received a number of comments indicating that certain pharmacies, such as pharmacies located near State borders and home infusion pharmacies, distribute more than 30 percent of their compounded human drug products to patients interstate because, for example, the patients are located in another nearby State, or because few pharmacies compound a particular drug product to treat an uncommon condition for patients dispersed throughout the country. The comments noted that the proposed definition of inordinate amounts and the proposed provision in which States agree to take action could prevent such pharmacies from fulfilling patients' medical needs for the drug products that they supply. Other comments expressed concern about instances in which pharmacies are located near a State border and distribute compounded drug products to the other side of that border. FDA also received general comments questioning the Agency's basis for the 30 percent limit and indicating that it was too low. Some comments suggested that FDA increase the limit, including a suggestion to increase it to 50 percent.

The 2018 revised draft standard MOU addressed these comments in two respects. First, it removed the provision in the 2015 draft standard MOU that States agree to take action with respect to the distribution of inordinate amounts of compounded human drug products interstate. Second, it changed what is considered ''inordinate amounts'' from a 30 percent limit to a 50 percent threshold. In the final standard MOU, the States are not agreeing to take action with respect to distribution of inordinate amounts of compounded human drug products interstate, but, instead, to notify FDA of pharmacies that have distributed an inordinate amount of compounded human drug products interstate. The Agency does not intend to take action against a pharmacy located in a State that has entered into the MOU solely because the pharmacy has exceeded the threshold for inordinate amounts. Rather, the State Board of Pharmacy or other appropriate State agency entering into the final standard MOU agrees to collect further information on pharmacies that have distributed inordinate amounts interstate and provide this information to FDA to help inform Agency inspectional priorities. The State Board of Pharmacy or other appropriate State agency also agrees to notify FDA and the appropriate state regulator of physicians if it becomes aware of physicians distributing any amount of compounded human drug products interstate.

We note that States generally have day-to-day oversight responsibilities over State-licensed pharmacies, pharmacists, and physicians. In general, FDA considers a State-licensed pharmacy or physician to be primarily overseen by the State, which is responsible both for regulation of the compounder and protection of its citizens who receive the compounded drug products. However, as discussed above, if a substantial proportion of a compounder's drug products is distributed outside a State's borders, adequate regulation of those drugs poses significant challenges to State regulators. In such cases, although State oversight continues to be critical, additional oversight by FDA may afford an important public health benefit.

As stated above, the final standard MOU uses 50 percent as the threshold beyond which the amount of compounded human drug products distributed interstate by a pharmacy would be considered inordinate. The 50 percent threshold is the threshold that, with regard to pharmacies, triggers an information identification and reporting obligation once it is reached. The Agency believes that more than 50 percent is an appropriate measure of ''inordinate amounts'' because it marks the point at which pharmacies are distributing the majority of their compounded human drug products interstate, and the regulatory challenges associated with interstate distributors discussed above become more pronounced. At this point, the risk posed by the distribution practices of the compounder may weigh in favor of additional Federal oversight in addition to State oversight.

FDA recognizes that, in some cases, pharmacies may distribute more than 50 percent of a small quantity of compounded human drug products to contiguous States. Although such pharmacies have exceeded the inordinate amounts threshold in the final standard MOU, FDA would

consider other information, such as the number of patients that will receive the compounded human drug products, if available, when assessing the pharmacy's priority for risk-based inspection. Accordingly, when a State Board of Pharmacy or other appropriate State agency identifies a pharmacy that distributes an inordinate amount of compounded human drug products interstate, the final standard MOU provides that the State entity will supply the Agency with certain information as described above. In addition, if the State Board of Pharmacy or other appropriate State agency becomes aware of a physician who is distributing any amount of compounded human drug products interstate, the State entity will notify both the appropriate regulator of physicians within the State and FDA. FDA intends to use this information to prioritize its oversight of compounders based on risk, focusing on those that appear likely to distribute large volumes of compounded human drug products, particularly when the distribution is to multiple States, the drug products are intended to be sterile, and there is information about a lack of valid prescriptions for individually identified patients.

The calculation of inordinate amounts in the final standard MOU, with clarifying changes to the language, is the same as the calculation proposed in the 2018 revised draft standard MOU, with the exception of a change in the timeframe used in the calculation from 1 month to 1 year and removing drugs compounded by physicians from the calculation made by the State Board of Pharmacy or other appropriate State agency. The 2015 draft standard MOU provided that a compounder is considered to have distributed an inordinate amount of compounded drug products interstate if the number of units of compounded drug products distributed interstate during any calendar month is equal to or greater than 30 percent of the number of units of compounded and non-compounded drug products distributed or dispensed both intrastate and interstate by such compounder during that calendar month. FDA received comments noting that because the calculation includes both compounded and non-compounded drug products, in many cases, a substantial factor in whether a compounder has distributed an inordinate amount of compounded drug products interstate is whether the compounder offers non-compounded drug products. For example, under that policy, many specialty compounding pharmacies that engage in distribution of compounded human drug products interstate and only distribute compounded drug products would be able to distribute fewer compounded drug products interstate before reaching an inordinate amount than a pharmacy that also fills prescriptions for non-compounded drug products, even if both pharmacies produced the same amount of compounded drug products. After considering the public comments, FDA does not believe that including non-compounded drug products within the calculation of inordinate amounts would help address the public health concerns associated with sending compounded human drug products interstate that Congress sought to address in section 503A(b)(3)(B) of the FD&C Act. Non-compounded drug products were excluded from the calculation of inordinate amounts in the 2018 revised draft MOU. This final standard MOU maintains this exclusion.[2] FDA removed drug products compounded by physicians from the inordinate amount calculation to clarify that the State Board of Pharmacy or other appropriate State agency signing the MOU does not agree to gather information about the distribution of compounded drug products interstate by physicians or to calculate inordinate amounts of drug products compounded by a physician and distributed interstate. Instead, the State Board of Pharmacy or other appropriate State agency signing the MOU agrees that if it becomes aware that a physician is distributing any amount of compounded human drug products interstate it will notify the State authority that regulates physicians and FDA. This focus on States calculating inordinate amounts of pharmacy compounding reflects FDA's understanding and feedback from State regulators that the distribution interstate of compounded drug products mainly involves pharmacy compounders.

FDA received comments on the 2018 revised draft MOU expressing concern about calculating inordinate amounts by calendar month. After considering these comments and recognizing the possibility for significant monthly fluctuations, we have provided for annual calculation of inordinate amounts in the final standard MOU.

This 50 percent threshold does not function as a limit on the distribution of compounded human drug products interstate, but, instead, is a threshold for triggering information gathering about pharmacy distribution of compounded drugs by the State Board of Pharmacy or other appropriate State agency and provision to FDA. The information gathered will be considered by the Agency for the purpose of helping to inform its risk-based inspection priorities.

C. Definitions

Appendix A retains the definitions of ''adverse drug experience,'' ''serious adverse drug experience,'' ''product quality issue,'' and ''serious product quality issue'' from the 2018 revised draft standard MOU.

To clarify the meaning of ''distribution of inordinate amounts of compounded drug products interstate,'' the proposed definition of ''distribution'' in the 2018 revised draft standard MOU has been omitted and ''distribution of compounded human drug products interstate'' and ''inordinate amounts'' are defined. ''Distribution of compounded human drug products interstate'' means that a pharmacy or physician has sent (or caused to be sent) a compounded drug product out of the state in which the drug was compounded. A pharmacy has distributed an ''inordinate amount'' of compounded human drug products interstate if the number of prescription orders for compounded human drug products that the pharmacy distributed interstate during any calendar year is greater than 50 percent of the sum of: (1) The number of prescription orders for compounded human drug products that the pharmacy sent out of (or caused to be sent out of) the facility in which the drug products were compounded during that same calendar year; plus (2) the number of prescription orders for compounded human drug products that were dispensed (*e.g.,* picked up by a patient) at the facility in which they were compounded during that same calendar year.

We received a number of comments on the 2015 draft standard MOU and the 2018 revised draft standard MOU stating that distributing and dispensing are mutually exclusive activities, such that if a drug product is distributed, it is not also dispensed, and vice versa. Some comments asserted, in particular, that a compounded drug product should not be considered to be ''distributed'' when it is provided pursuant to a prescription. Other stakeholders, however, agreed with the inclusion of drug products provided pursuant to a prescription within the definition of ''distribution'' and maintained that this interpretation was important to protect the public health.

After considering these comments and the public health objectives of section 503A(b)(3)(B) of the FD&C Act, FDA

[2] FDA also intends to exclude non-compounded drugs from the calculation of the 5 percent limit in section 503A(b)(3)(B)(ii).

considers that when a drug is picked up at the facility in which it was compounded, dispensing, but not distribution, occurs for purposes of 503A(b)(3)(B).

FDA believes that in-person dispensing, where the transaction between the compounder and the patient is completed at the facility in which the drug product was compounded, is appropriately overseen, primarily, by the State outside the context of the MOU, regardless of whether the compounded drug product subsequently leaves the State. Such an intrastate, local transaction generally indicates a close connection among the patient, compounder, and prescriber. By contrast, transactions by mail often have a less direct nexus among the patient, compounder, and prescriber than in-person pick-ups and would be considered ''distribution.''

Drugs dispensed in-person that are later taken out of State will not contribute to reaching the threshold for inordinate amounts under the final MOU. Nor will complaints associated with compounded drug products dispensed this way and subsequently taken out of State be subject to the complaint investigation provisions of the final MOU. FDA expects that, in practice, the State in which the initial transaction occurred would handle such complaints. The State may, in its discretion, notify FDA of the complaint.

FDA is not persuaded by comments urging the Agency to interpret ''distribution'' and ''dispensing'' to be entirely separate activities for purposes of section 503A(b)(3)(B) of the FD&C Act. These comments recommend using definitions for these terms used elsewhere in the FD&C Act and FDA regulations, and generally conclude that distribution does not include the transfer of a drug pursuant to a prescription.

The conditions in section 503A, including section 503A(b)(3)(B), must be interpreted consistent with the prescription requirement in section 503A(a) of the FD&C Act. If we were to interpret the word ''distribution'' to apply only if a drug is provided without a prescription, it would mean that drug products compounded under section 503A of the FD&C Act are excluded from regulation under the MOU and the 5 percent limit, because to qualify for the exemptions under section 503A, a compounder must obtain a valid prescription order for an individually identified patient. For the reasons stated previously in this document, we believe this would achieve the opposite of what Congress intended. A compounded drug product may be eligible for the exemptions under section 503A of the FD&C Act only if it is, among other things, ''compounded for an identified individual patient based on the receipt of a valid prescription order or a notation, approved by the prescribing practitioner, on the prescription order that a compounded product is necessary for the identified patient.''

Nor is there anything to suggest that Congress understood ''distributed'' and ''dispensed'' to be mutually exclusive categories rather than overlapping categories for purposes of section 503A. Section 503A(b)(3)(B) of the FD&C Act does not define ''distribution'' to exclude dispensing, which Congress has done elsewhere when that was its intention.[3] The definition proposed by comments would write an exclusion for dispensing, in its entirety, into the statute where Congress did not. Indeed, with respect to comments suggesting that drugs dispensed pursuant to prescriptions could not also be ''distributed,'' we note that, in section 503A(b)(3)(B), Congress specifically contemplated that prescription orders could be ''distributed'' when it directed the Agency to count the number of prescription orders that pharmacists and prescribers distributed.

IV. Other Issues

A. Authority of State Boards of Pharmacy or Other Appropriate State Agencies

The 2018 revised draft standard MOU proposed that ''States'' would be the signatories of the MOU. In the final standard MOU, FDA clarifies the State party to the agreement, which is described as the ''State Board of Pharmacy or other appropriate State agency.'' FDA received comments expressing concerns that the State entity signing the MOU (*e.g.,* the State Board of Pharmacy) may not have regulatory authority over physician compounding and could not agree to the MOU provisions regarding physicians as they appeared in the 2018 revised draft standard MOU. With regard to physician compounding, FDA has revised certain provisions from the 2018 revised draft standard MOU. Under the final standard MOU, a State Board of Pharmacy or other appropriate State agency would enter into the MOU on behalf of the State and agree to (1) notify FDA and the appropriate regulator of physicians within the State when it receives a complaint about adverse drug experiences or product quality issues associated with a human drug product compounded by a physician and distributed outside the State; and (2) if it becomes aware of a physician distributing any amount of compounded human drug products interstate, notify FDA and the appropriate regulator of physicians within the State.

B. Physician Compounding

It is FDA's understanding that physicians who compound drugs generally do so for their own patients, within their own professional practice, and provide them intrastate. FDA believes that, generally, physicians are not engaged in compounding that results in routine distribution of compounded drug products interstate.

Additionally, several comments advised that State Boards of Pharmacy do not oversee physician compounding and would not be able to agree to the provisions under the 2018 revised draft standard MOU with respect to oversight of physician compounding (collecting additional information to identify whether a physician compounder is distributing inordinate amounts of compounded drug products interstate, etc.). Accordingly, under the final standard MOU, State Boards of Pharmacy or other appropriate State agencies would agree to (1) notify FDA and the appropriate regulator of physicians within the State when they receive complaints about adverse drug experiences or product quality issues associated with a human drug product compounded by a physician and distributed outside the State; and (2) if they become aware of a physician distributing any amount of compounded human drug products interstate, notify FDA and the appropriate regulator of physicians within the State. The information provided to FDA will help inform Agency inspectional priorities with respect to physicians who compound human drug products and provide information to State regulators of physicians for appropriate action.

[3] In other (non-compounding) contexts, where it would further a regulatory purpose, Congress and the Agency have specifically defined ''distribute'' to exclude dispensing. See, for example, section 581(5) of the FD&C Act (21 U.S.C. 360eee(5)), which applies to Title II of the DQSA, and 21 CFR 208.3, which applies to 21 CFR part 208. Section 503A of the FD&C Act does not contain a similar definition, or a similar specific direction to exclude dispensing from the meaning of distribution. We also note that these definitions were adopted for provisions that focus on conventionally manufactured drug products, which assign different obligations to dispensers than to wholesalers, packagers, or other intermediaries in light of the different role that dispensers play with respect to product labeling and the drug distribution chain. In contrast, section 503A of the FD&C Act focuses on compounded drugs, and the reasons for defining ''distribution'' to exclude dispensing in Title II of the DQSA or part 208 do not apply.

C. Development of a Standard MOU

A number of comments on the 1999 draft standard MOU, the 2013 draft 503A guidance, the 2015 draft standard MOU, and the 2018 revised draft MOU suggested that FDA negotiate MOUs with individual States, rather than develop a standard MOU. Section 503A of the FD&C Act requires the Agency to develop a standard MOU for use by the States. Furthermore, it would be impractical to develop an individualized MOU with every State, and creating individualized MOUs would create a patchwork of regulation of distribution of compounded human drug products interstate by compounders seeking for their drug products to qualify for the exemptions under section 503A of the FD&C Act. This would be confusing to the healthcare community, as well as regulators.

D. Exemptions From the Provisions Related to Distribution of Inordinate Amounts of Compounded Human Drug Products Interstate

Some comments on the 2013 draft 503A guidance, the 2015 draft standard MOU, and the 2018 revised draft standard MOU requested that we consider exempting certain drug products or types of compounding entities from the threshold in the MOU and the 5 percent limit. For example, some comments recommended that we exempt nonsterile products.

American consumers rely on the FDA drug approval process to ensure that medications have been evaluated for safety and effectiveness before they are marketed in the United States. Drugs made by compounders, including those made at outsourcing facilities, are not FDA-approved. This means that they have not undergone premarket review of safety, effectiveness, or manufacturing quality. Therefore, when an FDA-approved drug is commercially available, FDA recommends that practitioners prescribe the FDA-approved drug rather than a compounded drug product unless the prescribing practitioner has determined that a compounded product is necessary for the particular patient and would provide a significant difference for the patient as compared to the FDA-approved commercially available drug product.

In section 503A of the FD&C Act, Congress enacted several conditions to differentiate compounders from conventional manufacturers and provided that only if the compounders meet those conditions can they qualify for the exemptions from the drug approval requirements in section 505 of the FD&C Act. One of those conditions relates to limitations and other measures to address distribution of compounded drug products interstate, and FDA intends to enforce those provisions to differentiate compounding that qualifies for the exemptions from conventional manufacturing in the guise of compounding that does not and will apply the conditions to all types of drugs and all categories of compounding.

E. Information Sharing Between the State Boards of Pharmacy or Other Appropriate State Agencies and FDA

The final standard MOU provides that State Boards of Pharmacy or other appropriate State agencies will agree to notify FDA of a complaint relating to a compounded human drug product distributed outside the State involving a serious adverse drug experience or serious product quality issue and provide information about those experiences and issues. The final standard MOU also provides that State Boards of Pharmacy or other appropriate State agencies will notify FDA if they identify a pharmacy that has distributed inordinate amounts of compounded human drug products interstate. In addition, State Boards of Pharmacy or other appropriate State agencies will notify FDA and the appropriate regulator of physicians within the State if the State entity becomes aware of a physician who is distributing any amount of compounded human drug products interstate, or if the State entity receives a complaint involving an adverse experience or product quality issue relating to a human drug product compounded by a physician and distributed outside the State.

FDA has entered into a cooperative agreement with NABP to establish an information sharing network that is intended to, in part, facilitate State information reporting to FDA by State Boards of Pharmacy or other appropriate State agencies that enter into the MOU with FDA addressing distribution of compounded drugs interstate.[4] The goal of this information-sharing and research initiative is to improve the management and sharing of information available to State regulators and FDA regarding State-licensed compounders and the distribution of compounded human drug products interstate to support better and more targeted regulation and oversight of compounding activities to help reduce risk to patients. This information will be important to help States to focus their limited resources on compounders for which they have primary oversight responsibility that present the greatest risk. It will also facilitate FDA's ability to determine when additional Federal oversight is warranted, such as when a large-scale compounder distributes drug products to multiple States, potentially causing significant and widespread harm if its products are substandard. FDA expects that the information sharing network will be designated by FDA for purposes of the MOU to collect, assess, and allow review and sharing of information pursuant to the MOU. FDA regularly posts, on its compounding website, information about enforcement and other actions related to compounders that violate the FD&C Act, and it is obligated to share certain information with States under section 105 of the DQSA. In addition to these measures, FDA is taking steps to proactively share information with States about complaints that it receives regarding compounded drug products, consistent with Federal laws governing information disclosure.

F. Enforcement of the 5 Percent Limit on Distribution of Compounded Human Drug Products Out of the State in Which They Are Compounded

In the 2013 draft 503A guidance, FDA stated that it does not intend to enforce the 5 percent limit on distribution of compounded human drug products outside of the State in which they are compounded until 90 days after FDA has finalized a standard MOU and made it available to the States for their consideration and signature. Most comments on the 2013 draft 503A guidance that raised this issue said this period was too short but did not recommend a specific alternative. A few comments recommended a different timeframe, one recommending 120 days and another recommending 365 days. The 1997 Senate Committee Report for the Food and Drug Administration Modernization Act suggests that a 180-day period for States to decide whether to sign might be appropriate.[5] In the notice of availability for the 2018 revised draft standard MOU, consistent with the 2015 draft standard MOU, the Agency proposed a 180-day period after

[4] See RFA–FD–19–025, available at *https://grants.nih.gov/grants/guide/rfa-files/RFA-FD-19-025.html.*

[5] ''[U]ntil the State . . . enters into a memorandum of understanding (MOU) with the Secretary or 180 days after the development of the standard MOU, whichever comes first, the [section 503A] exemption shall not apply if inordinate quantities of compounded products are distributed outside of the State in which the compounding pharmacy or physician is located.'' (U.S. Senate Committee Report)

the final standard MOU is made available for signature before FDA will enforce the 5 percent limit in States that have not signed the MOU, and invited public comment on whether this was an appropriate timeframe. Some commenters on the 2018 revised draft standard MOU stated that more time may be necessary because some States may be required to enact new laws and promulgate new regulations before entering the MOU. Therefore, in response to these comments, FDA is providing a 365-day period for States to decide whether to sign the MOU before FDA intends to begin enforcing the 5 percent limit in States that do not sign. It is FDA's understanding that this extended timeframe corresponds to a full legislative cycle for most States and should, therefore, afford sufficient time for States to modify their laws and regulations, if necessary.

V. Paperwork Reduction Act of 1995

This MOU refers to previously approved 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 have been approved under OMB control number 0910–0800.

VI. Electronic Access

Persons with access to the internet may obtain the final standard MOU at either *https://www.fda.gov/drugs/human-drug-compounding/regulatory-policy-information, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs,* or *https://www.regulations.gov.*

Dated: October 21, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–23687 Filed 10–26–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Tick-Borne Disease Working Group

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As required by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the Tick-Borne Disease Working Group (TBDWG) will hold a virtual meeting. The meeting will be open to the public. For this meeting, the TBDWG will review chapters and the template for the 2020 report to the HHS Secretary and Congress. The 2020 report will address ongoing tick-borne disease research, including research related to causes, prevention, treatment, surveillance, diagnosis, diagnostics, and interventions for individuals with tick-borne diseases; advances made pursuant to such research; federal activities related to tick-borne diseases; and gaps in tick-borne disease research.

DATES: The meeting will be held online via webcast on November 17, 2020 from approximately 9:00 a.m. to 5:30 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the TBDWG web page at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/2020-11-17/index.html* when this information becomes available.

FOR FURTHER INFORMATION CONTACT: James Berger, Designated Federal Officer for the TBDWG; Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Mary E. Switzer Building, 330 C Street SW, Suite L600, Washington, DC, 20024. Email: *tickbornedisease@hhs.gov;* Phone: 202–795–7608.

SUPPLEMENTARY INFORMATION: The registration link will be posted on the website at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/2020-11-17/index.html* when it becomes available. After registering, you will receive an email confirmation with a personalized link to access the webcast on November 17, 2020.

The public will have an opportunity to present their views to the TBDWG orally during the meeting's public comment session or by submitting a written public comment. Comments should be pertinent to the meeting discussion. Persons who wish to provide verbal or written public comment should review instructions at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/2020-11-17/index.html* and respond by midnight November 6, 2020 ET. Verbal comments will be limited to three minutes each to accommodate as many speakers as possible during the 30 minute session. Written public comments will be accessible to the public on the TBDWG web page prior to the meeting.

Background and Authority: The Tick-Borne Disease Working Group was established on August 10, 2017, in accordance with Section 2062 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to provide expertise and review federal efforts related to all tick-borne diseases, to help ensure interagency coordination and minimize overlap, and to examine research priorities. The TBDWG is required to submit a report to the HHS Secretary and Congress on their findings and any recommendations for the federal response to tick-borne disease every two years.

Dated: October 13, 2020.

James J. Berger,

Designated Federal Officer, Tick-Borne Disease Working Group, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2020–23693 Filed 10–26–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Listing of Members of the Indian Health Service's Senior Executive Service Performance Review Board (PRB)

AGENCY: Indian Health Service, HHS.

ACTION: Notice; correction of Performance Review Board Membership.

SUMMARY: The Indian Health Service published a notice in the **Federal Register** on October 14, 2020 listing members of the Indian Health Service's Senior Executive Service Performance Review Board. The membership listing failed to include Mr. Christopher Mandregan as a member of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Nathan Anderson, Human Resources Specialist, 5600 Fishers Lane, Rockville, MD 20857, Phone: (605) 681–4940.

Correction

In the FR notice of October, 14, 2020, (85 FR 65062), the correction is to the alphabetical listing of Performance Review Board members:

Buchanan, Chris
Cooper, Jennifer
Cotton, Beverly
Curtis, Jillian
Driving Hawk, James
Grinnell, Randy (Chair)
Gyorda, Lisa
LaRoche, Darrell
Mandregan, Christopher
Redgrave, Bryce
Smith, Ben

Tso, Roselyn

In alphabetical order, Mr. Christopher Mandregan should be listed as a member of the Indian Health Service Performance Review Board. Membership should read as:

- *Mandregan, Christopher*

The other members listed remain as originally published.

Michael D. Weahkee,

Assistant Surgeon General, RADM, U.S. Public Health Service, Director, Indian Health Service.

[FR Doc. 2020–23713 Filed 10–26–20; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Conflict SEP for NIDA–L.

Date: November 18, 2020.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 21, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23679 Filed 10–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, November 9, 2020, 12:00 p.m. to November 9, 2020, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on October 16, 2020, 85 FR 65855.

This notice is being amended to change the meeting date for ERB I–01 from November 9, 2020 to November 19, 2020. The time remains the same. The meeting is closed to the public.

Dated: October 21, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23705 Filed 10–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Avant-Garde Award and Avenir Award Programs for HIV/AIDS and Substance Use Disorder Research (DP1, DP2).

Date: December 14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 3WFN 9th Floor, MSC 6021, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 402–7371, *yvonne.ferguson@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 21, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23678 Filed 10–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Molecular Mechanisms of Combination Adjuvants (MMCA) (U01 Clinical Trial Not Allowed).

Date: November 20–23, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20892, (Virtual Meeting).

Contact Person: Margaret A. Morris Fears, Ph.D., Scientific Review Officer, Scientific

Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20852, (301) 761–5444, *maggie.morrisfears@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 21, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23677 Filed 10–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel PAR Review: Silvio O. Conte Centers for Basic Neuroscience or Translational Mental Health Research (P50).

Date: November 19, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Nicholas Gaiano, Ph.D., Review Branch Chief, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center/Room 6150/MSC 9606, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742 *nick.gaiano@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NRSA Institutional Research Grant Training Review (T32).

Date: November 20, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Nicholas Gaiano, Ph.D., Review Branch Chief, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center/Room 6150/MSC 9606, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742, *nick.gaiano@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 21, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23707 Filed 10–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Hematology.

Date: November 19–20, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 22, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23732 Filed 10–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0035; OMB No. 1660–0072]

Agency Information Collection Activities: Proposed Collection; Comment Request; Flood Mitigation Assistance (FMA); Building Resilient Infrastructure and Communities (BRIC); Pre-Disaster Mitigation (PDM)

AGENCY: Federal Emergency Management Agency, DHS

ACTION: 60 Day Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's Hazard Mitigation Assistance (HMA) grant programs. While this information collection continues to include the Flood Mitigation Assistance (FMA) program, it includes updates to (1) introduce the Building Resilient Infrastructure and Communities (BRIC) program; and (2) establish the Pre-Disaster Mitigation (PDM) program as a legacy program. Under the FEMA's HMA grant programs, States, local communities, Tribes, and Territories (SLTTs) seek assistance to support disaster mitigation and provide opportunities to reduce or eliminate potential losses to SLTTs.

DATES: Written comments must be received on or before December 28, 2020.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0035. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID, and will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this

information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennie Orenstein, Grants Policy Branch Chief, FIMA, FEMA, (202) 212–4071. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This collection of information is necessary to implement grants for the Flood Mitigation Assistance (FMA) program, Pre-Disaster Mitigation (PDM), and Building Resilient Infrastructure and Communities (BRIC) program.

The FMA program is authorized pursuant to Section 1366 of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c. The FMA program, under 44 CFR part 79, provides funding for measures taken to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insured under the National Flood Insurance Program (NFIP). FMA was created as part of the National Flood Insurance Reform Act (NFIRA) of 1994, Public Law 103–325. The Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12), Public Law 112–141, consolidated the Repetitive Flood Claims (RFC) and Severe Repetitive Loss grant (SRL) programs into FMA, and changed the cost-share requirements under FMA to allow more Federal funds for properties with repetitive flood claims.

The PDM program was authorized under Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288, 42 U.S.C. 5133, as amended by Section 102 of the Disaster Mitigation Act of 2000, Public Law 106–390. The PDM program provided grants for cost-effective mitigation actions prior to a disaster event to reduce overall risks to the population and structures, while also reducing reliance on funding from actual disaster declarations. Section 1234 of the Disaster Recovery Reform Act of 2018 (DRRA) amended Section 203 of the Stafford Act to authorize an updated program. As a result, FEMA is replacing the PDM program with the BRIC program and is establishing PDM as a legacy program. While the last cycle of the PDM program awards were made in Fiscal Year (FY) 2019, this information collection will continue through FY 2020–2021 for grant monitoring and closeout.

The BRIC program is designed to promote a national culture of preparedness and public safety through encouraging investments to protect the Nation's communities and infrastructure and through strengthening national mitigation capabilities to foster resilience. The BRIC program seeks to fund effective and innovative projects that will reduce risk, increase resilience, and serve as a catalyst to encourage the whole community to invest in and adopt policies related to mitigation.

The guiding principles of the BRIC program are to (1) support State and local governments, Tribes, and territories through capability and capacity-building to enable them to identify mitigation actions and implement projects that reduce risks posed by natural hazards; (2) encourage and enable innovation while allowing flexibility, consistency, and effectiveness; (3) promote partnerships and enable high-impact investments to reduce risk from natural hazards with a focus on critical services and facilities, public infrastructure, public safety, public health, and communities; (4) provide a significant opportunity to reduce future losses and minimize impacts on the Disaster Relief Fund; and (5) support the adoption and enforcement of building codes, standards, and policies that will protect the health, safety, and general welfare of the public, take into account future conditions, and have long-lasting impacts on community risk reduction, including for critical services and facilities and for future disaster costs. The BRIC program will distribute funds annually and apply a Federal/non-Federal cost share.

In accordance with 2 CFR 200.203, FEMA requires that all parties interested in receiving FEMA mitigation grants submit an application package for grant assistance. Applications and subapplications for the BRIC and FMA programs are submitted via the FEMA Grants Outcome (FEMA GO) system. Information necessary for the ongoing monitoring and closeout of the PDM program for FY 2019 and prior will be collected via the e-Grants system. The FEMA GO and e-Grants systems have been developed to meet the intent of the e-Government initiative, authorized by Public Law 106–107. This initiative requires that all Government agencies both streamline grant application processes and provide for the means to electronically create, review, and submit a grant application via the internet.

In order to increase transparency in decision-making while building capability and partnerships, FEMA will convene a National Review Panel to score applications and subapplications based on qualitative evaluation criteria. The qualitative criteria are narrative submissions to allow applicants and subapplicants the flexibility to fully explain the strengths of the proposed project. Qualitative evaluation criteria have graded scales of point scoring.

The BRIC program will solicit volunteers from SLTTs and Other Federal Agencies (OFAs) to review applications that are routed to the qualitative panel reviews. The volunteers will review and score applications based on a pre-determined scoring criteria.

Collection of Information

Title: Mitigation Grant Programs.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0072.

FEMA Forms: Building Resilient Infrastructure and Communities (BRIC) FY 20 National Competition Panel Review Expression of Interest Form.

Abstract: FEMA's Flood Mitigation Assistance and Building Resilient Infrastructure and Communities programs use an automated grant application and management system called FEMA GO. The Pre-Disaster Mitigation program uses an automated grant application and management system called e-Grants. These grant programs provide funding for the purpose of reducing or eliminating the risks to life and property from hazards. The FEMA GO and e-Grants systems include all the application information needed to apply for funding under these grant programs. FEMA will use the information to solicit volunteers from SLTTs and Other Federal Agencies (OFAs) to review applications that are routed to the qualitative panel reviews. The volunteers will review and score applications based on a pre-determined scoring criteria.

Affected Public: State, Local communities, Tribes and Territories; Individuals or Households.

Estimated Number of Respondents: 436.

Estimated Number of Responses: 5,364.

Estimated Total Annual Burden Hours: 58,248.

Estimated Total Annual Respondent Cost: $3,324,211.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $7,586,635.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–23762 Filed 10–26–20; 8:45 am]

BILLING CODE 9111–BW–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2020–0126; FXIA16710900000–201–FF09A30000]

Foreign Endangered Species; Wild Bird Conservation Act; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by November 27, 2020.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2020–0126.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2020–0126.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2020–0126; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

A. Endangered Species

Applicant: Tufts University, North Grafton, MA; Permit No. 56679D

The applicant requests a permit to import biological samples derived from the following species, taken in Peru, for the purpose of scientific research:

- Wild Goeldi's monkeys (*Callimico goeldii*),
- Bald uacari (*Cacajao calvus*),
- Mantled howler monkeys (*Alouatta palliata*), and

• Yellow-tailed woolly monkeys (*Lagothrix flavicauda syn. Oreonax flavicauda*).

This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Saint Louis Zoo, Saint Louis, MO; Permit No. 71918D

The applicant requests a permit to import biological samples derived from wild and captive-bred Cuban crocodiles (*Crocodylus rhombifer*) and American crocodiles (*Crocodylus acutus*) taken in the Zapata Swamp, in Cuba, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Columbian Park Zoo/City of Lafayette, Lafayette, IN; Permit No. 60773D

The applicant requests to amend their permit to purchase an additional captive-bred female African penguin (*Spheniscus demersus*) in interstate commerce from Six Flags Discovery Kingdom, Vallejo, California, for the purpose of enhancing the propagation or survival of the species. This notification is for a single interstate commerce activity.

Applicant: San Diego Zoo Global, San Diego, CA; Permit No. 70167B

The applicant requests authorization to import biological samples including but not limited to skin biopsies, blood, hair, and tissue from any endangered or threatened species for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: John D. Maditz, Nokesville, VA; Permit No. 82173D

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Clyde Peeling's Reptiland, Allenwood, PA; Permit No. 42675B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Komodo island monitor (*Varanus komodoensis*) and Siamese crocodile (*Crocodylus siamensis*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

B. Wild Bird Conservation Act

The public is invited to comment on the following application for approval to conduct certain activities with a bird species covered under the Wild Bird Conservation Act of 1992 (16 U.S.C. 4901–4916). This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992 (50 CFR 15.26(c)).

Applicant: Vernon Brett Padgett, Atlanta, GA; 12087C

The applicant wishes to amend the cooperative breeding program, CB042 Captive Breeding Program for under-represented *Bucerotidae* and *Psittaciformes* in aviculture, by including knobbed hornbill (*Aceros cassidix*), importing into the United States 25 individual birds (12 males and 13 females). If the amendment is approved, the program will be overseen by the Zoological Association of America, Punta Gorda, Florida.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Management Analyst/Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2020–23686 Filed 10–26–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY925000.L13400000.PQ0000 20X]

Notice of Availability of the Final Environmental Impact Statement for the Wyoming Pipeline Corridor Initiative (WPCI) Resource Management Plan Amendments to 9 BLM-Wyoming Resource Management Plans

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) and Proposed Resource Management Plan (RMP) Amendment for the proposed Wyoming Pipeline Corridor Initiative(WPCI) within the BLM Cody, Worland, Buffalo, Casper, Lander, Pinedale, Kemmerer, Rawlins and Rock Springs field offices. This notice identifies the initiation of the 30-day protest period and the 60-day Governor's consistency review period for the Proposed RMP Amendment.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Final Programmatic EIS and Proposed RMP Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability (NOA) in the **Federal Register**.

ADDRESSES: Requests for information regarding the Final EIS may be mailed to:

• *Mail:* Protest Coordinator, P.O. Box 261117, Lakewood, CO 80226, Overnight Delivery: Director (210), Attention: Protest Coordinator 2850, Youngfield Street, Lakewood, CO 80215.

Copies of the Final EIS are available on the project website at: *https://go.usa.gov/xpCMr* or *https://eplanning.blm.gov/eplanning-ui/project/1502028/570*.

FOR FURTHER INFORMATION CONTACT: Heather Schultz, Project Manager, telephone 307–775–6084; address 5353 Yellowstone Road Cheyenne Wyoming; email *hschultz@blm.gov.* Contact Ms. Schultz to add your name to our mailing list. Persons who use a telecommunications device for the deaf

(TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The State of Wyoming is proposing a pipeline corridor network for carbon capture, utilization, and storage (CCUS), enhanced oil recovery (EOR), and other compatible uses to be designated on BLM-managed lands in Wyoming through the land use planning process. The State of Wyoming proposes that roughly 2,000 miles and 25 segments of pipeline corridors be designated on BLM-managed lands and in those lands' associated RMPs. The proposed WPCI corridors are divided into segments based on proposed width and the regions they will service. The BLM analyzed the State's proposal by preparing an EIS. Based on the findings of the EIS process, the BLM is proposing to amend the nine RMPs containing lands proposed for pipeline corridors to designate those corridors. If the BLM were to receive a right-of-way application for CCUS and EOR pipelines or related facilities in the future, project specific NEPA would be completed separately at that time. The analysis has identified issues to address within the planning area, including Greater Sage-Grouse; big game habitat (including migration corridors); potential conflicts with coal mining and other resource uses; air quality; transportation; vegetation and reclamation success; anticipated oil and gas development in the planning area; existing rights-of-way, valid existing rights and other authorizations that may not be permitted in the corridor; and opportunities to apply best management practices and design features.

The BLM analyzed five alternatives:

Alternative A: No Action Under this alternative, none of the RMPs would be amended to establish additional corridors, and the existing corridors would remain and would not be dedicated to pipelines and facilities associated with CCUS, EOR and other uses. These corridors would remain available for any type of potential future project.

Alternative B: Proposed Action: Dedicates Corridors for CCUS and EOR Projects. Portions of existing corridors (300ft or 200ft wide) would be dedicated to pipelines and facilities associated with CCUS, EOR and other uses as outlined in the State of Wyoming Proposal. These corridors would be designated both in Sage Grouse Priority Habitat Management Areas (PHMA) and outside of PHMA as proposed by the state of Wyoming.

Alternative C: Maintain Existing Management in Existing Corridors and create new corridors dedicated to CCUS and EOR Projects. Routes would be modified or eliminated from the Proposal to avoid resource conflicts, Sage Grouse PHMA, pre-existing rights, existing uses and infrastructure. Use of existing corridors would be maximized. Management of existing corridors would remain the same and would not be dedicated to pipelines and facilities associated with CCUS and EOR. Additional corridors would be created (300ft or 200ft wide) dedicated to CCUS, EOR and other uses as outlined in the Proposal and analyzed in the EIS. Additional corridors would be not be created in Sage Grouse PHMA.

Alternative D: Dedicate portions of existing corridors and create new corridors dedicated to CCUS and EOR Projects. Routes would be modified or eliminated from the Proposal to avoid resource conflicts, Sage Grouse PHMA, pre-existing rights, existing uses and infrastructure. Portions of existing corridors (300ft or 200ft wide) would be dedicated to pipelines and facilities associated with CCUS and EOR and other uses as outlined in the State of Wyoming Proposal. Additional corridors would be not be created in Sage Grouse PHMA.

Preferred Alternative (Alternative E): The Preferred Alternative was developed in response to public comments received on the Draft EIS, and combines the uniqueness of each of the 25 segments with the current RMP's as well as specific siting, resource conflicts, restrictions, etc. identified in the robust WPCI analysis. Alternative E does not represent new analysis conducted but rather blends the analysis developed in the Draft EIS under Alternatives B and D.

Instructions for filing a protest regarding the Proposed Land Use Plan Amendment/Final EIS may be found in the ''Dear Reader'' Letter of the Final EIS and Proposed Land Use Plan Amendment and at 43 CFR 1610.5–2.

A protest may raise only those issues which were submitted for the record during the planning process. The BLM will issue a Record of Decision no earlier than 30 days from the date of the Notice of Availability published by the Environmental Protection Agency.

All protests on the Proposed RMPA must be submitted in writing by any of the following methods:

Website: https://go.usa.gov/xpCMr or *https://eplanning.blm.gov/eplanning-ui/project/1502028/570.*

Regular Mail: Director (210).

Attention: Protest Coordinator, P.O. Box 261117, Lakewood, CO 80226.

Overnight Delivery: Director (210) Attention: Protest Coordinator, 2850 Youngfield Street, Lakewood, CO 80215.

The BLM encourages submission of protests using the ePlanning online tools rather than by mail.

Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Kimber L. Liebhauser,

BLM Wyoming State Director (Acting).

[FR Doc. 2020–23761 Filed 10–26–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-31041; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before October 10, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by November 12, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on property or proposed district name, (County) State.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions

in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 10, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ALABAMA

Mobile County

Midtown Historic District (Boundary Increase), 2401–2403 and 2407 Old Shell Rd., Mobile, BC100005805

CALIFORNIA

Los Angeles County

Pasadena Field Archery Range, 415 South Arroyo Blvd., Pasadena, SG100005799

Riverside County

Desert Golf Course, 301 North Belardo Rd., Palm Springs, SG100005813

San Francisco County

Whelan, John A., House, 1315 Waller St., San Francisco, SG100005794

COLORADO

Denver County

First Avenue Hotel, 101 North Broadway, Denver, SG100005800

CONNECTICUT

Litchfield County

Winsted Water Works,Winchester Rd. (north side), Old Waterbury Tpk./Rugg Brook Rd., Winchester, SG100005797

GEORGIA

Fulton County

Cascade Heights Commercial Historic District, Centered on the jct. of Cascade Rd. SW and Benjamin E. Hayes Dr. SW, Atlanta, SG100005817

IOWA

Wapello County

Agassiz School, 608 East Williams St., Ottumwa, SG100005787

MASSACHUSETTS

Suffolk County

Crawford Street Historic District, 5–38 Crawford St., 42 Elm Hill Ave., 621 Warren St., Boston, SG100005798

NEW JERSEY

Mercer County

V. Henry Rothschild-F.A. Straus and Co. Atlantic Products Corporation Mill Complex, 1 North Johnston Ave., Hamilton Township, SG100005815

OHIO

Stark County

St. Joseph Roman Catholic Church Complex, 2427 Tuscarawas St. West, Canton, SG100005806

PUERTO RICO

San Juan Municipality

Rafael Cordero Graded School, (Early Twentieth Century Schools in Puerto Rico TR), Calle Aurora Esq. Horae Prada 15, Santurce vicinity, MP100005816

SOUTH DAKOTA

Roberts County

Sisseton School, (Schools in South Dakota MPS), 302 East Maple St., Sisseton, MP100005818

Sisseton School, (Federal Relief Construction in South Dakota MPS), 302 East Maple St., Sisseton, MP100005818

TENNESSEE

Blount County

Millennium Manor, 500 North Wright Rd., Alcoa, SG100005788

Montgomery County

Mt. Olive Cemetery, 951 Cumberland Dr., Clarksville, SG100005789

Rhea County

First Avenue Methodist Episcopal Church, 240 1st Ave., Dayton, SG100005790

Sullivan County

Kingsport Hosiery Mills, 435 Press St., Kingsport, SG100005791

Washington County

Johnson City Postal Savings Bank and Post Office, 401 Ashe St., Johnson City, SG100005792

Wayne County

Hughes House, 204 West Pillow St., Clifton, SG100005793

VIRGINIA

Alexandria Independent City

George Washington High School, 1005 Mount Vernon Ave., Alexandria, SG100005803

Craig County

Bellevue, 14505 Cumberland Gap Rd. (VA 42), New Castle vicinity, SG100005801

Halifax County

Oak Cliff, 10000 Huell Matthews Hwy. (US 501), Alton vicinity, SG100005804

Washington County

Depot Square Historic District, Wall St. South, Depot Sq. SW, Front St. SW, Grand St. SW, Abingdon, SG100005802

Additional documentation has been received for the following resources:

ARIZONA

Pima County

Armory Park Historic Residential District (Additional Documentation), East 12th St. to 19th St., Stone Ave. to 2nd Ave., Tucson, AD76000378

Hughes, Sam, Neighborhood Historic District (Additional Documentation), Roughly bounded by East Speedway Blvd., North Campbell Ave., East 7th St. and North, Bentley Ave., Tucson, AD94001164

KANSAS

Trego County

Wilcox School-District 29 & District 14 (Additional Documentation), (Public Schools of Kansas MPS), Rural Route –15 mi. south of WaKeeney on KS 283, Ransom, AD06000393

(Authority: Section 60.13 of 36 CFR part 60)

Dated: October 14, 2020.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2020–23681 Filed 10–26–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1229–1230 (Review)]

Monosodium Glutamate From China and Indonesia

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on monosodium glutamate (''MSG'') from China and Indonesia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on October 1, 2019 (84 FR 52129) and determined on January 6, 2020 that it would conduct full reviews (85 FR 3421, January 21, 2020). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

notice in the **Federal Register** on May 13, 2020 (85 FR 28663). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on August 25, 2020. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). The Commission determined that these reviews were extraordinarily complicated and extended the review period by up to 90 days. It completed and filed its determinations in these reviews on October 21, 2020. The views of the Commission are contained in USITC Publication 5127 (October 2020), entitled *Monosodium Glutamate from China and Indonesia: Investigation Nos. 731–TA–1229–1230 (Review).*

By order of the Commission.

Issued: October 21, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–23696 Filed 10–26–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–736]

Importer of Controlled Substances Application: Mylan Pharmaceuticals

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Mylan Pharmaceuticals has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before November 27, 2020. Such persons may also file a written request for a hearing on the application on or before November 27, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 7, 2020, Mylan Pharmaceuticals, Incorporated, 3711 Collins Ferry Road, Morgantown, West Virginia 26505–2362, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Methylphenidate	1724	II
Oxycodone	9143	II
Hydromorphone	9150	II
Methadone	9250	II
Morphine	9300	II
Fentanyl	9801	II

The company plans to import finished dosage forms for analytical testing and distribution for clinical trials. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–23766 Filed 10–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–738]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: API GLOBAL LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to proposed regulations that, if finalized, would govern the program of growing marihuana for scientific and medical research under DEA registration.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefor, may file written comments on or objections to the issuance of the proposed registration on or before December 28, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW 8701 Morrissette Drive, Springfield, Virginia 22152. To ensure proper handling of comments, please reference Docket No -. DEA–738 in all correspondence, including attachments.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may file written comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA proposes to conduct this evaluation in the manner described in the rule proposed at 85 FR 16292, published on March 23, 2020, if finalized.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on September 15, 2020, API Global LLC, 30 Hillview Road, Lincoln Park, New Jersey 07035, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I
Marihuana Extract	7350	I
Marihuana	7360	I

The applicant noticed above applied to become registered with DEA to grow marihuana as a bulk manufacturer subsequent to a 2020 DEA notice of proposed rulemaking that provided information on how DEA intends to expand the number of registrations and described the way it would oversee those additional growers. If finalized, the proposed rule would govern persons seeking to become registered with DEA to grow marihuana as a bulk manufacturer, consistent with applicable law. The notice of proposed rulemaking is available at 85 FR 16292.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–23767 Filed 10–26–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0072]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Address Verification/Change Request Form (1–797)

AGENCY: Criminal Justice Information Services Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 28, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, Federal Bureau of Investigation, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Clarksburg, WV 26306; phone: 304–625–4320 or email *glbrovey@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Address Verification/Change Request Form (1–797).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1–797. The applicable component within the Sponsoring component: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. The form can be used by any requester who wishes to correct or verify the address submitted on their Departmental Order 556–73 request.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 780 respondents will complete each form within approximately 2 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 26 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 20, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–23772 Filed 10–26–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0046]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products; DEA Form 597

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 597. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public: Business or other for-profit.

Abstract: The Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177), requires that on and after September 30, 2006, a regulated seller must not sell at retail over-the-counter (non-prescription) products containing the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, unless it has self-certified to DEA, through DEA's website. The Methamphetamine Production Prevention Act of 2008 (MPPA) (Pub. L. 110–415) was enacted in 2008 to clarify the information entry and signature requirements for electronic logbook systems permitted for the retail sale of scheduled listed chemical products.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

Activity	Number of annual respondents	Number of annual responses	Average time per response (minutes)
Training record	51,657	681,872	3
Self-certification		51,657	15
Transaction record (regulated seller)		24,481,773	1
Transaction record (customer)	24,481,773	24,481,773	1
Total	24,533,430	49,697,075	

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 188,600 cost of burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: October 22, 2020.

Melody Braswell,

Department Clearance Officer for PRA,U.S. Department of Justice.

[FR Doc. 2020–23773 Filed 10–26–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0021]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection Dispensing Records of Individual Practitioners

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Dispensing Records of Individual Practitioners.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number is associated with this collection. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public: Business or other for-profit.

Abstract: Pursuant to 21 U.S.C. 827(c), practitioners who regularly dispense or administer controlled substances to patients and charge them for the substances and those practitioners who administer controlled substances in the course of maintenance or detoxification treatment shall keep records of such activities, and accordingly must comply with the regulations on recordkeeping.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

Activity	Number of annual respondents	Number of annual responses	Average annual time per response (hours)
Dispensing records of individual practitioners	62,392	62,392	.5
Recordkeeping requirements of collectors	9,941	9,941	.5
Total	72,333	72,333	N/A

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 36,167 annual burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: October 22, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–23774 Filed 10–26–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0003]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; ARCOS Transaction Reporting; DEA Form 333

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* ARCOS Transaction Reporting.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 333. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public: Business or other for-profit.

Abstract: Section 307 of the Controlled Substances Act (21 U.S.C. 827) requires controlled substance manufacturers and distributors to make periodic reports to DEA regarding the sale, delivery, and other disposal of certain controlled substances. These reports help ensure a closed system of distribution for controlled substances, and are used to comply with international treaty obligations.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

	Number of annual respondents	Number of annual responses	Average time per response (hours)	Total annual hours
DEA–333 (paper)	31	110	0.50	55
DEA–333 (electronic)	1,150	11,180	0.25	2,795
Total	1,181	11,290		2,850

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 2,850 annual burden hours.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: October 22, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–23775 Filed 10–26–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification to Consent Decree Under the Clean Water Act

On October 21, 2020, the Department of Justice lodged a proposed modification to the consent decree with the United States District Court for the Northern District of Georgia in the lawsuit entitled *United States and State of Georgia* v. *DeKalb County, Georgia,* Civil Action No. No. 1:10-cv-04039–SDG.

The United States and the State of Georgia filed this lawsuit in 2010 under the Clean Water Act. The complaint sought injunctive relief and civil penalties for violations in connection with the City's sanitary sewer system. The consent decree entered by the Court on December 13, 2011 provides for DeKalb County to perform injunctive measures as described in the consent decree, to pay a civil penalty split between United States and the State of Georgia, and to perform a supplemental environmental project. The proposed modification to the consent decree, among other things: (1) Extends the time period for DeKalb County to rehabilitate priority sewer areas, (2) requires additional injunctive relief, and (3) requires DeKalb County to pay a $1,047,000 civil penalty, which will be divided evenly between the United States and the State.

The publication of this notice opens a period for public comment on the modification to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Georgia* v. *DeKalb County, Georgia,* D.J. Ref. No. 90–5–1–1–09497. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the modification to the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the modification to the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $22 (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief,Environmental Enforcement Section,Environment and Natural Resources Division.

[FR Doc. 2020–23694 Filed 10–26–20; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

30-Day Notice for the "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery"

AGENCY: National Endowment for the Arts.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection for the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *www.Reginfo.gov*.

DATES: Written comments must be submitted to the office listed in the address section below within 30 days from the date of this publication in the **Federal Register**.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in

an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered is not used for the purpose of substantially informing influential policy decisions; and
- Information gathered yields qualitative information; the collections are not designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3135–0130.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals and Households; Businesses and Organizations; State, Local or Tribal Government.

Estimated Number of Respondents: 7,950.

Average Expected Annual Number of Activities: 4.

Average Number of Respondents per Activity: 883.

Annual Responses: 2,650.

Frequency of Response: Once per request.

Average Minutes per Response: 16.

Average Expected Annual Burden hours: 726.5.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; 2. the accuracy of the Agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 21, 2020.

Anthony M. Bennett,

Director of Administrative Services and Contracts, National Endowment for the Arts.

[FR Doc. 2020–23695 Filed 10–26–20; 8:45 am]

BILLING CODE 7537–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings Special Board of Directors Meeting

TIME & DATE: 2:00 p.m., Friday, October 30, 2020.

PLACE: Via Conference Call.

STATUS: Open.

Agenda

I. Virtual Site Visits and Presentations
- NeighborWorks of Western Vermont
- NeighborWorks of Salt Lake
- A Community of Friends (Los Angeles, CA)

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2020–23847 Filed 10–23–20; 4:15 pm]

BILLING CODE 7570–02–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2019–136]

New Postal Product

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:* October 28, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable 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).:* CP2019–136; *Filing Title:* USPS Notice of Amendment to Priority Mail Express & Priority Mail Contract 92, Filed Under Seal; *Filing Acceptance Date:* October 20, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 28, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–23676 Filed 10–26–20; 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 REGULATORY COMMISSION

[Docket Nos. CP2018–30; MC2021–19 and CP2021–20]

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:* October 29, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable 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).:* CP2018–30; *Filing Title:* USPS Notice of Amendment to Priority Mail & First-Class Package Service Contract 61, Filed Under Seal; *Filing Acceptance Date:* October 21, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 29, 2020.

2. *Docket No(s).:* MC2021–19 and CP2021–20; *Filing Title:* USPS Request to Add Priority Mail & First Class Package Service Contract 175 to

[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).

Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 21, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 29, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–23722 Filed 10–26–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90235; File No. SR–CboeEDGA–2020–027]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Current Pilot Program Related to EDGA Rule 11.15, Clearly Erroneous Executions, to the Close of Business on April 20, 2021

October 21, 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 October 19, 2020, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to extend the current pilot program related to EDGA Rule 11.15, Clearly Erroneous Executions, to the close of business on April 20, 2021. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), 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 purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions to the close of business on April 20, 2021. Portions of Rule 11.15, explained in further detail below, are currently operating as a pilot program set to expire on October 20, 2020.[3]

On September 10, 2010, the Commission approved, on a pilot basis, changes to EDGA Rule 11.15 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

On December 26, 2018, the Commission published the proposed Eighteenth Amendment[7] to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'')[8] to allow the Plan to operate on a permanent, rather than pilot, basis. On April 8, 2019, the Exchange amended EDGA Rule 11.15 to untie the pilot program's effectiveness from that of the Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019 in order allow the Exchange and other national securities exchanges additional time to consider further amendments, if any, to the clearly erroneous execution rules in light of the proposed Eighteenth Amendment to the Plan.[9] On April 17, 2019, the Commission published an approval of the Eighteenth Amendment to allow the Plan to operate on a permanent, rather than pilot, basis.[10] On October 21, 2019, the Exchange amended EDGA Rule 11.15 to extend the pilot's effectiveness to the close of business on April 20, 2020.[11] Finally, on March 18, 2020, the Exchange amended EDGA Rule 11.15 to extend the pilot's effectiveness to the close of business on October, 20, 2020.[12]

The Exchange now proposes to amend EDGA Rule 11.15 to extend the pilot's effectiveness to the close of business on April 20, 2021. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88499 (March 27, 2020), 85 FR 18604 (April 2, 2020) (SR–CboeEDGA–2020–009).

[4] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[5] *See* Securities Exchange Act Release No. 68806 (February 1, 2013), 78 FR 8670 (February 6, 2013) (SR–EDGA–2013–05).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–EDGA–2014–11).

[7] *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (File No. 4–631) (''Eighteenth Amendment'').

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 85544 (April 8, 2019), 84 FR 15011 (April 12, 2019) (SR–CboeEDGA–2019–005).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4–631).

[11] *See* Securities Exchange Act Release No. 87366 (October 21, 2019), 84 FR 57538 (October 25, 2019) (SR–CboeEDGA–2019–017).

[12] *See supra* note 5.

clearly erroneous execution pilot programs, the substance of which are identical to EDGA Rule 11.15.

The Exchange does not propose any additional changes to EDGA Rule 11.15. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis. As the Plan was approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of EDGA Rule 11.15 for an additional six months should provide the Exchange and other national securities exchanges additional time to consider further amendments, if any, to the clearly erroneous execution rules.

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.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] 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)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that extending the clearly erroneous execution pilot under EDGA Rule 11.15 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange understands that FINRA and other national securities exchanges will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2020–027 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–CboeEDGA–2020–027. 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

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeEDGA–2020–027 and should be submitted on or before November 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23683 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90241; File No. SR–C2–2020–016]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enhance its Drill-Through Protections and Make Other Clarifying Changes

October 21, 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 October 9, 2020, Cboe C2 Exchange, Inc. (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to enhance its drill-through protections and make other clarifying changes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance its drill-through protections for simple and complex orders and make other clarifying changes. Currently, pursuant to Rule 6.14(a)(4) and (b)(6), the System will execute a marketable buy (sell) order or complex order,[3] respectively, up to a buffer amount above (below) the limit of the Opening Collar or the national best offer (''NBO'') (national best bid (''NBB'')), as applicable, or the synthetic national best offer (''SNBO'') or synthetic national best bid (''SNBB''), respectively (the ''drill-through price''). The System enters any order (or unexecuted portion), simple[4] or complex, into the book or the complex order book (''COB''), respectively, at the drill-through price for a specified period of time (determined by the Exchange).[5] At the end of the time period, the System cancels any portion of the order not executed during that time period.

The Exchange proposes to permit orders to rest in the book or COB, as applicable, for multiple time periods and at more aggressive displayed prices during each time period.[6] Specifically, for a limit order (or unexecuted portion) with a Time-in-Force of Day, GTC, or GTD, or a complex order, the System enters the order in the Book or COB with a displayed[7] price equal to the drill-through price (as discussed below, if an order's limit price is less aggressive than the drill-through price, the order will rest in the Book or COB, as applicable, at its limit price and subject to the User's instructions, and the drill-through mechanism as proposed to be amended would no longer apply to the order).[8] The order (or unexecuted portion) will rest in the book or COB, as applicable, until the earlier to occur of the order's full execution or the end of the duration of the number of time periods.[9] Following the end of each period prior to the final period, the System adds (if a buy order) or subtracts (if a sell order) one buffer amount to the drill-through price displayed during the immediately preceding period (each new price becomes the ''drill-through price'').[10] The order (or unexecuted

[3] The System may also initiate a complex order auction (''COA'') at the drill-through price for a complex order that would otherwise initiate a COA.

[4] Market orders or limit orders (or unexecuted portions) with times-in-force of immediate-or-cancel (''IOC'') or fill-or-kill (''FOK'') are cancelled rather than be entered into the book. Limit orders with times-in-force of day, good-til-cancelled (''GTC''), or good-til-day (''GTD) may enter the book.

[5] The current time period is two seconds, and the current default amounts are available in the technical specifications available at *https://cdn.cboe.com/resources/membership/US_Options_BOE_Specification.pdf*. Upon implementation of the proposed rule change, the Exchange will likely reduce the length of the time period and maintain the same buffer amounts.

[6] The Exchange will announce to Trading Permit Holders the buffer amount, the number of time periods, and the length of the time periods in accordance with Rule 1.2. The Exchange notes that each time period will be the same length (as designated by the Exchange), and the buffer amount applied for each time period will be the same.

[7] Currently, the drill-through price is the price of orders and complex orders in the book or COB, respectively. The proposed rule change clarifies that the drill-through price is displayed, which is consistent with current functionality.

[8] *See* proposed Rule 6.14(a)(4)(C) and (b)(6)(B).

[9] The Exchange will determine on a class-by-class basis the number of time periods, which may not exceed five, and the length of the time period, which may not exceed three seconds. *See* proposed Rule 6.14(a)(4)(C)(i) and (b)(6)(B)(i). The proposed rule change adds class flexibility so that the Exchange may determine different time periods and buffer amounts for different classes, which may exhibit different trading characteristics and have different market models.

[10] The System will apply a timestamp to the order (or unexecuted portion) based on the time it enters

Continued

portion) rests in the book or COB, as applicable, at that new drill-through price for the duration of the subsequent period. Following the end of the final period, the System cancels the simple or complex order (or unexecuted portion) not executed during any time period.[11] The Exchange has received feedback from Users that the current application of the drill-through mechanism is too limited. The Exchange believes this proposed rule change will provide additional execution opportunities for these orders (or unexecuted portions) while providing protection against execution at prices that may be erroneous.

For example, suppose the Exchange's market for a series in a class with a 0.05 minimum increment is 0.90–1.00, represented by a quote for 10 contracts on each side (the quote offer is Quote A). The following sell orders or quote offers for the series also rest in the book:

- Order A: 10 contracts at 1.05;
- Quote B: 10 contracts at 1.10;
- Order B: 10 contracts at 1.15; and
- Order C: 20 contracts at 1.25.

The market for away exchanges is 0.80–1.45. The Exchange's buffer amount for the class is 0.10, the drill-through resting time period is one second, and the number of time periods is three. The System receives an incoming order to buy 100 at 1.40, which executes against resting orders and quotes as follows: 10 Against Quote A at 1.00 (which is the national best offer), 10 against Order A at 1.05, and 10 against Quote B at 1.10. The System will not automatically execute any of the remaining 70 contracts from the incoming buy order against Order B, because 1.15 is more than 0.10 away from the national best offer at the time of order entry of 1.00 and thus exceeds the drill-through price check. The 70 unexecuted contracts then rest in the book for one second at a price of 1.10 (the initial drill-through price). No incoming orders are entered during that one-second time period to trade against the remaining 70 contracts. The System then re-prices the buy order in the book at a new drill-through price of 1.20 (drill-through price plus one buffer of 0.10). Ten contracts immediately execute against Order B at a price of 1.15 (the buy order is still handled as the ''incoming order'' that executes against the resting Order B, and thus receives price improvement to 1.15). An incoming order to sell 20 contracts at 1.20 enters the book and executes against 20 of the resting contracts at that price. At the end of the second one-second time period, there are 40 remaining contracts. These contracts then rest in the book at a price of 1.30 for the final one second time period. Twenty contracts immediately execute against Order C at a price of 1.25. No incoming orders are entered during that time period to trade against the remaining 20 contracts. At the end of the final one-second time period, the System cancels the remaining 20 contracts.[12]

Currently, Users may establish a higher or lower buffer amount than the default amount set by the Exchange with respect to complex orders subject to the drill-through protection.[13] Pursuant to the proposed rule change, if a User establishes its own buffer amount, the drill-through protection will work as it does today. In other words, if a User establishes its own buffer amount, a complex order will rest in the COB for one time period at the drill-through price and any unexecuted portion will be cancelled at the end of the time period. The proposed rule change clarifies that the length of the time period will continue to be determined by the Exchange, and will be the same as the length of the time period that applies to complex orders for which the User does not establish its own buffer amount. The Exchange believes this is consistent with a User's desire to set its own buffer to accommodate its own risk tolerance. All Users have the ability either to establish their own buffer amounts for complex orders, and thus have unexecuted orders rest for one time period, or let their complex orders be subject to the Exchange default buffer amount for complex orders, and thus have unexecuted orders rest at multiple price points for multiple time periods, as proposed.

The proposed rule change also makes certain clarifying and nonsubstantive changes, including movement of certain terms and provisions within Rule 6.14(a)(4) and (b)(6) due to the proposed rule changes described above. First, the proposed rule change combines the provisions in current subparagraphs (A) and (B) of Rule 6.14(a)(4) into proposed subparagraph (A). The drill-through protection in the following subparagraphs of Rule 6.14(a)(4) (currently and as proposed) apply to orders that enter the Book at the conclusion of the opening auction and intraday in the same manner. Current Rule 6.14(a)(4)(B) (the second subparagraph (B) and (C) (proposed subparagraphs (B) and (C)) provide that the System handles orders not executed pursuant to current subparagraph (A) in accordance with those subparagraphs, inadvertently omitting that current subparagraphs (B) (the second subparagraph (C) [sic] and (C) (and proposed subparagraphs (B) and (C)) also apply to orders described in current first subparagraph (B).[14] The proposed rule change clarifies that the drill-through protection applies to all orders that would enter the Book at prices worse than the drill-through price, including orders not executed during the opening auction and orders entered intraday. This is consistent with and a clarification of current functionality.

Second, the proposed rule change adds clarifying language regarding how the System handles orders for which the limit price is equal to or less than (if a buy order) or greater than (if a sell order) the drill-through price. Current Rule 6.14(b)(6) contemplates that complex orders with limit prices equal to or less aggressive than the drill-through price will not be subject to the mechanism pursuant to which orders will rest in the COB for a time period and then be cancelled. Specifically, Rule 6.14(b)(6)(A) states if a buy (sell) complex order would execute or enter the COB at a price *higher (lower) than the drill-through price,* the System enters the complex order into the COB with a price equal to the drill-through price and rests for the time period in accordance with the drill-through mechanism. Additionally, Rule 6.14(b)(6)(B) states that any complex order with a displayed price equal to the drill-through price *(unless the drill-through price equals the order's limit price)* will rest in the COB for the drill-through time period. Therefore, currently, if the limit price of a complex order is less aggressive than or equal to the drill-through price (*i.e.,* if a buy (sell) complex order (or unexecuted

or is re-priced in the book or COB, as applicable, for priority purposes. *See* proposed Rule 6.14(a)(4)(C)(iii) and (b)(6)(B)(iii). This is consistent with the current drill-through functionality, pursuant to which the System applies a timestamp to the order (or unexecuted portion) based on the time it enters the book or COB, as applicable, modified to reflect the multiple price levels at which an order may rest. *See* current Rule 6.14(a)(4)(C) and (b)(6)(A).

[11] Note current Rule 6.14(a)(4)(C) and (b)(6)(B) uses the language ''cancel or reject'' while the proposed rule change deletes ''reject,'' as both terms have the same result and merely relate to internal System code, making the use of both terms unnecessary.

[12] The proposed drill-through protection for complex orders works in an identical manner.

[13] *See* Rule 6.14(b)(6) (proposed subparagraph (b)(6)(A)).

[14] The Exchange notes that current Rule 6.14(a)(4) inadvertently has two subparagraphs lettered (B). The proposed rule change, as describes above, incorporates the provisions from the first subparagraph (B) into subparagraph (A) and retains the second subparagraph (B) as the only subparagraph (B).

portion) would execute or enter the COB at a price lower (higher) than or equal to the drill-through price), the complex order will rest in the COB, as applicable, and the drill-through mechanism stops (*i.e.,* the time period will not occur and the System will not cancel the order). This is also true for simple orders but is not specified in the current Rules.

The proposed rule change clarifies that notwithstanding the provisions described above regarding an order or complex order resting in the book or COB, respectively, for brief time periods at drill-through prices, if a buy (sell) order's limit price equals or is less (greater) than the drill-through price at any time during application of the drill-through mechanism, the order rests in the book or COB, as applicable, subject to a User's instructions,[15] at its limit price and any remaining time period(s) described above do not occur.[16] If the drill-through price is equal to or more aggressive than the order's limit price, the additional protection of having the order rest in the COB for a short time period is not necessary given that the order will rest at the limit price entered by the User (and thus an acceptable execution price for that User). Additionally, displaying an order at a drill-through price (a price at which execution is possible) worse than the limit price of the order would be inconsistent with the terms of the order. This is consistent with current functionality (updated to reflect the proposed rule change to allow multiple time periods) and the definition of limit orders and merely clarifies this in the Rules.

Third, the proposed rule change corrects the market order reference in current and proposed Rule 6.14(a)(4)(C) (to limit order. That subparagraph relates to orders with times-in-force of day, GTC, or GTD that will rest in the book for a time period at the drill-through price. However, market orders by definition [17] do not rest in the book and would not have those times-in-force, which are contrary to the character of market orders. The System applies the functionality described in that subparagraph to limit orders with those times-in-force. The proposed rule change conforms the rule to current System functionality and to the definition of market and limit orders, as limit orders not fully executed upon entry will rest in the book while market orders not fully executed upon entry will be cancelled and not rest in the book.[18]

Fourth, the proposed rule change clarifies in proposed Rule 6.14(b)(6)(B)(ii) that if the synthetic best bid or offer (''SBBO'') changes prior to the end of any time period but the complex order cannot leg into the simple book, and the new SBB or SBO, as applicable, crosses the drill-through price, the System changes the displayed price of the complex order to the new SBB or SBO, as applicable, plus or minus the applicable minimum increment for the class. The current Rule states that $0.01 is added to or subtracted from the new SBBO. However, a class may have a minimum increment other than $0.01 pursuant to Rule 5.4(b). Currently, the System adds or subtracts the applicable minimum increment. The proposed rule change corrects an inadvertent error in the Rules to conform to current System functionality and Rules regarding minimum increments for complex orders. The proposed rule change will ensure that a complex order will rest in the COB only with a displayed price in the applicable minimum increment applicable for the class of that complex order. The proposed rule change also clarifies that the complex order will rest in the COB (the current rule text says the complex order is not cancelled), and adds detail that the complex order rests at that displayed price, subject to a User's instructions, and if it was not the final period, any remaining time period(s) do not occur.

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.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [20] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [21] 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 enhancement to the drill-through mechanism removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest. The proposed rule change will permit orders (or unexecuted portions) to rest in the book or COB, as applicable, at different displayed prices for a brief but overall longer period of time, which will provide market participants' orders with additional execution opportunities while continuing to protect them against execution at potentially erroneous prices. The proposed enhancement to the drill-through protection is similar to current drill-through functionality. The Exchange may determine the buffer amount for orders and the time period in which orders may rest in the book or COB. The proposed rule change permits an order to rest at multiples of the buffer amount, which would have the same effect as the Exchange setting a larger buffer amount. For example, if the Exchange set a buffer amount of $0.75, that would allow orders to execute at any price no further than $0.75 away from the NBBO or SNBBO at the time of order entry (including at prices $0.25 and $0.50 away from the NBBO or SNBBO at the time of order entry). This allows for the same potential execution prices that would be possible if the Exchange set a buffer of $0.25 and three time periods under the proposed rule change. While the overall time period for which an order may rest in the book or COB may be longer than the currently permissible time period, the longer time period will still be relatively brief (maximum of 15 seconds). The Exchange notes it may maintain the same buffer amounts that are in place today. However, rather than increase the buffer amount at one time, the proposed rule change adds the overall larger

[15] For example, the order will remain in force subject to any time-in-force instruction applied to the order by the User upon entry.

[16] *See* proposed Rule 6.14(a)(4)(C)(iv) and (b)(6)(B)(iv).

[17] *See* Rule 5.6(b).

[18] The proposed rule change also reorders the terms limit and market orders in current Rule 6.14(a)(4)(B) (the second subparagraph (B), which is proposed subparagraph (a)(4)(B)). As noted above, current Rule 6.14(a)(4) inadvertently has two subparagraphs lettered (B). The proposed rule change, as describes above, incorporates the provisions from the first subparagraph (B) into subparagraph (A) and retains the second subparagraph (B) as the only subparagraph (B).This is a nonsubstantive change, as the times-in-force of immediate-or-cancel or fill-or-kill described in that subparagraph are applicable to limit orders rather than market orders, which by definition are immediate-or-cancel.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

buffer amount incrementally over a potentially overall longer time period. While this may permit executions at prices farther away from the NBBO or SNBBO at the time of order entry, it will still never permit executions at prices through orders' limit prices. This will provide execution opportunities for orders at incremental amounts away from the NBBO or SNBBO, as applicable, over a slightly longer time period and thus against a potentially larger number of orders. Users also have the ability to cancel orders prior to the completion of the time periods if they do not want the orders resting for a longer period of time (and Users can set their own buffer for complex orders, which would cause those complex orders to rest for a single time period rather than multiple as proposed).

The Exchange believes the proposed clarifying and nonsubstantive changes to the drill-through protection rules protect investors by adding transparency to the rules regarding the drill-through functionality. These changes are consistent with current functionality and thus do not impact the applicability of the drill-through mechanism to orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the enhanced drill-through protection will apply to all marketable orders in the same manner. Users may cancel orders resting on the Book during the drill-through time periods or set their own buffer with respect to complex orders if they do not want their orders resting for a longer period of time as proposed.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates solely to how and when marketable orders will rest on the Exchange's book or COB. The proposed enhancement to the drill-through protection is consistent with the current protection and provides orders subject to the protection with additional execution opportunities while providing continued protection against execution against potentially erroneous prices.

The Exchange believes the proposed rule change would ultimately provide all market participants with additional execution opportunities when appropriate while providing protection from erroneous execution. The Exchange believes the proposal will enhance risk protections, the individual firm benefits of which flow downstream to counterparties both at the Exchange and at other options exchanges, which increases systemic protections as well. The Exchange believes enhancing risk protections will allow Users to enter orders and quotes with further reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased liquidity for the execution of their orders. Without adequate risk management tools, such as the one proposed to be enhanced in this filing, Trading Permit Holders could reduce the amount of order flow and liquidity they provide. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed rule change is designed to encourage Trading Permit Holders to submit additional order flow and liquidity to the Exchange. The proposed flexibility may similarly provide additional execution opportunities, which further benefits liquidity in potentially volatile markets. In addition, providing Trading Permit Holders with more tools for managing risk will facilitate transactions in securities because, as noted above, Trading Permit Holders will have more confidence protections are in place that reduce the risks from potential system errors and market events.

The proposed clarifying and nonsubstantive changes are consistent with current functionality and are intended to add clarity to the Rules, and thus the Exchange expects those changes to have no 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2020–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2020–016. 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

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 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.

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2020–016 and should be submitted on or before November 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23685 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–558, OMB Control No. 3235–0617]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 433

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 433 (17 CFR 230.433) governs the use and filing of free writing prospectuses under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Rule 433 is to reduce the restrictions on communications that an issuer can make to investors during a registered offering of its securities, while maintaining important investor protections. A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available. We estimate that it takes approximately 1.28 burden hours per response to prepare a free writing prospectus and that the information is filed by 2,906 respondents approximately 5.4026 times per year for a total of 15,700 responses. We estimate that 25% of the 1.28 burden hours per response (0.32 hours) is prepared by the issuer for total annual reporting burden of approximately 5,024 hours (0.32 hours × 15,700 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23753 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–556, OMB Control No. 3235–0619]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 163

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 163 (17 CFR 230.163) provides an exemption from Section 5(c) (15 U.S.C. 77e(c)) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain communications by or on behalf of a well-known seasoned issuer. The information filed under Rule 163 is publicly available. We estimate that it takes approximately 0.24 burden hours per response to provide the information required under Rule 163 and is filed by approximately 53 issuers. We estimate that 25% of the 0.24 hours per response (0.06 hours) is prepared by the issuer for an annual reporting burden of 3 hours (0.06 hours per response × 53 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23750 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–462, OMB Control No. 3235–0521]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 425

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously

approved collection of information discussed below.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more-timely basis, so long as the written communications are filed on the date of first use. The information provided under Rule 425 is made available to the public upon request. Also, the information provided under Rule 425 is mandatory. Approximately 7,160 issuers file communications under Rule 425 at an estimated 0.25 hours per response for a total of 1,790 annual burden hours (0.25 hours per response × 7,160 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23752 Filed 10–26–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–094, OMB Control No. 3235–0085]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17a–11

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17a–11, Notification Provisions for Brokers and Dealers (17 CFR 240.17a–11), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

In response to an operational crisis in the securities industry between 1967 and 1970, the Commission adopted Rule 17a–11 under the Exchange Act on July 11, 1971. Rule 17a–11 requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's designated examining authority (''DEA''), and the Commodity Futures Trading Commission (''CFTC'') if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a–11 is an integral part of the Commission's financial responsibility program which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition.

Rule 17a–11 also requires over-the-counter (''OTC'') derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1 to notify the Commission when their tentative net capital drops below certain levels.

To ensure the provision of these types of notices to the Commission, Rule 17a–11 requires every national securities exchange or national securities association to notify the Commission when it learns that a member broker-dealer has failed to send a notice or transmit a report required under the Rule.

Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notices or reports received pursuant to Rule 17a–11. The Commission believes that information obtained under Rule 17a–11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

The Commission expects to receive 343 notices from broker-dealers whose capital declines below certain specified levels or who are otherwise experiencing financial or operational problems and eleven notices each year from national securities exchange or national securities association notifying it that a member broker-dealer has failed to send the Commission a notice or transmit a report required under the Rule. The Commission expects that it will take approximately one hour to prepare and transmit each notice. Therefore, the Commission estimates the total annual reporting burden arising from this section of the rule will be approximately 354 hours.[1]

Rule 17a–11 also requires broker-dealers engaged in securities lending or repurchase activities to either: (1) File a notice with the Commission and their DEA whenever the total money payable against all securities loaned, subject to a reverse repurchase agreement or the contract value of all securities borrowed or subject to a repurchase agreement, exceeds 2,500% of tentative net capital; or, alternatively, (2) report monthly their securities lending and repurchase activities to their DEA in a form acceptable to their DEA.

The Commission estimates that, annually, six broker-dealers will submit the monthly stock loan/borrow report. The Commission estimates each firm will spend, on average, approximately one hour per month (or twelve hours per year) of employee resources to prepare and send the report or to prepare the information for the FOCUS report (as required by the firm's DEA, if applicable). Therefore, the Commission estimates the total annual reporting burden arising from this section of the rule will be approximately 72 hours.[2]

Therefore, the total annual reporting burden associated with Rule 17a–11 is approximately 426 hours.[3]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and

[1] 343 hours + 11 hours = 354 hours.

[2] 6 broker-dealers × 12 hours per year = 72 hours.

[3] 343 hours + 11 hours + 72 hours = 426 hours.

recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23748 Filed 10–26–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–654, OMB Control No. 3235–0704]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 506(e) of Regulation D Felons and Other Bad Actors Disclosure Statement

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget the following request for an extension of the previously approved collection of information discussed below.

Regulation 506(e) of Regulation D (17 CFR 230.506(e)) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the issuer to furnish to each purchaser, a reasonable time prior to sale, a description in writing of any matters that would have triggered disqualification under Rule 506(d)(1) of Regulation D, but occurred before September 23, 2013. The disclosure required by Rule 506(e) is not filed with the Commission, but serves as an important investor protection tool to inform investors of an issuer's and its covered persons, involvement in past ''bad actor'' disqualifying events such as pre-existing criminal convictions, court injunctions, disciplinary proceedings, and other sanctions enumerated in Rule 506(d). Without the mandatory written statement requirements set forth in Rule 506(e), purchasers may have the impression that all bad actors are disqualified from participation in Rule 506 offerings.

We estimate there are 19,908 respondents that will conduct a one-hour factual inquiry to determine whether the issuer and its covered persons have had pre-existing disqualifying events before September 23, 2013. Of those 19,908 respondents, we estimate that 220 respondents with disqualifying events will spend ten hours to prepare a disclosure statement describing the matters that would have triggered disqualification under 506(d)(1) of Regulation D, except that these disqualifying events occurred before September 23, 2013, the effective date of the Rule 506 amendments. An estimated 2,200 burden hours are attributed to the 220 respondents with disqualifying events in addition to the 19,908 burden hours associated with the one-hour factual inquiry. In sum, the total annual increase in paperwork burden for all affected respondents to comply with the Rule 506(e) disclosure statement is estimated to be approximately 22,108 hours of company personnel time.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23747 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–34071; File No. 812–15172]

Goldman Sachs (Malaysia) Sdn. Bhd., et al.; Notice of Application and Temporary Order

October 22, 2020.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order (''Temporary Order'') exempting them from section 9(a) of the Act, with respect to a guilty plea entered on October 22, 2020 (''Guilty Plea''), by Goldman Sachs (Malaysia) Sdn. Bhd. (the ''Pleading Entity'' or ''GS Malaysia'') in the United States District Court for the Eastern District of New York (the ''District Court'') in connection with a plea agreement (''Plea Agreement'') between the Pleading Entity and the United States Department of Justice (''DOJ''), until the Commission takes final action on an application for a permanent order (the ''Permanent Order,'' and with the Temporary Order, the ''Orders''). Applicants also have applied for a Permanent Order.

Applicants: GS Malaysia, Goldman Sachs & Co. LLC (''GS&Co.''), Goldman Sachs Asset Management, L.P. (''GSAM''), Goldman Sachs Asset Management International (''GSAMI'') and GS Investment Strategies, LLC (''GSIS'' and collectively, the ''Applicants'').

FILING DATE: The application was filed on October 22, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request, by email. Hearing requests should be received by the Commission by 5:30 p.m. on November 16, 2020 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: David A. Markowitz, The Goldman Sachs Group, Inc., *david.markowitz@gs.com.*

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, at (202) 551–6773 or David J. Marcinkus, Branch Chief, at (202) 551–6821

(Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations:

1. The Pleading Entity is a Malaysia Sendirian Berhad (private company limited by shares) that provides asset management and corporate finance services to clients in Malaysia and is a wholly-owned indirect subsidiary of Goldman Sachs Group, Inc. (''GS Group''). GS Group is a bank holding company and a financial holding company regulated by the Board of Governors of the Federal Reserve System (''FRB'').

2. GS&Co., a New York limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and is a direct, wholly-owned subsidiary (as such term is defined in the Act) of GS Group. GS&Co. is also registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''). GS&Co. serves as principal underwriter to the Funds [1] and as adviser to the ESCs (as defined below) listed in Part 1 of Appendix A to the application.

3. GSAM, a New York limited partnership, is registered as an investment adviser under the Advisers Act and is a wholly-owned indirect subsidiary of GS Group. GSAM serves as an adviser or subadviser to the Funds listed in Part 2 of Appendix A to the application.

4. GSAMI, a United Kingdom limited company, is registered as an investment adviser under the Advisers Act and is a wholly-owned indirect subsidiary of GS Group. GSAMI serves as an adviser or subadviser to the Funds listed in Part 3 of Appendix A to the application.

5. GSIS, a Delaware limited liability company, is registered as an investment adviser under the Advisers Act and is a wholly-owned indirect subsidiary of GS Group. GSIS serves as an adviser to the ESCs listed in Part 4 of Appendix A to the application.

6. While no existing company of which the Pleading Entity is an ''affiliated person'' within the meaning of section 2(a)(3) of the Act (''Affiliated Person''), other than GSIS, GS&Co., GSAM and GSAMI (together, the ''Fund Servicing Applicants''), currently serves as an investment adviser (as defined in section 2(a)(20) of the Act) or depositor of any registered investment company, employees' securities company (''ESC''), or investment company that has elected to be treated as a business development company under the Act, or as principal underwriter (as defined in section 2(a)(29) of the Act) for any registered open-end investment company (''Open-End Fund''), registered unit investment trust (''UIT''), or registered face-amount certificate company (''FACC'') (such activities performed on behalf of such persons, collectively ''Fund Servicing Activities''), Applicants request that any relief granted by the Commission pursuant to the application also apply to any other current or future Affiliated Person of the Pleading Entity other than GS Group (together with the Fund Servicing Applicants, the ''Covered Persons'') with respect to any activity contemplated by section 9(a) of the Act.[2]

7. On October 22, 2020, the DOJ filed a criminal information (the ''Information'') in the District Court charging the Pleading Entity with one count of conspiracy to commit offenses against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (''FCPA''), as amended, *see* Title 15, United States Code, Sections 78dd–1 and 78dd–3. According to the Statement of Facts that served as the basis for the Plea Agreement (the ''Statement of Facts''), between 2009 and 2014, the GS Group (together with its wholly-owned subsidiaries and affiliated entities, the ''Company''), through certain of its agents and employees, including Tim Leissner (''Leissner'') [3] and Roger Ng (''Ng''),[4] knowingly and willfully conspired with others to provide payments and other things of value to or for the benefit of foreign officials to induce the officials to influence the decisions of 1Malaysia Development Berhad (''1MDB''), a sovereign development company wholly owned by the Government of Malaysia, International Petroleum Investment Company (''IPIC'') (an investment fund wholly owned by the Government of Abu Dhabi), and Aabar Investments PJS (a subsidiary of IPIC) to obtain and retain business for the Company (the ''Conduct''), as further described in the application, in violation of the FCPA. Leissner, Ng, and another employee of the Company referred to in the Statement of Facts as Employee 1 (''Employee 1''), also used the connections of an outside individual involved in the Conduct (Jho Low) to obtain and retain business for the Company and, in turn, concealed that individual's involvement in the deals from certain other employees and agents of the Company.[5] In connection with the Plea, the Company expects to enter into a deferred prosecution agreement with DOJ (the ''DPA'').

8. Pursuant to the Plea Agreement, the Pleading Entity entered the Guilty Plea on October 22, 2020 in the District Court to the charge set out in the Information. Applicants state that, according to the Plea Agreement, the Pleading Entity agrees as follows: First, the Pleading Entity shall cooperate fully with the DOJ and the United States Attorney's Office for the Eastern District of New York (collectively, the ''Offices'') in any and all matters relating to the conduct described in the Plea Agreement and the Statement of Facts and other conduct under investigation by the Offices or any other component of the DOJ at any time during the term of the DPA (the ''Term'') until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded or the end of the Term. Second, at the request of the Offices, the Pleading Entity shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks in any investigation of the Pleading Entity, GS Group, or any of its present or former officers, directors, employees, agents, and

[1] The term ''Funds'' as used herein refers to any registered investment company, employees' securities company or investment company that has elected to be treated as a business development company under the Act for which a Covered Person (as defined below) currently or in the future serves as an investment adviser (as defined in section 2(a)(20) of the Act) or depositor, or any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company for which a Covered Person currently or in the future serves as principal underwriter (as defined in section 2(a)(29) of the Act).

[2] Covered Persons may, if the Order is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders. GS Group, the ultimate parent of the Pleading Entity, does not and will not serve as an investment adviser, depositor or principal underwriter to any registered investment company as it is not a Covered Person.

[3] From November 2006 to February 2016, Leissner was a Participating Managing Director of the Company and, from 2011 to 2016, held various senior positions in the Company's investment banking division in Asia and served on the board of directors of GS Malaysia.

[4] From 2010 to 2014, Ng was a Managing Director of the Company and, for part of that time, served as Head of Investment Banking for, and was on the board of directors of, GS Malaysia.

[5] Employee 1 is no longer employed by any Company affiliate.

consultants, or any other party, in any and all matters relating to the conduct described in the Plea Agreement and the Statement of Facts and any other conduct under investigation by the Offices or any other component of the DOJ. Third, should the Pleading Entity learn during the Term of any evidence or any allegations of conduct that may constitute a violation of the money laundering laws that involve the employees or agents of the Pleading Entity, or should the Pleading Entity learn of any evidence or allegation of conduct that may constitute a violation of the FCPA's anti-bribery or accounting provisions had the conduct occurred within the jurisdiction of the United States, the Pleading Entity shall promptly report such evidence or allegation to the Offices. Fourth, the Pleading Entity agrees that any fine imposed by the District Court will be due and payable as specified in Paragraph 19 of the Plea Agreement, and that any restitution imposed by the District Court will be due and payable in accordance with the District Court's order. Finally, the Pleading Entity agrees to commit no further crimes and to work with GS Group in fulfilling GS Group's obligations under the DPA.

9. The Applicants expect that the District Court will enter a judgment against the Pleading Entity (the ''Judgment'') that will require remedies that are materially the same as set forth in the Plea Agreement. The individuals referenced in the Information as responsible for the Conduct are no longer employed by the Pleading Entity or any of its affiliates.

10. On October 22, 2020, the SEC instituted cease-and-desist proceedings against GS Group relating to the Conduct (the ''SEC Order''). In anticipation of the institution of those proceedings, GS Group submitted an Offer of Settlement consenting to the entry of such order, which the Commission has accepted. The SEC Order includes findings that GS Group violated the following sections of the Exchange Act: Section 30A (the anti-bribery provisions of the FCPA), section 13(b)(2)(A) (the books and records provision of the FCPA), and section 13(b)(2)(B) (requiring Exchange Act registered companies to devise and maintain a sufficient system of internal accounting controls).[6]

11. GS Group and its affiliates have entered into settlement agreements with other U.S. and non-U.S. regulatory or enforcement agencies related to the Conduct. The Board of Governors of the Federal Reserve System (''FRB'') entered a cease and desist order and order of assessment of a civil monetary penalty (the ''FRB Order'') on October 22, 2020 against GS Group concerning unsafe and unsound banking practices relating to the 1MDB transactions that resulted from deficient policies, procedures and controls. The New York State Department of Financial Services (''DFS'') entered into a consent order (the ''DFS Order'') on October 22, 2020 with GS Group as the parent company of Goldman Sachs Bank USA (''GS Bank'') (which operates in New York State and is licensed and regulated by the DFS) to settle DFS' investigations into alleged violations of New York banking law arising out of GS Bank's investments in 1MDB-related instruments. GS Group entered into a Settlement Agreement with the Government of Malaysia and 1MDB (the ''Malaysian Settlement Agreement'') on August 18, 2020 to resolve all criminal and regulatory proceedings in Malaysia involving the Company, including pending criminal proceedings against subsidiaries of GS Group and certain of their current and former directors, relating to the 1MDB transactions and the Conduct. On October 22, 2020, the U.K. Financial Conduct Authority and the U.K. Prudential Regulation Authority each entered a warning notice (together, the ''U.K. Notices'') against Goldman Sachs International (''GSI''), an indirect wholly owned subsidiary of GS Group, relating to GSI's failure to assess and manage the risks associated with the 1MDB transactions, properly record how GSI committees assessed and managed those risks and respond appropriately to allegations of bribery. The Hong Kong Securities and Futures Commission issued a Statement of Disciplinary Action (the ''SFC Statement'') against Goldman Sachs (Asia) L.L.C. (''GS Asia''), an indirect wholly owned subsidiary of GS Group, on October 22, 2020, relating to GS Asia's failure to properly examine and address red flags in connection with the 1MDB transactions and to diligently supervise its senior personnel in connection with their participation in the 1MDB transactions. On October 22, 2020, the Singapore Commercial Affairs Department, at the direction of the Singapore Attorney General's Chambers, issued a Notice of Conditional Warning against Goldman Sachs (Singapore) Pte, an indirect wholly owned subsidiary of GS Group (''GS Singapore''), relating to the Conduct (the ''Singapore Notice''). On October 22, 2020, the Monetary Authority of Singapore (the ''MAS'') issued a letter of direction (the ''MAS Letter'') requiring GS Singapore to appoint an independent auditor to review the effectiveness and sustainability of the remedial measures implemented by GS Singapore following the MAS' inspection.

Applicants' Legal Analysis

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or as principal underwriter for any Open-End Fund, UIT, or FACC, if such person within ten years has been convicted of any felony or misdemeanor, including those arising out of such person's conduct as a broker, dealer or bank. Section 2(a)(10) of the Act defines the term ''convicted'' to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(1). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. The Pleading Entity is an Affiliated Person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Therefore, the Applicants state that the Plea Agreement would result in a disqualification of each Fund Servicing Applicant for ten years under section 9(a)(3) were they to act in any of the capacities listed in section 9(a), by effect of a conviction described in section 9(a)(1).

2. Section 9(c) of the Act provides that: ''[t]he Commission shall by order grant [an] application [for relief from the prohibitions of subsection 9(a)], either unconditionally or on an appropriate temporary or other conditional basis, if it is established [i] that the prohibitions of subsection 9(a), as applied to such person, are unduly or disproportionately severe or [ii] that the conduct of such person has been such as not to make it against the public interest or the protection of investors to grant such application.'' Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting the Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Covered Persons may, if the Orders are granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

[6] 15 U.S.C. 78m(b)(2)(A), 78m(b)(2)(B), and 78dd–1.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants assert that (i) the scope of the misconduct was limited and did not involve any of the Applicants acting as an investment adviser, depositor or principal underwriter for any Fund, or any Fund with respect to which the Fund Servicing Applicants engage in Fund Servicing Activities, (ii) application of the statutory bar would impose significant hardships on the Funds and their shareholders, (iii) the prohibitions of section 9(a), if applied to the Fund Servicing Applicants, would be unduly or disproportionately severe and (iv) the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption from section 9(a).

4. Applicants represent that the Conduct did not involve any of Applicants acting in the capacity as an investment adviser, depositor or principal underwriter for any Fund. Applicants represent that the Conduct similarly did not involve any Fund with respect to which the Fund Servicing Applicants engage in Fund Servicing Activities.[7] Instead, the Applicants state that the Conduct occurred primarily as a result of the actions of a few employees. As discussed above, the individuals referenced in the Information as responsible for the Conduct are no longer employed by the Pleading Entity or any of its affiliates.

5. Applicants acknowledge that the Conduct also reflected failures of GS Group control functions and that the Company's control functions and committees should have done more to follow up on red flags. The application states that five employees identified in the Statement of Facts as having been involved in these failures are employed by affiliates of the Pleading Entity that are not Covered Persons. Applicants represent, however, that none of these five employees has been, or will in the future be, employed by a Covered Person relying on the Orders or otherwise involved in the Fund Servicing Activities.

6. Applicants state that one of the employees discussed above was employed by a Fund Servicing Applicant before the 1MDB bond transactions, but was employed by an affiliate that is not a Fund Servicing Applicant at the time of the 1MDB bond transactions. Applicants state that this employee did not engage in the Conduct. Applicants further state that, after the 1MDB bond transactions were completed, the employee became aware of and failed to escalate information and concerns about bribery related to the bond transactions. Applicants state that this individual currently serves as a manager or director of a Fund Servicing Applicant and has had, and in the future will have, no day-to-day involvement in Fund Servicing Activities. Applicants state that this individual's role includes oversight of that Fund Servicing Applicant commensurate with the responsibilities of a manager or director.

7. Applicants state that GS Group is committed to promoting a general culture of compliance, including continuing to implement significant changes in connection with its relevant practices and controls, as summarized below and described in more detail in the application. Applicants assert that, in light of the limited scope of the Conduct, it would be unduly and disproportionately severe to impose a section 9(a) disqualification on the Fund Servicing Applicants. Applicants assert that the conduct of the Applicants has not been such to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

8. Applicants assert that neither the protection of investors nor the public interest would be served by permitting the section 9(a) disqualifications to apply to the Fund Servicing Applicants because those disqualifications would deprive the Fund of the advisory or sub-advisory and underwriting services that shareholders expected the Funds would receive when they decided to invest in the Funds. Applicants also assert that the prohibitions of section 9(a) could operate to the financial detriment of the Funds and their shareholders, including by causing the Funds to spend time and resources to engage substitute advisers, subadvisers, and principal underwriters, which would be an unduly and disproportionately severe consequence given that the Conduct did not involve any of the Fund Servicing Activities.

9. Applicants assert that if the Fund Servicing Applicants were barred under section 9(a) from providing investment advisory services to the Funds and were unable to obtain the requested exemption, the effect on their businesses and employees would be severe. Applicants state that the Fund Servicing Applicants have committed substantial capital and other resources to establishing expertise in advising and sub-advising Funds with a view to continuing and expanding this business, which Applicants consider strategically important. Similarly, Applicants represent that if GS&Co. were barred under section 9(a) from continuing to provide underwriting services to the Funds and were unable to obtain the requested exemption, the effect on its current business and employees would be significant. GS&Co. has committed capital and other resources to establish expertise in underwriting the securities of the Funds and to establish distribution arrangements for Fund shares. Applicants further state that prohibiting the Fund Servicing Applicants from engaging in Fund Servicing Activities would not only adversely affect their business, but would also adversely affect their employees who are involved in these activities.[8]

10. Applicants represent that: (1) None of the current or former directors, officers or employees of Applicants (other than certain former personnel of the Pleading Entity and GS&Co.[9] who were not involved in any of the Fund Servicing Applicants' Fund Servicing Activities) engaged in the Conduct; (2) no current or former employee of the Pleading Entity or any Covered Person who previously has been or who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Covered Person; (3) the identified employees have had no, and will not have any future, involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act; and (4) because the personnel of Applicants (other than certain former personnel of the Pleading Entity and GS&Co.[10] who were not involved in any of the Fund Servicing Applicants' Fund Servicing Activities) did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser.

[7] The Pleading Entity does not engage, has not engaged, and will not engage in in any of the capacities contemplated by section 9(a) of the Act.

[8] Applicants represent that GS&Co. acts as transfer agent for most of the Funds. Although GS&Co. would retain the authority to act in this capacity even if it were prohibited under section 9(a) from engaging in Fund Servicing Activities, Applicants represent that as a practical matter, it is unlikely that the Funds would continue to retain GS&Co. as transfer agent if GS&Co. were unable to perform Fund Servicing Activities. Thus, GS&Co. would likely lose another significant part of its business. This would also adversely affect its employees.

[9] One of the employees most extensively involved in and responsible for the Conduct (Leissner), was employed by GS&Co. for approximately two months immediately prior to his termination in February 2016. During this time, the employee had no involvement in GS&Co.'s Fund Servicing Activities.

[10] See paragraph 6, *supra*.

11. Applicants have agreed that none of GS Group, the Applicants or any of the other Covered Persons will employ the former employees of an affiliate of the Pleading Entity or any other person who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

12. Applicants have also agreed that GS Group and each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure compliance with the terms and conditions of the Orders granted under section 9(c).

13. In addition, GS Group and each Applicant and Covered Person will comply in all material respects with the material terms and conditions of the Plea Agreement and with the material terms of the DPA, the FRB Order, the DFS Order, the SEC Order, the Malaysian Settlement Agreement, the U.K. Notices, the SFC Statement, the Singapore Notice, the MAS Letter, and any other orders issued by regulatory or enforcement agencies addressing the Conduct. Applicants note that in connection with the DPA, GS Group will represent that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the FCPA and other anti-corruption laws *throughout its operations,* including its subsidiaries. In addition, GS Group will represent that it has undertaken, and will continue to undertake, a review of its existing internal accounting controls, policies, and procedures regarding compliance with the FCPA and other anti-corruption laws, and modify them where necessary to ensure that it maintains (i) an effective system of internal accounting controls, and (ii) a rigorous anti-corruption compliance program designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws. The DPA will require GS Group to provide an initial report to DOJ within one year describing its remediation efforts to date, and to undertake two annual follow-up reviews and reports to DOJ.[11]

14. Applicants further state that GS Group and its affiliates have undertaken certain other remedial measures, as described in greater detail in the application. These remedial measures include: Enhancing the scrutiny of senior personnel in high-risk areas and products, heightening the firm's focus on accountability when employee red flags are identified, and taking steps to ensure that employees are hearing about compliance expectations from the firm's executive management. Applicants state that GS Group has also been strengthening processes to heighten attention to potential red flags identified by deal teams and committees, increasing representation of the firm's control functions in key vetting groups and committees, and reviewing transactions earlier in the life cycle to reduce the possibility that later momentum in the deals could inappropriately carry them over the line for approval. Applicants also state that the firm has been continually improving its electronic surveillance to take advantage of recent technological advances and has increased its commitment to spending on compliance efforts and headcount in order to maintain the efficacy of the enhancements described above and to continue improving the firm's controls and systems.

15. As a result of the foregoing, the Applicants submit that absent relief, the prohibitions of section 9(a) would be unduly or disproportionately severe, and that the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption.

16. To provide further assurance that the exemptive relief being requested in the application would be consistent with the public interest and the protection of the investors, the Applicants agree that they will, as soon as reasonably practical, with respect to each of the Funds for which a Fund Servicing Applicant is the primary adviser, distribute to the boards of directors or trustees of the Funds (''Board'') written materials describing the circumstances that led to the Plea Agreement, as well as any effects on the Funds and the application. The written materials will include an offer to discuss the materials at an in-person meeting with the Board, including the directors who are not ''interested persons'' of the Funds as defined in section 2(a)(19) of the Act and their ''independent legal counsel'' as defined in rule 0–1(a)(6) under the Act, if any. With respect to each of the Funds for which a Fund Servicing Applicant is not the primary investment adviser, the relevant Fund Servicing Applicant will provide such materials to the Fund's primary investment adviser and offer to discuss the materials with such primary investment adviser. The Applicants undertake to provide the Boards with all information concerning the Plea Agreement and the application as necessary for those Funds to fulfill their disclosure and other obligations under the U.S. federal securities laws and will provide them a copy of the Judgment as entered by the District Court.

17. Certain Fund Servicing Applicants, as well as certain of their affiliates, have previously applied for exemptive orders under section 9(c) of the Act, as described in greater detail in the application. Applicants, however, note that none of the conduct underlying the previous section 9(c) orders granted to Fund Servicing Applicants involved the provision of Fund Servicing Activities.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. None of GS Group, the Applicants or any of the other Covered Persons will employ the former employees of an affiliate of the Pleading Entity or any other person who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

3. GS Group and each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders within 60 days of the date of the Permanent Order or, with respect to condition four, such later date or dates as may be contemplated by the Plea Agreement, the DPA, the FRB Order, the DFS Order, the SEC Order, the Malaysian Settlement Agreement, the U.K. Notices, the SFC Statement, the Singapore Notice, the MAS Letter or any other

[11] The required remedial steps with respect to GS Group's Corporate Compliance Program are described in Attachment C to the DPA, and the reporting requirements are described in Attachment D to the DPA.

orders issued by regulatory or enforcement agencies addressing the Conduct.

4. GS Group and each Applicant and Covered Person will comply in all material respects with the material terms and conditions of the Plea Agreement and with the material terms of the DPA, the FRB Order, the DFS Order, the SEC Order, the Malaysian Settlement Agreement, the U.K. Notices, the SFC Statement, the Singapore Notice, the MAS Letter and any other orders issued by regulatory or enforcement agencies addressing the Conduct. In addition, within 30 days of each anniversary of the Permanent Order (until and including the third such anniversary), GS Group will submit a certification signed by its chief executive officer and its global head of regulatory affairs, confirming that the Pleading Entity has complied with the terms and conditions of the Plea Agreement in all material respects and that GS Group has complied with the terms and conditions of the DPA in all material respects. Each such certification will be submitted to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement.

5. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders within 30 days of discovery of the material violation. In addition, GS Group will submit to the Chief Counsel of the Commission's Division of Investment Management, with a copy to the Chief Counsel of the Commission's Division of Enforcement, a copy of each report submitted to the Department of Justice pursuant to Paragraph 14 and Attachments C and D of the DPA within five days of the submission of each report to the Department of Justice. GS Group's first such report will be signed by its chief executive officer and global head of regulatory affairs.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as the date of the Guilty Plea, solely with respect to the Guilty Plea entered into pursuant to the Plea Agreement, subject to the representations and conditions in the application, until the Commission takes final action on their application for a permanent order.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23778 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–557, OMB Control No. 3235–0618]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 173

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Securities Act Rule 173 (17 CFR 230.173) provides a notice of registration to investors who purchased securities in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). A Rule 173 notice must be provided by each underwriter or dealer to each investor who purchased securities from the underwriter or dealer. The Rule 173 notice is not publicly available. We estimate that it takes approximately 0.0167 hour per response to provide the information required under Rule 173 and that the information is filed by approximately 5,338 respondents approximately 43,546 times a year for a total of 232,448,548 responses. We estimate that the total annual reporting burden for Rule 173 is 3,881,891 hours (0.0167 hours per response × 232,448,548 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23751 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–1, OMB Control No. 3235–0007]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–02736

Extension:
Rule 13e–3 (Schedule 13E–3)

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 13e–3 (17 CFR 240.13e–3) and Schedule 13E–3 (17 CFR 240.13e–100)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Schedule 13E–3 provides shareholders and the marketplace with material information concerning a going private transaction. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. This information is made available to the public. Information provided on Schedule 13E–3 is mandatory. We estimate that Schedule 13E–3 is filed by approximately 77 issuers annually and it takes approximately 137.42 hours per response. We estimate that 25% of the 137.42 hours per response is prepared by the filer for a total annual reporting

burden of 2,646 hours (34.36 hours per response × 77 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23749 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–114, OMB Control No. 3235–0102]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Regulations 14D and 14E, Schedule 14D–9

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation 14D (17 CFR 240.14d–1—240.14d–11) and Regulation 14E (17 CFR 240.14e–1—240.14f–1) and related Schedule 14D–9 (17 CFR 240.14d–101) require information important to security holders in deciding how to respond to tender offers. This information is made available to the public. Information provided on Schedule 14D–9 is mandatory. Schedule 14D–9 takes approximately 260.56 hours per response to prepare and is filed by 169 companies annually. We estimate that 25% of the 260.56 hours per response (65.14 hours) is prepared by the company for an annual reporting burden of 11,009 hours (65.14 hours per response × 169 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23754 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90240; File No. SR-CboeBZX–2020–075]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enhance Its Drill-Through Protections and Make Other Clarifying Change

October 21, 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 October 9, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to enhance its drill-through protections and make other clarifying changes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance its drill-through protections for orders and make other clarifying changes. Currently, pursuant to Rule 21.17(d), the System will execute a marketable buy (sell) order, respectively, up to a buffer amount above (below) the limit of the Opening Collar or the national best offer (''NBO'') (national best bid (''NBB'')), as applicable (the ''drill-through price''). The System enters any order (or unexecuted portion) into the BZX Options Book at the drill-through price for a specified period of time (determined by the Exchange).[3] At the end of the time period, the System cancels any portion of the order not executed during that time period.

The Exchange proposes to permit orders to rest in the BZX Options Book for multiple time periods and at more

[3] The current time period is two seconds, and the current default amounts are available in the technical specifications available at *https://cdn.cboe.com/resources/membership/US_Options_BOE_Specification.pdf.* Upon implementation of the proposed rule change, the Exchange will likely reduce the length of the time period and maintain the same buffer amounts.

aggressive displayed prices during each time period.[4] Specifically, the System enters the order in the BZX Options Book with a displayed [5] price equal to the drill-through price (as discussed below, if an order's limit price is less aggressive than the drill-through price, the order will rest in the BZX Options Book at its limit price and subject to the User's instructions, and the drill-through mechanism as proposed to be amended would no longer apply to the order).[6] The order (or unexecuted portion) will rest in the BZX Options Book until the earlier to occur of the order's full execution or the end of the duration of the number of time periods.[7] Following the end of each period prior to the final period, the System adds (if a buy order) or subtracts (if a sell order) one buffer amount to the drill-through price displayed during the immediately preceding period (each new price becomes the ''drill-through price'').[8] The order (or unexecuted portion) rests in the BZX Options Book at that new drill-through price for the duration of the subsequent period. Following the end of the final period, the System cancels the order (or unexecuted portion) not executed during any time period. The Exchange has received feedback from Users that the current application of the drill-through mechanism is too limited. The Exchange believes this proposed rule change will provide additional execution opportunities for these orders (or unexecuted portions) while providing protection against execution at prices that may be erroneous.

For example, suppose the Exchange's market for a series in a class with a 0.05 minimum increment is 0.90–1.00, represented by a quote for 10 contracts on each side (the quote offer is Quote A). The following sell orders or quote offers for the series also rest in the BZX Options Book:

- Order A: 10 contracts at 1.05;
- Quote B: 10 contracts at 1.10;
- Order B: 10 contracts at 1.15; and
- Order C: 20 contracts at 1.25.

The market for away exchanges is 0.80–1.45. The Exchange's buffer amount for the class is 0.10, the drill-through resting time period is one second, and the number of time periods is three. The System receives an incoming order to buy 100 at 1.40, which executes against resting orders and quotes as follows: 10 Against Quote A at 1.00 (which is the national best offer), 10 against Order A at 1.05, and 10 against Quote B at 1.10. The System will not automatically execute any of the remaining 70 contracts from the incoming buy order against Order B, because 1.15 is more than 0.10 away from the national best offer at the time of order entry of 1.00 and thus exceeds the drill-through price check. The 70 unexecuted contracts then rest in the BZX Options Book for one second at a price of 1.10 (the initial drill-through price). No incoming orders are entered during that one-second time period to trade against the remaining 70 contracts. The System then re-prices the buy order in the BZX Options Book at a new drill-through price of 1.20 (drill-through price plus one buffer of 0.10). Ten contracts immediately execute against Order B at a price of 1.15 (the buy order is still handled as the ''incoming order'' that executes against the resting Order B, and thus receives price improvement to 1.15). An incoming order to sell 20 contracts at 1.20 enters the BZX Options Book and executes against 20 of the resting contracts at that price. At the end of the second one-second time period, there are 40 remaining contracts. These contracts then rest in the BZX Options Book at a price of 1.30 for the final one second time period. Twenty contracts immediately execute against Order C at a price of 1.25. No incoming orders are entered during that time period to trade against the remaining 20 contracts. At the end of the final one-second time period, the System cancels the remaining 20 contracts.

The proposed rule change also makes certain clarifying and nonsubstantive changes, including movement of certain terms and provisions within Rule 21.17(d) due to the proposed rule changes described above. First, the proposed rule change combines the provisions in current subparagraphs (1) and (2) of Rule 21.17(d) into proposed subparagraph (1). The drill-through protection in the following subparagraphs of Rule 21.17(d) (currently and as proposed) apply to orders that enter the BZX Options Book at the conclusion of the opening auction and intraday in the same manner. Therefore, current (and proposed) subparagraph (d)(2) apply to all orders that enter the BZX Options Book as described in proposed subparagraph (d)(1) (current subparagraphs (d)(1) and (2)). The proposed rule change clarifies that the drill-through protection applies to all orders that would enter the BZX Options Book at prices worse than the drill-through price, including orders not executed during the opening auction and orders entered intraday. This is consistent with and a clarification of current functionality.

Second, the proposed rule change adds clarifying language regarding how the System handles orders for which the limit price is equal to or less than (if a buy order) or greater than (if a sell order) the drill-through price. Current Rule 21.17(d) contemplates that orders with limit prices equal to or less aggressive than the drill-through price will not be subject to the mechanism pursuant to which orders will rest in the BZX Options Book for a time period and then be cancelled. Specifically, Rule 21.17(d) states if a buy (sell) order would execute or post to the BZX Options Book at a price *higher (lower) than the drill-through price,* the System enters the order into the BZX Options Book with a price equal to the drill-through price and rests for the time period in accordance with the drill-through mechanism. Therefore, currently, if the limit price of an order is less aggressive than or equal to the drill-through price (*i.e.,* if a buy (sell) order (or unexecuted portion) would execute or enter the BZX Options Book at a price lower (higher) than or equal to the drill-through price), the order will rest in the BZX Options Book and the drill-through mechanism stops (*i.e.,* the time period will not occur and the System will not cancel the order).

The proposed rule change clarifies that notwithstanding the provisions described above regarding an order resting in the BZX Options Book for brief time periods at drill-through prices, if a buy (sell) order's limit price equals or is less (greater) than the drill-through price at any time during application of the drill-through mechanism, the order rests in the BZX Options Book, subject to a User's

[4] The Exchange will announce to Trading Permit Holders the buffer amount, the number of time periods, and the length of the time periods in accordance with the introductory paragraph of Rule 21.17. The Exchange notes that each time period will be the same length (as designated by the Exchange), and the buffer amount applied for each time period will be the same.

[5] Currently, the drill-through price is the price of orders in the book. The proposed rule change clarifies that the drill-through price is displayed, which is consistent with current functionality.

[6] *See* proposed Rule 21.17(d)(2).

[7] The Exchange will determine on a class-by-class basis the number of time periods, which may not exceed five, and the length of the time period, which may not exceed three seconds. *See* proposed Rule 21.17(d)(2)(A). The proposed rule change adds class flexibility so that the Exchange may determine different time periods and buffer amounts for different classes, which may exhibit different trading characteristics and have different market models.

[8] The System will apply a timestamp to the order (or unexecuted portion) based on the time it enters or is re-priced in the book for priority purposes. *See* proposed Rule 21.17(d)(2)(C). This is consistent with the current drill-through functionality, pursuant to which the System applies a timestamp to the order (or unexecuted portion) based on the time it enters the book, modified to reflect the multiple price levels at which an order may rest. *See* current Rule 21.17(d).

instructions,[9] at its limit price and any remaining time period(s) described above do not occur.[10] If the drill-through price is equal to or more aggressive than the order's limit price, the additional protection of having the order rest in the BZX Options Book for a short time period is not necessary given that the order will rest at the limit price entered by the User (and thus an acceptable execution price for that User). Additionally, displaying an order at a drill-through price (a price at which execution is possible) worse than the limit price of the order would be inconsistent with the terms of the order. This is consistent with current functionality (updated to reflect the proposed rule change to allow multiple time periods) and the definition of limit orders and merely clarifies this in the Rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed enhancement to the drill-through mechanism removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest. The proposed rule change will permit orders (or unexecuted portions) to rest in the BZX Options Book at different displayed prices for a brief but overall longer period of time, which will provide market participants' orders with additional execution opportunities while continuing to protect them against execution at potentially erroneous prices. The proposed enhancement to the drill-through protection is similar to current drill-through functionality. The Exchange may determine the buffer amount for orders and the time period in which orders may rest in the BZX Options Book. The proposed rule change permits an order to rest at multiples of the buffer amount, which would have the same effect as the Exchange setting a larger buffer amount. For example, if the Exchange set a buffer amount of $0.75, that would allow orders to execute at any price no further than $0.75 away from the NBBO at the time of order entry (including at prices $0.25 and $0.50 away from the NBBO at the time of order entry). This allows for the same potential execution prices that would be possible if the Exchange set a buffer of $0.25 and three time periods under the proposed rule change. While the overall time period for which an order may rest in the BZX Options Book may be longer than the currently permissible time period, the longer time period will still be relatively brief (maximum of 15 seconds). The Exchange notes it may maintain the same buffer amounts that are in place today. However, rather than increase the buffer amount at one time, the proposed rule change adds the overall larger buffer amount incrementally over a potentially overall longer time period. While this may permit executions at prices farther away from the NBBO at the time of order entry, it will still never permit executions at prices through orders' limit prices. This will provide execution opportunities for orders at incremental amounts away from the NBBO over a slightly longer time period and thus against a potentially larger number of orders. Users also have the ability to cancel orders prior to the completion of the time periods if they do not want the orders resting for a longer period of time.

The Exchange believes the proposed clarifying and nonsubstantive changes to the drill-through protection rules protect investors by adding transparency to the rules regarding the drill-through functionality. These changes are consistent with current functionality and thus do not impact the applicability of the drill-through mechanism to orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the enhanced drill-through protection will apply to all marketable orders in the same manner. Users may cancel orders resting on the BZX Options Book during the drill-through time periods.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates solely to how and when marketable orders will rest on the BZX Options Book. The proposed enhancement to the drill-through protection is consistent with the current protection and provides orders subject to the protection with additional execution opportunities while providing continued protection against execution against potentially erroneous prices.

The Exchange believes the proposed rule change would ultimately provide all market participants with additional execution opportunities when appropriate while providing protection from erroneous execution. The Exchange believes the proposal will enhance risk protections, the individual firm benefits of which flow downstream to counterparties both at the Exchange and at other options exchanges, which increases systemic protections as well. The Exchange believes enhancing risk protections will allow Users to enter orders and quotes with further reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased liquidity for the execution of their orders. Without adequate risk management tools, such as the one proposed to be enhanced in this filing, Trading Permit Holders could reduce the amount of order flow and liquidity they provide. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed rule change is designed to encourage Trading Permit Holders to submit additional order flow and liquidity to the Exchange. The proposed flexibility may similarly provide additional execution opportunities, which further benefits liquidity in potentially volatile markets. In addition,

[9] For example, the order will remain in force subject to any time-in-force instruction applied to the order by the User upon entry.

[10] *See* proposed Rule 21.17(d)(2)(D).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

providing Trading Permit Holders with more tools for managing risk will facilitate transactions in securities because, as noted above, Trading Permit Holders will have more confidence protections are in place that reduce the risks from potential system errors and market events.

The proposed clarifying and nonsubstantive changes are consistent with current functionality and are intended to add clarity to the Rules, and thus the Exchange expects those changes to have no 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SRCboeBZX–2020–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-CboeBZX–2020–075. 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–CboeBZX–2020–075 and should be submitted on or before November 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23684 Filed 10–26–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16710 and #16711; Oregon Disaster Number OR–00111]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Oregon

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA–4562–DR), dated 10/20/2020.

Incident: Wildfires and Straight-line Winds.

Incident Period: 09/07/2020 and continuing.

DATES: Issued on 10/20/2020.

Physical Loan Application Deadline Date: 12/21/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 07/20/2021.

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 10/20/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Clackamas, Douglas, Jackson, Klamath, Lane, Lincoln, Linn, Marion, Tillamook

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 167105 and for economic injury is 167110.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–23724 Filed 10–26–20; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1303X]

Somerset Railroad Corporation—Abandonment Exemption—in Niagara County, N.Y.

On October 7, 2020, Somerset Railroad Corporation (SRC) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 13.39 miles of rail line located in Niagara County, N.Y. (the Line). The Line extends from milepost 2.2 to a power plant located at the end of the line and traverses U.S. Postal Service Zip Codes 14012, 14008, 14108, and 14094. SRC states that there are no stations on the Line. (Pet. 5.)

According to SRC, the Line was constructed to provide rail service to the Somerset power generation station, which was decommissioned as of March 31, 2020, and had been the sole shipper on the Line. (Pet. 1–2.) SRC states that it last provided rail service to the power plant in December 2019 and that the Line cannot be used for overhead traffic because it is stub-ended. (*Id.* at 2–3.) [1] In a letter appended as Exhibit D to the petition, Riesling Power LLC, which owns both SRC and the decommissioned power plant, states that it no longer needs rail service and that it supports the proposed abandonment.

SRC states that, based on the information in its possession, the Line does not contain federally granted rights-of-way. (*Id.* at 1.) Any documentation in SRC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 25, 2021.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by November 6, 2020, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

Following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 16, 2020.[2]

All pleadings, referring to Docket No. AB 1303X, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on SRC's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Avenue NW, Suite 1300 South, Washington, DC 20004. Replies to the petition are due on or before November 16, 2020.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available at *www.stb.gov.*

Decided: October 21, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–23682 Filed 10–26–20; 8:45 am]

BILLING CODE 4915–01–P

[1] SRC states that it is currently using the Line to move the power plant's coal hopper cars to be scrapped, and that SRC anticipates salvaging the track, rail ties, and other track materials following abandonment but intends to leave the bridges in place. (Pet. 2.)

[2] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0141]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel UBUNTU (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 27, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0141 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0141 and follow the instructions for submitting comments.
- *Mail or Hand Delivery*: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0141, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and

specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel UBUNTU is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Sailing instruction and live aboard pleasure cruises for youth groups and families''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Washington; Delaware, New Jersey, New York (excluding New York Harbor), Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine'' (Base of Operations: Deltaville, VA)

—VESSEL LENGTH AND TYPE: 39' Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0141 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0141 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * *

Dated: October 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–23720 Filed 10–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0139]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEACLUSION (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 27, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0139 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0139 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0139, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information

provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEACLUSION is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Charter trips with a captain. Most trips would be day trips of less than 8 hours in length. Additionally, vessel will be used to train personnel on sailing catamaran operations via an American Sailing Association (ASA) certified instructor.''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Florida'' (Base of Operations: Panama City Beach, FL)

–VESSEL LENGTH AND TYPE: 40' Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0139 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0139 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

Dated: October 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–23719 Filed 10–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0135]

Request for Comments of a Previously Approved Information Collection: Uniform Financial Reporting Requirements

AGENCY: Maritime Administration, DOT

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on July 30, 2020.

DATES: Comments must be submitted on or before November 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, Director, 202–366–5769, Office of Financial Approvals, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Uniform Financial Reporting Requirements.

OMB Control Number: 2133–0005.

Type of Request: Renewal of a Previously Approved Information Collection

Background: The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semi-annual and annual financial statements with the Maritime Administration. Regulations requiring financial reports to MARAD are authorized by Section 801, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1211). Financial reports are also required by regulation of purchasers of ships from MARAD on credit, companies chartering ships from MARAD, and of companies having Title XI guarantee obligations (46 CFR part 298).

Respondents: Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI

guarantee obligations.U.S. citizens who own and operate U.S.-flag vessels.

Affected Public: Business or other for profit.

Total Estimated Number of Responses: 100.

Frequency of Collection: Annually.

Estimated Time per Respondent: 9.5.

Total Estimated Number of Annual Burden Hours: 950.

Public Comments Invited: Comments are invited on: 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; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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; and 49 CFR 1.93

Dated: October 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2020–23716 Filed 10–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0140]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HESPER (Sailing Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 27, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0140 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0140 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0140, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Hesper* is:

— INTENDED COMMERCIAL USE OF VESSEL: ''Private charters and overnights, educational and historical trips.''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Maine'' (Base of Operations: Portland, ME)

—VESSEL LENGTH AND TYPE: 44' Sailing Vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0140 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0140 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to

provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

Dated: October 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–23718 Filed 10–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0143]

Request for Comments of a Previously Approved Information Collection: Voluntary Intermodal Sealift Agreement (VISA)

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. The information requested is needed by the Maritime Administration (MARAD) and the Department of Defense (DoD), including representatives from U.S. Transportation Command and its components, to assess respondents' eligibility for participation in the VISA program. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 12, 2020.

DATES: Comments must be submitted on or before November 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: William McDonald, 202–366–0688, Office of Sealift Support, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W25–310, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Intermodal Sealift Agreement (VISA).

OMB Control Number: 2133–0532.

Type of Request: Renewal of a Previously Approved Information Collection.

Background: The Voluntary Intermodal Sealift Agreement (VISA) is a voluntary agreement, in accordance with section 708, Defense Production Act, 1950, as amended, under which participants agree to provide commercial sealift capacity and intermodal shipping services and systems, necessary to meet national defense requirements. In order to meet national defense requirements, the Government must assure the continued availability of commercial sealift resources.

Respondents: Operators of qualified dry cargo vessels.

Affected Public: Business or other for profit.

Total Estimated Number of Responses: 40.

Frequency of Collection: Annually.

Estimated Time per Respondent: 5 hrs.

Total Estimated Number of Annual Burden Hours: 200.

Public Comments Invited: Comments are invited on: 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; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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; and 49 CFR 1.93

Dated: October 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–23717 Filed 10–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0144]

Request for Comments of a Previously Approved Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 12, 2020.

DATES: Comments must be submitted on or before November 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Barbara Jackson, (202) 366–0615, Office of Management and Administrative Services, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 2133–0543.

Type of Request: Renewal of a Previously Approved Information Collection .

Background: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service,

or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Respondents: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Affected Public: Business or other for profit.

Total Estimated Number of Responses: 6000.

Frequency of Collection: Annually.

Estimated time per Respondent: 10–120 minutes.

Total Estimated Number of Annual Burden Hours: 1958.

Public Comments Invited: Comments are invited on: 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; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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; and

49 CFR 1.93

Dated: October 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2020–23715 Filed 10–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Board of Trustees of the Carpenters Pension Trust Fund-Detroit & Vicinity Pension Fund, a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Carpenters Pension Trust Fund-Detroit & Vicinity Pension Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Carpenters Pension Trust Fund-Detroit & Vicinity Pension Fund.

DATES: Comments must be received by December 11, 2020.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Commenters are strongly encouraged to submit public comments electronically. Treasury expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

Comments may be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Danielle Norris. Comments sent via facsimile, telephone, or email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Carpenters Pension Trust Fund-Detroit & Vicinity Pension Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On September 29, 2020, the Carpenters Pension Trust Fund-Detroit & Vicinity Pension Fund's Board of Trustees submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://home.treasury.gov/services/the-multiemployer-pension-reform-act-of-2014/applications-for-benefit-suspension.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Carpenters Pension Trust Fund-Detroit & Vicinity Pension Fund's application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Carpenters Pension Trust Fund-Detroit & Vicinity Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2020–23711 Filed 10–26–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits.

AGENCY: Department of the Treasury.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Board of Trustees of the Arizona Bricklayers' Pension Trust Fund, a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Arizona Bricklayers' Pension Trust Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Arizona Bricklayers' Pension Trust Fund.

DATES: Comments must be received by December 11, 2020.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Commenters are strongly encouraged to submit public comments electronically. Treasury expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

Comments may be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Danielle Norris. Comments sent via facsimile, telephone, or email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Arizona Bricklayers' Pension Trust Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On September 30, 2020, the Arizona Bricklayers' Pension Trust Fund's Board of Trustees submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://home.treasury.gov/services/the-multiemployer-pension-reform-act-of-2014/applications-for-benefit-suspension.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Arizona Bricklayers' Pension Trust Fund's application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Arizona Bricklayers' Pension Trust Fund. Consideration will be given to any comments that are timely received by Treasury.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2020–23709 Filed 10–26–20; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that a virtual meeting of the Advisory Committee on Disability Compensation (the Committee) will begin and end as follows:

Dates:	Times:
Tuesday, December 1, 2020.	9:00 a.m.–12:00 p.m. (Eastern Standard Time).
Wednesday, December 2, 2020.	9:00 a.m.–12:00 p.m. (Eastern Standard Time).

The virtual meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The agenda will include overview briefings on the VA Schedule for Rating Disabilities, the Real Team, Benefits Delivery at Discharge (BDD) expansion, COVID–19 and examinations, and the Vocational Rehabilitation and Employment program.

No time will be allocated at this virtual meeting for receiving oral presentations from the public. Interested individuals may submit a one (1) to two (2) page summary of their written statements for the Committee's review. Public statements may be received no later than November 19, 2020, for inclusion in the official meeting record. Please send these to Sian Roussel of the Veterans Benefits Administration, Compensation Service at *Sian.Roussel@va.gov.*

Members of the public who wish to obtain a copy of the agenda should contact Sian Roussel at *Sian.Roussel@va.gov* and provide his/her name, professional affiliation, email address and phone number.

For any public member who would like to attend the virtual meeting, please use the call-in number 1–800–767–1750; and access code: *75937#.*

Dated: October 22, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–23768 Filed 10–26–20; 8:45 am]

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Part II

Securities and Exchange Commission

17 CFR Parts 230 and 240

Publication or Submission of Quotations Without Specified Information; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–10842; 34–89891; File No. S7–14–19]

RIN 3235–AM54

Publication or Submission of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''SEC'' or the ''Commission'') is adopting amendments to Rule 15c2–11 (the ''Rule'') under the Securities Exchange Act of 1934 (the ''Exchange Act''), which governs the publication of quotations for securities in a quotation medium other than a national securities exchange, *i.e.,* over-the-counter (''OTC'') securities. The amendments are designed to modernize the Rule, promote investor protection, and curb incidents of fraud and manipulation by, among other things: Requiring information about issuers to be current and publicly available for broker-dealers to quote their securities in the OTC market; narrowing reliance on certain exceptions from the Rule's requirements, including the piggyback exception; adding new exceptions for the quotations of securities that may be less susceptible to fraud and manipulation; removing obsolete provisions; adding new definitions; and making technical amendments.

DATES:

Effective date: December 28, 2020. *Compliance date:* The compliance dates are discussed in Part II.P of this release.

FOR FURTHER INFORMATION CONTACT: Laura Gold, Special Counsel, John Guidroz, Branch Chief, James Curley, Theresa Hajost, Samuel Litz, Patrice Pitts, Special Counsels, Elizabeth Sandoe, Senior Special Counsel, Josephine Tao, Assistant Director, Office of Trading Practices, and Mark Wolfe, Associate Director, Office of Derivatives Policy and Trading Practices, and John Fahey, Senior Special Counsel, Office of Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, at (202) 551–5777.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rule 15c2–11 under the Exchange Act [15 U.S.C. 78a *et seq.*] and a conforming amendment to 17 CFR 230.144(c)(2) under the Securities Act of 1933 (the ''Securities Act'') [15 U.S.C. 77a *et seq.*].

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I. Overview

The Commission is adopting amendments to Rule 15c2–11, which sets out certain requirements for a broker-dealer seeking to initiate (or resume) quotations for securities in the OTC market.[1] The amendments are

[1] For purposes of this release, Rule 15c2–11, as amended, is referred to as the ''amended Rule.'' A ''quotation'' is defined as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker-dealer in receiving bids or offers from others for a security, or any indication by a broker-dealer that wishes to advertise its general interest in buying or selling a particular security. Amended Rule 15c2–11(e)(7). A ''quotation medium'' is defined as any ''interdealer quotation system'' or any publication or electronic communications network or other device that is used by broker-dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell. Amended Rule 15c2–11(e)(8). An ''interdealer quotation system'' is defined as any system of general circulation to brokers or dealers that regularly disseminates quotations of identified broker-dealers. Amended Rule 15c2–11(e)(3). A ''national securities exchange'' is an exchange, as defined under Section 3(a)(1) of the Exchange Act

designed to modernize the Rule and to enhance investor protection by requiring that current and publicly available issuer information be accessible to investors. Specifically, the amendments provide greater transparency to the investing public by requiring information about the issuer and its security [2] to be current and publicly available before a broker-dealer can begin quoting that security.

Securities that trade in the OTC market are primarily owned by retail investors.[3] Many issuers of quoted OTC securities publicly disclose current information about themselves.[4] However, in other cases, there is no or limited current public information available about certain issuers of quoted OTC securities to allow investors or other market participants to make informed investment decisions. A lack of current and public information about these companies disadvantages retail investors because it may prevent them from estimating return probabilities and generating positive returns in OTC stocks.[5] It can contribute to incidents of fraud and manipulation by preventing retail investors from being able to counteract misinformation.[6] A majority of the Commission enforcement cases involving allegations of fraudulent behavior in the OTC securities market has involved delinquent filings, which result in a lack of current, accurate, or adequate information about an issuer.[7] As broker-dealers play an integral role in facilitating investor access to OTC securities and serve an important gatekeeper function, Rule 15c2–11 is designed to prevent fraud and manipulation by requiring that broker-dealers review key, basic information about an issuer before initiating a quoted market in an OTC security. In practice, however, certain of the Rule's outdated exceptions often have resulted in a quoted market for the securities of issuers for which there is no current and publicly available information for analysis by market participants, including broker-dealers and retail investors. In some cases, a quoted market may continue for the securities of issuers that no longer exist or have ceased operations.[8] Providing greater transparency of OTC issuers to retail investors so that they can make better-informed investment decisions and counteract misinformation promotes the Commission's important mission of protecting investors.[9]

Further, the OTC market has changed significantly since the Rule was initially adopted in 1971[10] (approximately 49 years ago) and last substantively amended in 1991 (over 29 years ago).[11] For example, use of the internet is much more widespread today than it was when the Rule was last substantively amended. In 1991, it was significantly more difficult to obtain information about issuers of OTC securities and to continuously update and widely disseminate quotations for OTC securities. The internet and other forms of electronic communication and innovation have made it far less costly and burdensome to access, update, and disseminate information on a global scale.

Responding to these developments, and as part of the Commission's overall efforts to protect retail investors from fraud and manipulation,[12] the Commission is adopting amendments that are designed to modernize the Rule to: (1) Promote investor protection by providing greater transparency to the investing public regarding issuers of OTC securities, (2) facilitate capital formation for issuers for which information is current and publicly available, and (3) reduce unnecessary burdens on broker-dealers and enhance the efficiency of the OTC market.

The amended Rule continues to require a broker-dealer to obtain and review basic information about an issuer of an OTC security before initiating or resuming a quoted market in the issuer's security.[13] The amended Rule also continues to require the broker-dealer to have a reasonable basis for believing that the information about the issuer, when considered along with any supplemental information, is accurate and from a reliable source. In addition to broker-dealers, under the amended Rule, qualified interdealer quotation systems (each, a ''qualified IDQS'') [14] are permitted to comply with the information review requirement, and broker-dealers may rely upon a qualified IDQS's publicly available determination that it has complied with the information review requirement to publish or submit a quotation to initiate or resume a quoted market in an issuer's security.

The information review requirement in the amended Rule includes additional provisions that are designed to enhance transparency of issuer information and help to foster the integrity of the OTC market. Importantly, the amended Rule requires that the documents and information that a broker-dealer or qualified IDQS reviews generally must be current and publicly available. The amended Rule specifies under paragraph (b) the documents and information that must

and Rule 3b-16 thereunder, that is registered with the Commission under Sections 5 and 6 of the Exchange Act. The amendments adopted do not change the definitions of the terms ''quotation,'' ''quotation medium,'' and ''interdealer quotation system'' under the Rule.

[2] This information is listed in paragraph (a) of the former Rule and in paragraph (b) of the proposed Rule and amended Rule. For purposes of this release, the documents and information specified in paragraph (b) of the proposed Rule and amended Rule are referred to as ''paragraph (b) information.''

[3] *See* Andrew Ang *et al., Asset Pricing in the Dark: The Cross-Section of OTC Stocks,* 26 Rev. Fin. Studs. 2985–3028 (2013).

[4] *See infra* Part VI.B.2.b, Table 3 (describing how, of the 9,895 companies that issue securities that are quoted in the OTC market, 6,886 of those issuers have public information available).

[5] *See, e.g.,* Joshua T. White, Outcomes of Investing in OTC Stocks (Dec. 16, 2016), *https://www.sec.gov/files/White_OutcomesOTCinvesting.pdf.*

[6] *See* Rajesh Aggarwal & Guojun Wu, *Stock Market Manipulations,* 79 J. Bus. 1915 (2006); Thomas Renault, *Market Manipulation and Suspicious Stock Recommendations on Social Media,* Universite Paris I Pantheon-Sorbonne—Centre d'Economie de la Sorbonne (Dec 20, 2017), *https://ssrn.com/abstract=3010850*; *infra* Part VI.C.1.a.

[7] For instance, one study looked at a broad sample of litigated securities cases between January 2005 and June 2011 and identified 1,880 cases involving OTC securities and 1,157 cases involving securities listed on national securities exchanges in the United States. Of the OTC securities cases, the majority—1,148 cases, or 61 percent—were related to delinquent filings, 151 (eight percent) were related to a pump-and-dump scheme, 159 (eight percent) were related to financial fraud, 12 (one percent) were related to insider trading, and 212 (11 percent) were related to other fraudulent misrepresentation or disclosure. *See* Douglas J. Cumming & Sofia Johan, *Listing Standards and Fraud,* 34 Managerial & Decision Econ. 451–70 (2013) (''We stress the fact that litigated cases of fraud are not necessarily representative of actual cases of fraud. The difference between actual cases and litigated cases depend on rule setting (listing standards and exchange trading rules), surveillance (the people and technology available to detect fraud), and the quality of enforcement (the process and expenditures to enable cases to go forward and the effectiveness of courts).''); *see also infra* Part VI.B.2.c.

[8] *See Publication or Submission of Quotations Without Specified Information,* Exchange Act Release No. 87115, at 7–8 (Sept. 25, 2019), 84 FR 58206, 58207 (Oct. 30, 2019) (''Proposing Release'' or the ''proposal'').

[9] *See* Proposing Release at 58210–11 (discussing key regulatory approaches that the Commission has implemented to combat retail investor fraud).

[10] *See Initiation or Resumption of Quotations by a Broker or Dealer Who Lacks Certain Information,* Exchange Act Release No. 9310 (Sept. 13, 1971), 36 FR 18641 (Sept. 18, 1971).

[11] *See Initiation or Resumption of Quotations Without Specified Information,* Exchange Act Release No. 29094 (Apr. 17, 1991), 56 FR 19148 (Apr. 25, 1991) (''1991 Adopting Release'').

[12] *See supra* note 9.

[13] For purposes of this release, the term ''information review requirement'' refers to the requirement for broker-dealers and qualified interdealer quotation systems to obtain and review certain issuer information before a broker-dealer publishes a quotation for a security in the absence of an exception.

[14] See *infra* Part II.J.4 for a discussion of the proposed definition of the term ''qualified interdealer quotation system'' and how that term is defined in the amended Rule.

be reviewed with respect to issuers, including a new provision to recognize companies that issue securities in reliance on Regulation Crowdfunding (''crowdfunding issuers''), and expands the list of documents and information that must be reviewed for certain other types of issuers. In addition, the amended Rule requires that a broker-dealer or qualified IDQS identify whether the quotation is published on behalf of the issuer or a company insider and also expands the list of market participants that must review supplemental information to comply with the information review requirement to include qualified IDQSs.

The amended Rule contains several exceptions to the information review requirement. The amended Rule continues to provide an exception that permits broker-dealers to publish a quotation for unsolicited customer orders without complying with the information review requirement.[15] However, the amendments to the Rule prohibit broker-dealers from relying on this exception for an affiliate of the issuer or a company insider, unless information about the issuer is current and publicly available. This exception, as amended, permits a broker-dealer to rely on a representation from the customer's broker that such customer is not an affiliate of the issuer or a company insider.

The amended Rule also adds three new exceptions. First, the amended Rule adds an exception for highly liquid securities of well-capitalized issuers if the security meets a multi-prong test involving the security's worldwide average daily trading volume value and its issuer's total assets and shareholders' equity.[16] Second, the amended Rule adds an underwritten offerings exception for quotations for a security by a broker-dealer that is named as an underwriter in the registration statement or offering statement for such security.[17] Finally, the amended Rule adds an exception to permit broker-dealers to rely on publicly available determinations by a qualified IDQS or a registered national securities association that the requirements of certain other exceptions are met.[18] The qualified IDQS or registered national securities association must establish, maintain, and enforce reasonably designed written policies and procedures with respect to making the determinations.

In addition, the amended Rule modifies the ''piggyback'' exception, which allows a broker-dealer to rely on the quotations of another broker-dealer that initially complied with the information review requirement.[19] The amended Rule permits broker-dealers to rely on the piggyback exception based on at least a one-way priced quotation, so long as there are no more than four business days in succession without a quotation,[20] and prohibits reliance on the exception if the issuer of the security is a shell company after a certain prescribed period or was the subject of a trading suspension order issued by the Commission until 60 calendar days after the expiration of such order.[21] The exception also now requires issuer information to be, depending on the regulatory status of the issuer, one of the following: (1) Current and publicly available, as defined by the amended Rule; (2) timely filed (*i.e.,* filed by the prescribed due date for a report or statement as required by an Exchange Act or Securities Act reporting obligation); or (3) filed within 180 calendar days from a specified period. The exception also now includes a grace period that permits broker-dealers to continue quoting the securities for a limited period of up to 15 calendar days once a qualified IDQS or register national securities association makes a publicly available determination that issuer information is no longer current and publicly available, timely filed, or filed within 180 calendar days from the applicable specified time frame. The piggyback exception no longer requires that there be quotations on each of at least 12 days within the previous 30 calendar days to establish piggyback eligibility.

Generally, under the amended Rule, broker-dealers, qualified IDQSs, and a national securities association must preserve the applicable documents and information they reviewed, including to demonstrate reliance on an exception and in relation to publicly available determinations, for at least three years, the first two years in an easily accessible place.[22] These entities are not required to preserve documents and information available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').[23] A broker-dealer that publishes a quotation in reliance on a publicly available determination of a qualified IDQS or a registered national securities association need only preserve a record of the name of such qualified IDQS or registered national securities association.[24]

The amended Rule also adds definitions for the terms ''company insider,'' ''current,'' ''publicly available,'' ''qualified interdealer quotation system,'' and ''shell company.''[25] Finally, the Commission is providing guidance regarding source reliability and the information review requirement, with modifications to incorporate and update the red flags guidance provided in 1999.[26]

II. Discussion of the Final Amendments

In general, the final amendments: (1) Provide greater transparency to retail investors and other market participants regarding issuers of quoted OTC securities, (2) limit the use of certain exceptions under the Rule to better protect retail investors from fraud and manipulation, and (3) add new exceptions to reduce unnecessary burdens on broker-dealers and to enhance the efficiency of the OTC market. As discussed in greater detail below, commenters supported many aspects of the proposal. For example, commenters stated that the proposal would help to modernize the Rule, better protect investors by facilitating increased availability of issuer information for OTC securities and their issuers,[27] and make the OTC market

[15] *See* Amended Rule 15c2–11(f)(2).

[16] *See* Amended Rule 15c2–11(f)(5).

[17] *See* Amended Rule 15c2–11(f)(6).

[18] These exceptions are the exchange-traded security exception, the municipal security exception, the ''piggyback'' exception, and the exception for the highly liquid securities of well-capitalized issuers. *See* Amended Rule 15c2–11(f)(7).

[19] *See* Amended Rule 15c2–11(f)(3). Once the requirements of this exception are met, a broker-dealer can ''piggyback'' on either its own or other broker-dealers' previously published quotations.

[20] *See* Amended Rule 15c2–11(f)(3)(i)(A). The piggyback exception under the amended Rule no longer includes provisions contained in the piggyback exception under the former Rule for: (1) A broker-dealer quotation in an IDQS that does not identify the quotation as an unsolicited quotation, which provision permitted broker-dealers to publish or submit quotations in reliance on the piggyback exception in an IDQS that did not make known to others unsolicited quotations; and (2) self-piggybacking by market makers, which provision permitted broker-dealers to publish or submit quotations in reliance on their own quotations if all of the other requirements of the piggyback exception were met.

[21] *See* Amended Rule 15c2–11(f)(3)(i)(B).

[22] The requirement for broker-dealers and other entities to keep certain records that support their compliance with the information review requirement or reliance on an exception, as applicable, is referred to throughout this release as the ''recordkeeping requirement.''

[23] *See* Amended Rule 15c2–11(d)(1), (2).

[24] *See* Amended Rule 15c2–11(d)(2)(ii).

[25] *See* Amended Rule 15c2–11(e).

[26] *See Publication or Submission of Quotations Without Specified Information,* Exchange Act Release No. 41110 (Feb. 25, 1999), 64 FR 11126 (Mar. 8, 1999) (''1999 Reproposing Release'').

[27] Letter from Marcia E. Asquith, Executive Vice President, Board and External Relations, Financial Industry Regulatory Authority, Inc., to Vanessa Countryman, Sec'y, SEC (Feb. 11, 2020) (''FINRA Letter''); Letter from Ted Haberfield, Chairman & President, MZHCI, LLC, to SEC (Sept. 2, 2020) (''MZ Letter''); Letter from John B. Lowy, P.C., to SEC (July 26, 2020) (''Lowy Letter''); *see* Letter from

more efficient.[28] Some commenters supported the amendments as proposed.[29] Many commenters generally supported amending the Rule to better protect investors but suggested certain changes to the proposal,[30] including, for example, to permit broker-dealers to publish quotations for securities of issuers whose paragraph (b) information is current and publicly available on an annual basis, as opposed to on a six-month basis, to maintain a quoted market in such issuers' securities.[31]

Other commenters, however, believed that the proposal would not be effective in deterring fraud and manipulation, including pump-and-dump schemes,[32] and stated that the proposal was too broad and overly expansive.[33] For example, one commenter stated its belief that the proposal would not effectively deter fraud but would negatively affect liquidity in the OTC market, which, according to this commenter, ultimately would impair capital formation.[34]

As discussed further below, the Commission agrees that there may be a negative impact on liquidity for dark issuers (*i.e.,* issuers that do not make their information publicly available) as a result of broker-dealers not being able to continuously quote their securities and understands that existing shareholders of non-reporting issuers may be negatively impacted from the loss of a quoted market for such securities, even if the securities migrate to the grey market.[35] The Commission, however, believes that the amendments should incentivize issuers to make their information current and publicly available to allow broker-dealers to continuously quote their securities.[36] As discussed further below, the Commission believes the amendments will enhance transparency overall, which will facilitate price discovery, provide investors with information that will allow them to make better-informed investment decisions and help counteract misinformation about the issuers of such securities that can contribute to incidents of fraud and manipulation.[37] The Commission further believes that this requirement, in combination with the addition of new, targeted exceptions, will enhance the efficiency of the OTC market.[38]

Other commenters stated that additional regulation would make it more expensive to trade OTC securities.[39] The Commission believes, as discussed below, that the amended Rule contains provisions that help mitigate costs associated with quoting OTC securities (*e.g.,* the ability for a broker-dealer to rely on publicly available determinations of a qualified IDQS or a registered national securities association, new exceptions to broker-dealers' compliance with the information review requirement, and flexibility to make current information about an issuer publicly available on any of several different websites).

Some commenters stated that the Rule should be left as is.[40] Specifically, some commenters stated that the amendments are unnecessary because, according to

Gerald Adler, Adler Silverberg PLLC, to SEC (Mar. 3, 2020) (''Adler Silverberg Letter''); Sherwood E. Neiss, Co-founder, GUARDD and Principal, Crowdfund Capital Advisors, Douglass S. Ellenoff, Esq., Co-founder, GUARDD and Founding Partner, Ellenoff Grossman & Schole LLP, James P. Dowd, CPA, CFA, Co-founder GUARDD and CEO North Capital Private Securities Corporation, GUARDD, Inc., to Div. Trading & Mkts., SEC (Jan. 13, 2020) (''GUARDD Letter''); Letter from Aseel M. Rabie, Managing Director and Associate General Counsel, and Bernard V. Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association, to Vanessa Countryman, Sec'y, SEC (Dec. 23, 2019) (''SIFMA Letter''); Letter from James Toes, President and CEO, and Chris Halverson, Chairman of the Board, Security Traders Association, to Vanessa Countryman, Sec'y, SEC (Jan. 23, 2020) (''STA Letter''); Letter from Robert Verderese, Head of Cash Trading, Virtu Financial, to Vanessa Countryman, Sec'y, SEC (Feb. 7, 2020) (''Virtu Letter'') (stating that stocks that meet the definition of a penny stock and are not providing current information would not be eligible for quoting under the Rule); Letter from Andrew F. Viles, U.S. General Counsel, Canaccord Genuity LLC, to Vanessa Countryman, Sec'y, SEC (Mar. 20, 2020) (''Canaccord Letter'').

[28] Letter from William F. Galvin, Sec'y of the Commonwealth, Commonwealth of Massachusetts, to Vanessa Countryman, Sec'y, SEC (Dec. 30, 2019) (''Massachusetts Letter''); Letter from Sherry J. Sandler, Global OTC, to Vanessa Countryman, Sec'y, SEC (Mar. 3, 2020) (''Global OTC Letter''); *see* MZ Letter.

[29] Steven Barber (Dec. 30, 2019); Barry Gleicher (Nov. 7, 2019); Massachusetts Letter.

[30] *See, e.g.,* R. Cromwell Coulson, CEO, OTC Mkts. Grp. Inc. (May 6, 2020) (citing R. Cromwell Coulson, *Exploring the Investor Impact of an SEC Rule Proposal,* Traders Magazine (May 1, 2020), *available at https://www.tradersmagazine.com/departments/regulation/exploring-the-investor-impact-of-an-sec-rule-proposal/*) (''Coulson Comment''); FINRA Letter; Global OTC Letter; Letter from Peter Goldstein, Managing Member, Exchange Listing LLC, to Vanessa Countryman, Sec'y, SEC (May 8, 2020) (''Exchange Listing Letter''); Letter from Sara Hanks, CEO, CrowdCheck, Inc., to Vanessa Countryman, Sec'y, SEC (May 22, 2020) (''CrowdCheck Letter''); Letter from Joseph M. Lucosky, Managing Partner, Lawrence Metelitsa, Partner, and Scot E. Linsky, Counsel, Lucosky Brookman LLP, to SEC (May 29, 2020) (''Lucosky Brookman Letter''); Letter from David Menn, CEO, MCAP LLC, to Vanessa Countryman, Sec'y, SEC (May 15, 2020) (''MCAP Letter''); Richard Revelins, Executive Director, Peregrine Corporate Limited (July 10, 2020) (''Peregrine Comment''); Letter from Robin Sosnow, Managing Partner, & Manuel Pesendorfer, Attorney, Sosnow & Associates PLLC, to Vanessa Countryman, Sec'y, SEC (May 14, 2020) (''Sosnow & Associates Letter''); SIFMA Letter; STA Letter; Letter from Louis Taubman, Partner, Hunter Taubman Fischer & Li LLC, to Vanessa Countryman, Sec'y, SEC (May 28, 2020) (''HTFL Letter''); Virtu Letter.

[31] *See, e.g.,* Letter from Stephen M. Brophy, President, Aztec Land and Cattle Company, Limited, to SEC (Dec. 27, 2019) (''Aztec Letter''); Brett Dorendorf (Nov. 23, 2019); Al Gonzalez, President, Beacon Redevelopment Industrial Corp. (Dec. 8, 2019) (''Beacon Redevelopment Letter''); Michael Hess (Sept. 27, 2019); Doug Mohn (Nov. 8, 2019); Ariel Ozick (Dec. 30, 2019); Robert E. Schermer, Jr. (Dec. 20, 2019); Tom H. Sleeter, Chief Investment Officer, Total Clarity Wealth Management, Inc. (''Total Clarity Comment''); Letter from David Waters, President, Alluvial Capital Management, LLC (Oct. 9, 2019) (''Alluvial Letter'').

[32] Laura Coffman (Nov. 7, 2019); Alexandra Elliott (Oct. 10, 2019); Christian Gabis (Nov. 26, 2019); Letter from Ari Rubenstein, Co-Founder and Chief Executive Officer, Global Trading Systems, LLC, to Vanessa Countryman, Sec'y, SEC (Feb. 26, 2020) (''GTS Letter''); Reid McKenzie (Oct. 31, 2019); Joshua Marino (Oct. 4, 2019); Letter from James E. Mitchell, General Partner, Mitchell Partners, L.P., to Vanessa Countryman, Sec'y, SEC (Oct. 9, 2019) (''Mitchell Partners Letter 1''); Letter from Erik S. Nelson, President, Coral Capital Partners, Inc., to Vanessa Countryman, Sec'y, SEC (Dec. 30, 2019) (''Coral Capital Letter''); Virtu Letter; *see* Christopher J. DiIorio (Feb. 4, 2020).

[33] Coral Capital Letter; Ron Lefton (Nov. 11, 2019); Letter from Jon Norberg, to Chairman Clayton (Nov. 19, 2019) (''Norberg Letter''); Debby Valentijn (Dec. 21, 2020). Another commenter highlighted that, because there are many different types of companies in the OTC market, the proposed regulatory solutions are not always effective. Mitchell Partners Letter 1; *see* John Gardiner, President and CEO, Taranis Resources, Inc. (Mar. 4, 2020) (''Taranis Comment''); GTS Letter.

[34] Coral Capital Letter.

[35] The Commission, however, believes that the potential for such harm would be limited by the ability of broker-dealers to rely on exceptions to publish quotations, including the unsolicited quotation exception, and the ability of existing shareholders to continue to trade their securities. *See infra* note 216 and accompanying text.

The Commission does not expect the amended Rule to affect the liquidity and pricing of securities in the entire OTC market, as this commenter stated. A delinquent reporting issuer's security could experience a discount in price resulting from the risk that the issuer may not file its required report within 180 days from the end of a specified period. In such case, as discussed below in Part II.D.1, broker-dealers would not be able to rely on the piggyback exception to publish or submit quotations for such issuer's security if its paragraph (b) information were not ''current'' and ''publicly available.'' This scenario involving a particular subset of OTC securities is not expected to affect the liquidity and pricing of all quoted securities in the OTC market because individual securities in the OTC market generally are not included in a market index or benchmark that would be affected by any one security's liquidity or pricing. Further, to the extent an OTC security is included in an index or benchmark, such an index or benchmark would require that issuer information be current and publicly available. *See, e.g., OTC Markets Indices,* OTC Mkts. Grp. Inc., *https://www.otcmarkets.com/market-activity/indices* (last visited Aug. 31, 2020).

[36] *See infra* Part VI.C.1.a.

[37] Several academic studies have found that higher levels of disclosure are associated with higher levels of liquidity in the OTC markets. *See infra* Part VI.C.1.

[38] *See infra* Part VI.C.1.a, c.

[39] Frank Danna, III (Nov. 10, 2019); James Duade (Dec. 26, 2019); Christian Gabis.

[40] Letter from Steven Erickson, CFA, Anbec Partners, LP, to Hon. Jay Clayton, Chairman, SEC (Oct. 23, 2019) (''Anbec Partners Letter''); Ariel Ozick; Michael E. Reiss (Oct. 25, 2019).

these commenters, investors are aware of the risks when they buy OTC securities,[41] other Commission rules and regulations have superseded the original purpose of Rule 15c2–11,[42] and state law already provides investor protections that the proposal seeks to provide.[43] While investor protections can be provided through a variety of means (*e.g.,* from sales practice rules to registration requirements), the specific manner in which Rule 15c2–11 governs the publication or submission of broker-dealers' quotations in a quotation medium serves to cement the broker-dealer's role as a gatekeeper for many investors, including retail investors, to the OTC market. Further, as discussed above, in light of technological developments that have transformed the OTC market since the Rule was adopted and last substantively amended, the Commission believes that it is appropriate to update and modernize the Rule with the goals of providing greater transparency and better combatting fraud.

Another commenter stated that, instead of amending the Rule, the Commission should focus on enforcing rules governing market makers.[44] Some commenters stated that the Commission should instead focus its enforcement efforts on bad actors.[45] For example, one commenter stated that the most effective way to protect retail investors is by suspending trading in securities that are implicated in conduct that appears suspicious or ''illegitimate.''[46] For the reasons discussed throughout this release, the Commission believes that the amended Rule is an important tool to combat fraud and manipulation and enhance investor protection, in addition to trading suspensions and other enforcement actions.

While certain of the Commission's initiatives to protect investors involve addressing fraudulent conduct that has already occurred, such as through the Commission's examination and enforcement programs, the Commission has also been proactive in taking measures that are designed to prevent fraudulent activity before it occurs.[47] The Commission believes that the amendments facilitate such efforts by, for example, addressing the lack of current and publicly available information about companies to the disadvantage of retail investors in comparison to other market participants.[48] The amendments are narrowly tailored to further the Commission's ongoing effort to protect retail investors from fraud and manipulation in the OTC market, maintain the integrity of the OTC market, promote a more efficient and effective OTC market, and facilitate capital formation for issuers that make their information current and publicly available.[49]

The Commission is adopting substantially as proposed several amendments to the Rule, as discussed above. However, the Commission has modified the proposed Rule in a number of respects. Summarized below are key modifications from the proposal:

- *Piggyback Exception.* The Commission is adopting the proposed amendments to the piggyback exception with several targeted modifications: Requiring at least a one-way priced quotation (as opposed to two-way priced quotations);[50] removing from the exception the 30-calendar-day window but still requiring that no more than four days in succession elapse without a quotation;[51] permitting broker-dealers to rely on the piggyback exception to publish quotations for the security of a shell company for the 18 months following the initial priced quotation for an issuer's security that is published or submitted in an IDQS;[52] and providing a limited, conditional grace period to permit broker-dealers to continue to rely on the piggyback exception to publish quotations for an issuer in certain instances when the issuer's paragraph (b) information ceases to be, depending on the regulatory status of the issuer, current and publicly available, timely filed, or filed within 180 calendar days from a specified time frame.[53]
- *Specified Information.* The Commission is adopting a provision to clarify that issuers that make filings pursuant to Regulation Crowdfunding are reporting issuers for purposes of the Rule.[54] For catch-all issuers, the Commission is also: (1) Expanding the list of information specified in paragraph (b) to include the address of the issuer's principal place of business, the state of incorporation of each of the issuer's predecessors (if any), the ticker symbol of the issuer's security (if assigned), and the title of each company insider;[55] and (2) requiring the issuer's most recent balance sheet to be as of a date less than 16 months before the publication or submission of a broker-dealer's quotation and the issuer's profit and loss and retained earnings statements to be for the 12 months preceding the date of the most recent balance sheet.[56]
- *Unsolicited Quotation Exception.* The Commission is limiting reliance on the exception for a quotation on behalf of either a company insider, as proposed, or an affiliate of the issuer if the issuer's paragraph (b) information is not current and publicly available; modifying the exception to permit broker-dealers to rely on a written representation from a customer's broker that such customer is not a company insider or an affiliate;[57] and clarifying

[41] David Aldridge (Oct. 1, 2019); R. Berkvens (Oct. 3, 2019); Dana Blanc (Oct. 10, 2019); Joe Helmer, CFA, Caldwell Sutter Capital (Dec. 24, 2019) (''Caldwell Sutter Capital Comment''); Frank Danna, III; Ralf Erz (Oct. 8, 2019); Philippe Goodwill (Oct. 1, 2019); Letter from Matthew Kerchner, CFA, Terravoir Venture, to Hon. Jay Clayton, Chairman, SEC (Nov. 25, 2019) (''Terravoir Venture Letter''); Richard Kogut (Oct. 8, 2019); Aharon Levy (Oct. 12, 2019); Tracy Michaels (Sept. 30, 2019); Michael E. Reiss; Robert Ringelberg (Oct. 13, 2019); Jim Rivest (Sept. 29, 2019); Letter from David Sanders, to SEC (Oct. 10, 2019) (''Sanders Letter''); Thomas Schiessling (Oct. 30, 2019); Lucas H. Selvidge (Oct. 23, 2019); Kevin Ward (Oct. 8, 2019); *see* Philippe Goodwill. Another commenter specified that broker-dealers require purchasers of OTC stocks to sign multiple agreements and disclaimers before they are eligible to purchase OTC stocks and that broker-dealers require annual income qualifications and tax bracket verification when opening accounts. Letter from Darian Andersen, General Counsel, P.C., to Vanessa Countryman, Sec'y, SEC (Dec. 23, 2019) (''Andersen Letter'').

[42] *See* Letter from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, to SEC (Jan. 24, 2020) (''Professor Angel Letter'').

[43] Letter from Douglas Raymond, Drinker Biddle & Reath (Nov. 21, 2019) (''Drinker Letter'').

[44] Hans Brost (Nov. 15, 2019).

[45] *See, e.g.,* Caldwell Sutter Capital Comment; Exchange Listing Letter; Braxton Gann (Oct. 11, 2019); Joshua Marino; Daniel Raider (Oct. 2, 2019); *see* Canaccord Letter.

[46] Canaccord Letter.

[47] *See* Proposing Release at 58210.

[48] *Id.* For example, the Commission stated in the Proposing Release its concern that market participants can take advantage of exceptions from the Rule's information review requirement to the detriment of retail investors. Without current public information about an issuer, it is difficult for an investor or other market participant to evaluate the issuer and the risks involved in purchasing or selling its securities. *See id.* at 58208.

[49] *See infra* Part VI.C.2.

[50] Amended Rule 15c2–11(f)(3)(i)(A).

[51] Amended Rule 15c2–11(f)(3)(i)(A). As discussed above, the former Rule required that quotations must have appeared on each of at least 12 days during the previous 30 calendar days, with no more than four consecutive business days in succession without a quotation. Former Rule 15c2–11(f)(3)(i), (ii).

[52] *See* Amended Rule 15c2–11(f)(3)(i)(B)(2).

[53] *See* Amended Rule 15c2–11(f)(3)(ii).

[54] Amended Rule 15c2–11(b)(3)(iii).

[55] See paragraphs (b)(5)(i)(B), (C), (D), and (K) of the amended Rule, respectively, for such requirements.

[56] *See* Amended Rule 15c2–11(b)(5)(i)(L). As discussed below in Part II.B.3, the Commission has determined not to adopt the proposed requirement for a catch-all issuer's balance sheet that is not as of a date less than six months before the publication or submission of the broker-dealer's quotation to be accompanied with profit and loss and retained earnings statements for the period from the date of such balance sheet to a date that is less than six months before the publication or submission of the quotation.

[57] *See* Amended Rule 15c2–11(f)(2)(iii)(A). While the Commission proposed this limitation with respect to quotations that are published or

that broker-dealers may rely on a publicly available determination by a qualified IDQS or a registered national securities association that an issuer's information is current and publicly available.[58]

• *ADTV and Asset Test Exception.* The Commission is clarifying in the rule text that the worldwide ADTV value must be ''reported'' and eliminating the term ''unaffiliated'' from the shareholders' equity prong of the three-part test.[59]

• *Publicly Available Determination That an Exception Applies.* The Commission is adopting the proposed exception for a broker-dealer to rely on a qualified IDQS's or registered national securities association's publicly available determination that an exception applies; however, the Commission is not adopting the provision in the exception that would have required a qualified IDQS or registered national securities association to make a publicly available determination that an issuer's information is current and publicly available in addition to its determination that an exception applies.[60] The Commission is adding a new provision that a qualified IDQS or a registered national securities association that makes certain publicly available determinations must establish, maintain, and enforce certain reasonably designed written policies and procedures.[61] The Commission is making conforming changes in the rule text to clarify that a broker-dealer may rely on publicly available determinations regarding the exception for exchange-traded securities, the piggyback exception, the exception for municipal securities, and the ADTV and asset test exception.[62]

• *Location of Publicly Available Specified Information.* The Commission is expanding the list of locations where issuer information may be made publicly available to include (in addition to EDGAR and the website of a qualified IDQS, a registered national securities association, an issuer, and a broker-dealer) the website of: (1) A state or federal agency, and (2) an electronic delivery system that is generally available to the public in the primary trading market of a foreign private issuer.[63]

A. Unlawful Activity

1. Current and Publicly Available Issuer Information—Rule 15c2–11(a)(1)(i)(B), (a)(2)(ii)

The Commission is adopting, largely as proposed, the amendment that requires an issuer's paragraph (b) information to be current and publicly available[64] for a broker-dealer to publish or submit an initial quotation for that issuer's security. Consistent with the proposed Rule, the amended Rule provides that the particular information that a broker-dealer must obtain and review is determined by an issuer's regulatory status: Whether the issuer (1) filed a registration statement under the Securities of Act of 1933 (a ''prospectus issuer''), (2) filed an offering statement under Regulation A[65] (a ''Reg. A issuer''), (3) is subject to the periodic reporting requirements of the Exchange Act, Regulation A or Regulation Crowdfunding, or is the issuer of a security covered by Section 12(g)(2)(G) of the Exchange Act (a ''reporting issuer''), or (4) is a foreign private issuer that is exempt from registration under Exchange Act Section 12(g) pursuant to Rule 12g3–2(b) (an ''exempt foreign private issuer''). Such issuers are subject to statute- or rule-based disclosure and reporting requirements under the federal securities laws. An issuer that does not fall within any of these categories and is generally not subject to similar statute- or rule-based disclosure and reporting requirements under the federal securities laws is referred to as a ''catch-all issuer.''[66] Consistent with the proposed Rule, the amended Rule requires that an issuer's paragraph (b) information be current and publicly available for all issuers, including catch-all issuers, for a broker-dealer to initiate or resume a quoted market in an issuer's security.[67]

The Commission sought comment about the proposal's requirement that an issuer's paragraph (b) information be current and publicly available for a broker-dealer to publish or submit, after complying with the information review requirement or after relying on the review performed by a qualified IDQS,[68] an initial quotation for that issuer's security in a quotation medium.[69]

submitted on behalf of company insiders, the amended Rule also applies this limitation with respect to affiliates of the issuer.

[58] *See* Amended Rule 15c2–11(f)(2)(iii)(B).

[59] *See infra* Part II.F.

[60] *See* Proposed Rule 15c2–11(f)(8)(i).

[61] Amended Rule 15c2–11(a)(3). The Commission, therefore, is not adopting in each of the exceptions that reference a publicly available determination the proposed requirement for a qualified IDQS or a national securities association to make a publicly available determination that it ''has'' certain reasonably designed written policies and procedures, as proposed paragraph (f)(8)(iii) would have required.

[62] *See* Amended Rule 15c2–11(f)(7).

[63] Amended Rule 15c2–11(e)(5).

[64] For purposes of this release, the terms ''current'' and ''publicly available'' have the same meaning as their definitions in paragraphs (e)(2) and (e)(5) of the amended Rule, respectively. *See infra* Part II.J.1. The definition of the term ''current'' as used in this release may differ from its meaning in other Commission rules (*e.g.,* Securities Act Rule 144).

[65] *See* Rules 251 and 252 of Regulation A. The proposal used the term ''notification'' instead of ''offering statement'' to refer to the specified information for a Reg. A issuer, and the Commission is making a technical edit in the amended Rule to use the term ''offering statement'' to be consistent with Regulation A. *See* Amended Rule 15c2–11(b)(2).

[66] For purposes of this release, the term ''catch-all issuer'' refers to issuers for which documents and information are specified in paragraph (b)(5) of the proposed Rule and amended Rule. As discussed in more detail below, this term refers to an issuer for which the documents and information specified in paragraphs (b)(1) through (b)(4) of the proposed Rule or amended Rule do not apply. As discussed below in Part II.B.5, the amended Rule treats reporting issuers that are delinquent in their filing obligations (*i.e.,* their paragraph (b) information is not ''current'') as catch-all issuers only for purposes of initiating or resuming a quoted market in these issuers' securities. However, other catch-all issuers may have no Exchange Act or Securities Act reporting or disclosure obligation whatsoever.

[67] Specifically, the amended Rule requires an issuer's paragraph (b) information (excluding, in the case of a catch-all issuer, the documents and information specified in paragraphs (b)(5)(i)(N) through (P)) to be current and publicly available. *See* Amended Rule 15c2–11(a)(1)(i)(B), (a)(2)(ii). Paragraph (b) information must be current and publicly available, consistent with (1) a broker-dealer's determination, as part of its compliance with the information review requirement, that an issuer's paragraph (b) information is current and publicly available or a qualified IDQS's publicly available determination that it has complied with the information review requirement, including the requirement in paragraph (a)(2)(ii) that the issuer's paragraph (b) information is current and publicly available; and (2) the broker-dealer publishing or submitting a quotation within three business days after it complies with the information review requirement or the qualified IDQS makes such publicly available determination. As discussed below in Part II.A.3, this three-business-day requirement is designed to promote the commencement of a quoted market in a security concomitant with current information about the issuer of that security.

[68] For purposes of this release, the ''proposed qualified IDQS review exception'' refers to the proposed exception provided in paragraph (f)(7) of the proposed Rule. The ability of a broker-dealer to initiate or resume a quoted market in a security in response to a qualified IDQS's publicly available determination that it complied with the information review requirement is substantively adopted; however, this provision no longer appears as an exception under paragraph (f) of the amended Rule and, instead, appears in the amended Rule's unlawful activity provision under paragraph (a)(1)(ii). For a discussion of this amendment, see *infra* Part II.A.3.

[69] Proposed Rule 15c2–11(a)(1)(ii), (a)(2)(ii). While the Commission proposed to require that an issuer's paragraph (b) information be current and publicly available for a broker-dealer to rely on certain exceptions to publish or submit quotations for that issuer's security (*e.g.,* the proposed amendments to the piggyback exception), paragraph (a) of the proposed Rule and the amended Rule address broker-dealers' initial quotations that are published or submitted to commence a quoted market once they have either complied with the information review requirement or relied on a

Continued

Certain commenters supported the principle of increased access to issuer information to support informed investment decisions,[70] observing that the internet has created new ways of accessing and storing information, as well as the rise of online brokerages, which has made trading securities easier and less expensive than it was when the Rule was last substantively amended.[71] The Commission also received comments that did not support increased transparency; in particular, the Commission received numerous comments on the proposed requirement for an issuer's paragraph (b) information to be current and publicly available to remain eligible for the piggyback exception, as discussed below in Part II.D.1. However, the Commission did not receive any comments specifically relating to the proposed requirement for current and publicly available information in the context of publishing or submitting an initial quotation for an issuer's security. The Commission is adopting this provision related to broker-dealers' initial quotations largely as proposed.

As discussed below in relation to the piggyback exception, the Commission believes that the public availability of an issuer's paragraph (b) information helps to alleviate concerns that limited or no information for certain OTC issuers, such as catch-all issuers, exists or that such information is difficult for retail investors to find.[72] However, the Commission also believes that the amended Rule's requirement that an issuer's paragraph (b) information be current and publicly available for a broker-dealer to quote the issuer's security should not result in an obligation for the public availability of current information for catch-all issuers that is more onerous than the disclosure obligations for reporting issuers under the federal securities laws. The Commission believes that this is important because not all catch-all issuers have a reporting or disclosure obligation under the federal securities laws, and catch-all issuers' paragraph (b) information might not be updated more frequently than annually if the issuer's state or local disclosure regulations do not impose such a requirement. Accordingly, the Commission has made a modification to the proposed information review requirement for broker-dealers to publish or submit initial quotations. For broker-dealers to publish or submit initial quotations (and also for broker-dealers to rely on the piggyback exception, as discussed below), the Commission is not requiring certain financial information for catch-all issuers to be as of a date less than six months of the publication or submission of a broker-dealer's quotation for a catch-all issuer's security.[73] Instead, the Commission is requiring that the issuer's: (1) Most recent balance sheet must be as of a date less than 16 months before the publication or submission of the broker-dealer's quotation, and (2) profit and loss and retained earnings statements must be as of a date for the 12 months preceding the date of such balance sheet.[74] Consistent with the proposed Rule, the amended Rule provides that, for a broker-dealer to initiate or resume a quoted market in a catch-all issuer's security, the catch-all issuer information specified in paragraph (b)(5)(i), excluding the issuer's financial information described above, must be as of a date within 12 months before the publication or submission of the quotation.[75]

2. Qualified IDQS That Complies With the Information Review Requirement—Rule 15c2–11(a)(2)(i) Through (iv)

The Commission is expanding the scope of market participants that may comply with the information review requirement.[76] Paragraph (a)(2) of the amended Rule permits a qualified IDQS to make known to others the publication or submission of a quotation by a broker-dealer that relies on a qualified IDQS's compliance with the information review requirement, so long as certain criteria are met (a ''qualified IDQS review quotation'').[77] The qualified IDQS that makes known to others the quotation of a broker-dealer that is published or submitted pursuant to paragraph (a)(1)(ii) of the amended Rule must first have complied with paragraphs (a), (b), and (c) of the amended Rule, which require the qualified IDQS to review the issuer's paragraph (b) information and any of its supplemental information in compliance with the information review requirement. In addition, a qualified IDQS that complies with the information review requirement must also comply with the recordkeeping requirement in paragraph (d)(1)(i)(B) of the amended Rule.

The Commission proposed to permit a qualified IDQS to make known to others the publication or submission of a qualified IDQS review quotation.[78] The Commission also proposed to define the term ''qualified interdealer quotation system'' to mean any IDQS that meets the definition of an ''alternative trading system'' (an ''ATS'') under Rule 300(a) of Regulation ATS and operates pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Exchange Act.''[79] Under the proposed Rule, broker-dealers would have been able to publish or submit quotations based on their reliance on a qualified IDQS's publicly available determination that it complied with the information review requirement.[80] In addition, under the proposed Rule, the activities that satisfy the information review requirement that

qualified IDQS's publicly available determination that it complied with the information review requirement.

[70] *See, e.g.,* Letter from Christopher Gerold, President, North American Securities Administrators Association, Inc., to Vanessa Countryman, SEC (Dec. 27, 2019) (''NASAA Letter''); Letter from Brenda Hamilton, Hamilton & Associates Law Group, P.A., to Vanessa Countryman, Sec'y, SEC (Oct. 15, 2019) (''Hamilton & Associates Letter''); Josh Lawler, Partner, Zuber Lawler & Del Duca LLP (Feb. 24, 2020) (''Zuber Lawler Letter''); Michael E. Reiss; Jim Rivest; Robert E. Schermer, Jr.; Michael Tofias (Oct. 21, 2019); *see* Peter Kniffin (Oct. 12, 2019); Sosnow & Associates Letter.

[71] *See* Hamilton & Associates Letter (''The result has been the entry of large numbers of new investors into the once-obscure OTC market. Revisions to the Rule are long overdue.''); *see* Dana Blanc; Doug Mohn.

[72] *See, e.g.,* Ulf Brüggemann *et al., The Twilight Zone: OTC Regulatory Regimes and Market Quality,* 31 Rev. Fin. Stud. 898, 907 (2018) (noting difficulties in accessing information about companies, even information filed with state regulators); Jeff Swartz, *The Twilight of Equity Liquidity,* 34 Cardozo L. Rev. 531, 573 (2012) (stating that this situation is particularly problematic because unsophisticated investors make up a large portion of OTC market participants); *see also* Michael K. Molitor, *Will More Sunlight Fade the Pink Sheets? Increasing Public Information About Non-Reporting Issuers with Quoted Securities,* 39 Ind. L. Rev. 309, 311, 337 (2006). In addition, increasing the public availability of current information about OTC issuers has the potential to counteract misinformation, which can proliferate through promotions and other channels. *See infra* Part VI.B.2.c.

[73] *See infra* Part II.B.3.

[74] *See* Amended Rule 15c2–11(b)(5)(i)(L); *see also infra* Part II.J.1.

[75] *See* Amended Rule 15c2–11(b)(5)(i).

[76] *See* Proposing Release at 58212. Consistent with the proposal, paragraph (a)(2) of the amended Rule does not impose an affirmative obligation on a qualified IDQS to comply with the information review requirement; rather, paragraph (a)(2) makes it an unlawful activity for a qualified IDQS to make known to others the publication or submission of a quotation by a broker-dealer that relies on the qualified IDQS's compliance with the information review requirement, unless the qualified IDQS has obtained and reviewed the applicable specified issuer documents and information in compliance with the information review requirement and made a publicly available determination of such compliance.

[77] Amended Rule 15c2–11(a)(2). The definition of the term ''qualified interdealer quotation system'' under the amended Rule is discussed below in Part II.J.4.

[78] *See* Proposing Release at 58213.

[79] Proposed Rule 15c2–11(e)(5).

[80] *See* Proposing Release at 58213; *see also* Proposed Rule 15c2–11(f)(7).

would apply to a qualified IDQS (*i.e.,* obtaining and reviewing the applicable paragraph (b) information and supplemental information) would be the same as those that would apply to a broker-dealer.[81]

The Commission sought comment about the proposed amendment to permit qualified IDQSs to comply with the information review requirement.[82] This aspect of the proposal received no comment in opposition, and commenters who supported the proposal stated that it expands the types of entities that may comply with the information review requirement, modernizes the information review process, and makes the process more efficient.[83] The Commission has determined to adopt this provision substantially as proposed, with technical edits.[84]

A qualified IDQS's requirements under paragraph (a)(2) of the amended Rule mirror the requirements for broker-dealers under paragraph (a)(1) of the amended Rule.[85] The amended Rule's recordkeeping requirements for broker-dealers and qualified IDQSs should aid in Commission oversight of compliance with the Rule's provisions. Finally, the notice and reporting requirements for an IDQS that operates as an ATS under the Exchange Act contribute to the Commission's effective oversight of ATSs.

3. Broker-Dealer That Relies on a Qualified IDQS's Publicly Available Determination That It Complied With the Information Review Requirement—Rule 15c2–11(a)(1)(ii)

The Commission is adopting a new provision in the amended Rule to allow broker-dealers to rely on a qualified IDQS's publicly available determination that it complied with the information review requirement.[86] The amended Rule, consistent with the proposed Rule, sets forth certain criteria for a broker-dealer to publish or submit a quotation in reliance on a qualified IDQS's compliance with the information review requirement.

The Commission sought comment about the proposal for an exception to permit a broker-dealer to publish or submit a qualified IDQS review quotation.[87] The Commission received comment supporting this provision.[88] Commenters who supported the proposed exception stated that it would: (1) Reduce burdens for broker-dealers by expanding the scope of entities that may comply with the information review requirement, (2) modernize and make the Rule more efficient, and (3) promote more competition to improve the overall process.[89] One commenter also stated that the qualified IDQS review exception should be collapsed into the Rule's unlawful activity provision to simplify the Rule.[90]

The Commission is adopting new paragraph (a)(1)(ii) of the amended Rule,[91] which substantively is the same as the proposed exception to permit broker-dealers to rely on a qualified IDQS's publicly available determination that it complied with the information review requirement.[92] Specifically, this provision requires a broker-dealer's quotation to be published or submitted within three business days after the qualified IDQS makes a publicly available determination.[93] Unlike the proposed Rule, the amended Rule does not include a 30-calendar-day limitation for broker-dealers to rely on a qualified IDQS's publicly available determination.[94] To ensure that there is current issuer information at the initiation of a quoted market in such issuer's security, the Commission has determined to adopt the proposed requirement that a broker-dealer's quotation must be published within three business days of the qualified IDQS making publicly available its determination. This three-business-day window is designed to help ensure that there is a very limited time period between the information review conducted by the qualified IDQS and the first quotation published or submitted by a broker-dealer in reliance on the qualified IDQS's publicly available determination that it complied with the information review requirement.[95] As discussed below,

[81] *See* Proposing Release at 58213.

[82] Proposed Rule 15c2–11(a)(2).

[83] *See, e.g.,* Letter from James Berns, Berns & Berns, to Vanessa Countryman, Sec'y, SEC (Aug. 31, 2020); Coral Capital Letter; CrowdCheck Letter; *see also* HTFL Letter; Lowy Letter.

[84] The amended Rule replaces the phrase ''required by'' with ''specified in'' and adds the word ''the'' to the requirement that ''[s]uch qualified interdealer quotation system ha[ve] in its records *the* documents and information *specified in* paragraph (b) of this section . . . .'' Amended Rule 15c2–11(a)(2)(i) (emphasis added). Paragraph (a)(2) of the amended Rule also includes the phrase ''for publication'' to mirror the text of paragraph (a)(1), updates the cross-reference to paragraph (a)(1)(ii) of the amended Rule, and removes in three instances the word ''and.''

[85] The shell company limitation in paragraph (f)(7)(i) of the proposed qualified IDQS review exception is not incorporated into the information review requirement for qualified IDQSs under the amended Rule. The Commission believes that the investor protections provided from a qualified IDQS's compliance with the information review requirement for a shell company helps to ensure that a quoted market for its security is less susceptible to fraudulent or manipulative schemes because the qualified IDQS must have a reasonable basis for believing that the shell company's information is accurate in all material respects and from a reliable source before a broker-dealer can initiate or resume a quoted market in the shell company's security.

[86] *See* Amended Rule 15c2–11(a)(1)(ii).

[87] Proposed Rule 15c2–11(f)(7). The Commission stated that the proposed exception would have reduced the burden on broker-dealers in connection with initiating or resuming a quoted market in an OTC security. Under the proposed exception: (1) A broker-dealer would need to have published or submitted a quotation within three business days after the qualified IDQS made its determination publicly available, and (2) broker-dealers could rely on the exception only during the 30 calendar days after the first quotation was published or submitted in reliance on the proposed exception. These timing requirements were intended, among other things, to ensure that the broker-dealer would commence a quoted market shortly after the qualified IDQS makes the applicable publicly available determination and to provide an opportunity for the broker-dealer to establish the frequency of quotations that the proposed amendments to the piggyback exception would require. *See* Proposing Release at 58231. Further, the proposed exception would not have applied if the issuer of a security were a shell company. *See* Proposed Rule 15c2–11(f)(7)(i).

[88] Coral Capital Letter (stating that the exception should apply to the securities of shell companies and penny stocks); Canaccord Letter; Letter from Daniel Zinn, General Counsel, and Cass Sanford, Associate General Counsel, OTC Mkts. Grp. Inc., to SEC (Nov. 25, 2019) (''OTC Markets Group Letter 1''); Letter from Daniel Zinn, General Counsel, and Cass Sanford, Associate General Counsel, OTC Mkts. Grp. Inc., to SEC (Dec. 30, 2019) (''OTC Markets Group Letter 2''); Letter from F. Mark Reuter, Partner, Keating, Muething & Klekamp (Dec. 13, 2019) (''Keating Letter''); SIFMA Letter. Commenters also supported the proposal with respect to publicly available determinations that issuer information is current and publicly available. Zuber Lawler Letter.

[89] Coral Capital Letter; *see* Keating Letter.

[90] *See* Letter from Daniel Zinn, General Counsel, and Cass Sanford, Associate General Counsel, OTC Mkts. Grp. Inc., to SEC (Apr. 8, 2020) (''OTC Markets Group Letter 3''). This commenter also suggested a reordering of the Rule such that there would no longer exist a need to distinguish between initial versus ongoing quoting requirements, according to the commenter. *Id.*

[91] This provision is substantively the same as that in the proposed exception but is achieved through different means; the amended Rule provides this ability in a single place, under the unlawful activity provision, while the proposed Rule largely provided this through an exception. The amendments as modified are designed to streamline the amended Rule and facilitate compliance.

[92] *See* Proposed Rule 15c2–11(f)(7).

[93] *See infra* note 95 (stating that this three-business-day window is consistent with the time frame specified for the required manner in which current reports must be obtained under paragraph (b)(3) of the amended Rule).

[94] As discussed below in Part II.D.5, the piggyback exception under the amended Rule no longer has a timing requirement of 30 calendar days following the initiation (or resumption) of a quoted market for securities to establish piggyback eligibility.

[95] The requirement for a broker-dealer's quotation to be published within three business days of the qualified IDQS making publicly available its determination is consistent with the time frame specified for the required manner in which current

Continued

broker-dealers that publish quotations pursuant to paragraph (a)(1)(ii) need only to preserve the name of the qualified IDQS that made the publicly available determination that it has complied with the information review requirement.[96]

In response to a comment stating that entities other than a broker-dealer or a qualified IDQS should be able to comply with the information review requirement,[97] the Commission does not believe that it would be appropriate to further expand the scope of entities that may comply with the Rule's information review requirement. The Commission's oversight of, and regulatory requirements for, broker-dealers and qualified IDQSs under the Exchange Act would help to promote compliance with the information review requirement and enhance investor protection.[98] Other commenters stated that the Rule should permit broker-dealers to rely on the determination of a qualified IDQS: (1) To initiate quotes in these securities without requiring a broker-dealer or qualified IDQS to file a separate Form 211 with the Financial Industry Regulatory Authority (''FINRA''),[99] and (2) to publish subsequent quotations without the 30-calendar-day ''piggyback eligibility'' period following the initial quotation.[100] One commenter requested clarification on whether a qualified IDQS would need to submit a Form 211 to FINRA for a broker-dealer to rely on a qualified IDQS's publicly available determination that it complied with the information review requirement before it could publish a quotation for some or all categories of securities.[101] The requirement to file a Form 211 falls under FINRA Rule 6432. The amended Rule does not impose obligations with respect to FINRA Rule 6432 and does not require qualified IDQSs, or broker-dealers relying on a qualified IDQS's publicly available determination that an exception applies, to file Forms 211 with FINRA. During and after the transition period, the Commission will continue to monitor the operation of this market and expects FINRA to do the same, including through examinations of qualified IDQSs. The Commission's staff expects to work with FINRA on an ongoing basis regarding the implementation of the amended Rule.[102]

4. Policies and Procedures for Making Certain Publicly Available Determinations—Rule 15c2–11(a)(3)

The Commission has determined to require a qualified IDQS or registered national securities association that makes certain publicly available determinations in accordance with the amended Rule to establish, maintain, and enforce reasonably designed written policies and procedures associated with making such a determination. Such publicly available determinations may pertain to whether: (1) An issuer's paragraph (b) information is current and publicly available for purposes of the unsolicited quotation exception,[103] (2) the piggyback exception's grace period applies,[104] or (3) the requirements of a certain exception (*i.e.,* the exchange-traded security exception, the piggyback exception, the municipal security exception, or the ADTV and asset test exception) are met.[105] Under the proposed Rule, the qualified IDQS or registered national securities association would have had to make a publicly available determination that it has reasonably designed policies and procedures in place and being maintained and enforced to determine whether the applicable paragraph (b) information is current and publicly available, and that the requirements of an exception are met.[106]

Commenters expressed general concern that the proposal would weaken Commission oversight of compliance with the Rule.[107] The Commission is strengthening the proposed Rule's policies and procedures requirements for making such publicly available determinations. Instead of requiring a qualified IDQS or registered national securities association to make a publicly available determination that it ''has'' reasonably designed policies and procedures, the amended Rule requires such entities to establish, maintain, and enforce reasonably designed written policies and procedures to make the particular publicly available determination.

Specifically, paragraph (a)(3) under the amended Rule requires a qualified IDQS or registered national securities association that makes a publicly available determination regarding whether issuer information is current and publicly available, and, in some instances, whether the requirements of an exception are met, to establish, maintain, and enforce reasonably designed written policies and procedures to determine whether: (1) Paragraph (b) information is current and publicly available, and (2) the requirements of the paragraph (f)(7) exception are met.[108] The obligation to establish, maintain, and enforce written policies and procedures specified in paragraph (a)(3) of the amended Rule is designed to help promote the integrity of such publicly available determinations and to facilitate Commission oversight of the qualified IDQS or registered national securities association that makes them.

B. Specified Information

1. Current Reports—Rule 15c2–11(b)(3)(i) Through (iv)

The Commission is adopting as proposed[109] the requirement that a

reports must be obtained under amended Rule 15c2–11(b)(3), as discussed below in Part II.B.1. Further, this three-business-day window is designed to take account of the fact that certain issuer information (*e.g.,* a current report) is not filed at regular intervals. Accordingly, the three-business-day window provides a limited time frame during which a quoted market for an issuer's security can be initiated following the potential disclosure of new information about the issuer. This requirement that a broker-dealer's quotation be published within three business days of the qualified IDQS making its publicly available determination applies equally for publicly available determinations across all issuers, including those that do not have a reporting or disclosure obligation under the federal securities laws, to promote the investor protections that result from the commencement of a quoted market in a security concomitant with current information about the issuer of that security.

[96] *See infra* Part II.I (discussing the recordkeeping requirement).

[97] Coral Capital Letter.

[98] *See* Proposing Release at 58236.

[99] Canaccord Letter; STA Letter; Virtu Letter.

[100] Letter from Laura Anthony, Anthony L.G., PLLC, to SEC (Feb. 26, 2020) (''Anthony Letter''); Letter from Leonard Burningham to SEC (Dec. 30, 2019), and Letter from Leonard Burningham to SEC (Dec. 30, 2019) (collectively, the ''Leonard Burningham Letters''); OTC Markets Group Letter 2; OTC Markets Group Letter 3 (advocating for an elimination of the three-business-day requirement for reliance on the exception); SIFMA Letter.

[101] FINRA Letter (stating that its current rules do not contemplate that a qualified IDQS would be required to submit a Form 211 to FINRA and that the Form 211 includes a certification attesting that the submitting broker-dealer has not accepted and will not accept payments from the issuer of the security to be quoted for market making, which applies to the filing of a Form 211).

[102] As discussed below in Part II.P, the Commission staff intends to offer assistance and support to covered entities during the transition period and thereafter, with the aim of helping to ensure that the investor protections and other benefits of the amended Rule are implemented in an efficient and effective manner.

[103] *See* Amended Rule 15c2–11(f)(2)(iii)(B).

[104] *See* Amended Rule 15c2–11(f)(3)(ii)(A).

[105] *See* Amended Rule 15c2–11(f)(7).

[106] Proposing Release at 58232; *see* Proposed Rule 15c2–11(f)(8)(iii).

[107] *See, e.g.,* Steven Gereau, Mayfair Plastics Inc. (Sept. 30, 2019); Tom Prenger (Sept. 30, 2019).

[108] Amended Rule 15c2–11(a)(3). Paragraph (a)(3) of the amended Rule applies to registered national securities associations (and qualified IDQSs) that make publicly available determinations, but a registered national securities association is not eligible to comply with the information review requirement, as provided in paragraphs (a)(1)(i)(A) through (C) and (a)(2)(i) through (iii) of the amended Rule.

[109] *See* Proposing Release at 58214. The proposed Rule would revise the timing requirement from five business days to three business days and would streamline the timing standard associated with obtaining current reports by removing the

broker-dealer or a qualified IDQS obtain current reports as of a date up to three business days before the publication or submission of the quotation in connection with the information review requirement.[110] The Commission proposed to update and streamline the timing requirement for obtaining certain reports about material events affecting the issuer of a quoted security, such as a Form 8–K or Form 6–K, in connection with the information review requirement.[111] Prior to the amendment, the Rule required that a broker-dealer obtain such reports on the earlier of five business days before: (1) The initial publication or submission of a quotation; or (2) the date of submission of certain information pursuant to applicable rules of FINRA or its successor.[112]

In response to the proposal, one commenter expressed concern that the proposal imposed a requirement to wait three business days before publishing quotations,[113] while another suggested that the Commission remove the three-day-window.[114] After consideration of these comments, the Commission has determined to adopt the provision as proposed. As discussed in the Proposing Release, events that require the filing of current reports, such as a Form 8–K or Form 6–K, generally involve material events affecting an issuer.[115] The three-business-day period recognizes that current reports are not filed at regular intervals, and thus removing the entire period would be impractical. For example, a reporting issuer might file a current report, such as a Form 8–K, minutes before a broker-dealer publishes a quotation for such security. Therefore, the amended Rule, like the proposed Rule, provides a period during which such recently filed current reports will not be required paragraph (b) information for issuers that have a reporting obligation under Section 13 or 15(d) of the Exchange Act or Regulation A, although the amended Rule shortens the former Rule's five-day period to a three-day period.

This amendment is not designed to serve as a waiting period, as one commenter suggested,[116] but rather as a cutoff date at which a broker-dealer is not required to consider a more recently filed current report to comply with the information review requirement prior to publishing or submitting a quote. For example, a broker-dealer could publish a quotation on the same day that it complies with the information review requirement or on the same day that a qualified IDQS makes a publicly available determination that it has complied with the information review requirement. The Commission believes that removing the three-business-day period would create an impractical result and require broker-dealers and qualified IDQSs to continuously monitor for the filing of current reports with the Commission in the three business days leading up to the publication or submission of a broker-dealer's quotation. The three-business-day period provides a degree of certainty in regard to compliance burdens for the uncertain timing surrounding current reports, while at the same time shortening the previously existing period to better achieve the Commission's goals.

2. Reporting Issuer Provision—Rule 15c2–11(b)(3)

To simplify the amended Rule and improve its readability, the Commission is breaking out the provisions governing paragraph (b) information for reporting issuers by addressing each type of issuer in a separate paragraph. This amendment would not have changed any substantive obligations for a broker-dealer under the Rule and would remove from the list of issuers those that are covered by Section 12(g)(2)(B) under the Exchange Act because such issuers have a reporting obligation under Section 13 or 15(d) under the Exchange Act and would, therefore, already be covered by paragraph (b)(3)(i) under the proposed Rule.[117] The Commission sought comment about this aspect of the proposal but did not receive any comment. The Commission is adopting the reorganized structure, as proposed.[118]

3. Catch-All Issuer Information—Rule 15c2–11(b)(5)(i)

The Commission is also expanding the list of specified paragraph (b) information for catch-all issuers to include the identity of company officers and large shareholders, along with additional information that commenters suggested, and is lengthening the amount of time for all catch-all issuer information to be updated for such information to meet the definition of ''current.'' [119] The Commission proposed to expand the list of specified paragraph (b) information associated with catch-all issuers to include the identity of company officers and large shareholders of the company.[120] The proposed requirement to make such information publicly available was designed to make it easier for investors and other market participants to identify a more complete list of persons who are associated with the issuer and to research their backgrounds.[121]

The Commission sought comment about the proposal to expand the list of

requirement regarding a broker-dealer's demonstration of its compliance with the Rule by filing a form (*i.e.,* a Form 211) with FINRA, which must be received at least three business days before the broker-dealer's quotation is published or displayed in a quotation medium. Thus, the proposed Rule would require that a broker-dealer or qualified IDQS obtain all current reports as of a date up to three business days before the initial publication or submission of a quotation. The proposed timing requirement was intended to reflect that, in today's market, reports, such as a Form 8–K, are easily accessible and can be obtained in a timely manner. In addition, the proposed requirement to obtain all current reports as of a certain date is related to the initiation or resumption of a quoted market for a security, not to the requirements of applicable FINRA rules for a broker-dealer to submit certain information to FINRA. *See id.* These changes were intended to require broker-dealers and qualified IDQSs to obtain current reports closer in time to the initial publication or submission of a quotation.

[110] Amended Rule 15c2–11(b)(3)(i) through (iii).

[111] Proposed Rule 15c2–11(b)(3)(i) through (iii). Current reports filed with the Commission include, but are not limited to, current reports on Form 8–K pursuant to Section 13 or 15(d) of the Exchange Act and current reports on Form 1–U pursuant to Rule 257(b)(4) of Regulation A. *See* Proposing Release at 58214 n.58.

[112] Former Rule 15c2–11(d)(2)(i). The timing standard for obtaining current reports in paragraph (d)(2)(i) of the former Rule was incorporated, with a modification, into paragraphs (b)(3)(i) through (iii) of the proposed Rule.

[113] *See* Coral Capital Letter.

[114] OTC Markets Group Letter 3.

[115] *See* Proposing Release at 58214.

[116] *See* Coral Capital Letter.

[117] *See* Proposing Release at 58214.

[118] *See* Amended Rule 15c2–11(b)(3)(i) through (v). To make the amended Rule easier to read, the Commission is making a streamlining edit from the proposal by not adopting the proposed requirement in paragraphs (b)(3)(i)(B), (b)(3)(ii)(B), and (b)(3)(iii)(B) for a broker-dealer or qualified IDQS to have a reasonable basis for believing that the issuer is current in filing the applicable specified information. This requirement was redundant with the proposed Rule's information review requirement—and would have been redundant with the amended Rule's information review requirement—that a broker-dealer or a qualified IDQS must have a reasonable basis for believing that the specified information is ''current and publicly available.'' *See* Amended Rule 15c2–11(a)(1)(i)(B) and (C), (a)(2)(ii) and (iii); Proposed Rule 15c2–11(a)(1)(ii) and (iii), (a)(2)(iii); *see also infra* Parts II.J.1 and 3 (discussing how paragraph (b) information that is filed by the applicable time frames specified in paragraph (b) for the issuer is current and publicly available for purposes of the amended Rule). Instead, paragraph (b)(3) of the amended Rule provides that the specified information for reporting issuers is a current copy of the documents and information that are listed under the applicable subparagraph under paragraph (b). This technical edit is appropriate because the definition of current for purposes of the amended Rule pertains to an issuer's paragraph (b) information and not to the issuer itself. *See* Amended Rule 15c2–11(e)(2); *infra* Part II.J.1. For a description of non-structural changes to the specified information provision for reporting issuers, see *infra* Part II.B.6, which discusses the addition of a specified information provision for crowdfunding issuers under the amended Rule.

[119] *See* Amended Rule 15c2–11(b)(5)(i).

[120] Proposed Rule 15c2–11(b)(5)(i)(K).

[121] *See* Proposing Release at 58214–15.

paragraph (b) information for catch-all issuers to include the identity of company insiders and larger shareholders of the company; the ticker symbol of the security being quoted; the address of the issuer's principal place of business if that address differs from the address of the issuer's principal executive offices; and any additional information to help accurately identify company insiders (*e.g.,* job title). One commenter stated that a variety of securities trade in the OTC market and advocated for greater flexibility in the specified information that is required to be current and publicly available.[122] The Commission believes that, by requiring different types of paragraph (b) information to address the wide variety of OTC issuers[123] and by providing flexible requirements for such information to be current and publicly available,[124] the amended Rule is appropriately tailored to each type of covered issuer. Further, the Commission believes that the list of catch-all issuer information that is required to be current and publicly available appropriately balances the fact that some catch-all issuers do not have a reporting obligation while protecting investors through the disclosure of a relatively limited amount of information that could help investors access information about the catch-all issuer before making an investment decision.

Another commenter stated that the Rule's requirements for paragraph (b) information for catch-all issuers to be current and publicly available should not be as onerous as the disclosure obligations imposed on reporting companies and that information that is required to be current and publicly available should not be too complicated for an investor to read.[125] The Commission believes that the information that is required to be current and publicly available for catch-all issuers includes basic information about the issuer and does not include the type of detail or complexity as is required for reporting issuers under the federal securities laws. For example, the amended Rule's specified information for catch-all issuers does not require that the issuer's balance sheet be audited. Other commenters requested that paragraph (b) information for catch-all issuers also include: Any trade sanctions to which the issuer is subject;[126] the security's ticker symbol and CUSIP number;[127] the address of the issuer's principal place of business if that address differs from the address of the issuer's principal executive office;[128] the job titles of company insiders;[129] the number of freely tradeable securities;[130] and additional information with regard to an issuer's recent predecessors (over the prior five years), along with their state of incorporation and the CUSIP numbers of any equity securities issued by those predecessors.[131] The Commission agrees that it is appropriate that some of this information be required to be disclosed to the investing public regarding catch-all issuers before a broker-dealer can publish or submit a quotation for securities of such issuers and, therefore, has determined to expand the former Rule's list of paragraph (b) information for catch-all issuers to include, in paragraph (b)(5)(i) of the amended Rule, the identity of company officers and large shareholders, as proposed, along with certain additional information that commenters suggested: (1) Job titles for company insiders, (2) the names of all of an issuer's predecessors during the past five years, (3) the issuer's principal place of business, (4) the state of incorporation or registration of each of the issuer's predecessors (if any) during the past five years, and (5) the ticker symbol (if assigned) during the past five years.[132] The Commission has determined not to require all of the information suggested by commenters because the Commission believes that the catch-all issuer information required in paragraph (b) of the amended Rule strikes an appropriate balance between (1) ensuring that important basic information about an issuer is current and publicly available to commence a quoted market or rely on many of the amended Rule's exceptions (*e.g.,* the piggyback exception), and (2) allowing broker-dealers to facilitate demand in a quoted market for OTC securities without an overly burdensome list of information to prepare, obtain, and review.[133] The public availability of this additional information about catch-all issuers will provide a more comprehensive look at the company and its operations for those making investment decisions before a broker-dealer can publish quotations for such issuers' securities.

One commenter suggested that the list of persons described in paragraph (b)(5)(i)(K) of the proposed Rule include the word ''executive'' in front of the word ''officer'' because, according to the commenter, an issuer may employ many persons with the title of ''officer'' who do not direct company-wide policies and do not manage the company.[134] As stated in the proposal, the Commission believes that investors could benefit from knowing the identity of officers who manage a company.[135] Further, the term ''officer'' refers to a person's management functions as opposed to his or her title. For example, under the amended Rule, while the term ''officer'' could be used to refer to a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer of a company, it can also refer to any person routinely performing corresponding functions with respect to the company.[136] In complying with the information review requirement, a broker-dealer or qualified IDQS may rely on information regarding officers provided by a person whom the broker-dealer has a reasonable basis for believing is a reliable source, such as the issuer.[137] Paragraph (b)(5)(i)(K) of the amended Rule uses the newly defined term ''company insider'' to replace the list of persons delineated in paragraph (b)(5)(i)(K) of the proposed Rule.[138] As discussed below in Part II.L.5, this term is designed to capture persons who manage a company or have a greater degree of access to issuer information and who may have a heightened incentive to engage in fraudulent or manipulative conduct.[139]

[122] Mitchell Partners Letter 1; *see* Letter from Philip Milner, Jr., to Hon. Jay Clayton (Nov. 26, 2019) (''Milner Letter''); Norberg Letter; Kyle M. Peeples (Dec. 1, 2019); Debby Valentijn.

[123] This specified information ranges from a registration statement for prospectus issuers to a list of specified information for a catch-all issuer. *See* Amended Rule 15c2–11(b)(1) through (5). Further, the paragraph (b) information for catch-all issuers that must be obtained and reviewed for a broker-dealer to initiate a quoted market does not approach the level of comprehensiveness that is required with respect to a company with reporting obligations under the federal securities laws. As discussed above, except for certain financial information, most paragraph (b) information for catch-all issuers is current if it is publicly available on an annual basis. In contrast, certain reporting issuers may have an obligation to file a report on a quarterly basis.

[124] For example, certain information for a catch-all issuer is not required to be current and publicly available for a broker-dealer to rely on the piggyback exception. *See* Amended Rule 15c2–11(f)(3)(i)(C)(3).

[125] Beacon Redevelopment Letter.

[126] Jean-Paul Tres (Dec. 29, 2019).

[127] Coral Capital Letter.

[128] *Id.*

[129] *Id.*

[130] FINRA Letter.

[131] *Id.*

[132] *See* Amended Rule 15c2–11(b)(5)(i).

[133] *See infra* Part VI.C.1.a.

[134] Brian Brown, Chief Financial Officer and Treasurer, Computer Services, Inc. (Mar. 10, 2020) (''Computer Services Letter'').

[135] *See* Proposing Release at 58214.

[136] *See* Exchange Act Rule 3b–2.

[137] *See infra* Part II.O.

[138] Amended Rule 15c2–11(e)(1).

[139] For example, company insiders may stand to profit by selling the company shares they own during a pump-and-dump scheme. Proposing Release at 58225.

Finally, the Commission has determined not to adopt the proposed requirement that would have required certain catch-all issuer financial information—the issuer's profit and loss and retained earnings statements—to be as of a date less than six months before the publication or submission of a broker-dealer's quotation for a catch-all issuer's security if the issuer's balance sheet were not as of a date within six months before such publication or submission of a quotation.[140] As discussed below in Part II.D.1, the Commission also has lengthened the time period for financial information of catch-all issuers to be current and publicly available under the piggyback exception. Among other reasons, including those discussed below, the Commission believes that requiring such financial information for catch-all issuers to be compiled and published more frequently than annually would require an allocation of resources to the preparation of financial statements that is not justified in light of the facts that a catch-all issuer generally does not have any reporting or disclosure obligation under the federal securities laws and that an issuer's reporting obligations under state law generally are annual. In addition, the Commission believes that this time frame, in addition to the expansion of the list of specified information for catch-all issuers, as discussed above, will help provide investors with the appropriate tools to make better-informed investment decisions. Accordingly, the amended Rule specifies that, for a broker-dealer to initiate, resume, or maintain a quoted market in a catch-all issuer's security:[141] (1) Such issuer's balance sheet is current if its most recent balance sheet is as of a date less than 16 months before the publication or submission of the broker-dealer's quotation,[142] and (2) the issuer's profit and loss and retained earnings statements are current if they are for the 12 months preceding the date of such balance sheet.[143] Consistent with the proposed Rule, the amended Rule also provides that catch-all issuer information specified in paragraph (b)(5)(i), excluding the issuer's financial information, is current if it is as of a date within 12 months before the publication or submission of the quotation.[144]

4. Requirement To Make Catch-All Issuer Information Available Upon Request—Rule 15c2–11(b)(5)(ii)

To facilitate investor access to information, the amended Rule requires broker-dealers that comply with the information review requirement to make catch-all issuer information available upon the request of a person expressing an interest in a proposed transaction in the issuer's security, such as by providing the requesting person with appropriate instructions regarding how to obtain publicly available information electronically.[145] The Commission proposed to permit broker-dealers to provide persons who express an interest in a proposed transaction involving a catch-all issuer with instructions regarding how to obtain publicly available information electronically.[146] This proposed amendment was intended to make it easier for retail investors to locate and easily access catch-all issuer information.[147] This proposed amendment would not limit other ways in which a broker-dealer could make information available to persons expressing an interest in a proposed transaction in a security of a catch-all issuer; it simply recognized that the internet provides a cost-effective means to distribute catch-all issuer information to such persons.[148]

The Commission sought comment on this aspect of the proposal and received support.[149] The Commission has determined to adopt the proposed amendment regarding the manner in which a broker-dealer may provide this information. To alleviate the concern that issuer information may be difficult for investors to locate on their own, this amendment is designed to make such information easier to find while providing a cost-effective means for broker-dealers to distribute catch-all issuer information to all investors, not just those that request such information.[150] In this regard, if such information is located on different websites, broker-dealers may provide the website addresses at which investors can find the information that is required to be publicly available. The Commission is also adopting a technical edit.[151] Consistent with the proposal, the amended Rule requires that, to the extent the broker-dealer also has catch-all issuer information, the broker-dealer must make such information available to persons who request such information.[152] A broker-dealer that publishes a quotation in reliance on a publicly available determination of a qualified IDQS that the qualified IDQS complied with the information review requirement, therefore, is not required to make catch-all issuer information available upon request because such broker-dealer is not itself complying

[140] Amended Rule 15c2–11(b)(5)(i)(L).

[141] The timing requirements for a catch-all issuer's paragraph (b) information to be current (and publicly available) are the same notwithstanding whether a broker-dealer is initiating or resuming a quoted market in a catch-all issuer's security pursuant to paragraph (a) of the amended Rule or whether it is relying on the piggyback exception to maintain a quoted market in a catch-all issuer's security. For a discussion of the requirement for catch-all issuer information to be current and publicly available for a broker-dealer to initiate or resume a quoted market in a catch-all issuer's security, see *supra* Part II.A.1. For a discussion of the requirement for catch-all issuer information to be current and publicly available for a broker-dealer to maintain a quoted market in a catch-all issuer's security by relying on the piggyback exception, see *infra* Part II.D.1.

[142] As discussed above, the Commission is not requiring such financial information for catch-all issuers to be current and publicly available on a six-month basis, as proposed, because such a requirement would result in a catch-all issuer's financial information being compiled and published on a more frequent basis than the information of certain issuers that have a reporting or disclosure obligation under the federal securities laws, such as crowdfunding issuers. A period of 16 months allows time to finalize and make publicly available an annual balance sheet.

[143] *See* Amended Rule 15c2–11(b)(5)(i)(L).

[144] Amended Rule 15c2–11(b)(5)(i); *see* Amended Rule 15c2–11(e)(2). The Commission is also making technical edits to the proposed Rule so that the amended Rule is easier to read. First, while the proposed Rule would have used the phrase ''the documents and information required by paragraph (b),'' the amended Rule uses the term ''the documents and information specified in paragraph (b).'' This technical edit is intended to reflect that paragraph (b) specifies the documents and information regarding an issuer that a broker-dealer or qualified IDQS must obtain and review to comply with the information review requirement or determine that the requirements of an exception are met. Second, the Commission is not adopting the requirement in proposed paragraph (b)(5)(i) that catch-all issuer information must be ''current and made publicly available.'' The Commission believes that this change from the proposal is appropriate, given the requirement that such information be current and publicly available for a broker-dealer or qualified IDQS to comply with the information review requirement, or for a broker-dealer to rely on certain of the amended Rule's exceptions. This streamlining amendment does not change any of the timing components for such information to be considered current and publicly available.

[145] Amended Rule 15c2–11(b)(5)(ii).

[146] Proposed Rule 15c2–11(b)(5)(ii). Proposed Rule 15c2–11(b)(4) included a similar requirement to permit a broker-dealer to provide to persons who express an interest in a proposed transaction in a security of an exempt foreign private issuer appropriate instructions regarding how to obtain the information electronically.

[147] *See* Proposing Release at 58215.

[148] *See id.* Additionally, as the Commission explained in the Proposing Release, ''to the extent the broker-dealer has information regarding proposed paragraphs (b)(5)(i)(N) through (P), the broker-dealer would be required to make such information available to persons who request the information pursuant to proposed paragraph (b)(5)(ii).'' *Id.*

[149] Coral Capital Letter.

[150] *See* Proposing Release at 58215.

[151] Paragraph (b)(5)(ii) of the amended Rule replaces the words ''required by'' with the words ''specified in'' and includes the word ''the'' so that the broker-dealer ''must make *the* information *specified in* paragraph (b)(5)(i) of this section'' available upon request. *See* Amended Rule 15c2–11(b)(5)(ii) (emphasis added).

[152] *See* Amended Rule 15c2–11(b)(5)(ii).

with the information review requirement.

5. Application of the Catch-All Issuer Provision—Rule 15c2–11(b)(5)(ii)

Consistent with the Commission's efforts to increase transparency about OTC securities for all investors, the Commission is adopting, as proposed, the provision that specifies that an issuer would be a ''catch-all issuer'' if the documents and information specified in paragraphs (b)(1) through (b)(4) of the amended Rule do not apply to the issuer.[153] As discussed below, however, the amended Rule treats reporting issuers that are delinquent in their filing obligations (*i.e.,* their paragraph (b) information is not ''current,'' as that term is defined in paragraph (e)(2) of the amended Rule) as catch-all issuers only for purposes of initiating or resuming a quoted market in these issuers' securities.

The Commission sought comment about the provision in paragraph (b)(5)(ii) of the proposed Rule that specified the two circumstances in which an issuer would be a catch-all issuer: (1) If an issuer is not a type of reporting issuer enumerated in (b)(1) through (b)(4) of the proposed Rule, and (2) if the information required to be reported by the particular type of reporting issuer is not current because, for example, it is not timely filed. One commenter stated that a company with a reporting obligation that files a Form NT and provides notice that it will not file a periodic report on a timely basis may become a catch-all issuer and thus be ineligible for quoting pursuant to the piggyback exception because, under paragraph (b)(5)(i)(L) of the proposed Rule, its financial information would be older than six months.[154]

The Commission has determined to modify the proposed provision that specified that a reporting issuer would be a catch-all issuer if its information is no longer ''current,''[155] by limiting its application to compliance with the information review requirement for a broker-dealer to initiate a quoted market for an issuer's security. Accordingly, the amended Rule treats reporting issuers that are delinquent in their filing obligations as catch-all issuers only for purposes of initiating or resuming a quoted market in these issuers' securities, and thus a broker-dealer or a qualified IDQS would be required to comply with the information review requirement using the catch-all issuer's information required under the amended Rule only if a broker-dealer were initiating or resuming a quoted market in the issuer's security.[156] Notably, the amended Rule does not treat delinquent reporting issuers as catch-all issuers for purposes of the piggyback exception, as discussed below in Part II.D.1.

In the context of maintaining a quoted market for an issuer's security, this change from the proposal (*i.e.,* limiting the treatment of delinquent reporting issuers as catch-all issuers to the initiation or resumption of a quoted market for an issuer's security) enhances the Rule's investor protections by reducing the potential for broker-dealers to sustain the false appearance of an active market in the securities of issuers that remain delinquent in their reporting obligations or no longer exist.[157] Consistent with the proposed amendment, the amended Rule does not change an issuer's statute- or rule-based reporting or disclosure obligation.[158] In response to a comment regarding an issuer that is granted an extension to file its annual report, and as discussed below, such an issuer will remain a reporting issuer[159] for purposes of the amended Rule's piggyback exception, and thus the broker-dealer would need to comply with the provisions of the piggyback exception that apply to reporting issuers (*i.e.,* paragraph (f)(3)(i)(C)(1) or (2)), depending on the category of reporting issuer, and not the provision that applies to catch-all issuers (*i.e.,* paragraph (f)(3)(i)(C)(3)).[160]

6. Specified Information Provision for Crowdfunding Issuers—Rule 15c2–11(b)(3)(iii)

The Commission has determined to add paragraph (b)(3)(iii) to the amended Rule as a technical amendment to align the amended Rule with Regulation Crowdfunding[161] and to tailor the provision to the specific regulatory status and existing disclosure and reporting obligations of a crowdfunding issuer, similar to how the amended Rule is tailored to recognize issuers that have an ongoing reporting obligation under the Exchange Act and Regulation A. Before the amendments, the Rule did not contain a provision tailored to the specific regulatory status and existing disclosure and reporting obligations of a crowdfunding issuer. A broker-dealer, therefore, would have been able to review the documents and information for a catch-all issuer to comply with the information review requirement before a broker-dealer could publish a quotation

[153] *See* Amended Rule 15c2–11(b)(5)(ii). While proposed Rule 15c2–11(b)(5)(ii) would have applied ''*to any security* of an issuer that is not included in paragraphs (b)(1) through (b)(4) of [the Rule],'' amended Rule 15c2–11(b)(5)(ii) requires that ''[t]he documents and information specified in paragraph (b)(5) of [the amended Rule] must be reviewed where paragraphs (b)(1) through (b)(4) of [the amended Rule] do not apply to such issuer.'' This technical change from the proposal addresses the fact that paragraph (b) specifies an issuer's documents and information.

One commenter stated that the term ''catch-all issuer'' is a term that many market participants will not understand. Hamilton & Associates Letter. This term, however, is used only for purposes of this release to refer to issuers for which documents and information are specified in paragraph (b)(5) of the amended Rule.

[154] OTC Markets Group Letter 2 (recommending that the Commission align references in paragraph (b) to the timing of disclosure with relevant Commission rules that apply to smaller reporting companies). The amended Rule's timing requirements for piggyback eligibility provide a longer window than reporting issuers have to comply with their Exchange Act reporting obligations, and are aligned with the requirements of Commission rules that apply to smaller reporting companies, by requiring that the documents and information specified in paragraph (b) be either filed within 180 calendar days from a specified period, for issuers with an Exchange Act reporting obligation, or timely filed for issuers with a reporting obligation under Regulation A or Regulation Crowdfunding. *See infra* Part II.D.1. In addition, the piggyback exception under the amended Rule includes a grace period that permits broker-dealers to continue to rely on the piggyback exception for a time-limited period if a report that must be filed pursuant to an Exchange Act or Securities Act reporting obligation has not been timely filed or filed within 180 days from the end of the specified period. *See infra* Part II.D.6.

[155] *See* Amended Rule 15c2–11(e)(2); *infra* Part II.J.1.

[156] Specifically, paragraph (b)(5)(ii) of the amended Rule provides that, for purposes of compliance with paragraph (a)(1)(i)(C) (broker-dealer complies with the information review requirement) or (a)(2)(ii) (qualified IDQS complies with the information review requirement) of the amended Rule, the documents and information specified in paragraph (b)(5) must be reviewed for an issuer for which the documents and information specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of the amended Rule regarding such issuer are not current. *See* Amended Rule 15c2–11(b)(5)(ii).

While proposed Rule 15c2–11(b)(5)(ii) would have required that ''[p]aragraph (b)(5) of this section [ ] apply to *any security of an issuer* if information described in paragraphs (b)(1) through (b)(4) of [the proposed Rule] is not current,'' amended Rule 15c2–11(b)(5)(ii) requires that ''the documents and information specified in paragraph (b)(5) of [the amended Rule] must be reviewed for an issuer for which the documents and information specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of [the amended Rule] regarding such issuer are not current.'' This technical change from the proposal addresses the fact that paragraph (b) specifies an issuer's documents and information.

[157] *See infra* Part II.D.1.a (discussing the time frame requirements associated with the transparency of reporting issuer information under the amended Rule's piggyback exception).

[158] *See* Amended Rule 15c2–11(b)(5)(ii) (using the phrase ''specified in'' instead of ''required by'' to clarify that the Rule does not impose any obligation on issuers).

[159] *See* Exchange Act Rule 12b–25(b) (providing that a registrant's report shall be deemed to be filed on the prescribed due date for such report if, among other things, the issuer represents in the Form 12b–25 that the subject annual report will be filed no later than the fifteenth calendar day following the prescribed due date).

[160] *See infra* Part II.D.1.

[161] *E.g.,* Rules 201 through 203 of Regulation Crowdfunding.

for the crowdfunding issuer's security. However, under the amended Rule, a crowdfunding issuer would not be treated as a catch-all issuer, and thus a broker-dealer or qualified IDQS would need to obtain and review the documents and information specified in the specific provision for crowdfunding issuer information to comply with the information review requirement (assuming the issuer is not delinquent in its reporting obligations, as discussed above).[162] In light of the addition of a specified information provision for crowdfunding issuers, a broker-dealer or qualified IDQS would need to obtain and review the documents and information in paragraph (b)(3)(iii) of the amended Rule (rather than paragraph (b)(5) for catch-all issuers, as proposed) to determine if the requirements of certain exceptions are met.

Paragraph (b)(3)(iii) of the amended Rule specifies that the applicable information for a crowdfunding issuer is the issuer's most recent annual report [163] because such report is the only periodic report required by Regulation Crowdfunding to be filed with the Commission.[164] The amended Rule also provides that, until a crowdfunding issuer files an annual report, the applicable paragraph (b) information is the Form C (the offering statement for securities offered under Regulation Crowdfunding) [165] filed by the issuer within the prior 16 months, together with any Form C/A (amendments to the offering statement) [166] and Form CU (updates on meeting targeted offering amounts) [167] filed thereafter.[168] The amended Rule allows broker-dealers and qualified IDQSs to review the issuer's Form C, together with any Form C/A and Form CU filed thereafter as an alternative to obtaining and reviewing the issuer's annual report when the issuer's first annual report may not have been filed due to a gap between: (1) The end of the issuer's fiscal year after initially offering securities pursuant to Regulation Crowdfunding, and (2) the prescribed due date for the issuer to file its first annual report. Form C, together with Form C/A and Form C/U, includes substantially the same information that is required by an annual report.[169] In addition, paragraph (b)(3)(iii) of the amended Rule requires that a broker-dealer or qualified IDQS have a reasonable basis under the circumstances for believing that the issuer is current in filing such reports described in this paragraph (b)(3)(iii).[170] Paragraph (b)(3)(iii) of the amended Rule closely tracks the document and information provisions regarding issuers with an Exchange Act or Securities Act reporting or disclosure obligation, and includes provisions specific to crowdfunding issuers in accordance with the thrust of the amended Rule to separate information requirements by the type of issuer.

C. Supplemental Information Requirement—Rule 15c2–11(c)

To help support the integrity of the OTC market and to promote investor protection by helping to ensure that market participants consider material information prior to the initiation of a quoted market for an issuer's security, the Commission is extending the application of the Rule's obligations regarding supplemental information [171] to cover all market participants that comply with the Rule's information review requirement, including broker-dealers and qualified IDQSs alike.[172] Under the amended Rule, a broker-dealer and a qualified IDQS, in complying with the information review requirement, must consider supplemental information about the issuer of an OTC security as part of its evaluation of whether the amended Rule's specified information is materially accurate. The type of information that is considered to be supplemental information (*e.g.,* a copy of a trading suspension order issued by the Commission pursuant to Exchange Act Section 12(k)) includes information about the issuer of the security that comes to the knowledge or possession of the broker-dealer before the broker-dealer publishes or submits a quotation for the issuer's security,[173] including records of transactions involving the issuer and company insiders.[174] The Commission has determined to adopt paragraph (c) as proposed, with one technical modification.[175]

The Commission sought comment on its proposed changes to the supplemental information requirement, including extending the requirement to qualified IDQSs and requiring records of transactions involving issuers and

[162] This new provision regarding the documents and information of crowdfunding issuers is provided in paragraph (b)(3)(iii) of the amended Rule. Paragraphs (b)(3)(iii) and (iv) of the proposed Rule pertained to the documents and information regarding (1) issuers that file annual statements referred to in Section 12(g)(2)(G)(i) of the Exchange Act and any periodic and current reports pursuant to Section 13 or 15(d) of the Exchange Act and (2) issuers of securities that fall within the provisions of Section 12(g)(2)(G) of the Exchange Act and that file annual statements referred to in Section 12(g)(2)(G)(i) of the Exchange Act, respectively. Such paragraphs are now contained in paragraphs (b)(3)(iv) and (b)(3)(v) of the amended Rule, respectively, in light of the addition of the specified information provision for crowdfunding issuers in paragraph (b)(3)(iii) of the amended Rule.

[163] *See* Amended Rule 15c2–11(b)(3)(iii).

[164] *See* Rule 202 of Regulation Crowdfunding.

[165] *See* Rule 203(a)(1) of Regulation Crowdfunding.

[166] *See* Rule 203(a)(2) of Regulation Crowdfunding.

[167] *See* Rule 203(a)(3) of Regulation Crowdfunding.

[168] Amended Rule 15c2–11(b)(3)(iii). Under the amended Rule, a recently filed Form C offering statement is not specified as paragraph (b) information because securities sold under Regulation Crowdfunding are generally not transferable for one year from issuance.

[169] *See* Rule 202 of Regulation Crowdfunding.

[170] Amended Rule 15c2–11(b)(3)(iii)(B).

[171] For purposes of this release, this requirement is referred to as the ''supplemental information requirement.''

[172] *See* Proposing Release at 58217. As stated in the Proposing Release, this modification was designed to help ensure that all market participants that comply with the information review requirement would be subject to the same requirements regarding supplemental information. *See* Proposing Release at 58218. Proposed paragraph (c) would not require that a qualified IDQS (or a broker-dealer) affirmatively seek additional information about the issuer. Rather, proposed paragraph (c) would require that a qualified IDQS (or broker-dealer) that complies with the information review requirement keep records of the documents and information specified in proposed paragraphs (c)(1) through (c)(3) (excluding documents and information available on EDGAR), including any information regarding the transactions actually provided to the qualified IDQS (or broker-dealer).

[173] *See* Proposed Rule 15c2–11(c); 1999 Reproposing Release at 11146–47 (explaining that, while a broker-dealer is not required to affirmatively seek out information about the issuer beyond that specifically required by the Rule, material information about the issuer that comes to the broker-dealer's knowledge or possession—orally or in writing—must be taken into account by the broker-dealer in assessing whether the issuer information is accurate and from a reliable source).

[174] As stated in the Proposing Release, such information is important to consider, in conjunction with the issuer's paragraph (b) information and any other supplemental information, because persons such as company insiders might be able to exert control over the issuer of an OTC security and have a heightened incentive to manipulate the price of the security. *See* Proposing Release at 58218. The proposed Rule would not have required that company insider status automatically lead a broker-dealer or qualified IDQS to conclude that the issuer's information is not accurate in all material respects or from a reliable source. Instead, such information would need to have been evaluated in conjunction with the issuer's paragraph (b) information, along with any other supplemental information that has come to the knowledge or possession of the broker-dealer or qualified IDQS, in forming a reasonable basis to believe that the issuer's information is accurate and from a reliable source. The Commission stated that the knowledge that a quotation is by or on behalf of a company insider could aid investors by alerting the broker-dealer or qualified IDQS to the possibility that the quotation is being made on behalf of a person who may have a heightened incentive to manipulate the price of an issuer's security. *See id.*

[175] Specifically, paragraph (c)(3) of the amended Rule uses the newly defined term ''company insider'' to capture persons who are associated with an issuer, manage the company, or have heightened access to issuer information and who may have a heightened incentive to engage in fraudulent or manipulative conduct. *See infra* Part II.J.5.

company insiders.[176] One commenter stated that broker-dealers and qualified IDQSs that comply with the information review requirement should not be required to affirmatively seek additional information about the issuer because such a requirement would effectively turn broker-dealers into a combination of due diligence firms and private investigative agencies.[177] While the supplemental information requirement places an affirmative obligation on broker-dealers and qualified IDQSs that comply with the information review requirement to consider and record information beyond the paragraph (b) information, the Commission believes that this provision will help to support the integrity of the OTC market and promote investor protection by requiring that broker-dealers and qualified IDQSs consider material information before commencing a quoted market.[178] The Commission also believes that the provision, as amended, is appropriately tailored to minimize burdens on broker-dealers and qualified IDQSs. Broker-dealers and qualified IDQSs are required to seek out only certain supplemental information (*e.g.,* the identity of the person on whose behalf the quotation is made, company insider status, and recent trading suspensions). The requirement to obtain information regarding for whom a quotation is being published and whether the security has been subject to a trading suspension is not a new requirement. Obtaining such information does not require any particular due diligence or private investigation skills. For example, the broker-dealer can ascertain the identity of a person who is requesting that an initial quotation for a security be published or submitted by asking the person when the person contacts the broker-dealer. Additionally, whether a security has been the subject of a trading suspension is available on the Commission's website and is easily accessible.[179]

A broker-dealer or qualified IDQS is required to consider and record other supplemental information only if such information: (1) Is provided to the broker-dealer or qualified IDQS by the person on whose behalf the quotation is published (*e.g.,* information regarding transactions),[180] or (2) comes to the knowledge or possession of the broker-dealer or qualified IDQS (*e.g.,* other material information regarding the issuer).[181] Considering and recording such information does not require a broker-dealer or qualified IDQS to conduct a due diligence review or a private investigation into facts that have not otherwise been provided to the broker-dealer or qualified IDQS, or that have not come to the knowledge or possession of the broker-dealer or qualified IDQS. The Commission believes structuring the supplemental information provision in this way strikes an appropriate balance of achieving the objectives of the Rule without placing unduly burdensome obligations on broker-dealers and qualified IDQSs.

Another commenter stated that information regarding the identity of the retail end-customer is not required to be publicly disclosed, so it is difficult for a broker-dealer that receives orders from correspondent brokers to have this information in its records on a transaction-by-transaction basis.[182] The Commission appreciates that a broker-dealer that publishes a quotation may not have a direct relationship with the retail customer on whose behalf the quotation is published and that such customer's broker is not required to publicly disclose the customer's identity.[183] Prior to the amendment, the Rule already required that a broker-dealer that complies with the information review requirement retain a record of the identity of the person or persons for whom the quotation is submitted or published. The Commission believes that it is operationally feasible for a broker-dealer to obtain this information (*e.g.,* the customer's retail broker might provide information to the broker-dealer about the identity of its customer) when such broker-dealer is reviewing the issuer's information and commencing a quoted market at the behest of a customer. While the amended Rule requires that broker-dealers and qualified IDQSs record the identity of the person on whose behalf the initial quotation is made, the Commission believes that requiring a record of the identity of the person on whose behalf the quotation is made when commencing a quoted market furthers the objectives of the Rule without imposing undue burdens associated with individual quotations and may aid Commission oversight of broker-dealers' and qualified IDQSs' compliance with the amended Rule. Further, the Commission understands that the majority of quotations are currently, and expects that they will continue to be, published in reliance on exceptions to the amended Rule and not in reliance on the performance of the information review requirement.

This commenter also requested that the supplemental information regarding company insiders be limited to information that has come to the knowledge or possession of the broker-dealer or qualified IDQS.[184] The Commission has determined not to limit the amended Rule's specified supplemental information regarding status as an issuer and company insider to information that has come to the knowledge or possession of the broker-dealer or qualified IDQS. Because the amended Rule requires a broker-dealer or qualified IDQS to consider supplemental information only for initial quotations when initiating or resuming a quoted market, the Commission does not believe that it is unreasonable to require a broker-dealer or qualified IDQS to know the identity of the person making the request to commence a quoted market in this limited circumstance. Issuers and company insiders can have a heightened incentive to engage in misconduct to artificially affect the price and trading volume of the issuer's security. The Commission believes that application of the supplemental information requirement only to information that has come to the knowledge or possession of the broker-dealer or qualified IDQS would be inconsistent with the Commission's goal of enhancing the Rule to better protect retail investors from fraud and

[176] *See* Proposing Release at 58216–17.

[177] *See* Coral Capital Letter.

[178] As discussed below in Part II.O, the supplemental information requirement places an affirmative requirement on such broker-dealers and qualified IDQSs to consider and have in their records the following documents and information: (1) Records related to the identity of the person or persons for whom the quotation is being published or submitted, whether such person or persons is the issuer or a company insider, and any information regarding the transactions that such person or person has provided to the broker-dealer or qualified IDQS; and (2) a copy of any trading suspension order issued by the Commission pursuant to Section 12(k) of the Exchange Act regarding any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation or a copy of the public release issued by the Commission announcing such trading suspension order. However, such broker-dealers or qualified IDQSs must consider and record a copy or a written record of any other material information (including adverse information) regarding the issuer only if it comes to the knowledge or possession of the broker-dealer or qualified IDQS before the quotation is published or submitted.

[179] Trading Suspensions, *https://www.sec.gov/litigation/suspensions.shtml* (last visited Aug. 27, 2020).

[180] Amended Rule 15c2–11(c)(1).

[181] Amended Rule 15c2–11(c)(3).

[182] OTC Markets Group Letter 3.

[183] *See infra* Part II.E (discussing the final amendments to the unsolicited quotation exception).

[184] OTC Markets Group Letter 3.

manipulation orchestrated by company insiders.

The Commission continues to believe that certain supplemental information is relevant for a broker-dealer or qualified IDQS to evaluate in establishing a reasonable basis under the circumstances for believing that an issuer's paragraph (b) information is accurate in all material respects and from a reliable source.[185] Consequently, paragraph (c) of the amended Rule adds qualified IDQSs to the Rule's list of market participants that must have in their records supplemental information to help ensure that all market participants that comply with the information review requirement are subject to the same requirements.[186] Under the amended Rule, broker-dealers and qualified IDQSs that comply with the information review requirement must retain a copy or a written record of three categories of supplemental information: (1) Records related to the publication or submission of the quotation, including the identity of the person on whose behalf the quotation is made, whether such person is an issuer or a company insider, and any information regarding the transaction provided to the broker-dealer or qualified IDQS; (2) a copy of any trading suspension order issued by the Commission during the 12 months preceding the date of publication or submission of the quotation or a copy of the press release announcing such suspension; and (3) any other material information regarding the issuer that comes onto the knowledge or possession of broker-dealer or qualified IDQS.[187]

The Commission is amending the Rule as proposed to require that the entity that complies with the information review requirement must have in its records the documents and information related to the identity of the person or persons for whom the quotation is being submitted or published, including whether such person is the issuer or a company insider[188] because the knowledge that a quotation is by or on behalf of the issuer or a company insider could promote investor protection by alerting the broker-dealer or qualified IDQS conducting the required review to the possibility that the quotation is being made on behalf of a person who may have a heightened incentive to manipulate the price of the security.[189] Whether the quotation is being made on behalf of such person is information that must be considered, together with any other supplemental information or paragraph (b) information, by the broker-dealer or qualified IDQS in forming a reasonable basis under the circumstances for believing that the issuer's paragraph (b) information is accurate in all material respects and from a reliable source.[190]

D. Piggyback Exception

The Commission is adopting various amendments to the piggyback exception, paragraph (f)(3), as discussed below.

1. Increased Transparency of Issuer Information—Rule 15c2–11(f)(3)(i)(C)(1) Through (3)

The Commission is requiring that an issuer's paragraph (b) information be current and publicly available, timely filed, or filed within 180 calendar days from a specified time frame,[191] in reference to the underlying timing obligations for each of the types of issuers under paragraph (b), for a broker-dealer to rely on the piggyback exception to publish quotations for the issuer's security.[192]

(a) Current and Publicly Available Issuer Information

The Commission sought comment about the proposed amendment, including whether to permit a broker-dealer to rely on the piggyback exception to publish or submit quotations for the securities of catch-all issuers only where the issuer's proposed paragraph (b) information is current and has been made publicly available within six months before the date of publication or submission of such quotation. Commenters who supported this aspect of the proposal stated that it would help to strengthen investor protections by offering the investing public access to information about OTC companies[193] and to enhance market efficiency and transparency.[194] One commenter stated that it is inconsistent for the proposal to both: (1) State that the piggyback exception's historical basis is that regular and continual priced quotations are an appropriate substitute for information about the issuer that would otherwise be relevant in establishing a quotation, and (2) require that issuer information be current and publicly available for a broker-dealer to rely on the piggyback exception.[195] The Commission continues to believe that the piggyback exception serves an important purpose in helping to facilitate liquidity. The Commission, however, does not believe that the historical basis for the piggyback exception—that ''regular and continual priced quotations are an appropriate substitute for information about the issuer which would otherwise be relevant in establishing a

[185] Amended Rule 15c2–11(c).

[186] Paragraph (c) of the amended Rule also adds to the former Rule's list of records related to the submission or publication of a quotation for a security a record of whether such submission or publication is on behalf of an issuer or company insider because such individuals might be able to influence or control the issuer of an OTC security. *See* Amended Rule 15c2–11(c), (c)(1); Proposing Release at 58218.

[187] Amended Rule 15c2–11(c)(1) through (3).

[188] Amended Rule 15c2–11(c)(1).

[189] *See* Proposing Release at 58218.

[190] *See* Amended Rule 15c2–11(a)(1)(i)(C), (a)(2)(iii) (requiring a broker-dealer or qualified IDQS that complies with the information review requirement to have a reasonable basis under the circumstances for believing that the issuer's paragraph (b) information is accurate in all material respects and that the sources of such paragraph (b) information are reliable based upon a review of the issuer's paragraph (b) information, together with any other supplemental information, as applicable); *see also supra* notes 174–175 and accompanying text (discussing how this requirement helps to promote the Rule's investor protection goals).

[191] As discussed below, this requirement with respect to the paragraph (b) information of certain types of reporting issuers is measured from the end of the issuer's most recent fiscal year or any quarterly reporting period that is covered by a report required by Exchange Act Section 13 or 15(d), as applicable. *See* Amended Rule 15c2–11(f)(3)(i)(C)(1). For purposes of this release, the phrase ''filed within 180 calendar days from [a/the] specified period'' refers to the phrase ''filed within 180 calendar days from the end of the issuer's most recent fiscal year or any quarterly reporting period that is covered by a report required by [S]ection 13 or 15(d) of the [Exchange] Act), as applicable,'' as specified in the rule text. *See* Amended Rule 15c2–11(f)(3)(i)(C)(1).

[192] *See* Amended Rule 15c2–11(f)(3)(i)(C)(1) through (3). For a discussion of the requirements for an issuer's paragraph (b) information to be current and publicly available before an issuer's security is initially quoted, see *supra* Part II.A.1.

[193] *See, e.g.,* Hamilton & Associates Letter; Massachusetts Letter; NASAA Letter.

[194] *E.g.,* OTC Markets Group Letter 2; SIFMA Letter; *see* FINRA Letter; Letter from J. Brad Wiggins, President and Legal Counsel, Securities Law USA (''Securities Law USA Letter''); Zuber Lawler Letter.

[195] Letter from Larry E. Bergmann, Partner, Murphy & McGonigle, P.C., to Vanessa Countryman, Sec'y, SEC (Dec 10, 2019) (''Murphy & McGonigle Letter''). This commenter wrote that, because the proposal's discussion about the policy rationale behind the piggyback exception—that regular and frequent quotations, including regular and frequent two-sided market making, reflect independent supply and demand forces—draws no distinction among the types of securities that are the subject of trading suspensions, it is unclear if the ''current and publicly available'' information requirement for catch-all issuers in the proposed provision would apply to catch-all issuers that were the subject of a trading suspension. *Id.* The paragraph (b) information of a catch-all issuer must be current and publicly available for a broker-dealer to publish or submit quotations for the catch-all issuer's security following the termination of a trading suspension for the issuer's security. *See* Amended Rule 15c2–11(f)(3)(i)(C)(3).

quotation'' [196]—adequately takes account of current industry and investor practices in today's OTC market, nor does it sufficiently promote investor protection or the broker-dealer's role as a gatekeeper to the OTC market.[197] In particular, prior to the amendments, the piggyback exception resulted in quoted markets persisting for securities of issuers that no longer exist and certain securities of issuers that do not make their information publicly available sustaining the false appearance of an active market.[198] These securities, which primarily are owned by retail customers,[199] historically have been more susceptible to fraud and manipulation.[200] The Commission believes that transparency of issuer information is essential for investors to be able to effectively analyze the issuer, its security, and the market for its security, particularly in light of the substantial reductions in information acquisition and dissemination costs due to the internet and modern technology. The Commission believes that the modern ease of accessing and disseminating information allows investors to more easily form inferences about the value of OTC securities based upon current and publicly available information rather than relying principally upon inferences based on the prices of piggybacked quotes.[201]

One commenter suggested that the Commission should repeal the piggyback exception because, as the commenter stated, it is ''a loophole that has permitted broker-dealers to solicit interest from and sell OTC securities to retail investors without verifying any of the details of the security, including, whether the issuer actually exists.'' [202] Another commenter stated that repealing the piggyback exception entirely would harm existing shareholders in OTC securities because it would cause many broker-dealers to cease market making or quoting prices in many OTC securities, draining or even eliminating liquidity in the OTC market.[203] The Commission believes that the piggyback exception serves an important purpose in helping to facilitate liquidity but remains concerned that the OTC market may attract those seeking to engage in fraudulent practices, such as pump-and-dump schemes, due to a lack of publicly available current information about certain issuers of quoted OTC securities.[204] This concern is amplified by the fact that the primary investors in the OTC market are retail investors. The amendments to the piggyback exception under the amended Rule are designed to facilitate liquidity in the OTC market while making narrowly tailored updates that promote investor protection and market efficiency, including the prevention of fraud and manipulation.[205]

Some commenters stated their concern that prohibiting quotations for securities of companies that do not provide current and publicly available information would not prevent fraud and manipulation [206] but would destroy liquidity,[207] be inconsistent with the proposal's goal of promoting a fair and orderly market for OTC securities,[208] and make dark companies' shares ''worthless.'' [209] Commenters stated that some of these companies have longstanding histories of operation and profit, and suggested that issuers of securities with certain characteristics should be exempt from the requirement that their information be current and publicly available.[210]

The Commission understands commenters' concern regarding the proposed Rule's impact on certain OTC companies that do not make their information publicly available. Under the amended Rule, the potential reduction in public price discovery in an OTC security due to the loss of a quoted market can reduce an issuer's ability to raise capital through stock issuances or through other channels,

[196] *See Initiation or Resumption of Quotations Without Specified Information,* Exchange Act Release No. 21470 (Nov. 8, 1984), 49 FR 45117 (Nov. 15, 1984).

[197] *See, e.g., supra* Part I.

[198] *See* Proposing Release at 58219; *see also infra* Part VI.B.2.c (discussing how OTC market may attract those seeking to engage in fraudulent practices, such as pump-and-dump schemes, due to a lack of publicly available current information about certain issuers of quoted OTC securities).

[199] *See* Proposing Release at 58207; *see also* Ang *et al.,* supra note 3.

[200] Douglas Cumming *et al., Financial Market Misconduct and Agency Conflicts: A Synthesis and Future Directions,* 34 J. Corp. Fin 150–68 (2015).

[201] *See infra* Part VI.A. In this regard, increasing the public availability of current information about OTC issuers has the potential to counteract misinformation, which can proliferate through promotions and other channels. *See infra* Part VI.B.2.c.

[202] Letter from Dennis M. Kelleher, President and CEO, and Lev Bagramian, Senior Securities Policy Advisor, Better Markets, Inc., to Vanessa Countryman, Sec'y, SEC (Dec. 30, 2020) (''Better Markets Letter'').

[203] NASAA Letter.

[204] Proposing Release at 58282.

[205] *See infra* Part VI.C.1.b.

[206] *See* Anbec Partners Letter; Franklin Antonio; Caldwell Sutter Capital Comment; Alexandra Elliott; Braxton Gann; Han Han (Oct. 15, 2019); Peter Hayman; Norberg Letter; Daniel Raider; Jim Rivest; Mark Schepers (Oct. 15, 2019); STA Letter; Terravoir Venture Letter; Tiercel Capital Comment; Michael Tofias; Alex Toppan (Oct. 14, 2019); Debby Valentijn; Virtu Letter; Don C. Whitaker; *see also* Coral Capital Letter (stating that the loss of a quoted market would harm the ability of an issuer to become current in its reporting obligations by reducing access to capital that is necessary to pay expenses associated with regaining its current status). One commenter argued that closed-end funds that hold securities of issuers that are not current in their reporting requirements would need to fair value those securities rather than calculate net asset value using recent trades. Sanders Letter (arguing that such a result could provide investors with less reliable information to make informed investment decisions). The Investment Company Act of 1940 prescribes the method for closed-end funds to value their portfolio securities, whether or not market quotations are readily available. *See, e.g.,* Investment Company Act Section 2(a)(41); *see also Good Faith Determinations of Fair Value,* Investment Company Release No. 33845 (Apr. 21, 2020), 85 FR 28734 (May 13, 2020).

[207] *See, e.g.,* Alluvial Letter; Andersen Letter; Franklin Antonio (Dec. 27, 2019); Hank Armested (Oct. 24, 2019); Thomas M. Amenda (Oct. 23, 2019); R. Berkvens; Tyler Black (Nov. 25, 2019); J.H. Broekhoven (Nov. 16, 2019); Brad Christensen (Oct. 3, 2019); Caldwell Sutter Capital Comment; Laura Coffman; Connor Davis, Founder and Principal, Lake Highlands Capital Management (''Lake Highlands Comment''); Douglas DiSanti (Nov. 18, 2019); Brett Dorendorf; Drinker Letter; Alexandra Elliott; David J. Flood (Oct. 8, 2019); Braxton Gann; Letter from Matt Geiger, Managing Partner, MJG Capital Fund, LP, to Chairman Clayton (Oct. 28, 2019) (''MJG Capital Fund Letter''); Carlton Getz, Winter Harbor Advisors, LLC (''Winter Harbor Advisors Comment''); Chris Girand (Oct. 25, 2019); Bradley Grasl, Chief Investment Officer, Tiercel Capital Texas (''Tiercel Capital Comment''); Peter Hayman (Dec. 31, 2019); Gary Huscher (Nov. 1, 2019); Matt Jester (Oct. 8, 2019); Richard Krejcarek (Jan. 2, 2020); Ron Lefton (Nov. 11, 2020); Aharon Levy; Guarang Merani (Oct. 15, 2019); Michael Milchen (Oct. 10, 2019); Milner Letter; Mitchell Partners Letter 1; William E. Mitchell (Oct. 24, 2019); Norberg Letter; Peter Quagliano (Nov. 1, 2019); Daniel Raider; Charles M. Rardon (Oct. 1, 2019); Michael E. Reiss; Ronald Ringelberg; Jim Rivest; GTS Letter; David Schiff (Oct. 22, 2019); Eric Schleien, Investment Manager, Granite State Capital Management (''Granite State Capital Comment''); Dan Schum (Oct. 7, 2019); Lucas H. Selvidge (Oct. 23, 2019); Chris Soule (Oct. 10, 2019); Andrew Summers, CFA, Managing Partner, Summers Value Partners LLC (''Summers Value Partners Comment''); Total Clarity Comment; Franklin Urdaneta (Dec. 3, 2019); Debby Valentijn (Dec. 21, 2019); S. Van den Hoogenhoff (Dec. 9, 2019); Virtu Letter; Don C. Whitaker (Sept. 29, 2019); Samuel J. Yake (Oct. 5, 2019); *see generally* Logan Kemper (Nov. 6, 2019) Professor Angel Letter; Winter Harbor Advisors Comment.

[208] Brett Dorendorf; Peter Hayman; Kyle M. Peeples; Norberg Letter; S. Van den Hoogenhoff; Debby Valentijn.

[209] Andersen Letter. Other commenters were primarily concerned with the proposed amendments' effect on liquidity of securities of dark companies and what they perceived as potential harm to shareholders of those companies. *E.g.,* Exchange Listing Letter; GTS Letter; Virtu Letter; *see* OTC Markets Group Letter 3. Comments regarding a general opposition to the proposed amendments with respect to this perceived impact are discussed above, in Part II.

[210] *See* Aztec Letter; Caldwell Sutter Capital Comment; Lawrence Goldstein, President, SMP Asset Management LLC (''SMP Asset Management Comment''); Ron Lefton; William E. Mitchell; Mitchell Partners Letter 1; Doug Mohn; Norberg Letter; Peter Quagliano; Michael E. Reiss; Jim Rivest; Mark Schepers; Total Clarity Comment; Debby Valentijn; Don C. Whitaker; David Wright (Dec. 16, 2019); Michael A. Zgayb (Oct. 23, 2019); *see also* James Duade; Eric Speron (Nov. 27, 2019); Michael Tofias; Virtu Letter.

such as debt,[211] and existing shareholders of non-reporting issuers can be negatively impacted from the loss of a quoted market for such securities, even if the securities migrate to the grey market.[212] The Commission believes, however, that undertaking to try to determine what constitutes a ''legitimate'' issuer, as suggested by commenters,[213] may require the Commission to make a merit-based determination that weighs certain characteristics of OTC issuers in relation to, or to the exclusion of, other characteristics of other OTC issuers. In addition, the limited available data regarding dark issuers would hamper analysis.

Further, the Commission does not believe the fact that such companies have longstanding histories of operation and profit obviates the need for their information to be current and publicly available for a broker-dealer to publish quotations for such securities. The Commission does not believe that these issuers with operations and profitability will become ''worthless'' [214] as a result of the amendments. The amendments can adversely affect these issuers and their shareholders; however, these issuers, even without a quotation for their securities by a broker-dealer, presumably would continue to operate and generate profits for their shareholders. These OTC securities would continue to represent an ownership interest on these profits and the issuer's assets. For newer issuers with prospective future profits, OTC shares would similarly represent a claim on these prospective profits. The Commission also believes that the potential harm to existing shareholders is (1) limited by the ability of broker-dealers to rely on exceptions to publish quotations, including the unsolicited quotation exception,[215] and the ability of existing shareholders to continue to trade their securities; and (2) mitigated by the decrease in exposure to fraudulent activity involving the securities of non-transparent companies (due to broker-dealers' inability to rely on the piggyback exception) to engage in manipulative schemes, such as pump-and-dump schemes.[216]

However, the Commission understands that market participants may have unique facts and circumstances as to how the amended Rule affects their activities, and the Commission will consider requests from market participants, including issuers, investors, or broker-dealers, for exemptive relief from the amended Rule for OTC securities that are currently eligible for the piggyback exception yet may lose piggyback eligibility due to the amendments to the Rule.[217] In considering whether an exemption from the Rule (pursuant to Section 36 of the Exchange Act and paragraph (g) of the amended Rule) [218] under these circumstances is necessary or appropriate and in the public interest, and is consistent with the protection of investors, the Commission may consider a number of factors, such as whether, based on data or other facts and circumstances provided by requestors, the issuers and/or securities are less susceptible to fraud or manipulation. In this regard, the Commission may consider, among other things, securities that have an established prior history of regular quoting and trading activity; issuers that do not have an adverse regulatory history; issuers that have complied with any applicable state or local disclosure regulations that require that the issuer provide its financial information to its shareholders on a regular basis, such as annually; issuers that have complied with any tax obligations as of the most recent tax year; issuers that have recently made material disclosures as part of a reverse merger; or facts and circumstances that present other features that are consistent with the goals of the amended Rule of enhancing protections for investors, particularly retail investors. The Commission encourages requests to be submitted expeditiously during the nine-month transition period of the amended Rule to avert potential interruptions in quotations in such securities that may occur on or after implementation.[219]

In addition, the Commission believes that the amendments are appropriate to help protect investors against potential exposure to fraud and manipulation that can occur when current information about an issuer is not publicly available. The Commission recognizes that shareholders of OTC securities may incur costs related to a loss of liquidity when broker-dealers cannot rely on the piggyback exception because there is no current and publicly available paragraph (b) information. However, on balance, the Commission believes that any such costs would be warranted by the attendant benefits. The Commission continues to believe that requiring issuer information to be current and publicly available will facilitate investor protection and transparency that will assist retail investors in making better-informed investment decisions and will counteract misinformation that can proliferate through promotions and other channels, thereby helping to prevent fraud and manipulation. More specifically, the amended Rule's requirements could have a deterrent effect in inhibiting fraudulent activity related to quoted OTC securities. Investors could benefit from decreased exposure to investment losses as a result of diminished fraudulent activity in the OTC market.[220] Further, academic studies have highlighted the relationship between the breadth and quality of firm disclosures and liquidity in the OTC market.[221] The Commission also believes that, because prices may become less susceptible to manipulation as a result of the trading activity of informed investors who have access to paragraph (b) information, the efficiency of prices (*i.e.,* the degree to which prices reflect the fundamental value of the security) could improve in the OTC market. These investors could buy underpriced securities and sell overpriced securities, pushing

[211] *See infra* Part VI.C.2 (discussing how issuers may nevertheless be able to access capital through transactions in the grey market).

[212] *See infra* Part VI.C.1.a.

[213] *See, e.g.,* Doug Mohn; Taranis Comment.

[214] Andersen Letter.

[215] *See infra* Part VI.C.1.a.

[216] *See infra* Part VI.C.2; *see also* Proposing Release at 58258, 58259 (stating that requirements for the transparency of issuer information could have a deterrent effect in inhibiting fraudulent activity related to quoted OTC securities). In addition, as discussed below in this Part II.D.1, the formation of an ''expert market,'' *see infra* note 269 and accompanying text, may alleviate these concerns, as well.

[217] Issuers and investors that may be interested in requesting any such exemptive relief may coordinate with broker-dealers to submit requests. Because the amended Rule governs publications or submissions by broker-dealers, the requirements of the amended Rule and any conditions of any such exemptive relief would likely be undertaken to be complied with by a broker-dealer rather than an investor or issuer.

[218] *See infra* Part II.L. Paragraph (g) of the amended Rule states that ''[u]pon written application or upon its own motion, the Commission may, conditionally or unconditionally, exempt by order any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, to the extent that that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.''

[219] The amended Rule has a compliance date that is nine months after the effective date of the amended Rule, and the compliance date for paragraph (b)(5)(i)(M) of the amended Rule is two years after the effective date of the amended Rule. *See infra* Part II.P. Prior to the compliance date, broker-dealers may continue to publish quotations in reliance on the piggyback exception even if an issuer's paragraph (b) information is not current and publicly available.

[220] *See infra* Part VI.C.1.a; *see also* Proposing Release at 58255.

[221] *See supra* note 6 and accompanying text.

mispriced securities toward fundamental values.[222]

Another commenter suggested that the Rule should explicitly except market makers who do not solicit retail customers and that other broker-dealers should not be permitted to piggyback on market makers relying on the piggyback exception.[223] Although such market makers may not directly solicit retail customers, retail investors may access these market makers' quotations that are published or submitted in an IDQS. Such quotations may thereby serve as an advertisement (for interest in a particular security) to these retail investors to purchase shares in the quoted company, which could be a dark issuer. Accordingly, this suggested exception would undermine the amended Rule's goal of providing transparency of the OTC market because it would allow broker-dealers that provide liquidity as market makers to publish or submit quotations for any security, including the security of an issuer for which information is not current and publicly available. Because the investor protection goals of this requirement are achieved, in part, by greater transparency and the public availability of current issuer information, and not by the mere fact that a broker-dealer provides liquidity as a market maker, the Commission does not believe that it would be appropriate to except broker-dealers who do not solicit retail customers, as suggested by the commenter.

Other commenters stated that the elimination of a quoted market for securities of issuers for which paragraph (b) information is not current and publicly available would disadvantage minority shareholders[224] or non-company insiders.[225] For example, some commenters believed that the proposal could encourage companies to go dark to destroy a public market in their stock.[226] The Commission acknowledges that existing shareholders, including minority shareholders, of companies that do not have current and publicly available paragraph (b) information will be negatively impacted if broker-dealers cease publishing quotations for the securities of such companies and OTC firm insiders repurchase shares from outside investors at lower stock prices.[227] However, the Commission believes that such impact would affect a limited number of existing shareholders in the overall market because the Commission expects a majority of issuers may not engage in such activity. To the extent that issuers engage in such activity, however, the Commission believes that any such impact is justified by the benefits of deterring potential fraud and manipulation, incentivizing greater issuer transparency and contributing to more efficient price formation.[228] In addition, the requirement for current and publicly available issuer information for a broker-dealer to rely on the piggyback exception to maintain a quoted market could also benefit existing shareholders, including minority shareholders or non-company insiders, due to more efficient pricing of securities of issuers for which information is current and publicly available.

Another commenter stated that certain OTC companies have decades of profits and cash yields without any operations or staff to manage the distribution of financial information, so the public distribution of financial information through a website, for example, would come directly at the expense of the cash yield to investors.[229] The Commission recognizes that the requirement for current and publicly available issuer information could come at the expense of cash yield to investors but believes that this requirement will promote investor protection by facilitating investors' access to information that they could use to make better-informed investment decisions. While an issuer may choose to make its financial information publicly available on its website using its own operations, an issuer may also choose to make information ''publicly available'' on a wide range of venues, including on the website of, and using the services of, a qualified IDQS, a registered national securities association, or a registered broker-dealer. Indeed, an investor may choose to coordinate with a broker-dealer or a qualified IDQS to have an issuer's current information made publicly available on, for example, the website of a broker-dealer or qualified IDQS.[230]

Some commenters opposed the requirement for current and publicly available information because, according to them, it is inconsistent with the fact that not all issuers have a reporting or disclosure obligation under the federal securities laws.[231] The amended Rule, however, does not place any obligation on an issuer to file or furnish information with the Commission—any such obligation already would exist for the issuer—and some issuers may choose to make current information about themselves publicly available while others may not.[232]

Commenters expressed concern regarding the potential for reduced access to capital for small companies that have chosen to ''go dark'' to reduce compliance costs.[233] While the Commission recognizes that these companies could be negatively affected by the amended Rule, the Commission is unable to quantify the potential impact on liquidity and value.[234] Further, as discussed above, the Commission recognizes that the loss of a quoted market and the information embedded in prices may reduce an issuer's ability to raise capital through stock issuances or through other channels, such as debt.[235] The Commission recognizes that some companies may choose to remain dark

[222] *See infra* Part VI.C.2.

[223] Professor Angel Letter (stating that market makers provide important liquidity to the market and produce important price information that is useful to investors and as a tool for enforcement).

[224] Caldwell Sutter Capital Comment; Ron Lefton; Milner Letter; Professor Angel Letter.

[225] Caldwell Sutter Capital Comment; Brad Christensen; James Duade; Michael Hess; Richard Krejcarek; Ron Lefton; Milner Letter; William E. Mitchell; MJG Capital Fund Letter; Doug Mohn; Ariel Ozick; Peter Quagliano; Dan Schum; Eric Speron; Michael Tofias; Don C. Whitaker.

[226] Anbec Partners Letter; Tim Bergin (Oct. 9, 2019); Lucas Elliott (Oct. 9, 2019); Ralf Erz; Braxton Gann; James Gibson (Oct. 25, 2019); Han Han; William E. Mitchell; Daniel Raider; Michael E. Reiss; Mark Schepers; Dan Schum (''These companies enjoy operating in the shadows.''); Michael Tofias; Raymond Webb (Oct. 7, 2019).

[227] *See infra* Part VI.C.1.a.

[228] *See infra* Part VI.C.1.a. Further, as discussed above, the Commission will consider requests for exemptive relief regarding issuers that currently do not make their information publicly available.

[229] William E. Mitchell.

[230] *See infra* Part II.J.3.

[231] David Aldridge; R. Berkvens; Tyler Black; J.H. Broekhoven; Brandon Cline (Dec. 7, 2019); David A. Moeller, CIMA, Director of Investment Planning, Symphony Financial, Ltd., Co. (''Symphony Financial Comment''); Anthony Perala (Oct. 25, 2019); Michael E. Reiss; Jim Rivest; Robert Schmidt (Nov. 5, 2019); Michael Tofias; Alex Toppan; Debby Valentijn; S. Van den Hoogenhoff. *But see* Peregrine Comment (''I[n] the case of companies who say that the cost of providing basic reporting and accounting information is overly complex or expensive, then these companies are probably too small, unprofessional and/or under resourced to be publicly traded in the first place and should probably remain private.'').

[232] Further, the Rule does not prevent an issuer from terminating or suspending its reporting obligations under the Exchange Act. Such an issuer, however, would become a catch-all issuer for purposes of the amended Rule. Under those circumstances, a broker-dealer would only be able to initiate a quoted market in that issuer's security if certain information specified in amended Rule 15c2–11(b)(5)(i) is current and publicly available.

[233] *See, e.g.,* Anbec Partners Letter; Caldwell Sutter Capital Comment; Laura Coffman; Paul Lucot (Oct. 16, 2019); Michael Tofias; Michael A. Zgayb; *see* James Duade; Terravoir Venture Letter.

[234] *See infra* Part VI.C.1.a.

[235] *See infra* Part VI.C.2.

over the objections of minority shareholders whose shares could lose value as a result of the amendments. However, non-transparent issuers with productive investment opportunities could opt to disclose information to maintain a quoted market and alleviate effects on capital formation. Therefore, a decision by the issuer to remain non-transparent may result in the issuer being less likely to have productive investment opportunities because the issuer may have less access to capital to use for productive investments than those that opt to disclose.[236] In addition, the Commission believes that the amendments could result in reduced investment in securities more susceptible to fraud and increased investment in securities less susceptible to fraud.[237]

Some commenters stated that broker-dealers should not be prohibited from relying on the piggyback exception to publish quotations for securities of delinquent reporting companies because, according to the commenter, price discovery that is created by publishing a quotation is ''a significant and important function of the market.'' [238] The Commission agrees that price discovery is an important function of the market and, therefore, has adopted an amendment to the piggyback exception allowing broker-dealers to rely on the exception based on one-way priced quotations (so long as the other requirements of the exception are met) that will help to facilitate price discovery in the OTC market.[239] Further, as discussed above [240] and below in Part VI.C.2, the Commission believes that efficiency of prices could improve in the OTC market as a result of greater issuer transparency. However, the Commission believes that investor protection requires that broker-dealers be prohibited from relying on the piggyback exception for an unlimited period to quote securities of reporting issuers that do not have current and publicly available information or are delinquent in their filing obligations. The Commission's belief is informed by studies that show a greater incidence of litigated cases involving pump-and-dump schemes brought against issuers of OTC securities relative to cases brought against issuers of exchange-listed securities.[241]

One commenter stated that the proposal would hurt valuation multiples for OTC securities because investors would be reluctant to invest in a company that might fall two quarters behind in its public disclosure requirements, which would lower share prices and trading volumes, thereby making it more difficult to meet the listing standards of exchanges.[242] While the Commission acknowledges, as discussed in the Economic Analysis below, that the proposed amendments may cause capital to migrate from opaque to more transparent companies,[243] the Commission does not believe that the requirement for issuer information to be current and publicly available makes it more difficult for issuers whose information is not current and publicly available to meet the listing standards of national securities exchanges because, in part, exchange listing standards already require such issuer information to be current and publicly available.[244] As discussed below in the Economic Analysis, securities of issuers with higher levels of disclosure typically experience an increase in liquidity, while the securities of issuers that do not disclose information typically experience a decrease in liquidity,[245] and liquid securities often trade at higher prices based on lower costs associated with their resale.[246] The amended Rule's requirement that issuer information be current and publicly available for a broker-dealer to maintain a quoted market in an issuer's security has the potential to increase the liquidity and price of securities of issuers for which information is current and publicly available, thereby benefiting such issuers such that they may consider seeking to list on a national securities exchange.[247]

Another commenter stated that to require yet another reporting layer at the holding company level for community banks could lead many to ''decide they cannot afford to trade at all.'' [248] The Commission recognizes that broker-dealers may not publish quotations pursuant to the piggyback exception (but may publish quotations pursuant to the unsolicited quotation exception, as discussed in the next paragraph) for the securities of issuers if issuer information, including that of holding companies for community banks,[249] is not current and publicly available, and that investors may incur costs associated with a loss of liquidity and possible associated decrease in share value.[250] However, the Commission believes that, on balance, by requiring current and publicly available issuer information—information regarding the holding company that is the issuer of the quoted security, not information limited to the bank that is the issuer's subsidiary—for a broker-dealer to maintain a quoted market in an issuer's security, the amended Rule promotes investor protection and facilitates efficiencies in price discovery by providing greater access to issuer information that investors can use to make more informed investment decisions. Moreover, fraudsters could have more difficulty in driving up the price for an OTC security in pump-and-dump and other manipulative schemes, which may be facilitated by investors' inability to analyze information

[236] *See infra* Part VI.C.1.a.

[237] *See infra* Part VI.C.1.a.

[238] Coral Capital Letter; *see* Coulson Comment.

[239] *See infra* Part II.D.2.

[240] *See supra* note 222 and accompanying text.

[241] *See* Cumming & Johan, *supra* note 7.

[242] Coral Capital Letter.

[243] *See infra* Part VI.C.2 (citing James J. Angel, *et al., From Pink Slips to Pink Sheets: Liquidity and Shareholder Wealth Consequences of NASDAQ Delistings* (Working Paper, Nov. 4, 2004), *available at https://www.researchgate.net/profile/Jeffrey_Harris7/publication/4893245_From_Pink_Slips_to_Pink_Sheets_Liquidity_and_Shareholder_Wealth_Consequences_of_Nasdaq_Delistings/links/02e7e527daa56e7612000000.pdf* (explaining that less liquid OTC securities could migrate away from the quoted OTC market as a result of the proposed restrictions on the piggyback exception)); *see also* Proposing Release at 58259.

[244] The listing standards of national securities exchanges are more extensive than the amended Rule's requirement regarding current and publicly available information. *See, e.g.,* Original Listing Application for Equity Securities, New York Stock Exchange, *available at https://www.nyse.com/publicdocs/nyse/listing/Full_Application.pdf* (last visited June 13, 2020) (requiring, among other things, that the applicant issuer agree to file all required periodic financial reports with the Commission, including annual reports, and where applicable, quarterly or semi-annual reports, by the due dates established by the Commission).

[245] *See infra* Part VI.C.1.a.

[246] *See* Ang *et al., supra* note 3 (finding that the return premium for illiquid stocks is much higher in OTC markets than in listed markets).

[247] *See, e.g., infra* note 690 and accompanying text.

[248] William E. Mitchell. Under the amended Rule, catch-all issuer information must be current and publicly available on an annual basis, with the exception of certain financial information, not on a quarterly basis, as this commenter suggested. *See* Amended Rule 15c2–11(f)(3)(i)(C)(3); Amended Rule 15c2–11(b)(5)(i).

[249] Financial information that is posted on the website of a federal banking regulator, such as *https://cdr.ffiec.gov/* and *https://www.ffiec.gov/*, generally includes the following financial information for companies that is specified in paragraph (b)(5)(i)(L) of the amended Rule: The issuer's balance sheet, income statements, and retained earnings statement. However, the Commission notes that a bank's financial information provided on such a website might not include the relevant financial information of the bank's holding company (*i.e.,* the issuer of the security), which would have to be current and publicly available for a broker-dealer to publish a quotation.

[250] *See infra* Part VI.C.1.a (stating that the cessation of published quotations and the migration to the grey market for some OTC securities can be followed by subsequent drops in price and trading volume but that a causal relationship is difficult to establish because of other contemporaneous factors, such as financial distress).

contained in promotion campaigns when issuer information is not current and publicly available, because quotations for such issuers' securities would not be published or submitted for retail investors to access.[251] Further, a promoter may be less likely to engage in a fraudulent or manipulative scheme for the security of an issuer for which there is current and publicly available information; the presence of current and publicly available issuer information can be a deterrent to a potential fraudster.[252]

Trading in the grey market, where no quoted prices are available for buyers and sellers to transact, will result in some costs from loss of liquidity [253] for certain securities because it involves manual efforts to locate the other side of a trade. However, these increased search costs associated with grey market trading may be limited or avoided if broker-dealers are able to rely on the unsolicited quotation exception to publish quotations on behalf of an investor that is not a company insider or affiliate of the issuer.[254] Rule 15c2–11 governs broker-dealers' publications or submissions of quotations for OTC securities in a quotation medium; the Rule does not govern trading in OTC securities altogether (*e.g.,* in the grey market, without quotations).[255]

Some commenters who opposed a requirement for current and publicly available information stated that some dark companies provide information,[256] such as an audited annual report, on an annual basis to their existing shareholders [257] or by request,[258] and that these dark issuers may not make this information more widely available to avoid revealing confidential financial and business information to competitors, to allow insiders to be the buyer of last resort at low prices, to have fewer shareholders, and to take advantage of tax benefits.[259] The Commission recognizes that compliance with this requirement, including with respect to the financial information for an issuer that does not have a statute- or rule-based reporting obligation, such as a catch-all issuer, may reveal confidential financial or business information to competitors. The Commission acknowledges there may be costs associated with potentially revealing (or revealing more widely) confidential information, but requiring the public availability of current issuer information can help to better facilitate informed investment decisions by both existing investors [260] and potential investors in addition to potentially limiting incidents of fraud and manipulation in OTC securities. The public availability of current issuer information improves the overall mix of information about issuers that is readily and easily accessible to investors. Further, the public availability of current issuer information can also promote market efficiency and pricing integrity of catch-all issuers' securities, which may facilitate capital formation and lead to more efficient prices that are less susceptible to manipulation.[261]

In response to the Commission's request for comment, one commenter stated that the securities of issuers that have undergone a reorganization, any major merger or acquisition, reverse merger, or significant restructuring should be eligible for the piggyback exception,[262] stating that companies that have undergone reverse mergers already are required to disclose ''a significant amount of information'' publicly by filing a ''[F]orm 8–K12(g),'' which the commenter stated is ''nearly identical'' to a Form 10, and that the Commission should require the disclosure of more information on this form if it is not satisfied with the amount of information a Form 8–K filer must disclose if it engages in a reverse merger.[263] The amended Rule does not prevent broker-dealers from relying on the piggyback exception for the securities of issuers that undergo major corporate transactions, so long as certain requirements are met. To the extent that the reports and filings specified in paragraph (b) require the disclosure of any major corporate action, such as a reorganization, merger, acquisition, or reverse merger, and such paragraph (b) information is current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable, for an issuer that has undergone such transaction, a broker-dealer would be able to rely on the piggyback exception for that issuer's security, so long as the other requirements of the piggyback exception are met.

Another commenter stated that the proposal would not increase the availability of information that would help investors.[264] The Commission believes, however, that some market participants, such as a qualified IDQS or broker-dealer, may choose to make current issuer information publicly available in response to the amended Rule and that doing so would increase access to issuer information that could help investors to make better-informed investment decisions.[265] Further, allowing broker-dealers only to quote securities when information is ''publicly available'' (consistent with the amended Rule's requirements) on any online location within a broad list of regulated market participants' websites and an issuer's website, in addition to EDGAR or the website of a state or federal agency, would increase access to issuer information, such as balance sheets, profit and loss statements, and retained earnings statements that investors could use to analyze in making better-informed investment decisions. The public availability of current information, in addition to the expansion of the Rule's specified paragraph (b) information for catch-all issuers, could enable investors to better assess information contained in promotion campaigns and, therefore, could have a deterrent effect in

[251] *See infra* Part VI.C.1.b; Proposing Release at 58255 n.267 and accompanying text.

[252] *Cf.* Karen K. Nelson *et al., Are Individual Investors Influenced by the Optimism and Credibility of Stock Spam Recommendations?,* 40 J. Business Fin. & Acct. 1155–83 (2013) (stating that ''stock spam invariably targets small securities with relatively little publicly available financial or other information'').

[253] *See, e.g.,* Brüggemann *et al., supra* note 72 (stating that ''both market quality proxies change monotonically when moving from the [quoted market] to the [g]rey [m]arket'' and that ''[t]he decline in liquidity and increase in crash risk are consistent with a ranking of these venues in terms of their regulatory strictness and disclosure requirements'').

[254] *See* Amended Rule 15c2–11(f)(2).

[255] *See* Amended Rule 15c2–11(a).

[256] Such catch-all issuer information is discussed above in Part II.B.3.

[257] *See* Duane DeYoung (Oct. 26, 2019); Brett Dorendorf; Christian Gabis; Michael Hess; Matt Jester; Lake Highlands Comment; Dave Peirce (Oct. 16, 2019); Anthony Perala.

[258] Anbec Partners Letter; Gary Huscher (Nov. 1, 2019); *see* Duane DeYoung; SMP Asset Management Comment; Michael P. Kruger (Oct. 10, 2019); Lucas Selvidge (Oct. 23, 2019).

[259] Peter Quagliano; Michael Tofias; *see* Alluvial Letter; Drinker Letter. *But see* NASAA Letter (stating that paragraph (b) information does not involve trade secrets, proprietary business operations, or other highly sensitive business information).

[260] Securities of well-established issuers that provide information to existing shareholders can still be subject to fraud and manipulation. *See infra* Part VI.C.1.a.

[261] *See infra* Part VI.C.1.a. Rule 15c2–11 does not impose any disclosure obligations upon issuers.

[262] Coral Capital Letter. *But see* NASAA Letter (encouraging the Commission to amend the Rule so that broker-dealers cannot rely on the piggyback exception to publish quotations for securities of issuers that undergo material business developments, including, but not limited to, declarations of bankruptcy, re-organizations, and mergers, unless information regarding such development ''has been disclosed'').

[263] Coral Capital Letter.

[264] John Sheehy (Oct. 15, 2019).

[265] *See, e.g.,* Aztec Letter (stating that ''Aztec . . . could, and is willing to, publish on its website the annual information required by Rule 15c2–11(b)[(5)(i)(A) through (M)]'').

inhibiting fraudulent activity related to quoted OTC securities.[266]

Some commenters provided examples of where they believed paragraph (b) information would be unnecessary to make an informed decision: Sophisticated investors with sufficient investment experience; active, self-directed traders that use professional products offered by electronic brokers; institutions and regulated investment advisers; broker-to-broker transactions; sales by all non-affiliate, retail investors;[267] and existing shareholders or short-term traders or speculators.[268] The Commission recognizes that investors may have varying needs for an issuer's paragraph (b) information to be current and publicly available due to different approaches in analyzing the issuer and the market for its security. The Commission also does not believe that the requirement for an issuer's paragraph (b) information to be current and publicly available would prevent investors from utilizing their own methods for analyzing issuers and their securities. Instead, the Commission believes that, on balance, by requiring paragraph (b) information to be current and publicly available for a broker-dealer to be able to publish quotations for issuers' securities, the amendments will require that a minimum amount of information be available about these quoted securities, which can be used by investors to make better-informed investment decisions. In addition, the public availability of paragraph (b) information should help to alleviate concerns that limited or no information for certain issuers of quoted OTC securities exists or that such information is difficult or impossible for retail investors to find.

Some commenters suggested that securities of companies that do not make their information publicly available or otherwise fail to meet an exception should be eligible for quoting on a market where quote distribution would be limited to ''professional investors'' and certain non-institutional investors would only be allowed to liquidate holdings.[269] These comments do not provide sufficient detail to address how such a market would function while ensuring that the Rule's goals would be achieved through such alternative means. The Commission recognizes, however, that investors in securities that migrate to the grey market (as a result of the amendments) may be more susceptible to fraud and less efficient pricing, and, as one commenter stated, may lack electronic mechanisms to facilitate best execution.[270] The Commission believes that, under certain conditions and circumstances, it could be beneficial to establish an ''expert market'' that would enhance liquidity for sophisticated or professional investors in grey market securities, as well as for small companies seeking growth opportunities that might prefer to be quoted in a market limited to such persons. To facilitate the formation and implementation of such a market, the Commission has the authority to issue exemptive relief by order pursuant to Section 36 of the Exchange Act and paragraph (g) of the amended Rule[271] that is necessary or appropriate in the public interest, and is consistent with the protection of investors. In this regard, the Commission may consider, among other things, the types of investors who could access quotations in this market and the types of securities that would be quoted in such a market.

In considering any such exemptive relief, the Commission preliminarily believes that any such expert market must not have the potential to develop into a parallel market for which quotations are accessible by retail investors and the general public. To protect retail investors from the harms resulting from incidents of fraud and manipulation in OTC securities for which no or limited publicly available information about the issuers exists to help counteract misinformation, such exemptive relief could focus on the types of investors that have the ability to assess an investment opportunity, including the ability to analyze the risks and rewards.[272] Thus, the Commission preliminarily believes that any such exemptive relief should be narrowly tailored to limit access to sophisticated investors, such as qualified institutional buyers, as defined in Securities Act Rule 144A(a)(1); accredited investors, as defined in Securities Act Rule 501(a); investment companies registered under the Investment Company Act of 1940; investment advisers registered under Section 203 of the Investment Advisers Act of 1940; banks, bank holding companies, savings associations, depository institutions, or foreign banks, as defined in Section 3 of the Federal Deposit Insurance Act; and broker-dealers.

The Commission may consider any appropriate factors or conditions for any such expert market including certain safeguards such as, for example, requiring that any participating security: (1) Is of an issuer that has an active license from its state of incorporation or domicile to carry on any business for which a license is required; and (2) was the subject of a quotation that was published or submitted pursuant to either paragraph (f)(1) (the exchange-traded security exception) or (f)(3) (the piggyback exception) of the amended Rule on the business day preceding the initial quotation in any such expert market.

Some commenters stated that certain catch-all issuers provide their paragraph (b) information to their shareholders (*e.g.,* on an annual basis), and so questioned the requirement for public availability of issuer information.[273] The amended Rule seeks to equalize opportunities for informed investment decisions based on information access between existing and potential shareholders by requiring that an issuer's financial information be current and publicly available before a broker-dealer can publish or submit a quotation for that issuer. The Commission recognizes that the type of information that investors may require to make an informed investment decision may vary based on their investment objectives, as well as on other factors. The Commission, however, believes that

[266] *See infra* Part VI.C.1.b; Proposing Release at 58255.

[267] OTC Markets Group Letter 2; *see also* Securities Law USA Letter; Zuber Lawler Letter.

[268] Coral Capital Letter.

[269] *E.g.,* OTC Markets Group Letter 2. Specifically, this commenter suggested that (what the commenter called) an ''Expert Market'' should be exempt from the definition of an IDQS under the Rule. OTC Markets Group Letter 2; OTC Markets Group Letter 3 (mentioning Qualified Institutional Buyers, accredited investors, certain registered entities, and banks); *see* Coulson Comment. Several commenters agreed that there should be a way to trade securities that would no longer be eligible for a quoted public market, including such an ''Expert Market.'' OTC Markets Group Letter 1; *see* Canaccord Letter; CrowdCheck Letter; HTFL Letter; Lucosky Brookman Letter; MCAP Letter; Sosnow & Associates Letter; Securities Law USA Letter; Zuber Lawler Letter; *see also* Caldwell Sutter Capital Comment; Taranis Comment; Ron Lefton; Letter from James E. Mitchell, General Partner, Mitchell Partners, L.P., to Hon. Jay Clayton, Chairman, SEC (Mar. 13, 2020) (''Mitchell Partners Letter 3''); STA Letter; Virtu Letter. One commenter stated that such a market, however, could compound systemic risks. Jean-Paul Tres.

[270] *See* OTC Markets Group Letter 2.

[271] *See infra* Part II.L. Paragraph (g) of the amended Rule states that ''[u]pon written application or upon its own motion, the Commission may, conditionally or unconditionally, exempt by order any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, to the extent that that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.''

[272] *See, e.g., Amending the ''Accredited Investor'' Definition,* Securities Act Release No. 10824 (Aug. 26, 2020), ____ FR ____ (____. ____, 2020).

[273] *E.g.,* Duane DeYoung; Brett Dorendorf; Michael Hess; Matt Jester; Lake Highlands Comment; Dave Peirce; Anthony Perala; *see* Christian Gabis.

allowing quotations absent current and publicly available financial information, regardless of investment strategy, would benefit existing shareholders who may have access to information that potential investors may lack because existing shareholders, for example, may be sent such information on a regular basis or upon request. Further, such an outcome could facilitate a market where demand is based on significant information asymmetries.

One commenter stated that the proposed piggyback exception would not be available for foreign private issuers that restrict access by U.S. persons to their disclosure documents,[274] and the Commission agrees. However, this restriction on the ability of a broker-dealer to maintain a quoted market in the securities of such foreign private issuers, in the absence of current and publicly available issuer information, aligns with the amendments' objective of providing additional transparency to investors, including retail investors, so that they can make better-informed investment decisions and more easily evaluate the issuer, its security, and the market for the security.[275]

As discussed above, the proposed Rule would have required that a catch-all issuer's financial information be current and publicly available within six months from a broker-dealer's publication or submission of a quotation for a broker-dealer to rely on the piggyback exception for the catch-all issuer. Some commenters specifically addressed the six-month requirement in the proposed Rule as too short an amount of time for a catch-all issuer's information to be current and publicly available.[276] One commenter opposed the six-month time frame because, according to the commenter, such an amount of time would place an undue burden on small issuers, create a compliance burden on broker-dealers, and negatively impact the ability of small issuers to raise capital.[277] Some commenters stated that certain well-established, thinly traded non-reporting issuers make their financial information[278] available to their existing shareholders only on an annual basis, which would not meet the standard of ''current'' for purposes of paragraph (b)(5)(i)(L) of the proposed Rule.[279]

The Commission has determined not to require catch-all issuer information to be current and publicly available within six months before the date of publication or submission of a broker-dealer's quotation for the broker-dealer to rely on the piggyback exception. Instead, for a broker-dealer to rely on the piggyback exception to publish or submit a quotation for a catch-all issuer's security, such issuer's balance sheet is current if its most recent balance sheet is as of a date less than 16 months[280] before the publication or submission of the broker-dealer's quotation, and the issuer's profit and loss and retained earnings statements are current if they are for the 12 months preceding the date of such balance sheet.[281] Such catch-all issuer's other information specified in paragraph (b)(5)(i), except for the information specified in paragraphs (b)(5)(i)(N) through (P), must be as of a date within 12 months before the publication or submission of the quotation.[282]

While the Commission recognizes investors' need for current financial information, the Commission is also cognizant of the anticipated costs to issuers of producing and updating paragraph (b) information. As discussed in Part II.B.3, a more frequent disclosure requirement for catch-all issuer financial information would require an allocation of resources to the preparation of financial statements that the Commission does not believe is justified in light of the fact that catch-all issuers may not have an ongoing reporting or disclosure obligation. In addition, the Commission believes that catch-all issuer information made publicly available on an annual basis, in addition to the expansion of the list of specified information for catch-all issuers,[283] will help provide investors with appropriate information to make better-informed investment decisions. Furthermore, as some commenters observed, the extension of time for catch-all issuer financial information to be current and publicly available aligns with current industry standards and practices regarding when issuers provide information to their investors[284] and certain requirements under state law to provide financial information to investors on an annual basis.[285] Therefore, the Commission believes the extension of time for the disclosure of catch-all issuer financial information (as compared to the proposed Rule's semi-annual requirement) strikes an appropriate balance between facilitating capital formation and issuer and market transparency to provide investors with information to make better-informed investment decisions.

As discussed above, the proposed Rule would have treated an issuer as a catch-all issuer if it were delinquent in its reporting or disclosure obligations as a result of not timely filing a report, as required by the Exchange Act or Securities Act. Accordingly, if an issuer had not timely filed a required report by the prescribed due date for such report, its information would not be current for purposes of the proposed Rule, and the issuer would be treated as a catch-all issuer until the issuer were to file its required report. In this instance, a broker-dealer would not have been able to rely on the piggyback exception to publish or submit a quotation for the issuer's security if the information specified in proposed paragraph (b)(5)(i)(L) for such issuer were not current and publicly available as of a date within six months from the publication or submission of the broker-dealer's quotation. This treatment of delinquent reporting issuers as catch-all issuers in the proposed Rule would have created different outcomes with respect to when information is current and publicly available for purposes of relying on the piggyback exception based on the frequency of Exchange Act or Securities Act reporting and disclosure obligations. For example, if an issuer did not file a required quarterly report by its prescribed due date, broker-dealers would continue to be able to publish a quotation in

[274] Murphy & McGonigle Letter.

[275] The amended Rule also expands the definition of the term ''publicly available'' to align the Rule with Exchange Act Rule 12g3–2(b) and include an electronic information delivery system that is generally available to the public in the primary trading market of a foreign private issuer, which accommodates information that is available on a foreign regulator's website. *See infra* Part II.J.3.

[276] *See* Coral Capital Letter; Joshua Marino.

[277] Coral Capital Letter.

[278] See *infra* Part II.B.3 for a discussion of such issuer information.

[279] *See, e.g.,* Alluvial Letter; Aztec Letter; Beacon Redevelopment Letter; Brett Dorendorf; Michael Hess; Doug Mohn; Ariel Ozick; Robert E. Schermer, Jr.; Total Clarity Comment.

[280] *See supra* note 142.

[281] *See* Amended Rule 15c2–11(b)(5)(i)(L); *infra* Part II.J.1 (discussing the amended Rule's definition of the term ''current'').

[282] *See* Amended Rule 15c2–11(b)(5)(i). Consistent with the proposed Rule, the amended Rule does not require the information specified in paragraphs (b)(5)(i)(N) through (P) to be current and publicly available because those paragraphs are not issuer-specific and, instead, refer to information about the publication or submission of the quotation and the broker-dealer publishing or submitting the quotation.

[283] *See supra* Part II.B.3.

[284] *See, e.g.,* Alluvial Letter; Aztec Letter; Beacon Redevelopment Letter; Brett Dorendorf; Michael Hess; Doug Mohn; Ariel Ozick; Robert E. Schermer, Jr.; Total Clarity Comment.

[285] *See* Drinker Letter.

reliance on the piggyback exception so long as the last day of the reporting period covered by the issuer's most recently filed quarterly report were as of a date within six months from the date of the publication or submission of the broker-dealers' quotations; the delinquent reporting issuer would have been treated as a catch-all issuer, but it would not immediately have lost its quoted market. In contrast, a broker-dealer would not have been able to publish a quotation in reliance on the piggyback exception for an issuer with a reporting obligation under Regulation A if the issuer failed to file its semi-annual or annual report by the prescribed due date for such report. Here, even though the issuer is delinquent in its reporting and would be treated as a catch-all issuer, its information would not be current and publicly available within the six-month time frame for the piggyback exception, and its quoted market must be discontinued, unless its information were made current and publicly available. To simplify the application of the piggyback exception, and to address the potential for disparate treatment under the piggyback exception of issuers that may have different reporting obligations, the piggyback exception under the amended Rule groups issuers based on their regulatory status in regard to Exchange Act or Securities Act reporting obligations. Accordingly, issuers with Exchange Act or Securities Act reporting or disclosure obligations are not treated as catch-all issuers for purposes of the piggyback exception.[286]

(b) Time Frame Requirements for Issuer Information

The following table summarizes the time frames for which paragraph (b) information must be current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable, for purposes of piggyback exception eligibility:

TABLE 1—PIGGYBACK EXCEPTION REQUIREMENTS REGARDING PARAGRAPH (b) INFORMATION

Documents and information specified in:	Paragraph (b) information must be:
Paragraphs (b)(3)(i), (b)(3)(iv), and (b)(3)(v) for reporting issuers that have an Exchange Act reporting obligation.	Filed within 180 calendar days following the end of the reporting period (*e.g.,* the fiscal year or fiscal quarter, as applicable).
Paragraph (b)(3)(ii) for reporting issuers that have a reporting obligation under Regulation A.	Filed within 120 calendar days following the end of the issuer's fiscal year[a] and 90 calendar days after the end of a semi-annual period.[b]
Paragraph (b)(3)(iii) for crowdfunding issuers	Filed within 120 calendar days following the end of the issuer's fiscal year.[c]
Paragraph (b)(4) for exempt foreign private issuers.	Since the first day of its most recently completed fiscal year, information that has been made public as required by the laws of the country of the issuer's incorporation, organization or domicile; or has filed with the principal stock exchange in its primary trading market on which its securities are traded.[d]
Paragraph (b)(5) for catch-all issuers	Current and publicly available annually, except for certain financial information: The issuer's most recent balance sheet must be as of a date less than 16 months before the publication or submission of a broker-dealer's quotation, and the issuer's profit and loss and retained earnings statements for the 12 months preceding the date of the most recent balance sheet.

[a] *See* Form 1–K., General Instructions, A.(2) (specifying that annual reports filed on Form 1–K shall be filed within 120 calendar days after the end of the fiscal year covered by the report).
[b] *See* Form 1–SA, General Instructions, A.(2).
[c] *See* Rule 203(b) of Regulation Crowdfunding.
[d] *See* Exchange Act Rule 12g3–2(b)(1)(iii), (b)(3)(ii).

To facilitate issuer transparency in connection with a broker-dealer's reliance on the piggyback exception to maintain a quoted market in the issuer's security, the amended Rule requires that an issuer's documents and information be filed within 180 calendar days from the end of the issuer's most recent fiscal year or any quarterly reporting period that is covered by a report required by Section 13 or 15(d) of the Exchange Act for reporting issuers for which documents and information are specified in paragraphs (b)(3)(i), (b)(3)(iv), and (b)(3)(v) of the amended Rule. The requirement under the amended Rule that an issuer's documents and information be filed within 180 calendar days from the specified period allows broker-dealers to continue to rely, for a limited period, on the piggyback exception to publish or submit quotations for securities of issuers that have not filed a required report by the prescribed due date for such report. Consistent with the proposed Rule, the amended Rule allows a broker-dealer to continue to rely on the piggyback exception to publish quotations, for a limited period, for a delinquent reporting issuer's security.[287] The provision of this limited time period balances the Rule's goals of preventing fraudulent and manipulative activity (specifically, in this case, in delinquent issuers' securities) while preserving liquidity in the OTC market.[288] By providing a specific, limited period for these reporting issuers to file reports before a broker-dealer can no longer rely on the piggyback exception for the issuer's security, the amended Rule limits the potential for the disruption and loss of a broker-dealer quoted market resulting from the failure of such issuer to file a required report by the prescribed due date for the report, which, at the same time, provides time for: (1) The issuer's paragraph (b) information to become current and publicly available for investors to access and utilize to make investment decisions, and (2) investors to sell securities if they so choose in a market that is maintained by broker-dealer quotations for a limited time.

The reports referenced in the amended Rule for issuers with a reporting obligation under Regulation A (*i.e.,* paragraph (b)(3)(ii)) and for crowdfunding issuers (*i.e.,* paragraph (b)(3)(iii)) must be ''timely filed'' for a broker-dealer to rely on the piggyback exception. Because issuers with a reporting obligation under Regulation A and crowdfunding issuers are not required to file reports more frequently than on a semi-annual or annual basis,[289] the due date for filing such

[286] *See* Amended Rule 15c2–11(f)(3)(i)(C).
[287] *See infra* note 291.
[288] *See infra* Part VI.B.2.c.
[289] *See* Form 1–SA, General Instructions, A.(2) (specifying that semi-annual reports on Form 1–SA

Continued

reports will always be greater than 180 days from the end of the prior reporting period covered by such a report. By requiring that issuer information be timely filed (*i.e.,* by the prescribed due date for a form or as required by Regulation A or Regulation Crowdfunding), the piggyback exception under the amended Rule is consistent with the time frames for issuers' Exchange Act or Securities Act reporting obligations.

Paragraph (f)(3)(i)(C)(1) under the amended Rule provides that the piggyback exception shall apply to the publication or submission of a quotation for a security of a reporting issuer (other than a crowdfunding issuer or an issuer that has a reporting obligation under Regulation A) [290] if the applicable paragraph (b) information is current and publicly available within 180 calendar days from the end of the issuer's most recent fiscal year or any quarterly reporting period.[291] For example, if an issuer with a quarterly reporting obligation, such as an issuer that has information specified in paragraph (b)(3)(i), (b)(3)(iv), or (b)(3)(v), were to file an annual report for a fiscal year that ended on December 31, 2020, a quotation for that issuer's security that was published or submitted by a broker-dealer in an IDQS, between January 1, 2021, and, inclusive of, June 29, 2021, would comply with the requirements in paragraph (f)(3)(i)(C) of the piggyback exception. If, however, the same issuer were to file a quarterly report for the quarters ending on March 31, 2021, and June 30, 2021, and was required but failed to file a quarterly report for the quarter that ended on September 30, 2021, a quotation for such issuer's security that was published or submitted, by a broker-dealer in an IDQS, between July 1, 2021, and, inclusive of, December 27, 2021, would meet the requirements of paragraph (f)(3)(i)(C) of the piggyback exception. In this same scenario, where the issuer failed to file a quarterly report for the quarter that ended on September 30, 2021, a quotation for such issuer's security that was published or submitted, by a broker-dealer in an IDQS, on December 28, 2021, would not meet the requirements of paragraph (f)(3)(i)(C) of the piggyback exception because the applicable paragraph (b) information was not current and publicly available with respect to any reporting period that ended 180 calendar days before the publication or submission of the quotation.[292]

If an issuer with an annual filing obligation (*i.e.,* an issuer for which documents and information are specified in paragraph (b)(3)(v) of the amended Rule) were to file its annual statement, pursuant to the requirements of section 12(g)(2)(G)(i) of the Exchange Act, for the period that ended on December 31, 2020, the quotation for such issuer's security that was published or submitted, by a broker-dealer in an IDQS, between January 1, 2021, and, inclusive of, June 29, 2022, would comply with the requirements in paragraph (f)(3)(i)(C) of the piggyback exception. If, however, the same (b)(3)(v) issuer failed to file an annual statement for the period that ended on December 31, 2020, a quotation for such issuer's security that was published or submitted, by a broker-dealer in an IDQS after June 29, 2021 (*i.e.,* 180 days after the end of issuer's fiscal year), would not comply with the requirements of paragraph (f)(3)(i)(C) of the piggyback exception.

Paragraph (f)(3)(i)(C)(2) under the amended Rule provides that the piggyback exception shall apply to the publication or submission of a quotation for a security of an issuer with a reporting obligation under Regulation A or a crowdfunding issuer so long as the applicable paragraph (b) information is timely filed.[293] If an issuer for which documents and information are specified in paragraph (b)(3)(ii) of the amended Rule that has reporting obligations under Regulation A were to file an annual report within 120 calendar days from the end of a fiscal year that ended on December 31, 2020,[294] the quotation for such issuer's security that was published or submitted, by a broker-dealer in an IDQS, between January 1, 2021, and, inclusive of, September 28, 2021,[295] would comply with the requirements of paragraph (f)(3)(i)(C) of the piggyback exception. If, however, the same issuer were to fail to timely file a semi-annual report by September 28, 2021, for the period that ended June 30, 2021, the quotation for such issuer's security that was published or submitted, by a broker-dealer in an IDQS, on September 29, 2021, would not comply with paragraph (f)(3)(i)(C) of the piggyback exception. In this example, a broker-dealer would not be able to rely on the piggyback exception to publish a quotation for the issuer's security beginning on September 29, 2021,

shall be filed within 90 calendar days after the end of the semi-annual period covered by the report, which would result in a report being filed 270 calendar days (180 calendar days + 90 calendar days) from the end of the prior reporting period); Rule 203(b) of Regulation Crowdfunding (specifying that annual reports filed on Form C–AR shall be filed no later than 120 days after the end of the fiscal year covered by the report, which would result in a report being filed 485 days (365 days + 120 days) from the end of the prior reporting period).

[290] As discussed below, the requirements for the paragraph (b) information of such issuers are included in paragraph (f)(3)(i)(C)(2) of the amended Rule and provide that: (1) A crowdfunding issuer's paragraph (b) information would be timely filed if it were filed within 120 calendar days following the end of the issuer's fiscal year, or (2) paragraph (b) information for an issuer with a reporting obligation under Regulation A would be timely filed if it were filed within 120 calendar days following the end of the issuer's fiscal year and 90 calendar days after the end of semi-annual period.

[291] Amended Rule 15c2–11(f)(3)(i)(C)(1). As proposed, a reporting issuer that was delinquent in its reporting obligation would have been treated as a catch-all issuer. *See* Proposed Rule 15c2–11(b)(5)(ii). As such, the issuer's information would need to have been current and made publicly available within six months (or 180 calendar days) before the date of publication or submission of such quotation for a broker-dealer to rely on the piggyback exception to publish quotations for its security. *See* Proposed Rule 15c2–11(f)(3)(ii). As discussed above, the amended Rule's piggyback exception does not impose the proposed six-month requirement for catch-all issuer information to be current and publicly available. In addition, the amended Rule treats delinquent reporting issuers as catch-all issuers only with respect to compliance with the information review requirement so that a broker-dealer can publish or submit an initial quotation to commence a quoted market in an issuer's security. *See* amended Rule 15c2–11(b)(5)(ii). In light of these changes from the proposal, the amended Rule's piggyback exception requires that an issuer's information specified in paragraph (b)(3)(i), (b)(3)(iv), or (b)(3)(v) be filed within 180 calendar days from the end of the issuer's most recent fiscal year or any quarterly reporting period that is covered by a report required by section 13 or 15(d) of the Exchange Act, as applicable, to avoid disparate treatment of issuers by imposing a requirement for such information that has an unduly short time frame. Although decreased access to current issuer information may have the potential to hamper an investor's ability to counteract misinformation, the Commission believes that the amendments to the piggyback exception appropriately balance these concerns (*i.e.,* disparate treatment of issuers and transparency of issuer information) by permitting broker-dealers to quote the securities of certain reporting issuers for a time-limited period (*i.e.,* so long as their paragraph (b) information is filed within 180 calendar days from the end of the issuer's most recent fiscal year or any quarterly reporting period that is covered by a report required by section 13 or 15(d) of the Exchange Act).

[292] A broker-dealer or qualified IDQS may comply with the information review requirement by reviewing the specified information for a catch-all issuer in paragraph (b)(5) of the amended Rule so that a broker-dealer can publish a quotation for the issuer's security if such issuer's information is current and publicly available. *See* Amended Rule 15c2–11(b)(5)(ii); *supra* Part II.B.5 (discussing the application of the catch-all issuer provision). Until the issuer's required report is filed, however, the broker-dealer would not be able to maintain a quoted market for such issuer's security in reliance on the piggyback exception.

[293] Amended Rule 15c2–11(f)(3)(i)(C)(2).

[294] For purposes of this example, this date represents the deadline for this issuer to file an annual report pursuant to Rule 257(b)(1) of Regulation A.

[295] In this example, September 28, 2020, is 90 calendar days after the end of the issuer's semi-annual reporting period, the deadline to file its semi-annual report.

because the issuer failed to timely file its semi-annual report pursuant to Rule 257(b)(3).[296] If, however, the same issuer were to timely file its semi-annual report by September 28, 2021, a broker-dealer could rely on the piggyback exception to publish or submit a quotation for the issuer's security through, and inclusive of, April 30, 2022 (*i.e.,* 120 days from the end of the issuer's 2021 annual reporting period).

If a crowdfunding issuer, which has documents and information specified in paragraph (b)(3)(iii) under the amended Rule, were to timely file by April 30, 2021, an annual report for a fiscal year that ended on December 31, 2020 (*i.e.,* 120 days after the end of the issuer's most recent fiscal year), a quotation for the issuer's security that was published or submitted, by a broker-dealer in an IDQS, between January 1, 2021, and, inclusive of, April 30, 2022, would comply with the requirements of paragraph (f)(3)(i)(C) of the piggyback exception. The 120-day requirement in the piggyback exception under the amended Rule—and, in this example, the period January 1, 2021, through April 30, 2022—reflects the requirements of a crowdfunding issuer to file a report within 120 days from the end of its fiscal year. If, however, the same crowdfunding issuer were to fail to timely file by April 30, 2021, an annual report for its fiscal year that ended on December 31, 2020, the quotation for such issuer's security that was published or submitted, by a broker-dealer in an IDQS, beginning on May 1, 2021, would not comply with the requirements of paragraph (f)(3)(i)(C) of the piggyback exception because the issuer's paragraph (b) information would not be timely filed within 120 days from the end of the issuer's most recent fiscal year.

Paragraph (f)(3)(i)(C)(3) under the amended Rule provides that the piggyback exception shall apply to the publication or submission of a quotation for a security of an exempt foreign private issuer or a catch-all issuer, so long as the applicable paragraph (b) information is current and publicly available.[297] If an exempt foreign private issuer, which has documents and information specified in paragraph (b)(4) of the amended Rule, were to publish its annual report, pursuant to a requirement of the laws of the country of the issuer's incorporation or the rules of its primary trading market, for the period that ended on December 31, 2020, the quotation for such issuer's security that was published or submitted, by a broker-dealer in an IDQS, between January 1, 2021, and the day the issuer is required to publish its next annual report, would comply with the requirements of paragraph (f)(3)(i)(C) of the piggyback exception. If, however, the same exempt foreign private issuer failed to publish its annual report pursuant to a requirement of the laws of the country of the issuer's incorporation or the rules of its primary trading market, the quotation for such issuer's security that was published or submitted on the day after such issuer was required to publish its annual report would not comply with the requirements of paragraph (f)(3)(i)(C) of the piggyback exception because the information specified in paragraph (b)(4) of the amended Rule would not be current and publicly available.

Finally, for a broker-dealer to publish or submit in an IDQS a quotation for the security of a catch-all issuer, which has documents and information specified in paragraph (b)(5) of the amended Rule, on or before February 1, 2023, the broker-dealer would comply with the requirements of paragraph (f)(3)(i)(C) of the piggyback exception if the information specified in paragraph (b)(5) of the amended Rule for such issuer were current and publicly available as of February 1, 2022 (a date that is within 12 months prior to the publication or submission of the broker-dealer's quotation), including if its balance sheet were dated as of October 1, 2021 (a date less than 16 months before the publication or submission of the quotation), and its profit and loss and retained earnings statements were for the 12 months preceding the date of the balance sheet. However, the broker-dealer's quotation for such issuer's security that was published or submitted on or after February 1, 2022, would not meet the requirements of paragraph (f)(3)(i)(C) of the piggyback exception if the issuer's paragraph (b) information were not current and publicly available as of February 1, 2021, including if its balance sheet were dated before October 1, 2020, and its profit and loss and retained earnings statements were for a period older than the 12 months preceding the date of the balance sheet, the specified information would not be current and publicly available within the time frame specified in paragraph (b)(5) of the amended Rule.

(c) Publicly Available Determinations Regarding Issuer Information

As discussed below, a qualified IDQS may make a publicly available determination that issuer information is current and publicly available, and broker-dealers may rely upon such publicly available determinations to submit or publish a quotation in an OTC security. In response to a comment requesting clarification as to whether a qualified IDQS's obligation to determine whether an issuer's paragraph (b) information is current and publicly available is ongoing,[298] the Commission clarifies that a qualified IDQS that makes a publicly available determination that the piggyback exception is available must establish, maintain, and enforce reasonably designed written policies and procedures to determine, on an ongoing basis, whether the documents and information specified in paragraph (b) are, depending on the type of issuer, current and publicly available, timely filed, or filed within 180 days from the end of a reporting period, as applicable.[299] While the obligation is ongoing, the frequency with which a qualified IDQS or registered national securities association must make such determination depends on the frequency with which an issuer's reports are required to (1) be filed with the Commission, according to the issuer's Exchange Act or Securities Act reporting obligation, or (2) be as of a certain date and publicly available (in the case of a catch-all issuer).[300] For example, a qualified IDQS or registered national securities association may determine that an issuer's paragraph (b) information, such as a required annual or semi-annual report, is timely filed once or twice a year, respectively, based on the prescribed due date for such issuer's report in compliance with its reporting obligation under Regulation A.[301] A broker-dealer relying on a

[296] As discussed below, amended Rule 15c2–11(f)(3)(ii) provides a limited grace period that would allow broker-dealers to continue to rely on the piggyback exception for a time-limited period to quote the security of an issuer that files a tardy report. Further, if the required report is filed during the grace period, broker-dealers could continue to rely on the piggyback exception even after the expiration of such grace period. *See* Rule 15c2–11(f)(3)(ii)(C); *see also infra* Part II.D.6.

[297] Amended Rule 15c2–11(f)(3)(i)(C)(2).

[298] FINRA Letter.

[299] *See supra* Part II.A.4 (discussing policies and procedures for qualified IDQSs and registered national securities associations that make publicly available determinations, including requirements for ongoing obligations).

[300] Amended Rule 15c2–11(a)(3) (stating that a qualified IDQS that makes a publicly available determination must establish, maintain, and enforce reasonably designed written policies and procedures to determine ''whether'' the requirements of an exception are met); *see supra* Part II.A.4 (discussing the policies and procedures requirements for publicly available determinations to be made by a qualified IDQS or registered national securities association).

[301] *See* Form 1–SA, General Instructions, A.(2).

publicly available determination made by a qualified IDQS or registered national securities association, however, does not have an independent obligation to confirm the continued public availability of current issuer information, though such broker-dealer would have a recordkeeping requirement to support its reliance on the piggyback exception,[302] including its reliance on the piggyback exception's grace period.[303]

2. One-Way Priced Quotations—Rule 15c2–11(f)(3)(i)(A)

To facilitate price discovery in a quoted market, the Commission is modifying the piggyback exception to require at least a one-way priced quotation (as opposed to adopting the proposed requirement that quotations represent both a bid and an offer at specified prices) for broker-dealers to rely on the piggyback exception. The Commission sought comment about the proposal to require that a security be the subject of both a bid and an offer at specified prices, in an IDQS, for a broker-dealer to rely on the piggyback exception to publish or submit a quotation for such security. Two commenters provided general support for this aspect of the proposal.[304] Commenters who opposed this aspect of this proposal stated that securities with a one-sided priced quotation should be eligible for the piggyback exception. Some stated that a one-sided priced bid should be eligible for the piggyback exception because, according to one commenter, one-sided priced bids provide sufficient evidence of legitimate, independent market interest,[305] while other commenters stated that allowing broker-dealers to rely on the piggyback exception based on one-sided priced quotations helps to protect minority shareholders[306] and provides price discovery and market development.[307]

The Commission has determined to permit broker-dealers to rely on the piggyback exception for securities that have at least either a bid quotation at a specified price or an offer quotation at a specified price[308] instead of requiring that both bid and offer quotations be at specified prices, as proposed. After considering the comments, and in light of other requirements of the piggyback exception and self-regulatory organization (''SRO'') rules that apply to the quotations of a broker-dealer,[309] the Commission believes that the requirement for at least a one-sided quotation at a specified price is an appropriate element of a multi-prong exception that strikes the right balance of updating the piggyback exception to reduce the likelihood that its use could facilitate a potential fraudulent or manipulative scheme without unduly hampering the development of liquidity in the OTC market.

A one-sided quotation at a specified price can contribute to price discovery and the commencement of a quoted market, each of which are important, especially in a thinly traded market, to an efficient and liquid OTC market. The Commission believes that expanding this part of the piggyback exception to require a one-sided quotation at a specified price rather than two-sided quotations at specified prices may avoid unduly impeding liquidity for investors and capital formation for issuers while still addressing the vulnerability of the piggyback exception to be used to facilitate potential fraud and manipulation. As amended, the multiple prongs of the piggyback exception, including the paragraph (f)(3)(i)(B) provision regarding shell companies and the paragraph (f)(3)(i)(C) provision regarding current and publicly available information for all issuers, both of which are discussed below, are designed to work together to help reduce the potential for fraudulent and manipulative activity when a broker-dealer relies on the piggyback exception, without unduly hampering liquidity in the OTC market.[310]

In response to a Commission solicitation of comment about whether there is a certain price threshold below which the piggyback exception should not apply, one commenter stated it was generally opposed to the establishment of a price threshold because, according to the commenter, price thresholds interfere with the normal functioning of a market.[311] The Commission has determined that a price threshold test would be inappropriate for the piggyback exception in light of its concerns that such a test could be subject to abuse through, for example, reverse stock splits.

3. Following a Trading Suspension—Rule 15c2–11(f)(3)(i)(B)

The Commission is eliminating the ability of a broker-dealer to rely on the piggyback exception during the first 60 calendar days after the termination of a Commission trading suspension under Section 12(k) of the Exchange Act, as proposed. The Commission sought comment on this aspect of the proposal. One commenter stated that requiring current and publicly available issuer information for a broker-dealer to rely on the piggyback exception, in conjunction with the proposed 60-calendar-day ''cooling off'' period following a trading suspension, should serve to enhance market transparency.[312]

The Commission has determined to adopt, without modification, the proposal to eliminate the ability of a broker-dealer to rely on the piggyback exception during the first 60 calendar days after the termination of a trading suspension order issued by the

[302] *See* Amended Rule 15c2–11(d)(2).

[303] *See infra* Part II.D.6.

[304] FINRA Letter (stating that two-way priced quotations are appropriate to support broker-dealers' reliance on the piggyback exception because, by entering priced quotations, the broker-dealer provides substantive market information concerning its view about the value of the security); Massachusetts Letter.

[305] OTC Markets Group Letter 2; *see* Securities Law USA Letter; Zuber Lawler Letter. One commenter stated that there is value in permitting piggyback eligibility for securities with a one-sided priced bid quotation. OTC Markets Group Letter 1.

[306] Mitchell Partners Letter 1. While permitting broker-dealers to rely on the piggyback exception based on one-sided quotations could protect minority shareholders, as this commenter suggested, the amendments are designed to provide protections to all investors. *See, e.g., supra* Part I (discussing the objectives of the amended Rule).

[307] Coral Capital Letter; OTC Markets Group Letter 2 (''A priced bid indicates a firm desire to buy the security, which itself acts as a valid price discovery mechanism.''); *see* Securities Law USA Letter; Zuber Lawler Letter.

[308] Amended Rule 15c2–11(f)(3)(i)(A). The Commission is making a technical edit from the proposal to use the word ''offer'' instead of the word ''ask'' to make the wording of the piggyback exception consistent with the Rule's definition of ''quotation,'' which uses the word ''offer'' instead of the word ''ask.''

[309] *See, e.g.,* FINRA Rule 5220.

[310] While the provision in proposed Rule 15c2–11(f)(3)(ii) referenced ''an issuer included in paragraph (b)(5),'' the provision in amended Rule 15c2–11 references the documents and information regarding an issuer that are specified in the applicable subparagraph of the amended Rule regarding such documents and information. This technical change from the proposal addresses the fact that paragraph (b) specifies an issuer's documents and information. In addition, while the proposed Rule's provision in the piggyback exception regarding shell companies, trading suspensions, and current and publicly available catch-all issuer information was contained in a single paragraph under proposed Rule 15c2–11(f)(3)(ii), the amended Rule has split the provision into multiple paragraphs. Amended Rule 15c2–11(f)(3)(i)(B) provides a provision regarding shell companies and trading suspensions, while amended Rule 15c2–11(f)(3)(i)(C)(1) through (3) provides a provision regarding an issuer's paragraph (b) information that is current and publicly available, timely filed, or filed within 180 calendar days from a specified period. This clarifying edit from the proposal has been made to make the provision easier to read.

[311] Coral Capital Letter.

[312] SIFMA Letter.

Commission under Section 12(k) of the Exchange Act.[313] The Commission continues to believe that such a period provides the appropriate amount of time for investors to consider new or additional information about an issuer that may arise following the expiration of a trading suspension order issued by the Commission. Among other things, a Commission trading suspension could indicate uncertainty about the accuracy of publicly available issuer information or questions about trading in the issuer's security.[314] The ability of investors to analyze information about an issuer is crucial to making informed investment decisions about the security of an issuer, and transparency into the market for an issuer's security for which trading has been suspended is especially important following the circumstances that lead to a trading suspension, such as the occurrence of deceptive or manipulative conduct.

Although the 60-calendar-day period, as proposed, was intended to incorporate the 30-calendar-day timing requirement to establish piggyback eligibility under the proposed Rule,[315] and although the amended Rule no longer includes such a requirement,[316] the Commission continues to believe that the process of re-establishing eligibility for the piggyback exception should not occur any sooner than 60 calendar days following the termination of a suspension order issued by the Commission. The Commission believes that the 60-calendar-day period before a broker-dealer may rely on the piggyback exception remains an appropriate period during which new or additional information about an issuer could be reviewed, which should promote informed investment decisions following a trading suspension. The Commission believes that a shorter amount of time would be inconsistent with the promotion of investor protection and the integrity of the OTC market.

4. Shell Company Exclusion—Rule 15c2–11(f)(3)(i)(B)

The Commission has determined to adopt, with some modification, the proposal to prohibit broker-dealers from relying on the piggyback exception for shell companies. Specifically, under this modified approach, a broker-dealer may rely on the piggyback exception to quote the security of an issuer that the broker-dealer has a reasonable basis under the circumstances for believing is a shell company [317] for the 18 months following the initial priced quotation for an issuer's security that is published or submitted in an IDQS. This approach will help protect retail investors by preventing such companies, which can be used as vehicles for fraud, from maintaining a quoted market indefinitely,[318] while promoting capital formation by preserving for a time-limited period a cost-effective means for companies to maintain a broker-dealer quoted market. The Commission remains concerned about the potential that a continuously quoted market facilitated by the piggyback exception could be used to entice investors to make an investment decision based on what appears to be an active and independent market when, in fact, the investor may be considering an artificially increased price for the shell company's security due to inaccurate and misleading promotional information.[319] The Commission, however, is also concerned that a blanket prohibition on broker-dealers' ability to rely on the piggyback exception for shell companies may negatively impact capital formation opportunities for privately held companies that seek to merge into OTC shell companies (through reverse mergers) as an alternative to an initial public offering (''IPO'').[320] The amended Rule appropriately balances the promotion of investor protection and the facilitation of capital formation by allowing broker-dealers to maintain a quoted market in the securities of shell companies to provide opportunities for privately held companies to engage in reverse mergers with such publicly quoted shell companies, for a limited period of 18 months.

The Commission sought comment about the proposal to eliminate the ability of a broker-dealer to rely on the piggyback exception for the securities of ''shell companies.'' Commenters who supported this limitation stated that it should reduce fraud and abuse of OTC securities,[321] especially in the context of reverse mergers.[322] Those who opposed this aspect of the proposal stated that it would be difficult to implement, leaving room for interpretation and potentially harming capital formation for those companies and their securities' liquidity.[323] The Commission appreciates that a security's liquidity may be negatively impacted if a broker-dealer declines to rely on the piggyback exception under the amended Rule because it believes that a determination (that the issuer of a security is not a shell company) cannot be made with certainty. As discussed more fully below, the definition of a shell company in the amended Rule tracks the definition of shell company in Rule 405 of Regulation C and in Exchange Act Rule 12b–2, the provisions of which apply to registrants, and comports with the provisions of Securities Act Rule 144(i)(1)(i) regarding the availability of that safe harbor for the resale of securities initially issued by certain

[313] Amended Rule 15c2–11(f)(3)(i)(B). As the Commission explained in the Proposing Release, ''adding 30 days to the piggyback exception's existing timing requirement of 30 days,'' which would result in ''a longer period of 60 calendar days[,] should provide investors with a better opportunity to consider new or additional information that may arise in the period following the conclusion of the issuer's trading suspension. The Commission believes that this proposed limitation would help to ensure that regular and frequent quotations for the securities of formerly suspended issuers generally reflect market supply and demand and are based on informed pricing decisions rather than on pricing decisions that are based on information that is no longer accurate or that (potentially) had led the issuer to be suspended.'' Proposing Release at 58222.

[314] *See id.*

[315] Proposing Release at 58222. After the expiration of a trading suspension at the conclusion of the 10-day period, the trading suspension no longer applies (*i.e.,* trading can resume, even if quoting does not automatically do so). *See* Exchange Act Section 12(k)(1)(A).

[316] *Compare* Amended Rule 15c2–11(f)(3)(i)(A), *with* Proposed Rule 15c2–11(f)(3)(i)(A), (B).

[317] Alternatively, a broker-dealer may rely on the publicly available determination of a qualified IDQS or registered national securities association that the exception is available. However, such qualified IDQS or registered national securities association must have a reasonable basis for believing that the issuer is a shell company in making a publicly available determination that the requirements of the piggyback exception are met. The Commission is also making a technical edit from the provision in the proposed Rule's piggyback exception to focus on the broker-dealer, rather than the issuer. Whereas the proposed Rule specified that the piggyback exception ''shall not apply to the security of an issuer,'' *see* Proposed Rule 15c2–11(f)(3)(ii), the provision in the amended Rule's piggyback exception specifies that the piggyback exception ''shall not apply to a quotation that is published or submitted by a broker or dealer for the security of an issuer,'' *see* Amended Rule 15c2–11(f)(3)(i)(B).

[318] Proposed Rule 15c2–11(f)(3)(ii). As explained in the Proposing Release, ''[a] continuously quoted market can increase the share price of a shell company that may have been promoted using inaccurate or misleading representations and could allow fraudsters to more easily fool new investors into believing there is an active and independent market for its security.'' Proposing Release at 58222.

[319] *See id.*

[320] *See* Coral Capital Letter; *see also* Anthony Letter.

[321] *See* Massachusetts Letter; *see also* Peregrine Comment.

[322] FINRA Letter (requesting that, given the fluidity of corporate actions, the Commission clarify how often a broker-dealer or qualified IDQS is expected to confirm that a company is not a shell company); Michael Goode, Managing Member, Morning Light Mountain, LLC (Dec. 16, 2019) (''Morning Light Mountain Comment''); Hamilton & Associates Letter.

[323] Coral Capital Letter; *see* Leonard Burningham Letters; Letter from William T. Hart, Hart & Hart, LLC, to SEC (Feb. 24, 2020); Sosnow & Associates Letter.

issuers.[324] In light of the concern that such determination cannot be made with certainty, however, the amended Rule applies a ''reasonable basis'' standard for making such determination. Accordingly, a broker-dealer may rely on the piggyback exception to quote the security of an issuer that the broker-dealer has a reasonable basis under the circumstances for believing is a shell company for the 18 months following the initial priced quotation for an issuer's security.[325] In addition, a qualified IDQS or registered national securities association may make a publicly available determination that the requirements of the piggyback exception are met based, in part, on its having a reasonable basis under the circumstances for believing that the issuer is a shell company.[326]

As discussed below in Part II.J.2, a broker-dealer, qualified IDQS, or registered national securities association has a reasonable basis under the circumstances for determining that an entity is a shell company by relying on an issuer's self-identification as a shell company (or not) by reviewing, for example, the issuer's financial information, or, alternatively, by reviewing a description of its business, as specified in paragraph (b)(5)(i)(H) of the amended Rule or in any disclosures provided to the Commission pursuant to reporting obligations under the federal securities laws, without reviewing the issuer's financial information.[327] Broker-dealers have experience in making determinations of shell company status in other contexts that should help to provide increased certainty regarding shell company determinations for purposes of the Rule.[328] Further, as discussed more fully below, the amended Rule provides a new exception that permits broker-dealers to publish or submit quotations in reliance on the publicly available determination of a qualified IDQS or a registered national securities association that certain exceptions are available, including the piggyback exception.[329] This new exception may help to alleviate burdens on broker-dealers associated with determining whether an issuer is a shell company. How often a broker-dealer, qualified IDQS, or registered national securities association may need to determine whether an issuer is a shell company for a broker-dealer to rely on the piggyback exception is based on how frequently information for that issuer is filed or made current and publicly available.[330] For example, a broker-dealer, qualified IDQS, or registered national securities association may determine that a reporting issuer is a shell company when its annual or periodic reports are filed. Similarly, a broker-dealer, qualified IDQS, or registered national securities association may determine that a catch-all issuer is a shell company on an annual basis.[331]

Further, consistent with Commission guidance regarding the definition of ''shell company'' for purposes of Rule 144(i)(1)(i), the Commission believes that it is appropriate in the context of this Rule to reiterate that startup companies, or companies that have a limited operating history, such as early-stage biotechnology companies with no or limited assets and revenues and substantial expenses,[332] are not intended to be captured by the definition of ''shell company'' because the Commission believes that such companies do not meet the condition of having ''no or nominal operations.''[333] A startup company that has limited operating history would not meet the condition of having ''no or nominal operations'' in paragraph (e)(9)(i) of the amended Rule's definition of shell company. This is consistent with the Commission's recognition that providing avenues for liquidity encourages investment in companies,[334] to promote opportunities for liquidity in the securities of such start-up companies.

As discussed above, the Commission believes that the amended Rule appropriately balances the promotion of investor protection and the facilitation of capital formation with respect to broker-dealers' reliance on the piggyback exception to publish or submit quotations for the securities of shell companies. For example, the Commission believes that permitting broker-dealers to publish or submit quotations for the securities of shell companies for a time-limited period of 18 months following the publication or submission of the initial priced quotation for such issuers' securities in an IDQS would facilitate capital formation and liquidity by permitting broker-dealers to maintain a quoted market in these securities during a defined period while limiting the risk that they could become the subject of a pump-and-dump scheme(s) if such quotations were permitted for an indefinite period. Further, even during the 18-month period that broker-dealers may rely on the piggyback exception to quote the securities of shell companies, broker-dealers are nevertheless subject to liability under the antifraud provisions of the securities laws, such as Exchange Act Section 10(b) and Rule 10b–5, if they publish quotations for the securities of shell companies with the intent to further a fraudulent or manipulative scheme.

Other commenters who opposed this part of the proposal stated that the proposal would prevent existing shareholders from being able to recover losses from investing in companies that become shell companies subsequent to purchasing shares in those companies.[335] Shell companies can be used for valid reasons; however, the Commission has noted that unregistered reverse mergers between privately held companies and publicly traded shell companies commonly are used to develop a market for the merged entity's securities, often as part of a pump-and-dump scheme.[336] The Commission recognizes that shareholders of shell companies may suffer a loss on their investment as a result of broker-dealers not being able to rely indefinitely on the piggyback exception to publish or submit quotations for the shell

[324] *See* Proposing Release at 58236. While the definition of ''shell company'' in amended Rule 15c2–11 mirrors the definition of ''shell company'' in Rule 405 of Regulation C and in Rule 12b–2, these provisions apply to registrants, and the definition of shell company for purposes of Rule 15c2–11 is not limited to companies that have filed a registration statement or have an obligation to file reports under Section 13 or Section 15(d) of the Exchange Act. Instead, the definition of ''shell company'' covers all issuers of securities because the provisions of Rule 15c2–11 apply to publications and submissions of quotations for securities of reporting issuers as well as catch-all issuers. *Id.*

[325] *See* Amended Rule 15c2–11(f)(3)(i)(B)(*2*).

[326] *See* Amended Rule 15c2–11(f)(3)(i)(B)(*2*); Amended Rule 15c2–11(f)(7).

[327] *See infra* note 473 and accompanying text.

[328] For example, broker-dealers have experience in making such determination in deciding whether Securities Act Rule 144 is available for the resale of securities. *See infra* note 333 and accompanying text.

[329] Amended Rule 15c2–11(f)(7).

[330] *See infra* Part V.C.2.b.

[331] For example, a broker-dealer, qualified IDQS, or registered national securities association could make such determination based on a review of the description of the issuer's business, as specified in paragraph (b)(5)(i)(H) of the amended Rule.

[332] *See, e.g.,* Wendy Tsai & Stanford Erickson, *Early-Stage Biotech Companies: Strategies for Survival and Growth,* 3 Biotech. Healthcare 49–53 (2006).

[333] *See Revisions to Rules 144 and 145,* Securities Act Release No. 8869 (Dec. 6, 2007), 72 FR 71546, 71557 n.172 *Dec. 17, 2007) (''Rules 144 and 145 Release'').

[334] *See Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A),* Securities Act Release No. 9741 (Mar. 25, 2015), 80 FR 21806, 21814 (Apr. 20, 2015).

[335] *See, e.g.,* Tom Amenda; Letter from Ronald A. Woessner, Principal, Woessner & Associates, to SEC (Apr. 16, 2020) (''Woessner & Associates Letter'').

[336] *See, e.g., Registration of Securities on Form S–8,* Securities Act Release No. 7646 (Feb. 25, 1999), 64 FR 11103, 11106 (Mar. 8, 1999).

company's security,[337] but the Commission also recognizes the potential for investor harm as a result of the securities of shell companies being used in fraudulent and manipulative schemes, such as pump-and-dump schemes. Therefore, the Commission has determined to preclude a broker-dealer from relying on the piggyback exception to maintain a market in the security of an issuer that the broker-dealer (or any qualified IDQS or registered national securities association pursuant to a publicly available determination) has a reasonable basis for believing is a shell company unless such quotation is published or submitted within the 18 months following the initial quotation for such issuer's security that is the subject of a bid or offer quotation in an IDQS at a specified price.[338] Other commenters believed that broker-dealers should be able to maintain a quoted market in the securities of shell companies so long as their paragraph (b) information is current and publicly available.[339]

Under the amended Rule, a broker-dealer may maintain a quoted market for the security of an issuer that the broker-dealer has a reasonable basis under the circumstances for believing is a shell company by relying on the piggyback exception during the 18-month period following the initial publication or submission of a priced bid or offer quotation for the security in an IDQS, assuming all other requirements of the piggyback exception are met.[340] After such period ends, the broker-dealer may publish or submit a quotation for the issuer's security if the broker-dealer complies with the information review requirement or relies on a publicly available determination of a qualified IDQS that the qualified IDQS complied with the information review requirement.[341] Such compliance involves, among other things, the broker-dealer or qualified IDQS having a reasonable basis under the circumstances for believing that such issuer's paragraph (b) information is accurate in all material respects and is from a reliable source.[342] Thereafter, the broker-dealer may continue to publish or submit a quotation for the issuer's security so long as either the broker-dealer continues to comply with the information review requirement or relies on a publicly available determination of a qualified IDQS that such qualified IDQS complied with the information review requirement. The Commission believes that compliance with the information review requirement is needed following the 18-month period to appropriately balance the facilitation of capital formation and the promotion of investor protection. In this regard, compliance with the information review requirement before a broker-dealer may publish a subsequent quotation for the security of an issuer that the broker-dealer has a reasonable basis under the circumstances for believing is a shell company helps to promote the Rule's investor protection goals. Specifically, such compliance is designed to prevent the security of an issuer that has yet to engage in a reverse merger with a privately held company during the 18-month period from being used in a pump-and-dump scheme. As part of such compliance, the broker-dealer must continuously monitor the amended Rule's specified information regarding such issuer to form a reasonable basis that the issuer's paragraph (b) information is accurate in all material respects and is from a reliable source.

Further, one commenter stated that this aspect of the proposal would harm the ability of privately held companies to become publicly traded issuers by engaging in a reverse merger,[343] while other commenters who advocated for broker-dealers to be able to rely on the piggyback exception for self-identified shell companies stated that the reverse merger process, as opposed to the IPO process, is an economical and attractive alternative for companies seeking to become publicly traded and gain greater access to capital markets.[344] The amended Rule does not affect a private operating company's ability to become a publicly traded company by engaging in a reverse merger with a quoted shell company. Although there can be significant existence of and potential for fraud arising from shell companies in the context of reverse mergers,[345] reverse mergers are also an important tool for capital formation.[346] The piggyback exception under the amended Rule appropriately balances these concerns by permitting broker-dealers to publish quotations for the securities of shell companies but only for a limited period. Investor protection will be furthered by preventing broker-dealers from relying on the piggyback exception to publish quotations for the securities of shell companies indefinitely.[347] However, in response to capital formation concerns raised by commenters, the Commission is permitting broker-dealers to rely on the piggyback exception to quote the security of a shell company for the 18 months following the initial priced bid or offer quotation for an issuer's security that is published or submitted in an IDQS.[348]

The Commission believes that permitting broker-dealers to rely on the piggyback exception for the 18 months following the initial publication or submission of a bid or offer quotation at a specified price for an issuer's security provides a sufficient amount of time for a quoted shell company to engage in a reverse merger with a private operating company and is similar to the time frame specified in other Commission rules governing acquisitions and mergers.[349] Following the merger of an operating company into a shell company, the combined entity would not meet the definition of a shell company, and broker-dealers may continue to rely on the piggyback exception to publish or submit quotations for the issuer's security so long as the other requirements of the piggyback exception are met.[350]

Other commenters suggested, instead, that the regulation of quotations for shell companies should focus on insiders, affiliates, and enhanced corporate governance because the problems that the Commission identified in the proposal regarding shell companies are driven by insiders and affiliates.[351] According to this

[337] *See infra* Part VI.C.1.b.

[338] *See* Amended Rule 15c2–11(f)(3)(B)(2).

[339] Woessner & Associates Letter; *see* OTC Markets Group Letter 3.

[340] *See* Amended Rule 15c2–11(f)(3)(i)(B)(2).

[341] *See* Amended Rule 15c2–11(a)(1)(i), (ii).

[342] *See* Amended Rule 15c2–11(a)(1)(i)(C), (a)(2)(iii).

[343] Woessner & Associates Letter.

[344] Coral Capital Letter; *see* Anthony Letter.

[345] *See* Proposing Release at 58223. As stated in the Proposing Release, a Commission staff analysis of 4,000 SEC litigation releases between 2003 and 2012 found that the majority of alleged violations involving issuers of OTC securities were primarily classified as reverse mergers of shell companies or as market manipulation. *See id.* at 58252 (citing Spotlight on Microcap Fraud (Feb. 22, 2019), *https://www.sec.gov/spotlight/microcap-fraud.shtml*).

[346] Proposing Release at 58223 (stating that the Commission has previously brought enforcement actions involving fraud arising from shell companies, often in the context of reverse mergers).

[347] *See, e.g., id.* at 58223.

[348] *See* Amended Rule 15c2–11(f)(3)(i)(B)(2).

[349] *See, e.g.,* Securities Act Rule 419(e)(2)(iv) (requiring that funds held in an escrow or trust account be returned if a consummated acquisition(s) meeting the requirements of Rule 419 has not occurred by a date 18 months after the effective date of the initial registration statement).

[350] For a discussion of this process, see Proposing Release at 58222–23.

[351] OTC Markets Group Letter 2; OTC Markets Group Letter 3; *see* Securities Law USA Letter; Zuber Lawler Letter. Commenters stated that much of the risk arising from shell companies concerns activities of individuals closely associated with the company using public markets to distribute unregistered shares. OTC Markets Group Letter 2;

Continued

commenter, such an approach would involve the restriction of trading by company insiders and stronger corporate governance requirements to promote transparency.[352] This commenter stated that the Rule should require additional disclosure from shell companies regarding their operations and insider and affiliate activities.[353] The Commission agrees with commenters that much of the risk regarding shell companies involves activities of individuals closely associated with the company using public markets to distribute unregistered shares. The Commission will continue to monitor the operation of this market, including the quoting and trading of shell companies' securities, to consider whether any further amendments to Rule 15c2–11, or any amendments to other Commission rules involving issuer disclosure, enhanced corporate governance, or trading restrictions by company insiders, are warranted.

5. Frequency of Quotation Requirement—Rule 15c2–11(f)(3)(i)(A)

In light of technological advances that have taken place since the Rule was last amended, the Commission is eliminating both the 12-business-day requirement and the 30-calendar-day window from the frequency of quotation requirement. The proposal would have replaced the requirement that quotations occur on each of at least 12 days within the previous 30 calendar days, with no more than four business days in succession without a quotation, with a requirement that quotations occur within the previous 30 calendar days, with no more than four business days in succession without a quotation. Commenters on this aspect of the proposal also requested the removal of the 30-calendar-day piggyback-eligibility period following an initial quotation for a security, given market-based solutions that render obsolete the need for a 30-calendar-day window.[354] Commenters also stated that there should be no limit on the number of broker-dealers that are permitted to publish quotations for a security after a qualified IDQS makes a publicly available determination to allow the initiation for a quoted market because, according to the commenter, the 30-calendar-day period delays and impedes the creation of a larger, more efficient public market for a security, and allowing multiple broker-dealers to publish quotations for such securities would remove an ''artificial barrier'' to price transparency, promoting competition, and enhancing liquidity.[355]

The Commission has determined to adopt the proposed amendment to eliminate the 12-business-days frequency of quotation requirement because technological advances that have taken place since this provision was adopted have obviated the need for it, given that it is now easier for broker-dealers to continuously update and widely disseminate quotations and information about issuers to investors.[356] As suggested by commenters, the Commission has also determined to eliminate the 30-calendar-day window from the frequency of quotation requirement in the amended Rule. Under the amended Rule, for a broker-dealer to rely on the piggyback exception, a quoted OTC security of an issuer would need to be the subject of a bid or offer quotation, in an IDQS, at a specified price, with no more than four business days in succession without such a quotation.[357]

The frequency of quotation requirement is designed to permit a broker-dealer to rely on the piggyback exception only when quotations are continuous. A requirement that quotations occur with no more than four business days in succession without such a quotation generally requires one quotation per week. The presence or elimination of the 30-calendar-day window does not alter this requirement. For that reason, the Commission believes that the 30-calendar-day window is not necessary to ensure that quotations are continuous for purposes of the piggyback exception (assuming all other requirements of the exception are met).

The Commission believes that the elimination of the 30-calendar-day window could contribute to a more liquid, efficient market because broker-dealers could rely on the piggyback exception to publish or submit quotations immediately after a quoted market is initiated (*i.e.,* after a broker-dealer publishes an initial quotation after complying with the information review requirement).[358] Further, the Commission does not believe that the elimination of the 30-calendar-day window would lessen the effects of the amended Rule's investor protections because the remaining requirements of the piggyback exception under the amended Rule are sufficient to help prevent misuse of the exception.

6. Grace Period—Rule 15c2–11(f)(3)(ii)

The Commission posed a question in the Proposing Release about whether the piggyback exception should include a grace period during which a broker-dealer could continue to publish or submit quotations following the expiration of the proposed six-month period specified in paragraph (f)(3)(ii) of the proposed Rule.[359] The Commission inquired about the length of such a grace period and the role of an IDQS or the use of tags to identify quotations for any security of an issuer if its information has not been made publicly available within a specified time frame.

Several commenters offered solutions to address broker-dealer quotations that are no longer eligible for the piggyback exception. These commenters supported the idea of a ''grace period'' with respect to companies that are no longer eligible to be publicly quoted (*e.g.,* because their information is no longer ''current'' or because a broker-dealer cannot rely on any exception to the Rule) to serve as a notice to investors and issuers, allow time to take appropriate action before the loss of quote eligibility (*e.g.,* remedy the absence of current and publicly available information),[360] and facilitate investor transactions in the securities.[361] One commenter advocated for a minimum of 90 days for such a grace period.[362] Another commenter requested clarification as to, if such a grace period were implemented, when a broker-dealer would be required to cease publishing or submitting quotations (*e.g.,* whether the broker-dealer would be required to cease

see Adler Silverberg Letter; Securities Law USA Letter; Sosnow & Associates Letter; Zuber Lawler Letter.

[352] OTC Markets Group Letter 2.

[353] OTC Markets Group Letter 3; *see* Sosnow & Associates Letter.

[354] OTC Markets Group Letter 1; OTC Markets Group Letter 2; *see* Securities Law USA Letter; Zuber Lawler Letter. One commenter represented that it already performs, and would continue to perform, an ongoing review of issuer disclosure to make determinations as to whether broker-dealers should be allowed to continue to quote in accordance with the Rule. OTC Markets Group Letter 2.

[355] OTC Markets Group Letter 2; *see* Securities Law USA Letter; Zuber Lawler Letter.

[356] Proposing Release at 58223.

[357] Amended Rule 15c2–11(f)(3)(i)(A).

[358] The amended Rule does not impose any limit on the number of broker-dealers that are permitted to publish quotations for a security after a qualified IDQS makes a publicly available determination to allow the initiation for a quoted market. *See* Amended Rule 15c2–11(f)(7).

[359] Proposed paragraph (f)(3)(ii) would have required catch-all issuer information, including financial information, to be current and publicly available within six months of the date of the publication or submission of a broker-dealer's quotation in reliance on the piggyback exception.

[360] OTC Markets Group Letter 2; *see* Securities Law USA Letter; Zuber Lawler Letter.

[361] SIFMA Letter (suggesting also that a ''tag'' on a quotation and notice on the website of a qualified IDQS would help in these types of scenarios).

[362] Coral Capital Letter.

publishing or submitting quotations on the next business day rather than intra-day).[363]

The Commission has determined to adopt a grace period in the piggyback exception to permit broker-dealers to continue quoting securities of any issuer for a limited period once the requisite information for such issuer is, depending on the regulatory status of the issuer, no longer current and publicly available, timely filed, or filed within 180 calendar days from a specified period.[364] This limited, conditional grace period is designed to provide the opportunity for investors to liquidate positions into a broker-dealer-quoted market for up to 15 calendar days from the publicly available determination that the issuer's information is no longer current and publicly available, timely filed, or filed within 180 calendar days from a specified period. A longer period of time, such as 90 days, as suggested by one commenter, would allow a quoted market for an issuer's security to be maintained in the absence of issuer transparency, which is inconsistent with the objective of the amendments to the Rule.

Specifically, paragraph (f)(3)(ii) of the amended Rule provides a limited grace period to rely on the piggyback exception if issuer information is, depending on the regulatory status of the issuer, no longer current and publicly available, timely filed, or filed within 180 calendar days from a specified period—or, the time frames specified in paragraph (f)(3)(i)(C) of the amended Rule—so long as three conditions are met. First, a qualified IDQS or registered national securities association must make a publicly available determination that the specified information for such issuer is no longer current and publicly available, timely filed (with respect to an issuer for which documents and information are specified in paragraph (b)(3)(ii) or (b)(3)(iii) of the amended Rule), or filed within 180 calendar days from a specified period (with respect to an issuer for which documents and information are specified in paragraph (b)(3)(i), (b)(3)(iv), or (b)(3)(v) of the amended Rule)[365] within the first four business days that such information is no longer current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable.[366] Accordingly, if the qualified IDQS or registered national securities association were to make a publicly available determination five business days after the issuer's information is, depending on the regulatory status of the issuer, no longer current and publicly available, timely filed, or filed within 180 calendar days from the specified period, broker-dealers would not be afforded a grace period to quote the issuer's security. The Commission believes that this condition is important to facilitate immediate notice to market participants—including retail investors—that an issuer's information is no longer current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable.[367]

Further, as discussed below in Part II.H, the Commission is requiring that any qualified IDQS or registered national securities association that makes a publicly available determination that a broker-dealer may rely on the piggyback exception must subsequently make a publicly available determination if that issuer's paragraph (b) information is no longer current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable. The qualified IDQS or registered national securities association must make such subsequent publicly available determination within the first four business days that such documents and information are no longer current and publicly available, timely filed, or filed within 180 calendar days.[368] To ensure the wide availability of such notice to market participants, the Commission strongly encourages, and Commission staff intends to offer assistance and support to,[369] qualified IDQSs and the registered national securities association to establish a means to tag, or otherwise provide freely available public indication of notice, that an issuer's paragraph (b) information is no longer current and publicly available, and that, as a result, the security has entered the 15-calendar-day grace period before it is ineligible to maintain its quoted market through reliance on the piggyback exception. However, the Commission also recognizes the importance of accommodating the flexibility of qualified IDQSs and national securities associations in displaying notices and information to broker-dealers, market participants, and investors; therefore, the indication of such notice may take different forms. In this regard, a registered national securities association could append a fifth letter identifier to the security's symbol, or an indicator could be displayed on the website of a qualified IDQS or a registered national securities association next to the security's name or quote, to provide sufficient notice to investors and other market participants that the issuer's security has entered the 15-calendar-day grace period.

Second, the grace period is conditioned on the broker-dealer's compliance with the requirements of paragraphs (d)(2) and (f)(3)(i), except for the requirement regarding the public availability of current issuer information, timely filed issuer information, or issuer information that is filed within 180 calendar days from the specified period, as applicable.[370] In other words, under the amended Rule, a broker-dealer may rely on the piggyback exception during the grace period only if each of the other conditions in the piggyback exception is met—the quotation must not be for the security of a shell company (unless the quotation is published or submitted within 18 months of the initial priced

[363] FINRA Letter.

[364] The grace period under the amended Rule extends to all issuers because the piggyback exception's requirement under the amended Rule for an issuer's information to be current and publicly available, timely filed, or filed within 180 calendar days from a certain reporting period, and publicly available similarly extends to all issuers. *See* Amended Rule 15c2–11(f)(3)(i)(C)(1) through (3).

[365] This requirement is measured from the end of the issuer's most recent fiscal year or any quarterly reporting period that is covered by a report required by Exchange Act Section 13 or 15(d), as applicable. *See* Amended Rule 15c2–11(f)(3)(ii) (referencing the applicable paragraph (f)(3)(i)(C)(1) of the amended Rule for this category of issuer).

[366] Amended Rule 15c2–11(f)(3)(ii)(A). This four-business-day window mirrors the time frame provided in the requirement in the piggyback exception that quotations occur with no more than four business days in succession without a priced quotation. *See* Amended Rule 15c2–11(f)(3)(i). Accordingly, the requirement that such publicly available determination be made during this four-business-day window allows broker-dealers to maintain the frequency of quotation requirement of the piggyback exception, as specified in paragraph (f)(3)(i)(A) of the amended Rule. Because such publicly available determinations are likely to be made through an automated process, the Commission expects that such publicly available determinations generally will be made on the business day following the date on which issuer information is no longer current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable.

[367] While only a qualified IDQS or registered national securities association must make any such publicly available determination, an investor or broker-dealer may choose to alert a qualified IDQS or national securities association that the issuer's paragraph (b) information is no longer current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable. In such scenario, the qualified IDQS or registered national securities association must comply with its policies and procedures, as required under paragraph (a)(3) of the amended Rule, for making such publicly available determination.

[368] *See* Amended Rule 15c2–11(f)(7); *infra* Part II.H.

[369] *See infra* Part II.P.

[370] Amended Rule 15c2–11(f)(3)(ii)(B).

quotation for such issuer's security in an IDQS), the quotation must represent a bid or an offer at a specified price, and no more than four days in succession may elapse without a quotation for the security—and the broker-dealer must comply with the recordkeeping requirements in paragraph (d)(2).

Lastly, paragraph (f)(3)(ii)(C) of the amended Rule specifies the duration of the grace period: The shorter of the period beginning with the date on which a qualified IDQS or registered national securities association makes a publicly available determination identified in paragraph (f)(3)(ii)(A) and ending on either (1) the specified issuer information being current and made publicly available or filed, or (2) the fourteenth calendar day following the date on which such publicly available determination was made.[371] Therefore, if the specified issuer information is current and made publicly available, or is filed, during the fourteen calendar days following the publicly available determination identified in paragraph (f)(3)(ii)(A), the grace period ends on that date. While the grace period ends on such date, piggyback eligibility under paragraph (f)(3)(i)(A) of the amended Rule resumes on such date, assuming all conditions in that paragraph are met.[372] Specifically, broker-dealers may continue to rely on the piggyback exception to publish quotations after the grace period ceases to apply if: (1) The documents and information specified in paragraph (b)(3) of the amended Rule for a reporting issuer were filed within 15 calendar days starting on the date on which the qualified IDQS or registered national securities association makes a publicly available determination that the issuer's paragraph (b) information is no longer timely filed or filed within 180 calendar days from a specified period,[373] and (2) all other requirements in paragraph (f)(3)(i) were met. Similarly, broker-dealers may continue to rely on the piggyback exception to publish quotations after the grace period ceases to apply if: (1) The documents and information specified in paragraph (b)(4) or paragraph (b)(5)(i) are current and publicly available within 15 calendar days starting on the date on which the qualified IDQS or registered national securities association makes a publicly available determination that the issuer's paragraph (b) information is no longer current and publicly available, and (2) all other requirements in paragraph (f)(3)(i) were met. However, if the specified issuer information is not made current and publicly available, or is not filed, during the 15 calendar days starting on the date of a publicly available determination identified in paragraph (f)(3)(ii)(A), a broker-dealer may no longer rely on the piggyback exception and would need to either comply with the information review requirement or rely on another of the amended Rule's exceptions to resume a quoted market in the security.

7. Removal of Certain Piggyback Exception Provisions Under the Former Rule

The Commission is removing certain provisions of the former Rule's piggyback exception to streamline the piggyback exception under the amended Rule. The Commission sought comment about eliminating paragraphs (f)(3)(ii) and (f)(3)(iii) of the former Rule.[374] Paragraph (f)(3)(ii) of the former Rule allowed broker-dealers to rely on the piggyback exception to publish or submit quotations in an IDQS that does not identify unsolicited customer indications of interest. In addition, paragraph (f)(3)(iii) of the former Rule allowed broker-dealers to piggyback off their own quotations. Commenters did not address the issue of eliminating such paragraphs and did not raise any concerns about any potential negative consequences that could result from removing these paragraphs from the piggyback exception. Further, no comment was received regarding the Commission's understanding that broker-dealers tend to rely on the piggyback exception as provided in paragraph (f)(3)(i) of the former Rule.[375] In light of the above, the Commission has determined to eliminate paragraphs (f)(3)(ii) and (f)(3)(iii) of the former Rule.

E. Unsolicited Quotation Exception—Rule 15c2–11(f)(2)

The Commission has determined to adopt the unsolicited quotation exception, substantially as proposed, with modifications from the proposal to enhance the effectiveness of the proposed amendments' investor protections and, specifically, to: (1) Prohibit reliance on the exception for a quotation on behalf of an affiliate of the issuer if the issuer's information is not current and publicly available, and (2) permit reliance on written representations that a customer is not a company insider or an affiliate of the issuer. The Commission sought comment about the proposal to require that certain issuer information be current and publicly available for a broker-dealer to rely on the unsolicited quotation exception to publish or submit a quotation on behalf of a company insider.[376] The Commission also solicited comment about whether affiliates of the issuer should be specified as persons for whom the unsolicited quotation exception would be unavailable, unless the issuer's paragraph (b) information is current and publicly available.

Some commenters supported this aspect of the proposal,[377] one of whom suggested easing the burden on broker-dealers by removing the obligation to identify company insiders from the exception and requiring additional disclosures (in Commission rules other than Rule 15c2–11) from certain market participants.[378] In the Proposing Release, the Commission did not propose to require the identification of company insiders and affiliates in Commission rules other than Rule 15c2–11. However, the Commission believes that permitting reliance on a written representation from the customer's broker that such customer is not a company insider or an affiliate of the issuer would help to alleviate burdens on broker-dealers associated with the identification of company insiders and affiliates.

The Commission believes that imposing a limitation, such that the customer requesting that a quote be published is not a company insider or affiliate, helps to prevent misuse of the unsolicited quotation exception by company insiders and affiliates who may take advantage of access to information about the company that is not available to non-insiders. Therefore, the Commission has determined to make the unsolicited quotation exception in the amended Rule unavailable for company insiders and affiliates if the information required to be reviewed under the Rule is not current and publicly available.[379] This limitation, under paragraph (f)(2)(ii)(B) of the amended Rule, is being adopted with modifications.[380] The exception, as

[371] Amended Rule 15c2–11(f)(3)(ii)(C).

[372] Broker-dealer quotations that are published or submitted in reliance on the grace period are not required to cease intra-day upon such public availability of current issuer information.

[373] *See* Amended Rule 15c2–11(f)(3)(i)(C)(*4*).

[374] *See* Proposing Release at 58225.

[375] *See id.*

[376] The proposed amendment was intended to help prevent the potential misuse of the exception by company insiders who might create the appearance of an active market in quoted OTC securities to entice new investors to invest, or to facilitate pump-and-dump schemes. *See id.*

[377] *See, e.g.,* SIFMA Letter.

[378] OTC Markets Group Letter 1; OTC Markets Group Letter 2.

[379] *See* Proposing Release at 58225.

[380] The adopted exception uses the newly defined term ''company insider,'' which is defined in paragraph (e)(1) of the amended Rule.

adopted, adds the term ''affiliate'' for the same reasons the Commission believes the exception should be unavailable to company insiders. The definition of the term ''affiliate'' in the rule text is the same as the definition of that term in Securities Act Rule 144(a)(1) because the Commission believes that the definition appropriately captures the scope of persons other than company insiders, as that term is defined in paragraph (e)(1) of the amended Rule, who also may have the potential for a heightened incentive to manipulate the price of a security. In addition, the Commission believes that broker-dealers, qualified IDQSs, and registered national securities associations have experience in applying this definition to determine whether a person is an affiliate because it is a well-established and broadly used definition in other areas of the federal securities laws. The Commission remains concerned about the increased potential for fraud and manipulation when securities trade in the absence of information about the issuer and the heightened incentive for company insiders and affiliates to engage in misconduct to artificially affect the price and trading volume of an OTC security. The Commission believes that protecting retail investors from fraud and manipulation in the OTC market requires a limitation on quotations on behalf of company insiders and affiliates when certain information is not current and publicly available. In response to a comment requesting that the Commission ''reinforce the principle that allowing insiders to trade in dark companies results in an uneven playing field and often constitutes a Rule 10b–5 violation,'' [381] the Commission reiterates to market participants that any transaction by a company insider or an affiliate is subject to applicable anti-fraud and anti-manipulation rules.

Other commenters expressed the concern that the broker-dealer publishing a quotation might not have a direct relationship with a customer (*e.g.,* when a retail customer order is routed from a retail broker to a broker-dealer acting as a market maker), which commenters stated would make it difficult to know whether that customer is a company insider.[382] Some commenters suggested that the Rule permit a broker-dealer to rely on an affidavit from the investor regarding whether that investor is an accredited investor, unaffiliated with the issuer, and not listed in the SEC Action Lookup for Individuals,[383] or by relying on a negative consent letter or similar approach from the broker-dealer that has the relationship with the ultimate customer to meet this requirement of the exception.[384] The Commission appreciates that the customer on whose behalf a quotation is published or submitted may not be the direct customer of the broker-dealer. Therefore, the amended Rule includes a provision designed to ease the burden on broker-dealers obligated to determine whether the person on whose behalf the quotation is published or submitted is a company insider or an affiliate. For purposes of the unsolicited quotation exception, the amended Rule permits a broker-dealer to rely on a written representation from the customer's broker that such customer is not a company insider or an affiliate if two conditions are met.[385] The written representation and the reasonable basis requirements provide a degree of assurance with regard to who the customer is, without imposing the higher burden that would result from mandating an affidavit or other sworn statement.

The first condition is that the broker-dealer publishing or submitting the quotation receives the written representation before, and on the same day that, the quotation representing the customer's unsolicited indication of interest is published or submitted. This condition is designed to promote the accuracy of the representation because a person's status as a company insider or an affiliate may change over time. The second condition is that the broker-dealer publishing or submitting the quotation has a reasonable basis under the circumstances for believing that the customer's broker is a reliable source.[386] For example, the broker-dealer publishing or submitting the quotation may receive information or a certification from the customer's broker regarding the reasonable steps that the customer's broker takes to determine whether its customers are company insiders or affiliates. Moreover, the broker-dealer publishing or submitting the quotation should question the reliability of the customer's broker if circumstances indicate that the customer's broker may be an unreliable source.

The Commission believes that permitting a broker-dealer to rely on a written representation from the customer's broker that such customer is not a company insider or an affiliate is a more narrowly tailored approach to achieve the objectives of these amendments than requiring issuers or other market participants to comply with new disclosure requirements in other rules in an effort to alleviate burdens on broker-dealers for purposes of the unsolicited quotation exception. Further, as one commenter acknowledged, the suggestion to revise the disclosure requirements in other Commission rules is outside the scope of the amendments.[387] The Commission believes that the use of a written representation, as provided in paragraph (f)(2)(iii)(A) of the amended Rule, responds to comments about easing broker-dealer burdens in connection

[381] OTC Markets Group Letter 2. This commenter also stated that insiders, affiliates, and employees should not be permitted to transact in securities of companies for which paragraph (b) information is not current and publicly available because market makers are unable to distinguish between affiliate and non-affiliate quotations. OTC Markets Group Letter 3.

[382] *E.g.,* Canaccord Letter; CrowdCheck Letter; STA Letter. *But see* Leonard Burningham Letters (stating that gatekeepers—broker-dealers, lawyers, transfer agents, and issuers—should be able to determine when transactions of insiders are affiliates).

[383] Mitchell Partners Letter 1 (stating that the display of unsolicited orders increases competition but that accredited investors do not need the Rule's investor protections). Launched in 2018, the SEC Action Lookup for Individuals is a search feature on the Commission's website that allows users to look up information about individuals who have been named as defendants in SEC federal court actions or respondents in SEC administrative hearings. *See* SEC Action Lookup—Individuals, *https://www.sec.gov/litigations/sec-action-look-up* (last visited June 13, 2020); *see also* Press Release, SEC Launches Additional Investor Protection Search Tool, (May 2, 2018), *https://www.sec.gov/news/press-release/2018-78.* While this tool allows for respondents' information to be researched, it may not necessarily provide information about insider or affiliate status.

[384] Canaccord Letter.

[385] Amended Rule 15c2–11(f)(2)(iii)(A).

[386] The condition mirrors the requirement to have ''a reasonable basis under the circumstances for believing'' that is used elsewhere in the Rule. Former Rule 15c2–11(a); Proposed Rule 15c2–11(a)(1)(iii), (a)(2)(iii); Amended Rule 15–11(a)(1)(iii), (a)(2)(iii).

[387] *See* OTC Markets Group Letter 2. This commenter stated that, because ''Rule 15c2–11 is fairly limited in scope, regulating only the publication of quotations by broker-dealers[,] . . . the Rule on its own cannot solve the breakdown in the information 'supply chain.' '' *Id.* The commenter suggested the following for the Commission to ''more effectively address these issues outside the scope of the Rule, in large part by requiring additional disclosure from powerful market participants'': (1) Affiliates, insiders, and paid promoters should not be afforded the ability to hide their positions in anonymous objecting beneficial owner accounts; (2) disclosure of transaction information for officers and affiliates of non-reporting issuers should be required in a manner similar to Forms 3, 4, and 5; (3) institutions should be required to disclose their holdings in non-exchange listed securities under Exchange Act Section 13(f); (4) Securities Act Section 17(b) should be amended to require additional disclosure from paid stock promoters; and (5) transfer agent regulations should be updated to require disclosure of share issuance and transfer information, and broker-dealers should be permitted to rely on this information in facilitating transactions in restricted and control securities. *Id.*

with the publication or submission of quotations without necessitating amendments to Commission rules other than Rule 15c2–11 and that could require disclosure of information even in circumstances where a broker-dealer is not publishing or submitting a quotation. Moreover, the customer's broker and the broker-dealer acting as a market maker typically already have processes in place for sharing information, such as information about the quotation, and the Commission believes broker-dealers have a variety of ways to share information related to the written statement. The Commission has determined to narrowly tailor the written representation to require the broker-dealer to provide only a statement that the customer is not a company insider or an affiliate. The Commission believes limiting the representation to a simple statement, without imposing additional costs and burdens associated with supplying extra information in the written representation that may not be needed by the broker-dealer, helps to prevent misuse of the unsolicited quotation exception while balancing considerations related to the benefits and burdens of affidavits or other additional types of disclosures in other Commission rules.

One commenter sought clarity regarding the ability of a broker-dealer that publishes or submits a quotation pursuant to the unsolicited quotation exception to rely on a qualified IDQS's determination that issuer information is current and publicly available for purposes of the unsolicited quotation exception.[388] The Commission is modifying the unsolicited quotation exception text to allow a broker-dealer to rely on publicly available determinations by a qualified IDQS or a registered national securities association that paragraph (b) information is current and publicly available. This revision is designed to clarify that a broker-dealer may rely on a publicly available determination by a qualified IDQS or a registered national securities association that paragraph (b) information is current and publicly available when relying on the unsolicited quotation exception, specifically.

F. ADTV and Asset Test Exception—Rule 15c2–11(f)(5)

To provide retail investors with greater price transparency, and to reduce burdens on broker-dealers in publishing quotations for highly liquid securities of well-capitalized issuers where the Rule's goals can be achieved through alternative means, the Commission is adopting the ADTV and asset test exception substantially as proposed, with modifications, as discussed below. Specifically, the proposed exception would have permitted a broker-dealer to publish or submit quotations without complying with the information review requirement where: (1) A security has a worldwide average daily trading volume value (the ''ADTV value'') of at least $100,000 during the 60 calendar days immediately before the publication of a quotation for such security, and (2) the issuer of such security has at least $50 million in total assets and $10 million in unaffiliated shareholders' equity as reflected in the issuer's publicly available audited balance sheet issued within six months after the end of its most recent fiscal year.[389] In addition, the proposed exception would also have required that paragraph (b) information about the issuer be current and publicly available.[390] The Commission sought comment on such an exception. Commenters expressed support for an exception for highly liquid securities of well-capitalized issuers.[391]

Because a pump-and-dump scheme often involves a thinly traded security of an issuer with limited assets, this exception recognizes that such fraudulent and manipulative activity generally does not involve issuers with substantial assets.[392] The Commission believes that the exception (*i.e.,* one that is based on a security's ADTV value and the issuer's total assets and shareholders' equity) will help to ensure that the Rule's policy goal of deterring broker-dealers from commencing quotations for quoted OTC securities that may facilitate a fraudulent or manipulative scheme is not undermined.[393] Further, the Commission believes that the exception's three thresholds of ADTV value, total assets, and shareholders' equity are tailored to appropriately capture issuers of securities that are less susceptible to fraud and manipulation based on the liquidity of the security and size of the issuer.[394]

Some commenters stated their view that identifying ''unaffiliated'' shareholders' equity can be difficult, if not impossible.[395] Commenters also stated that using the proposed requirement of $10 million in unaffiliated shareholders' equity may be difficult to measure in practice because information regarding affiliated versus unaffiliated shareholders' equity may be unavailable[396] or that this proposed requirement was problematic because large companies can have negative shareholders' equity.[397] In response to these commenters, paragraph (f)(5) of the amended Rules uses a ''shareholders' equity'' prong instead of ''unaffiliated shareholders' equity'' as proposed. With this modification, the Commission intends to address commenters' concerns regarding the operational difficulty in determining unaffiliated shareholders' equity, particularly where unaffiliated shareholders' equity is not disclosed by the issuer. The shareholders' equity must also be as reflected in the issuer's publicly available audited balance sheet.[398] One commenter, however, expressed concern that financial statements may not be reliable, such as when the issuer finds a mistake and states that the financial statements cannot be relied upon.[399] Depending on the facts and circumstances, a broker-dealer may no longer be able to rely on the ADTV and asset test exception to publish or submit quotations if the issuer finds a mistake and states that the financial statements cannot be relied upon. The asset test and shareholders' equity prong under amended Rule, however, require use of an audited balance sheet, which should help mitigate any potential concerns about the reliability of the financial information.

[388] SIFMA Letter.

[389] Proposed Rule 15c2–11(f)(5).

[390] Proposed Rule 15c2–11(f)(5)(ii).

[391] *See* MCAP Letter; OTC Markets Group Letter 2; SIFMA Letter; Virtu Letter (stating, however, its concern that the proposal would not reach enough securities, specifically those of issuers that have not been involved in market manipulation and fraud).

[392] *See* Proposing Release at 58226.

[393] *See id.* at 58228.

[394] *See infra* Part VI.C.1.c.

[395] OTC Markets Group Letter 2; OTC Markets Group Letter 3; SIFMA Letter.

[396] Canaccord Letter; SIFMA Letter.

[397] Professor Angel Letter (stating that it is not uncommon for large companies to have negative equity in certain cases, such as legitimate start-ups with losses or after a leveraged recapitalization). The Commission does not believe that the exception should apply to the securities of companies with negative equity because such securities may be more prone to manipulation as a result of being inexpensive to acquire for fraudulent purposes, which could possibly allow for more issuers that could be vulnerable to pump-and-dump schemes to be admitted within the exception, thus increasing investor exposure to fraud. *See infra* Part VI.C.1.c.

[398] The shareholders' equity prong is based on total permanent equity and includes noncontrolling interests presented within permanent equity in the issuer's consolidated financial statements. *See, e.g.,* Financial Accounting Standards Board Accounting Standards Codification (ASC) 505–10–05–3; ASC 810–10–45–15 through 45–16; paragraph 54 of International Accounting Standard 1, *Presentation of Financial Statements;* and Rule 5–02 of Regulation S–X.

[399] *See* Professor Angel Letter.

Some commenters suggested that certain parts of the test be replaced. One commenter suggested that market capitalization of $150 million should replace the unaffiliated shareholders' equity prong of the exception,[400] while another suggested that the asset test should be replaced with a market capitalization test.[401] The Commission does not believe that market capitalization is an appropriate alternative for either of these two prongs of the exception because market capitalization fluctuates based on share price. In the ''pump'' phase of a pump-and-dump scheme, a security's market price may rise to an artificially high level. As a result, market capitalization (which rises as market price rises) may quickly exceed this $150 million threshold. Shareholders' equity, however, is independent of market price and thus less susceptible to pump-and-dump schemes that may impact the price of a security.

Paragraph (f)(5)(i) of the amended Rule has been modified from the proposed rule text to clarify that a security must have a ''reported'' worldwide ADTV value of at least $100,000 during the 60 calendar days immediately before the publication or submission of a quotation of such security. The addition of the term ''reported'' clarifies that the exception requires that the standard for determining ADTV value be based on information that is publicly available.[402] This modification is consistent with and clarifies the Commission statement in the Proposing Release that ADTV value could be determined from information that is publicly available and from a reliable source (*i.e.,* trading volume as reported by a self-regulatory organization or comparable entity, or an electronic information system that regularly provides information regarding securities in markets around the world).[403] Thus, to satisfy the ADTV value prong in the amended Rule, a broker-dealer or qualified IDQS would need to determine the value of a security's ADTV from information that is publicly available. Further, the amended Rule permits that any reasonable and verifiable method may be used, as proposed.[404]

Further, the requirements of the exception, as adopted, have been streamlined. While paragraph (f)(5)(ii) of the proposed Rule also would have expressly required that the issuer's paragraph (b) information be current and publicly available,[405] this requirement is unnecessary in paragraph (f)(5) of the amended Rule because, in addition to requiring a security's ADTV to be based on information that is publicly available during a specific 60-calendar-day period, paragraph (f)(5)(ii) of the amended Rule expressly requires that an issuer's audited balance sheet be publicly available and issued within six months after the end of its most recent fiscal year, which results in the public availability of financial information that is specified in paragraph (b).

The Commission has determined not to adopt certain other modifications suggested by commenters. One commenter requested a 30-calendar-day period to review the information required by the Rule if a quoted OTC security ceases to qualify for the ADTV and asset test exception and if the piggyback exception is unavailable.[406] The Commission believes that permitting a 30-calendar-day period to comply with the information review requirement if the conditions of the ADTV and asset test exception were not met and no other exception were available would be inconsistent with investor protection because the targets of pump-and-dump schemes are often thinly traded securities of issuers with limited assets, and such an extension could provide the opportunity for a pump-and-dump scheme to be carried out where the Rule's objectives cannot be achieved through the requirements of this exception, any of the amended Rule's other exceptions, or the Rule's information review requirement being met.[407]

One commenter suggested that the Rule exempt securities of issuers with over $10 million in equity, as demonstrated by audited financial statements no older than 18 months, and that have been trading for more than $10 per share since January 1, 2017.[408] As discussed in the Economic Analysis, the Commission considered alternatives based on other thresholds, including price.[409] As a result, the Commission believes that the thresholds of the amended Rule[410] confine the exception to OTC securities that are not prone to fraudulent or manipulative activity.[411]

Three commenters supported an exemption that would allow broker-dealers to publish quotations for the securities of exempt foreign private issuers that satisfy the ADTV test, are traded on an ''offshore securities market'' that meets the requirements in Securities Act Rule 902(b)(2), and are not suspended to trade by a foreign financial regulatory authority.[412] The Commission recognizes that the expansion of the exception to securities of foreign private issuers that are traded on a ''designated offshore securities market'' within the meaning of Securities Act Rule 902(b)(2) could reduce burdens on broker-dealers in publishing quotations for securities of certain types of issuers, though the Commission believes that such a test would cover many of the same securities that would qualify for the ADTV and asset test exception, which already is designed to accommodate foreign private issuers. In addition, the Commission is concerned that securities that might not satisfy the asset test prong of the ADTV and asset test may meet the requirements of this suggested ''offshore securities market'' exception, and the Commission believes that the thresholds included by both prongs of the ADTV and asset test under the amended Rule appropriately capture issuers and their securities that are less susceptible to fraud and manipulation based on the liquidity of the securities and size of the issuer.[413] Further, the Commission believes that compliance with such an alternative would raise practical and implementation issues with respect to, for example, whether a

[400] OTC Markets Group Letter 2.

[401] Professor Angel Letter.

[402] *See* Proposing Release at 58227.

[403] *See id.* at 58227 nn.119, 120.

[404] *See id.* at 58227 n.120.

[405] *See* OTC Markets Group Letter 3 (suggesting that the requirement in the exception that paragraph (b) information be current and publicly available should be removed).

[406] Coral Capital Letter.

[407] *See, e.g.,* Andreas Hackethal *et al., Who Falls Prey to the Wolf of Wall Street? Investor Participation in Market Manipulation* (ECGI, Working Paper No. 446, 2019), *available* at *https://ecgi.global/sites/defalt/files/working_papers/douments/finalleuzmeyermulhnsolteshackethal.pdf* (stating that, in pump-and-dump schemes, promoters often target thinly traded penny stocks for which limited liquidity leads to fast price increases when demand rises); *see also* Michael Hank & Florian Hause, *On the effects of stock spam emails,* 11 J. Fin. Mkts 57, 60 (2008).

[408] Letter from Dan Kanter, President, and Craig Carlino, Chief Compliance Officer, Monroe Financial Partners, Inc. (Dec. 30, 2019) (''Monroe Letter'').

[409] *See infra* Part VI.C.1.c.

[410] In addition to the exception's ADTV value threshold, as discussed above, the exception also provides a threshold requiring that the issuer have at least $50 million in total assets and $10 million in shareholders' equity as reflected in the issuer's publicly available audited balance sheet issued within six months after the end of its most recent fiscal year. *See* Amended Rule 15c2–11(f)(5)(ii).

[411] As stated in the Economic Analysis, the Commission has found that zero issuers in 2019 that simultaneously met the $50 million total assets, $10 million shareholders' equity, and $100,000 ADTV value thresholds were subject to trading suspensions or caveat emptor status. *See infra* Part VI.C.1.c.

[412] Canaccord Letter; MCAP Letter; Virtu Letter.

[413] *See infra* Part VI.C.1.c; Proposing Release at 58226.

particular offshore market or jurisdiction has comparable securities regulations and market practices and standards.

One commenter suggested that the exception be expanded to include other categories of issuers, such as banks and insurance companies that provide information to their regulators, companies that undergo bankruptcy proceedings and provide information to a bankruptcy court, and other issuers that have a verifiable operating history and revenues and that pay dividends.[414] The Commission believes that the proposed exception appropriately identifies those well-capitalized issuers of securities that are highly liquid and thus are less likely to be susceptible to the type of fraudulent and manipulative conduct that Rule 15c2–11 is designed to prevent. The Commission does not believe that it would be appropriate to except from the requirement for current and publicly available information securities of banks and insurance companies that provide certain information to their regulators, which generally is not the same as the information specified in paragraph (b) of the amended Rule.[415] Further, the regulation of banks' and insurance companies' capital and reserves is not designed to provide the same investor protections that the amended Rule provides. In particular, the information review requirement is designed to help ensure that a quoted market for a security is less susceptible to fraudulent or manipulative schemes.[416] Similarly, an exception for securities based on an issuer's status of undergoing a bankruptcy proceeding and providing information to a bankruptcy court would not provide the same investor protections that the amended Rule provides. Finally, the Commission does not believe it would be appropriate to except all securities of issuers that pay dividends in light of its concerns that the payment of dividends alone does not prevent the securities of such issuers from being used as part of a fraudulent or manipulative scheme or indicate that an issuer is any less likely to be part of a fraudulent or manipulative scheme. The Commission, however, will continue to monitor trading in this market to consider whether any further expansion of this exception is warranted.

[414] Virtu Letter.

[415] *See also supra* note 249.

[416] *See* Proposing Release at 58208.

G. Underwritten Offering Exception—Rule 15c2–11(f)(6)

To help expedite the availability of securities to retail investors in the OTC market following an underwritten offering, and to facilitate capital formation, the Commission is adopting the underwritten offering exception, as proposed. The Commission sought comment about an exception from the information review requirement that permits a broker-dealer to publish or submit quotations for a security issued in an underwritten offering if: (1) The broker-dealer is named as an underwriter in the registration statement or offering statement for the underwritten offering, and (2) the broker-dealer that is the named underwriter publishes or submits the quotation.[417] All commenters on the proposed underwritten offering exception supported the proposal, except for one.[418] One of the comments also stated that the liability standards and professional obligations of underwriters in registered and Regulation A offerings are a sufficient basis for the exception.[419]

The Commission agrees and has determined to adopt the underwritten offering exception, as proposed, with a technical edit.[420] To avoid requiring a redundant review where the objectives of the information review requirement have already been achieved, the amended Rule allows a broker-dealer, without complying with the information review requirement, to publish or submit a quotation for a security of the same class issued in an underwritten offering if the broker-dealer served as the underwriter, so long as the broker-dealer's quotation is published or submitted within a certain time frame.[421] Specifically, paragraph (f)(6) of the amended Rule excepts the publication or submission of a quotation for a security by a broker-dealer that is named as an underwriter either in: (1) A registration statement that became effective fewer than 90 calendar days before the day on which such broker-dealer publishes or submits the quotation to the quotation medium, for an offering for that class of security, as is referenced in paragraph (b)(1), or (2) an offering statement that was qualified fewer than 40 calendar days before the day on which such broker-dealer publishes or submits the quotation to the quotation medium for an offering of that class of security, as referenced in paragraph (b)(2). Like the proposed Rule, the amended Rule includes a provision that the exception shall apply only for a limited period following the effectiveness of the registration statement or the qualification of the Regulation A offering statement.

A comment suggested that the Commission broaden the exception to apply to: (1) Subscription rights, warrants, and units consisting of common stock and warrants, and (2) broker-dealers other than the underwriter.[422] This aspect of paragraph (f)(6) of the amended Rule, which has not been changed from the proposed amendment, refers to a quotation for a *security* by a broker-dealer that is named as an underwriter in a registration statement or in an offering statement. Accordingly, the exception is available for the quotation of any security, including subscription rights, warrants, and units consisting of common stock

[417] Proposed Rule 15c2–11(f)(6). Although the proposed Rule used the term ''circular,'' the amended Rule uses the term ''statement'' to be consistent with Regulation A. *See* Amended Rule 15c2–11(f)(6). The Commission is also making a technical edit to the proposed Rule to replace the word ''identified'' with the word ''specified'' so that the underwritten offering exception is consistent with the amended Rule's other provisions.

[418] Better Markets Letter. This commenter stated generally that the proposed new exception further ''fragments markets and introduces unnecessary complexity.'' *Id.* The Commission does not believe that the underwritten offering exception would fragment the OTC market because this exception does not change any existing market structure. Rather, this exception provides an alternative means for broker-dealers to initiate a quoted market. In addition, the Commission disagrees with the comment that the underwritten offering exception would introduce unnecessary complexity because the requirements of the exception are provided in a bright-line fashion: (1) The broker-dealer must be named as an underwriter in the registration statement or offering statement for the underwritten offering, and (2) the broker-dealer that is the named underwriter publishes or submits the quotation. The Commission does not believe that compliance with the requirements is operationally difficult or complex because any broker-dealer seeking to rely on the exception will know if it is named as an underwriter in the exception's specified documents. Further, the Commission believes that the underwritten offering exception appropriately eases broker-dealer burdens in publishing quotations based on the performance of an activity (*i.e.,* a review of the issuer) that such broker-dealers are likely to have already performed, as discussed below, while at the same time helping to ensure that a quoted market for a security is less susceptible to fraudulent or manipulative schemes.

[419] Coral Capital Letter.

[420] Amended Rule 15c2–11(f)(6). The technical edit in the amended Rule replaces the term ''circular'' with ''statement'' to be consistent with Regulation A.

[421] As the Commission explained in the Proposing Release, ''[b]ecause of a broker-dealer's involvement in the registered or Regulation A offering, including their assumption of liability for misstatements or omissions in the prospectus or offering [statement] and public availability of the proposed paragraph (b) information on EDGAR, the Commission believes that a subsequent review requirement would be redundant and, thus, unnecessary.'' Proposing Release at 58230.

[422] Coral Capital Letter.

and warrants, so long as the conditions of the exception are met.

Another commenter suggested that the exception be expanded to cover ''any'' broker-dealer (including the underwriter), assuming the requirements in paragraphs (a) and (b) of the Rule are met.[423] The Commission believes that extending the exception to include broker-dealers that were not named as an underwriter would risk important investor protections and undermine the goals of the amended Rule, so it is not adopting this suggestion. As discussed in the Proposing Release, broker-dealers that act as underwriters in registered offerings or offerings conducted pursuant to Regulation A are subject to potential liability for misstatements and omissions in the related prospectus or offering statement.[424] As a result, unlike broker-dealers acting as market makers, underwriters are highly incentivized to confirm that information provided to investors in the prospectus for a registered offering or in an offering statement for a Regulation A offering is materially accurate and from a reliable source.

Accordingly, an underwriter typically conducts a due diligence review to mitigate potential liability for misstatements and omissions in the related prospectus or offering statement (and, therefore, is likely to have already conducted a review of the issuer).[425] Thus, the Commission believes that the underwritten offering exception should be unavailable for the publication or submission of a quotation by a broker-dealer that is not named as an underwriter.

H. Publicly Available Determination That an Exception Applies—Rule 15c2–11(f)(7)

The Commission has determined to adopt, with minor modifications, the proposal to permit a broker-dealer to rely on a publicly available determination by a qualified IDQS or a registered national securities association that certain exceptions are available. The proposed exception would have permitted broker-dealers to rely on the publicly available determination of a qualified IDQS or a registered national securities association that: (1) Paragraph (b) information is current and publicly available, or (2) a broker-dealer may rely on the proposed Rule's exchange-traded security exception, the piggyback exception, the municipal security exception, the ADTV and asset test exception, or the proposed qualified IDQS review exception. The Commission sought comment about this proposed exception to allow broker-dealers' reliance on publicly available determinations.

Commenters supported this aspect of the proposal,[426] stating that it would greatly enhance marketplace efficiency[427] and improve liquidity.[428] Commenters stated their confidence in certain market participants to make such determinations.[429] The Commission is adopting the exception substantively as proposed, with certain technical, streamlining, and clarifying amendments in light of other amendments that the Commission is adopting.[430] The Commission believes that this exception will make it easier for broker-dealers to maintain a market in OTC securities and promote the potential for liquidity in providing retail investors with greater opportunity to buy and sell such securities while at the same time achieving the amendments' investor protection goals, including through facilitating Commission oversight of the policies and procedures for making such determinations.[431] The amended Rule also clarifies that the exception allows broker-dealers to rely on publicly available determinations by a regulated third party (*i.e.,* a qualified IDQS or registered national securities association) that the following four exceptions are available: The exchange-traded security exception,[432] the piggyback exception,[433] the municipal security exception,[434] and the ADTV and asset test exception.[435]

One commenter stated that a broker-dealer should be permitted to publish a quotation pursuant to this exception in *any* IDQS based on the publicly available determination of a qualified IDQS or registered national securities association to create competition and avoid a monopoly based on issuers providing information necessary to make a publicly available determination to only one qualified IDQS.[436] The Commission agrees, and this exception under the amended Rule does not include any such limitation. Another commenter requested that the Commission clarify: (1) Whether a broker-dealer that relies on a publicly available determination that an exception applies must independently verify the availability of the applicable exception, and (2) how often a qualified IDQS or registered national securities association must confirm the accuracy of its publicly available determination that an exception applies (*e.g.,* whether the ADTV and asset test exception must be confirmed each day).[437] The amended Rule does not require a broker-dealer that relies on a publicly available determination that an exception applies to independently verify the availability of that exception. As discussed above in Part II.A.4, qualified IDQSs and registered national securities associations that make publicly available determinations must establish, maintain, and enforce reasonably designed written policies and procedures to determine whether: (1) Paragraph (b) information is (or is not) current and publicly available and (2) the requirements of the applicable

[423] OTC Markets Group Letter 3.

[424] Proposing Release at 58229–30.

[425] *See id.*

[426] Canaccord Letter; MCAP Letter; Robert E. Schermer, Jr.; Virtu Letter (stating that it could not estimate the potential financial burden, given that it was uncertain of the fees that a qualified IDQS would charge for providing such a service); Zuber Lawler Letter.

[427] OTC Markets Group Letter 1.

[428] Coral Capital Letter.

[429] Global OTC Letter; Keating Letter; *see* Coral Capital Letter (advocating for broker-dealers to be able to rely on the publicly available determinations of both qualified IDQSs and registered national securities associations).

[430] First, the paragraph that describes this exception in the amended Rule has been renumbered to paragraph (f)(7) in light of the fact that the Commission is adopting the proposed qualified IDQS review exception as part of paragraph (a) of the amended Rule rather than, as proposed, paragraph (f)(7). *See supra* Part II.A.3. Second, paragraph (f)(7) of the amended Rule has been streamlined and no longer contains the provision in proposed Rule 15c2–11(f)(8)(i) that described a publicly available determination that paragraph (b) information is current and publicly available because the requirement for paragraph (b) information to be current and publicly available has been incorporated into the amended Rule's individual exceptions. Third, while the Commission is adopting this amendment substantially as proposed, it includes a modification to explicitly incorporate into the unsolicited quotation exception the ability of broker-dealers to rely on publicly available determinations that paragraph (b) information is current and publicly available. *See* Amended Rule 15c2–11(f)(2)(iii)(B). Fourth, paragraph (f)(8)(ii) of the proposed Rule would have permitted broker-dealers to rely on the publicly available determination of a qualified IDQS or a registered national securities association that the exceptions in proposed paragraphs (f)(3)(i)(B) (*i.e.,* one of the provisions of the piggyback exception that the amended Rule no longer contains) and (f)(7) (*i.e.,* the proposed qualified IDQS review exception) are available. However, as discussed above, the piggyback exception in paragraph (f)(3)(i)(B) of the proposed Rule is not incorporated into the amended Rule and thus is not enumerated in paragraph (f)(7) of the amended Rule. Finally, paragraph (f)(8)(iii) of the proposed Rule, which would have provided a requirement regarding policies and procedures for making publicly available determinations, is also not incorporated into paragraph (f)(7) of the amended Rule because new paragraph (a)(3) of the amended Rule imposes a similar written policies and procedures requirement.

[431] *See supra* Part II.A.4.

[432] *See* Amended Rule 15c2–11(f)(1).

[433] *See* Amended Rule 15c2–11(f)(3)(i).

[434] *See* Amended Rule 15c2–11(f)(4).

[435] *See* Amended Rule 15c2–11(f)(5).

[436] Global OTC Letter.

[437] *See* FINRA Letter; *see also* Global OTC Letter.

paragraph (f) exceptions for which it has made a publicly available determination under paragraph (f)(7) are (or are not) met.[438] The Commission believes that the qualified IDQS or registered national securities association that makes a publicly available determination that an exception applies must establish, maintain, and enforce reasonably designed written policies and procedures to determine when the requirements of an exception for which it made such publicly available determination are no longer met. For example, depending on the exception, the frequency with which a qualified IDQS or registered national securities association must make a subsequent determination may depend on the frequency with which an issuer's reports are required to be filed with the Commission, according to the issuer's Exchange Act or Securities Act reporting obligation, or be as of a certain date and publicly available (in the case of a catch-all issuer).[439] In other cases, the frequency with which a qualified IDQS or registered national securities association must make such determination may be every trading day (*e.g.,* with respect to a security's reported worldwide ADTV value).[440]

Finally, in light of the adoption of the piggyback exception's grace period,[441] and because the loss of current and publicly available issuer information may impact individual investment decisions and the market for these securities, the Commission is requiring any qualified IDQS or registered national securities association that makes a publicly available determination that a broker-dealer may rely on the piggyback exception to subsequently make a publicly available determination if the issuer's paragraph (b) information is no longer current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable. The qualified IDQS or registered national securities association must make such subsequent publicly available determination within the first four business days that such documents and information are no longer current and publicly available, timely filed, or filed within 180 calendar days, respectively.[442]

I. Recordkeeping Requirement—Rule 15c2–11(d)

The Commission is adopting the recordkeeping requirement substantially as proposed, with slight modifications from the proposal. The Commission sought comment about the recordkeeping requirement for: (1) Broker-dealers and qualified IDQSs that comply with the information review requirement, and (2) broker-dealers, qualified IDQSs, and registered national securities associations to demonstrate that the requirements of an exception to the information review requirement are met. One commenter stated that it is reasonable for market participants to keep records that support their information review or reliance on an exception.[443] This commenter stated that it was difficult to follow the proposed recordkeeping requirement and that electronic copies of records should suffice, and that records should always be readily accessible.[444] Similarly, another commenter suggested that paragraph (b) information that already is publicly available (*e.g.,* in addition to on EDGAR, on the website of a broker-dealer, qualified IDQS, registered national securities association, or an issuer) should not be required to be preserved as part of the recordkeeping requirement.[445]

The Commission has determined to adopt the recordkeeping requirement substantially as proposed, with modifications to: (1) Make clarifying edits to align the provisions regarding publicly available determinations with the corresponding recordkeeping requirement, and (2) eliminate the provisions stipulating that a broker-dealer or qualified IDQS document the paragraph (b) information that it reviewed that is available on EDGAR.[446]

The amendments to the recordkeeping requirement are designed to help facilitate the Commission's oversight of broker-dealers that rely on certain exceptions under the amended Rule. Paragraph (d)(1) of the amended Rule outlines the recordkeeping requirement associated with compliance by a broker-dealer or qualified IDQS with the information review requirement.[447] This requirement applies to both a broker-dealer that publishes or submits a quotation pursuant to paragraph (a)(1) and a qualified IDQS that makes known to others the quotation of a broker-dealer pursuant to paragraph (a)(2).

Paragraph (d)(1)(i) provides that the records to be preserved are the documents and information required to be obtained and reviewed under paragraphs (a), (b), and (c) of the amended Rule with respect to compliance with the information review requirement, while paragraph (d)(1)(ii) provides that a broker-dealer that publishes a quotation in reliance on a broker-dealer's compliance with the information review requirement need only preserve a record of the name of the qualified IDQS that made the publicly available determination. The retention period for such records is not less than three years, the first two years in an easily accessible place. Further, unlike in the proposed Rule, paragraph (d)(1) of the amended Rule does not require that a broker-dealer or qualified IDQS document the paragraph (b) information that it reviewed on EDGAR. The Commission believes that such documentation is unnecessary and could create regulatory redundancies. Lastly, for purposes of complying with the amended Rule, broker-dealers, qualified IDQSs, or registered national securities associations may comply with the amended Rule's recordkeeping requirement in the same manner as that described in Exchange Act Rule 17a–4(f).[448]

Paragraph (d)(2) of the amended Rule applies to: (1) Any qualified IDQS or registered national securities association that makes a publicly available

[438] *See* Amended Rule 15c2–11(a)(3).

[439] *See, e.g.,* Amended Rule 15c2–11(f)(3)(i)(C). For example, as discussed above in Part II.D.1, a qualified IDQS or registered national securities association may determine that an issuer's paragraph (b) information, such as a required annual or semi-annual report, is timely filed twice a year based on the prescribed due date for such issuer's report in compliance with its Regulation A reporting obligation. *See* Form 1–SA, General Instructions, A.(2).

[440] *See* Amended Rule 15c2–11(f)(5)(i).

[441] *See* Amended Rule 15c2–11(f)(3)(ii); *supra* Part II.D.6.

[442] *See* Amended Rule 15c2–11(f)(7); *see also supra* note 366.

[443] Hamilton & Associates Letter.

[444] *Id.*

[445] OTC Markets Group Letter 3 (suggesting streamlining changes to the proposed Rule).

[446] Such documents and information already would be ''publicly available'' on EDGAR and, therefore, the Commission believes that a requirement for broker-dealers and qualified IDQSs to document such paragraph (b) information would result in unnecessary burdens for such broker-dealers and qualified IDQSs that would not facilitate the Commission's oversight because such paragraph (b) information is otherwise accessible. The Commission is making a technical edit from the proposal to define the term ''EDGAR'' in paragraph (d)(1)(i) of the amended Rule's recordkeeping requirement while removing the words ''Electronic Data Gathering, Analysis and Retrieval System'' in subsequent paragraphs of the rule text for streamlining purposes.

[447] Amended Rule 15c2–11(d)(1).

[448] *See, e.g.,* Exchange Act Rule 17a–4. Because the amended Rule requires the preservation of ''the documents and information required under paragraphs (a), (b), and (c)'' (*e.g.,* that demonstrate that the requirements of a particular exception under the amended Rule are met), a broker-dealer, qualified IDQS, or registered national securities association may not satisfy the relevant recordkeeping requirement by relying on a link or similar reference to a record maintained by another entity, such as a link to an issuer's or qualified IDQS's website and must, instead, preserve its own copy of the relevant contents of such website dated from the period for which the entity is relying on such information for purposes of complying with the amended Rule. *See* Amended Rule 15c2–11(d).

determination described in the unsolicited quotation exception, the piggyback exception, and the exception for a publicly available determination by a qualified IDQS or a registered national securities association that an exception applies, and (2) any broker-dealer that publishes or submits a quotation pursuant to any exception provided in paragraph (f). Paragraph (d)(2) provides that the records to be preserved are the documents and information that demonstrate that the requirements of the following exceptions are met: The unsolicited quotation exception, the piggyback exception, the ADTV and asset test exception, the underwritten offering exception, or the exception for a publicly available determination by a qualified IDQS or a registered national securities association that an exception applies. The retention period for such records is not less than three years, the first two years in an easily accessible place. Consistent with the proposal, paragraph (d)(2) of the amended Rule does not require the preservation of records for the exchange-traded security exception or the municipal security exception because whether a security is exchange-traded or is a municipal security is widely known without the need for a broker-dealer, qualified IDQS, or a registered national securities association to preserve a separate record.[449] Paragraph (d)(2) of the amended Rule also excepts from the recordkeeping requirement any paragraph (b) information that is available on EDGAR because such documents and information are readily and easily accessible on an electronic platform provided by the Commission.

Consistent with the proposal, the amended Rule limits the recordkeeping requirement for a broker-dealer that relies on a publicly available determination by a qualified IDQS or a registered national securities association that an exception is available or that an issuer's paragraph (b) information is current and publicly available.[450] Specifically, if a broker-dealer relies on a publicly available determination described in paragraph (f)(2)(iii)(B) of the unsolicited quotation exception or (f)(3)(ii)(A) of the piggyback exception under the amended Rule, the broker-dealer must preserve: (1) The name of the qualified IDQS or registered national securities association that made such determination and (2) the documents and information that demonstrate that the other requirements of the exception provided in paragraph (f)(2) or (f)(3), respectively, are met. A broker-dealer that relies on a publicly available determination of a qualified IDQS or a registered national securities association that an exception applies (*i.e.,* paragraph (f)(7) of the amended Rule) must preserve only a record of the exception for which the publicly available determination is made—whether the exchange-traded security exception, the piggyback exception, the municipal security exception, or the ADTV and asset test exception—and the name of the qualified IDQS or registered national securities association that made the publicly available determinations that the requirements of that exception are met. While the proposed recordkeeping requirement would have required such broker-dealer to document, among other things, the exception upon which the broker-dealer is relying,[451] the Commission is clarifying in the amended Rule's recordkeeping requirement that the word ''exception'' refers to the exception for which the publicly available determination is made, not the exception provided in paragraph (f)(7).

J. Definitions

In light of the amendments that the Commission is adopting, as discussed above, the Commission is also adopting definitions of certain terms that are used throughout these amendments.

1. Current—Rule 15c2–11(e)(2)

The Commission is adopting a definition of ''current'' only for purposes of the amended Rule to mean that the paragraph (b) information of a prospectus issuer, a Reg. A issuer, an exempt foreign private issuer, or a catch-all issuer is current if it is filed, is published, or is as of a date in accordance with the time frames specified in the applicable subparagraph for such information (*i.e.,* paragraph (b)(1), (b)(2), (b)(4), or (b)(5), respectively). In addition, under the amended Rule's definition of ''current,'' the paragraph (b) information of a reporting issuer is current only for the purposes of Rule 15c2–11 if it is the issuer's most recently required annual report or statement filed pursuant to Section 13 or 15(d) of the Exchange Act and any rule(s) thereunder, Regulation A, Regulation Crowdfunding, or Section 12(G)(2)(g) of the Exchange Act, together with any subsequently required periodic reports or statements filed pursuant to Section 13 or 15(d) of the Exchange Act and any rule(s) thereunder, Regulation A, Regulation Crowdfunding, or Section 12(G)(2)(g) of the Exchange Act.[452] The Commission sought, but did not receive any, comment on the proposal to define ''current'' to mean filed, published, or disclosed, in accordance with the time frames specified in each of the paragraphs (b)(1) through (b)(5).[453]

The definition sets forth the time frames within which issuer information must be filed, be published, or be as of a certain date for the issuer's information to be current for purposes of the amended Rule. Paragraphs (b)(1) through (b)(5) of the amended Rule provide a comprehensive delineation of the documents and information that must be ''current'' for purposes of the amended Rule, depending on the regulatory status of the issuer, including with respect to a crowdfunding issuer.[454] Summarized below are examples of paragraph (b) information that would be current for purposes of the amended Rule:

- A prospectus specified by section 10(a) of the Securities Act for an issuer that filed a registration statement under the Securities Act, other than a registration statement on Form F–6, that became effective fewer than 90 calendar days before the day on which such

[449] Proposing Release at 58234 (stating that whether a security is traded on an exchange or is a municipal security is widely known such that demonstrating that the requirements of those exceptions are met does not require independent preservation of records to support such reliance or to make a publicly available determination).

[450] *See* Amended Rule 15c2–11(d)(2)(ii).

[451] *See* Proposed Rule 15c2–11(d)(2)(i)(B); Proposing Release at 58223 (stating that ''[a] broker-dealer that relies on a determination pursuant to proposed paragraph (f)(7) by a qualified IDQS or proposed paragraph (f)(8) by a qualified IDQS or a registered national securities association, however, is required only to document the exception upon which the broker-dealer is relying and the name of the qualified IDQS or registered national securities association that determined that the requirements of that exception are met'').

[452] The Commission is making a clarifying change from the proposed definition of ''current'' to specify the application of the definition of the term ''current'' in light of the fact that some issuers have an Exchange Act reporting obligation while others do not. In addition, the Commission is also making technical edits from the proposed definition of current. First, the Commission is replacing the word ''disclosed'' (in the proposed definition) with the words ''are as of a date'' to align the amended Rule's definition of ''current'' with paragraph (b)(5)(i) of the amended Rule, which provides that a catch-all issuer's information must ''be . . . as of'' a certain date. Second, the amended Rule provides the definition of ''current'' in paragraph (e)(2) in light of the addition of the definition for the term ''company insider'' in paragraph (e)(1) of the amended Rule. The addition of the definition of ''company insider'' has changed the subparagraph numbers for other definitions under the amended Rule, and the Commission is also making technical amendments to include the term ''interdealer quotation system'' in paragraph (e)(3), ''issuer'' in paragraph (e)(4), ''quotation'' in (e)(7), and ''quotation medium'' in (e)(8) of the amended Rule.

[453] Proposed Rule 15c2–11(e)(1).

[454] *See* Amended Rule 15c2–11(b)(1) through (5).

broker-dealer publishes or submits the quotation to the quotation medium;[455]

• An offering statement provided for under Regulation A for an issuer that has filed an offering statement under Regulation A that was qualified fewer than 40 calendar days before the day on which such broker-dealer publishes or submits the quotation to the quotation medium;[456]

• An issuer's most recent annual report filed pursuant to Section 13 or 15(d) of the Exchange Act, together with any periodic or current reports that have been filed thereafter under the Exchange Act by the issuer, except for current reports filed during the three business days before the publication or submission of the quotation, provided that the issuer has filed all required annual and periodic reports within the time frames specified;[457]

• An issuer's most recent annual report filed pursuant to Regulation A, together with any periodic and current reports filed thereafter under Regulation A by the issuer, except for any current reports filed during the three business days before the publication or submission of the quotation, provided that the issuer has filed all required annual and periodic reports within the time frames specified;[458]

• An issuer's most recent annual report filed pursuant to Regulation Crowdfunding, provided that the issuer has filed the required annual report within the time frame specified;[459]

• An issuer's most recent annual statement referred to in Section 12(g)(2)(G)(i) of the Exchange Act, together with any periodic and current reports filed thereafter under the Exchange Act, except for current reports filed during the three business days before the publication or submission of the quotation, provided that the issuer has filed all required annual and statements within the time frame specified;[460]

• The information that, since the first day of its most recently completed fiscal year, the issuer has published as required to establish the exemption from registration under Section 12(g) of the Exchange Act pursuant to Exchange Act Rule 12g3–2(b);[461] and

• The information specified in paragraph (b)(5)(i)(A) though (P) (excluding paragraph (b)(5)(i)(L)) of the amended Rule that is as of a date within 12 months before the publication or submission of the quotation in addition to: (1) The issuer's most recent balance sheet that is as of a date less than 16 months before the publication or submission of the quotation for the issuer's security, and (2) the profit and loss and retained earnings statements for the 12 months preceding the date of the most recent balance sheet.[462]

2. Shell Company—Rule 15c2–11(e)(9)

The Commission has determined to adopt the definition of a ''shell company'' as proposed, with a technical edit from the proposal.[463] The Commission sought comment regarding the proposal to define ''shell company'' to mean any issuer other than a business combination related shell company, as defined in Rule 405 of Regulation C, or an asset-backed issuer, as defined in Item 1101(b) of Regulation AB, that has: (1) No or nominal operations; and (2) either: (a) No or nominal assets, (b) assets consisting solely of cash and cash equivalents, or (c) assets consisting of any amount of cash and cash equivalents and nominal other assets.[464] As the Commission explained in the Proposing Release, this definition of shell company closely tracks the definition of shell company in Rule 405 of Regulation C and in Exchange Act Rule 12b–2, the provisions of which apply to registrants, and comports with the provisions of Rule 144(i)(1)(i) regarding the availability of that safe harbor for the resale of securities initially issued by certain issuers.[465]

Commenters who opposed the proposed definition stated that, although there is a need to curtail abusive reverse mergers that can be facilitated by shell companies, the proposed definition would be ambiguous and difficult to apply.[466] The Commission believes the definition of shell company is a well-established and broadly used definition in other areas of the federal securities laws. The definition of shell company that the Commission is adopting does not preclude a broker-dealer, qualified IDQS, or registered national securities association from determining that an entity is a shell company based on an observation that a company has identified itself as a shell company (or as not a shell company) or, alternatively, review of a company's financial information, including asset composition, operational expenditures, and income-related metrics. The definition of shell company under the amended Rule is consistent with the requirements of other established and broadly used Commission rules to provide market participants flexibility in analyzing the particular facts and circumstances involving an issuer, such as the issuer's financial information and information related to its operations.[467]

Some commenters advocated for more of a bright-line definition of ''shell company''[468] or examples of the types of attributes of companies that would meet the Rule's definition of shell company to reduce the likelihood of inconsistent determinations.[469] One commenter stated that the definition should also include self-identified shell companies and companies that are ''shell risk'' companies based on a review of a company's financial information, including asset composition, operational expenditures, and income-related metrics.[470] The Commission continues to believe that defining the term ''nominal'' with reference to quantitative thresholds would be unworkable in this context.[471] However, in determining whether the requirements of the piggyback exception are met,[472] a market participant may rely on an issuer's self-identification as a shell company (or as not a shell company), unless it has a reasonable basis to believe otherwise.[473] Further, a

[455] *See* Amended Rule 15c2–11(b)(1).

[456] *See* Amended Rule 15c2–11(b)(2).

[457] *See* Amended Rule 15c2–11(b)(3)(i).

[458] *See* Amended Rule 15c2–11(b)(3)(ii).

[459] *See* Amended Rule 15c2–11(b)(3)(iii).

[460] *See* Amended Rule 15c2–11(b)(3)(iv).

[461] *See* Amended Rule 15c2–11(b)(4). The Commission is including technical edits to paragraph (b)(4) of the amended Rule to align the amended Rule with Exchange Act Rule 12g3–2(b), which refers to information required to be published for the foreign private issuer to avail itself of an exemption from registration under Section 12(g) of the Exchange Act. Accordingly, the amended Rule replaces the text ''beginning of its last fiscal year'' with ''first day of its most recently completed fiscal year'' and added the text ''as required to establish the exemption from registration under section 12(g) of the Act.''

[462] *See* Amended Rule 15c2–11(b)(5)(i).

[463] The term ''shell company'' is defined in paragraph (e)(9) of the amended Rule in light of the addition of the definition for the term ''company insider'' in paragraph (e)(1) of the amended Rule.

[464] *See* Proposed Rule 15c2–11(e)(8).

[465] *See* Proposing Release at 58236.

[466] Anthony Letter; Coral Capital Letter; Leonard Burningham Letters; OTC Markets Group Letter 1; Sosnow & Associates Letter; STA Letter. *But see* Lowy Letter.

[467] *See, e.g.,* Proposing Release at 58236 n.157.

[468] *E.g.,* STA Letter; *see* Lucosky Brookman Letter. *But see* Peregrine Comment.

[469] FINRA Letter.

[470] OTC Markets Group Letter 2; OTC Markets Group Letter 3; *see* Coulson Comment; Sosnow & Associates Letter.

[471] *See* Proposing Release at 58236.

[472] *See* Amended Rule 15c2–11(f)(3)(i)(B)(*2*).

[473] In the absence of any information that, under the circumstances, reasonably indicates that the source is unreliable, a broker-dealer, qualified IDQS, or registered national securities association could satisfy the amended Rule's requirement regarding the reliability of the information source if that information were provided by the issuer of the security or its agents, including its officers and directors, attorneys, or accountants. *See infra* Part II.O.2. The Commission understands that some instances exist in which an issuer may not identify as a shell company, such as in the context of a

broker-dealer may rely on a catch-all issuer's self-identification as a shell company in its review of the issuer's documents and information in paragraph (b)(5)(i)(H) of the amended Rule regarding a description of the issuer's business or any other statement from the issuer regarding its status as a shell company. Consistent with the definition of shell company in the proposal, the definition of a shell company under the amended Rule applies to all issuers of securities, and is not limited to companies that have filed a registration statement or have an obligation to file reports under Section 13 or Section 15(d) of the Exchange Act, because Rule 15c2–11 applies to the publication and submission of quotations for the securities of all types of issuers, including reporting issuers and catch-all issuers.[474] In response to comment,[475] the Commission reiterates that startup companies, or, in other words, companies with a limited operating history, are not captured in the definition of ''shell company'' because such companies do not meet the condition of having ''no or nominal operations.''[476]

3. Publicly Available—Rule 15c2–11(e)(5)

The Commission has determined to adopt the definition of ''publicly available'' substantially as proposed, with a modification to expand the proposed definition's list of locations to include: (1) The website of a state or federal agency, and (2) an electronic information delivery system that is generally available to the public in the primary trading market of a foreign private issuer, as defined in Rule 3b–4 of the Exchange Act.[477] In addition, the Commission is requiring that access to any specified location under the amended Rule's definition of ''publicly available'' must not be restricted by user name, password, fees, or other restraints.[478] The Commission sought comment about the proposal to define ''publicly available'' to mean available on EDGAR, or on the website of a qualified IDQS, a registered national securities association, the issuer, or a registered broker-dealer, provided that access is not restricted by user name, password, fees, or other restraints.[479] Commenters supported this aspect of the proposal,[480] acknowledging that, today, issuer information is available to the public on a wide variety of platforms—from EDGAR[481] to issuers' own websites.[482] Commenters generally agreed that the term ''publicly available'' should not apply if money is charged for access.[483] One commenter did not foresee any privacy concerns associated with making paragraph (b) information publicly available on the internet.[484]

Commenters suggested that the list of websites in the definition of ''publicly available'' be expanded to include Canada's System for Electronic Document Analysis and Retrieval (''SEDAR'') or other similar foreign regulatory or exchange websites (so long as information is available in English and access is not restricted by user name, password, fees, or other restraints)[485] and the websites of other financial regulators (*e.g.,* the Federal Deposit Insurance Corporation's website).[486] One commenter suggested that the Commission clarify that ''publication'' by an exempt foreign private issuer of information required by Rule 12g3–2(b) means that the information must be ''publicly available'' consistent with the definition of that term in proposed Rule 15c2–11(e)(4).[487]

The expansion of the list of specified locations under the amended Rule to include the websites of state and federal agencies accommodates state and federal agency websites that routinely make paragraph (b) information available to the public (*e.g.,* the Federal Deposit Insurance Corporation's website, which makes information about certain insured depositary institutions, including community banks, available for viewing by the public).[488] In addition, the expansion of the list to include an electronic information delivery system that is generally available to the public in the primary trading market of a foreign private issuer,[489] as defined in Rule 3b–4 of the Exchange Act, aligns the definition of publicly available in the amended Rule with Exchange Act Rule 12g3–2(b) and is appropriate because paragraph (b) information regarding an exempt foreign private issuer must, among other things, be publicly available for purposes of compliance with the information review requirement, reliance on an exception, or making a publicly available determination before a broker-dealer can publish a quotation for an exempt foreign private issuer's security.

While one commenter stated that the term ''publicly available'' correctly excludes websites that have barriers to access information,[490] another commenter suggested that the term's definition be expanded to include receipt, free of charge, via the internet or upon request by email.[491] The definition of ''publicly available'' for purposes of the amended Rule does not include delivery or receipt, free of charge, via the internet or upon request by email.[492] The requirement for publicly available information is designed to give *all* investors free,

reverse merger screening, but that other factors may suggest that the issuer is a shell company. *See, e.g., Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies,* Securities Act Release No. 8587 (July 15, 2005), 70 FR 42234, 42236 nn.31, 32 (July 21, 2005).

[474] *See* Proposing Release at 58236.

[475] *See* OTC Markets Group Letter 1.

[476] The Commission has stated that startup companies that have limited operating history do not meet the condition of having ''no or nominal operations'' for the purposes of Securities Act Rule 144(i)(1)(i). *See also* Rules 144 and 145 Release at 71557 n.172. The Commission also believes that this is appropriate in the context of broker-dealers determining whether a company fits within the meaning of ''shell company'' as defined in the amended Rule when deciding whether they may rely on the piggyback exception because it is consistent with other Commission statements. *See, e.g., id.*

[477] *See* Amended Rule 15c2–11(e)(5). The Commission is also adopting a technical edit from the proposal to define the term ''publicly available'' in paragraph (e)(5) of the amended Rule in light of the addition of the definition for the term ''company insider'' in paragraph (e)(1) of the amended Rule.

[478] As proposed, only access to paragraph (b) information was required to be unencumbered. *See* Proposed Rule 15c2–11(e)(4); Proposing Release at 58236. In addition, the Commission is also making a technical edit from the proposed definition of ''publicly available.'' Whereas the provision in the proposed Rule's definition of ''publicly available'' specified that the term ''*publicly available* shall *not* mean where access to documents and information . . . is restricted,'' *see* Proposed Rule 15c2–11(e)(4) (emphasis added), the provision in the amended Rule's definition of ''publicly available'' specifies that ''*publicly available* shall mean where access is *not* restricted,'' *see* Amended Rule 15c2–11(e)(5) (emphasis added).

[479] *See* Proposed Rule 15c2–11(e)(4).

[480] *E.g.,* Global OTC Letter; NASAA Letter.

[481] Hamilton & Associates Letter.

[482] *E.g.,* Leonard Marx, Jr., Retired Chairman & President, Merchants National Properties (Oct. 8, 2019); Mitchell Partners Letter 1; Braxton Gann.

[483] Canaccord Letter; Coral Capital Letter; NASAA Letter; *see* Global OTC Letter.

[484] NASAA Letter.

[485] FINRA Letter.

[486] Monroe Letter.

[487] Murphy & McGonigle Letter.

[488] *E.g.,* Securities Exchange Act Filings, Federal Deposit Insurance Corporation, *https://efr.fdic.gov/fcxweb/efr/index.html* (last visited June 1, 2020).

[489] *See Exemption From Registration Under Section 12(G) of the Securities Exchange Act of 1934 for Foreign Private Issuers,* Exchange Act Release No. 58465 (Sept. 5, 2008), 73 FR 52752, 52759 (Sept. 10, 2008) (stating that Rule 12g3–2(b) permits issuers to meet the rule's electronic publication requirement concurrently with the publishing in English of a non-U.S. disclosure document through an electronic information delivery system generally available to the public in its primary trading market).

[490] Global OTC Letter.

[491] Coral Capital Letter; *see* Mitchell Partners Letter 1 (commenting that some issuers have a policy of sending financial information to non-shareholders who inquire, which might not be captured in the definition of ''publicly available'').

[492] Nor does the definition under the amended Rule require availability in a centralized location.

unfettered access to certain information about an issuer to reduce information asymmetries that all investors could use to better understand and evaluate the issuer and the issuer's security before making an investment decision. The Commission believes, therefore, that the definition of publicly available should not include transmissions of information that are made upon request or are not freely available to all market participants at once.

Further, the definition of ''publicly available'' does not require that an issuer itself make its information available. Instead, the amended Rule defines the term ''publicly available'' as ''available on . . . or through'' a specified list of locations so that an investor could work with a broker-dealer or a qualified IDQS to make an issuer's information publicly available on the website of a broker-dealer or a qualified IDQS.[493]

Some commenters suggested that companies make their information publicly available in an immediately downloadable form, from a centralized website or on their own website.[494] While such a measure could facilitate access to such information, the Commission does not believe that it is necessary for such a measure to be required in the amended Rule, given that widespread use of the internet has made it easier and less burdensome to facilitate access to information in many different ways and that the definition of ''publicly available'' requires that access to information be unencumbered by user name, password, fees, or other constraints. Therefore, the Commission is not requiring under the amended Rule that information be in an immediately downloadable form, from a centralized website or from an issuer's own website, for such information to meet the definition of ''publicly available.'' Such publications would meet the amended Rule's definition of ''publicly available'' so long as: (1) The website is one of the enumerated locations in the definition (*i.e.,* EDGAR; the website of a state or federal agency, a qualified IDQS, a registered national securities association, an issuer, or a registered broker-dealer; or an electronic information delivery system that is generally available to the public in the primary trading market of a foreign private issuer, as defined in Exchange Act Rule 3b–4); and (2) access to such centralized website is not restricted by user name, password, fees, or other restraints.

Finally, to ensure the free and wide availability to market participants and investors, including retail investors, of publicly available determinations by any qualified IDQSs or registered national securities association regarding the public availability of current paragraph (b) information and the applicability of certain of the amended Rule's exceptions,[495] the Commission is expanding the proposed requirement that access to paragraph (b) information must not be restricted by user name, password, fees, or other restraints.[496] Rather, access to any specified location under the amended Rule's definition of ''publicly available'' must not be restricted by user name, password, fees, or other restraints. In this regard, access to a publicly available determination of a qualified IDQS or a registered national securities association, such as, for example, that the piggyback exception applies or a subsequent determination that an issuer's information is no longer current and publicly available, also must not be restricted by user name, password, fees, or other restraints.

4. Qualified Interdealer Quotation System—Rule 15c2–11(e)(6)

The Commission has determined to adopt the definition of a qualified IDQS as proposed, with technical revisions.[497] Specifically, paragraph (e)(6) of the amended Rule defines a ''qualified interdealer quotation system'' to mean any interdealer quotation system that meets the definition of an ATS under Rule 300(a) of Regulation ATS and operates pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Exchange Act.

The Commission sought comment regarding the proposal to define a ''qualified interdealer quotation system'' as any IDQS that meets the definition of an ATS, as defined under Rule 300(a) of Regulation ATS, and operates pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Exchange Act.[498] Although the Commission received comment on other aspects of the proposed Rule regarding certain activities of qualified IDQSs,[499] the Commission received no comment on the proposed definition of a qualified IDQS. The Commission continues to believe that the regulatory requirements for an IDQS that operates as an ATS under the Exchange Act—and the concomitant SRO and Commission oversight of this type of entity—would help to ensure investor protection and to prevent fraud and manipulation for the reasons discussed in the Proposing Release.[500]

5. Company Insider—Rule 15c2–11(e)(1)

The Commission has determined to add a definition of the term ''company insider.'' Specifically, paragraph (e)(1) of the amended Rule defines the term ''company insider'' to mean any officer or director of the issuer, or person that performs a similar function, or any person who is, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer.[501] As discussed below, this definition is consistent with the list of persons in the proposed rule text and with how the term ''company insider'' was used in the Proposing Release.[502]

The Commission sought comment regarding whether the Rule should include the defined term ''company insiders'' to describe the list of persons specified in paragraphs describing the requirements for certain catch-all issuer information (*i.e.,* paragraph (b)(5)(i)(K)), supplemental information (*i.e.,* paragraph (c)(1)), and the unsolicited quotation exception (*i.e.,* paragraph (f)(2)(ii)) and whether such a definition should include any other additional persons.[503] Although the Commission received no comment specifically on the proposed definition of ''company insider,'' commenters suggested generally that the Rule's investor protections could be enhanced by increasing the amount of current and

[493] *See* Amended Rule 15c2–11(e)(5).

[494] Brett Dorendorf; Lake Highlands Comment; Ariel Ozick.

[495] *See, e.g., supra* Part II.D.6.

[496] *See* Proposed Rule 15c2–11(e)(4).

[497] The Commission is making a non-substantive change to replace references to Regulation ATS and Exchange Act Rule 3a1–1(a)(2) in the proposed Rule with their Code of Federal Regulations cites. This technical edit does not change the meaning or operation of the term ''qualified interdealer quotation system'' in the amended Rule. Finally, the Commission is adopting a technical amendment to define the term ''qualified interdealer quotation system'' in paragraph (e)(6) of the amended Rule in light of the addition of the definition for the term ''company insider'' in paragraph (e)(1) of the amended Rule.

[498] *See* Proposed Rule 15c2–11(e)(5).

[499] *See, e.g., supra* Part II.A.2 (discussing the requirements for a qualified IDQS to comply with the information review requirement).

[500] *See* Proposing Release at 58236–37. For example, the requirements of Regulation ATS would provide the Commission with relevant information about the IDQS function of the qualified ATS and quoting and trading activity in the ATS, and therefore contribute to Commission oversight of an ATS that may choose to operate as a qualified IDQS. The amendments do not change the definition of an alternative trading system under Rule 300(a) for Regulation ATS or the conditions to the ATS exemption provided under Exchange Act Rule 3a1–1(a)(2).

[501] Amended Rule 15c2–11(e)(1).

[502] *See* Proposing Release at 58208 n.9.

[503] *See* Proposing Release at 58237.

publicly available information regarding insiders and affiliates of issuers.[504] In addition, one commenter suggested that the Commission recognize that the financial decisions of lower level officers who do not manage the company are largely based on personal financial considerations, not on material non-public information.[505]

Under the amended Rule, this definition applies to the same list of persons that were individually described in paragraphs (b)(5)(i)(K), (c)(1), and (f)(2) of the proposed Rule while also applying to any person that performs a similar function to that of an officer or director. Though this definition does not explicitly include the terms ''chief executive officer'' and ''member of the board of directors,'' the definition nevertheless applies to such person so long as he or she is an officer, director, or person that performs a similar function.[506] The Commission believes the definition of the term ''company insider'' in the amended Rule appropriately captures persons who manage a company or have a greater degree of access to issuer information and who may have a heightened incentive to engage in fraudulent or manipulative conduct.

K. Removal of Outdated Provisions

The Commission is rescinding the Nasdaq security exception, as proposed, because the Nasdaq security exception is obsolete in light of Nasdaq's registration as a national securities exchange.[507] The publication or submission of quotations by a broker-dealer of securities that are traded on a national securities exchange is already excepted from a broker-dealer's compliance with the information review requirement by paragraph (f)(1) of the amended Rule.

The Commission is also rescinding the requirement in former Rule 15c2–11(d)(1) that a broker-dealer that submits a quotation for the security of a catch-all issuer furnish to the IDQS, at least three business days before the quotation is published or submitted, the documents and information that the broker-dealer is required to maintain pursuant to paragraph (a)(5) of the former Rule. This requirement is unnecessary in light of the amendments to the recordkeeping requirement, which require that the applicable documents and information be preserved for a period of not less than three years, the first two years in an easily accessible place,[508] that help to facilitate the Commission's oversight of broker-dealers that publish quotations after complying with the information review requirement themselves, by relying on a qualified IDQS's publicly available determination that it complied with the information review requirement, or by relying on certain of the amended Rule's exceptions.[509] Accordingly, it is redundant to require broker-dealers both to submit information to an IDQS and to comply with the amended Rule's recordkeeping requirement. The Commission received no comment on this aspect of the proposal.

In addition, the Commission is rescinding the provision in the Rule that allowed a broker-dealer to comply with the requirement to obtain annual, quarterly, and current reports filed by the issuer where the broker-dealer has made arrangements to receive such reports when they are filed by the issuer and has regularly received reports from the issuer on a timely basis. As the Commission explained above and in the Proposing Release, this requirement is outdated because such reports can be obtained by broker-dealers through EDGAR.[510] No commenters opposed the rescission of this requirement.

Finally, the Commission is removing the ''Preliminary Note'' from the Rule and including new guidance to accompany the Rule. The Commission solicited comment on whether the Preliminary Note should be retained in its current form, in the form of guidance as proposed, or in a different form. The Commission received one comment in support of removing obsolete provisions from the Rule[511] and, for the reasons discussed in the Proposing Release, is removing the Preliminary Note from the Rule and, instead, is including new guidance to accompany the amended Rule.[512] This guidance is discussed in Part II.O below.

L. Exemptive Authority—Rule 15c2–11(g)

The Commission is amending paragraph (g) to conform the standard for the amended Rule's exemptive authority to the provision for exemptive authority in Section 36 of the Exchange Act because the Commission believes that the appropriate standard for granting an exemption from Rule 15c2–11 should mirror the statutory standard. Specifically, paragraph (g) of the amended Rule provides that the Commission may grant, conditionally or unconditionally, an exemption from the Rule to the extent such exemption ''is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' As discussed in the Proposing Release, Section 36 was enacted after the most recent substantive amendments to this Rule were adopted.[513] The Commission sought comment on this aspect of the proposal and received no comment.

M. Technical Amendments

As discussed above in Parts II.A through II.K, and for the reasons discussed in the Proposing Release, the Commission is adopting non-substantive technical amendments to the Rule's text. The Commission solicited comment on the proposed technical amendments, including whether any additional technical amendments would be appropriate and whether any of the Rule's text should be revised to improve the Rule's effectiveness and clarity. The Commission received one comment in support of streamlining the Rule and making technical, non-substantive changes[514] and is adopting the technical amendments as proposed in light of other amendments to the Rule.

Specifically, because the Commission is separating the review requirement from the Rule's specified information provisions, the Commission is re-lettering the Rule's provisions and making conforming edits to all cross-references within the Rule to reflect the re-lettering. The Commission is also alphabetizing defined terms under the Rule's definitional section and re-lettering the Rule's definitional provisions.

In addition, the Commission is adopting grammatical edits to the Rule. For example, the Commission is (1) amending the Rule's definition of ''quotation'' in paragraph (e)(7) by replacing the word ''he'' with ''its,'' (2) replacing the word ''which'' with the word ''that'' where appropriate, (3) adding and deleting commas in paragraph (b)(5)(i)(P) to provide clarity, (4) fixing typographical errors, (5) replacing the phrase ''required by'' with the phrase ''specified in'' with respect to paragraph (b) information, and (6)

[504] *See, e.g.,* OTC Markets Group Letter 2.

[505] *See* Computer Services Letter.

[506] *See* Amended Rule 15c2–11(e)(1).

[507] The Commission received one comment in support of removing obsolete provisions from the Rule. Virtu Letter.

[508] *See* Amended Rule 15c2–11(d)(1), (2).

[509] *See supra* Part II.I.

[510] *See supra* Part II.B.1; Proposing Release at 58237.

[511] Virtu Letter.

[512] As the Commission explained in the Proposing Release, if the Commission were to include new guidance to accompany the Rule, the guidance provided in the 1991 Adopting Release and referenced in the Preliminary Note to the Rule would be superseded. Proposing Release at 58239.

[513] *See* Proposing Release at 58238.

[514] Virtu Letter.

replacing the word ''specific'' with the word ''specified'' in the Rule's title. In addition, the Commission is spelling out all numbers that are less than 10.

Further, the Commission is adopting amendments to aid in the Rule's readability. For example, the Commission is amending the Rule by adding headings before certain of the Rule's provisions and by addressing instances of inconsistent letter capitalization (*e.g.,* by ensuring that all phrases such as ''Provided, however, that'' are written consistently throughout the Rule). In addition, the Commission is adding the term ''that is'' in paragraph (f)(1) when referring to a security that is admitted to trading on a national securities exchange. The Commission also is adopting amendments to replace the word ''shall'' with ''must'' where appropriate (*e.g.,* paragraph (b)(5), addressing catch-all issuer information), and is replacing the word ''respecting'' with the word ''for'' (*e.g.,* paragraph (f)(3), in the provisions of the piggyback exception).[515] To be consistent with other rules under the Exchange Act, the Commission is replacing (1) any references to the Financial Industry Regulatory Authority, Inc. with a reference to a registered national securities association and (2) adding CFR citations where appropriate (*e.g.,* replacing the words ''under the Securities Act'' in the paragraph pertaining to Reg. A issuers with ''(§§ 230.251 through 230.263 of this chapter)'' to reflect a reference to the CFR cite to Regulation A). In this regard, to align the amended Rule with Regulation A, the Commission is also adopting amendments in paragraph (b)(2) to replace the phrases (1) ''authorized to commence the offering'' with the word ''qualified,'' and (2) ''offering circular provided for under'' with the phrase ''exemption, with respect to such issuer,'' after the reference to Regulation A that existed in the former Rule. Similarly, to align the amended Rule with Exchange Act Rule 12g3–2(b), the Commission is adopting technical amendments to (1) replace the word ''beginning'' with the words ''first day'' and the word ''last'' with the phrase ''most recently completed fiscal year,'' (2) add the phrase ''as required to establish the exemption from registration under section 12(g) of the [Exchange] Act,'' and (3) delete the word ''reasonably'' before the phrase ''available at the request.'' In addition, the Commission is adding the phrase ''of the broker or dealer'' in paragraph (b)(5)(i)(N) to clarify that the specified information refers to any associated person of the broker-dealer. Also, the Commission is adopting conforming changes to begin each paragraph of paragraph (b) in the same manner to be consistent in listing the issuer information that the Rule requires. Further, the Commission is also adding the words ''under the circumstances'' to paragraph (b)(5)(ii) so that the standard for source reliability of catch-all issuer information is the same standard that is stated for the accuracy of catch-all issuer information. The Commission is also making a technical amendment to the definition of ''quotation'' so that it is provided in the same style as the amended Rule's other definitions.

The Commission also is adopting amendments to streamline and clarify the Rule's text. For example, the Commission is replacing the phrase ''a record of the circumstance involved in'' with the phrase ''records related to'' in paragraph (c)(1). The Commission also is replacing ''customer's indication of interest and does not involve the solicitation of the customer's interest'' in paragraph (f)(2) with ''customer's unsolicited indication of interest'' in paragraph (f)(2). The Commission is also replacing the list of ''any director, officer or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer'' with the newly defined term ''company insider.'' Finally, the Commission is deleting the word ''exact'' from paragraphs (a)(5)(i) and (iv) of the former Rule and replacing the phrase ''the nature'' with the phrase ''a description'' in paragraphs (a)(5)(viii), (ix), and (x).

The Commission also is adopting amendments to avoid redundancy in the Rule's text. For example, the Commission is removing from the Rule all instances of the phrase ''as defined in this section'' because the text of the Rule's definitional section, paragraph (f), makes it sufficiently clear that all instances where a particular defined term is mentioned are for the purposes of the Rule, unless as otherwise specified. In addition, the Commission is deleting the word ''said'' from the former Rule's paragraph (d)(1) because the words ''of this section'' also appear in the text of the Rule. The Commission is also deleting the phrase ''the issuer's most recent'' from the phrase ''a copy of the issuer's most recent'' in paragraph (b)(3) and also replacing ''[i]ssuer's most recent'' with the word ''[a]n'' in the beginning of paragraphs (b)(3)(i) through (iv) to avoid a redundancy.

Finally, the Commission is adopting amendments to paragraph (b)(2) of the amended Rule to align with Regulation A, which requires that all issuers who conduct offerings pursuant to Regulation A electronically file an offering statement on Form 1–A, on EDGAR.[516] The amended Rule references the offering circular for the issuer's security, the description of an issuer's filing under Regulation A is updated to more closely reflect Regulation A's requirement for an issuer that conducts an offering pursuant to Regulation A to electronically file an offering statement (as opposed to an offering notification) on EDGAR.[517] Further, paragraph (b)(2) of the amended Rule also reflects, consistent with Regulation A, that issuers are only permitted to begin selling securities pursuant to Regulation A once the offering statement has been qualified by the Commission.[518]

N. Conforming Rule Change—Rule 144(c)(2)

The Commission proposed to make conforming amendments to Rule 144(c)(2)[519] in light of the proposal to re-letter the provision addressing catch-all issuer information in paragraph (b)(5) of the proposed Rule. The Commission did not receive any comment on this aspect of the proposal. In light of the amendments adopted, the Commission is making conforming amendments to cross-references in the provisions of Rule 144(c)(2) that cite to Rule 15c2–11(a)(5). Specifically, the Commission is amending Rule 144(c)(2) to cross-reference Rule 15c2–11(b)(5)(i)(A) to (N) and Rule 15c2–11(b)(5)(i)(P), and the Commission is removing the cross-references to Rule 15c2–11(a)(5)(i) to (xiv) and Rule 15c2–11(a)(5)(xvi).

[515] While the proposed Rule would have used the word ''concerning,'' the amended Rule uses the word ''for'' when describing publications or submissions of quotations to be consistent with the rule text in paragraph (a). In addition, the amended Rule uses the word ''regarding'' instead of the word ''concerning,'' as proposed, when describing an issuer or its documents and information.

[516] Technical edits from the proposal include the deleting words ''under the Securities Act'' and adding Code of Federal Regulations (the ''CFR'') citations. In addition, the amended Rule includes technical edits from the proposed Rule to be consistent with Regulation A. For example, technical edits in this regard include changing the phrase ''a notification'' to ''an offering statement;'' changing text regarding commencing to ''qualified;'' and replacing the words ''offering circular provided for under'' with a reference to the Regulation A exemption with respect to the issuer. Lastly, technical edits have been made to delete the word ''the'' before the word ''subject;'' and replacing the word ''of'' with the word ''to.'' *See* Amended Rule 15c2–11(b)(2). The Commission did not receive comment on the proposed amendments to paragraph (b)(2).

[517] Rule 251(f) of Regulation A.

[518] Rule 251(d)(2) of Regulation A.

[519] Securities Act Rule 144(c)(2).

O. Guidance

As discussed above, the Commission is removing the Preliminary Note from the former Rule and adopting as proposed the guidance that appears below. This guidance is based on the 1991 Adopting Release (the ''1991 Guidance'') and the Appendix in the 1999 Reproposing Release (the ''1999 Appendix'').[520] The guidance includes targeted updates to: (1) The discussions related to source reliability and the information review requirement that were included in the 1991 Guidance,[521] and (2) the examples of red flags that were included in the 1999 Appendix.[522] In addition, the guidance below discusses the obligations of broker-dealers and qualified IDQSs in considering supplemental information as part of complying with the information review requirement. The guidance below supersedes the 1991 Guidance that was referenced in the Preliminary Note.

The Commission solicited comment on the guidance, including whether the 1999 Appendix should be incorporated into the new guidance. The 1999 Appendix provided guidance to broker-dealers on the scope of the review required by the Rule and offered examples of red flags that broker-dealers should look for when reviewing issuer information. Commenters suggested that the Commission provide updated guidance to the industry on the process involved in complying with the Rule's information review requirement, particularly with respect to any ''red flags'' regarding an issuer or its securities.[523] One commenter stated that broker-dealers' compliance with the provisions of the amended Rule involves the exploration of any red flags that may arise with respect to an issuer or security.[524] For example, one commenter stated that pump-and-dump schemes occur where companies in ''hot'' sectors use constant streams of press releases and promotional announcements, implying large quick profits to create a fear of missing out in order to appeal to unsophisticated investors.[525] Another commenter suggested that ''additional regulatory guidance is necessary to give effect to the proposed Rule.'' [526]

The Commission has determined to include the guidance, substantially as proposed, with a modification to include and update the red flags examples that were included in the 1999 Appendix. With one exception, the Commission continues to believe that all of the red flag examples from the 1999 Appendix, as updated, remain valid. The exception appeared in the section entitled, ''Offerings under Rule 504 of Regulation D where [certain] factors are present.'' [527] There have been amendments to Rule 504 of Regulation D and changes in the OTC market regarding use of that exemption since the list was last updated.[528] As a result, the Commission no longer believes that including an example to highlight certain fact patterns only in the context of Rule 504 of Regulation D would be useful for broker-dealers or qualified IDQSs in identifying the particular types of circumstances that require additional scrutiny in complying with the information review requirement.

1. Introduction

Broker-dealers and qualified IDQSs complying with the information review requirement under the amended Rule must have a reasonable basis under the circumstances for believing, based on a review of paragraph (b) information, together with any supplemental information required by paragraph (c), that: (1) The paragraph (b) information is accurate in all material respects, and (2) the sources of the paragraph (b) information are reliable.[529] Accordingly, the Commission is providing the following basic principles to guide broker-dealers and qualified IDQSs in complying with the information review requirement.

2. Source Reliability

The amended Rule requires that the broker-dealer or qualified IDQS must have a reasonable basis for believing that any source of the paragraph (b) information is reliable. In the absence of any red flag (*e.g.,* information that, under the circumstances, reasonably indicates that the source is unreliable), a broker-dealer or qualified IDQS could satisfy the amended Rule's requirement regarding the reliability of the information source if that information were provided by the issuer of the security or its agents, including its officers and directors, attorneys, or accountants, or was obtained from an independent information service, a document retrieval service, or standard research sources, such as reputable and commonly used internet websites used to research information related to securities issuers.

Occasionally, a broker-dealer or qualified IDQS may receive information specified in paragraph (b) and required by paragraph (c) of the amended Rule about an issuer from someone other than another broker-dealer, the issuer or its agents, or an independent information service. In such situations, while the broker-dealer or qualified IDQS might be aware of the identity of the immediate source of the specified information, it might not have any knowledge about the person that compiled such information. However, to comply with the amended Rule's requirement regarding source reliability, the broker-dealer or qualified IDQS is required to ascertain the reliability of the sources of the information. In this regard, when the immediate source represents that the information was compiled by the issuer, the broker-dealer generally should verify that representation by contacting the issuer directly.

If, however, the broker-dealer or qualified IDQS receives the information from an independent and objective source representing that it received the information directly from the issuer, the broker-dealer or qualified IDQS could rely on that representation absent countervailing information. When a red flag regarding the source's reliability exists, the broker-dealer or qualified IDQS should conduct the inquiry called for under the circumstances to

[520] The Commission took no further action on the guidance included in the 1999 Appendix in the 1999 Reproposing Release.

[521] Proposing Release at 58239.

[522] 1999 Reproposing Release at 11145. The 1999 Appendix supplemented the guidance from the 1991 Adopting Release, which was incorporated into the Rule through the Preliminary Note, by providing additional guidance on, among other things, ''red flags'' regarding the issuer that broker-dealers should consider as part of complying with the information review requirement. *See id.* at 11145. The Commission had proposed in the Proposing Release to update the 1991 Guidance. *See* Proposing Release at 58239.

[523] *See* Coral Capital Letter; FINRA Letter; OTC Markets Group Letter 1.

[524] FINRA Letter. FINRA stated that both it and the industry rely on the 28 examples of red flags that the Commission provided in the 1999 Appendix. Further, FINRA stated that broker-dealers being alert to possible red flags during the review process is an important component to achieving the investor protection and market integrity benefits for which the Rule is designed. In particular, FINRA stated its view about the continued importance of several of the red flags examples to firms' reviews, including regarding concentration of ownership, the presence of unusual auditing issues, suspicious documents, and large reverse stock splits. FINRA stated that, while some of the red flag examples may be less prevalent today than others, it believes that the Commission should incorporate all of the red flag examples into the adopted guidance. *Id.*

[525] Caldwell Sutter Capital Comment.

[526] Anthony Letter.

[527] *See* 1999 Reproposing Release at 11150 (describing the example of a Rule 504 offering that is preceded by an unregistered offering to insiders or others for services rendered at prices well below the price in the subsequent offering).

[528] *See, e.g., Exemptions to Facilitate Intrastate and Regional Securities Offerings,* Securities Act Release No. 10238 (Oct. 26, 2016), 81 FR 83494 (Nov. 21, 2016).

[529] Amended Rule 15c2–11(a)(1)(i)(C), (a)(2)(iii).

reasonably assess whether the source of the information is reliable.

3. Information Review Requirement

Once the broker-dealer or qualified IDQS has a reasonable belief as to the source's reliability, it should examine the materials in its records to make certain that all of the specified information has been obtained. Next, the broker-dealer or qualified IDQS should review the paragraph (b) information in the context of all other information, including supplemental information under paragraph (c), about the issuer that has come to its knowledge or is in its possession. Ordinarily, the broker-dealer or qualified IDQS need not take any further steps (*e.g.,* look behind the financial statements or affirmatively seek out information about the issuer beyond that specifically required by the amended Rule). However, the broker-dealer, consistent with paragraphs (a)(1)(i)(C)(1) and (2), or qualified IDQS, consistent with paragraphs (a)(2)(iii)(A) and (B), should be alert to any red flags (*i.e.,* information under the circumstances that reasonably indicates that one or more of the required items of information may be materially inaccurate or from an unreliable source). Red flags would be indicated, for example, by material inconsistencies in the paragraph (b) information or material inconsistencies between that information and other information that comes to the knowledge or possession of the broker-dealer or qualified IDQS. In the absence of red flags during the review of such information, a broker-dealer or qualified IDQS does not have an obligation to make further inquiries to determine whether it has a reasonable basis to believe that the issuer information is accurate.

Where no red flags appear during this review process, the broker-dealer or qualified IDQS could have a reasonable basis for believing that the information is accurate. If red flags appear, the broker-dealer or qualified IDQS could attempt to reasonably address any red flags or decide not to publish or submit a quotation for the issuer's security. In such case, the specific efforts by the broker-dealer or qualified IDQS to satisfy the reasonable basis standard with respect to the accuracy of the information and the reliability of sources can vary with the circumstances and may require the broker-dealer or qualified IDQS to obtain additional information or seek to verify the accuracy of existing information. For example, the broker-dealer or qualified IDQS may have a reasonable basis to believe that the information is accurate in all material respects after questioning the issuer directly. When red flags are present such that they bring into question the reliability of an issuer or its officers and directors, attorneys, or accountants, as a source of information, the broker-dealer or qualified IDQS may need to consult independent sources, such as an attorney or accountant.

As discussed above, the amended Rule requires that a broker-dealer or qualified IDQS have a reasonable basis under the circumstances for believing that paragraph (b) information, in light of any other documents and information required by the amended Rule, such as paragraph (c) information, is accurate in all material respects. However, the amended Rule does not require that, before submitting or publishing quotations for a security, a broker-dealer or qualified IDQS conduct an independent ''due diligence'' investigation regarding the issuer or its business operations and financial condition such as the investigation expected to be conducted by an underwriter. A broker-dealer or qualified IDQS publishing quotations may have no relationship with or access to the issuer of the security. The amended Rule does not require that the broker-dealer or qualified IDQS develop such a relationship to obtain information about the issuer. Rather, as described above, the amended Rule specifies the information that must be gathered, and the information review requirement would be satisfied if the broker-dealer or qualified IDQS had a reasonable basis for believing that the information is accurate in all material respects and obtained from a reliable source, after reviewing that information.

In short, a reasonable basis for belief in the accuracy of the paragraph (b) information can be founded solely on a careful review of the paragraph (b) information together with paragraph (c) information, provided that the paragraph (b) information was obtained from sources reasonably believed to be reliable and there are no red flags. When red flags are initially present, the broker-dealer or qualified IDQS may, upon inquiry, obtain additional information that provides a reasonable basis for believing that the information is accurate in all material respects and that the sources are reliable.

4. Examples of Red Flags

The Commission is providing examples of red flags where the broker-dealer or qualified IDQS may want to apply additional scrutiny. These examples, however, are not exhaustive. Conversely, the presence of these or other red flags is not necessarily an indication of fraud or inaccurate information; it simply means that the broker-dealer or qualified IDQS should consider questioning whether the issuer information is accurate, and in certain cases, from a reliable source. The more red flags that are present, the more a broker-dealer or qualified IDQS may want to scrutinize the issuer information.

a. *Commission and Foreign Trading Suspensions.* Trading suspensions, including foreign trading suspensions, generally raise significant red flags as to whether the issuer's information is accurate and whether the sources of such information are reliable. Once a trading suspension terminates, and before a broker-dealer can publish a quote, a broker-dealer or qualified IDQS must comply with the information review requirement if it cannot rely on an exception to the Rule. While conducting its information review under the amended Rule following a trading suspension, a broker-dealer or qualified IDQS may want to attempt to determine the basis for the suspension order and assess whether the issuer information that is current and publicly available following the trading suspension is accurate and whether its source is reliable. Such review may include seeking verification from the issuer or soliciting the views of an independent professional.

b. *Concentration of ownership of the majority of outstanding, freely tradeable stock.* Concentration of ownership of freely tradeable securities is a prominent feature of microcap fraud cases. When one person or group controls the flow of freely tradeable securities, this person or persons can have a much greater ability to manipulate the stock's price than when the securities are widely held.

c. *Large reverse stock splits.* Fraudulent and manipulative activity in OTC securities can involve the substantial concentration of the publicly traded float through a reverse stock split. The subsequent issuance of large amounts of stock to insiders increases their control over both the issuer and trading of the stock.

d. *Companies in which assets are large and revenue is minimal without any explanation.* A red flag exists when the issuer assigns a high value on its financial statements to certain assets, often assets that are unrelated to the company's business and were recently acquired in a non-cash transaction. While assets that are unrelated to the business of the issuer are not always an indication of potential fraud, some unscrupulous issuers have overvalued these types of assets in an effort to

inflate their balance sheet. In such situations, the company's revenues often are minimal and there appears to be no valid explanation for such large assets and minimal revenues. Also, a red flag is present when the financial statements of a development stage issuer list as the principal component of the issuer's net worth an asset wholly unrelated to the issuer's line of business.

e. *Shell company's acquisition of private company or other material business development.* Shell companies have been used as vehicles for fraud in a number of different fact patterns and schemes.[530] The piggyback exception under the amended Rule prohibits broker-dealers from relying on the piggyback exception for shell companies after a certain period.[531] The Commission remains concerned about the potential that a continuously quoted market could be used to entice investors to make an investment decision based on what appears to be an active and independent market when, in fact, the investor may be considering the security price of the shell company that increased due to inaccurate and misleading promotional information.[532] A broker-dealer should be mindful of the potential for abuse when reviewing issuer information where a shell company is involved, in particular if the shell company has acquired a privately held company or has undergone other material business developments (including, but not limited to, declarations of bankruptcy, re-organizations and mergers).

f. *A registered or unregistered offering raises proceeds that are used to repay a bridge loan made or arranged by the underwriter where:* (1) The bridge loan was made at a high interest rate for a short period; (2) the underwriter received securities at below-market rates prior to the offering; and (3) the issuer has no apparent business purpose for the bridge loan.

g. *Significant write-up of assets upon a company obtaining a patent or trademark for a product.* The significant write-up of assets once an issuer obtains a patent or trademark for a product may be a technique used by issuers engaged in fraud to inflate their balance sheets.

h. *Significant assets consist of substantial amounts of shares in other OTC companies.* Some fraudulent activity may involve issuers whose major assets are substantial amounts of shares in other OTC companies.

i. *Assets acquired for shares of stock when the stock has no market value.* The issuer's financial statements often can indicate that the issuer acquired assets to which it assigned substantial value in exchange for its essentially worthless stock.

j. *Unusual auditing issues.* Examples of this include auditors who refuse to certify financial statements or who issue audited reports containing a qualified opinion, where there has been an unexplained change of accountants, or an accountant has resigned or been dismissed. Rule 15c2–11 does not contemplate that a broker-dealer or qualified IDQS will scrutinize the issuer's financial statements with the expertise of an accountant. If, however, a broker-dealer or qualified IDQS sees any of these examples of red flags, it may wish to confirm the auditor's credentials with the appropriate state licensing authority, question the circumstances of the change in accountants, and carefully scrutinize the Rule's specified information.

k. *Significant write-up of assets in a business combination of entities under common control or extraordinary items in notes to the financial statements.* Unusual related party transactions are sometimes found in fraud schemes and may be used to write up the value of an issuer's assets after a merger between the related parties.

l. *Suspicious documents.* Examples can include inconsistent financial statements, altered financial statements, and altered certificates of incorporation. Issuer information that is altered on its face raises red flags that, at a minimum, could lead a broker-dealer or qualified IDQS to determine it does not have a reasonable basis to believe the issuer's information is accurate.

m. *A broker-dealer or qualified IDQS receives substantially similar offering documents from different issuers with certain characteristics.* Such characteristics include: The same attorney is involved; the same officers and directors are listed; or the same shareholders are listed. If a broker-dealer or qualified IDQS realizes, after reviewing the information for several issuers, that the same individuals are involved with these entities, the broker-dealer or qualified IDQS should consider inquiring further to determine whether it has a reasonable basis to believe that the issuer information is accurate.

n. *Extraordinary gains in year-to-year operations.* Such gains may be achieved through assigning an artificially high value to certain assets or through other manipulative devices that are red flags, such as the significant write-up of assets upon merger or acquisition.

o. *Reporting company fails to file an annual report.* A reporting company's failure to file an annual report suggests that there is a potential problem with the company.

p. *Disciplinary actions against an issuer's officers, directors, general partners, promoters, auditors, or control persons.* The following types of disciplinary actions raise red flags: An indictment or conviction in a criminal proceeding; an order permanently or temporarily enjoining, barring, suspending or otherwise limiting an officer, director, general partner, promoter, auditor, or control person's involvement in any type of business, securities, commodities, or banking activities; an adjudication by civil court of competent jurisdiction, the Commission, the Commodity Futures Trading Commission or a state securities regulator of a violation of federal or state securities or commodities law; or an order by a SRO permanently or temporarily barring, suspending or otherwise limiting involvement in any type of business or securities activities.

q. *Significant events involving an issuer or its predecessor, or any of its majority owned subsidiaries.* The following types of significant events raise red flags: Change in control of the issuer; substantial increase in equity securities; merger, acquisition, or business combination; acquisition or disposition of significant assets; bankruptcy proceedings; or delisting from any securities exchange. These are all examples of significant events involving the issuer, though they are not per se examples that reflect fraud and manipulation. However, certain events—a change in control of the issuer; merger, acquisition, or business combination; or acquisition or disposition of significant assets—can provide unscrupulous issuers an opportunity to artificially overvalue the issuer's assets to support an upward manipulation of the issuer's stock. An increase in the number of an issuer's equity securities provides the securities necessary for such manipulation. Bankruptcy proceedings or delisting from an exchange may also indicate facts surrounding an issuer that could lead a broker-dealer or qualified IDQS to conclude that it does not have a reasonable basis to believe that the issuer's financial information is accurate.

r. *Request to publish both bid and offer quotes on behalf of a customer for the same stock.* The highly unusual request from a customer for the broker-

[530] *See, e.g.,* Proposing Release at 58222–23 (discussing fact patterns in which shell companies have been used to defraud investors). See Amended Rule 15c2–11(e)(9) for a definition of the term ''shell company.''

[531] *See* Amended Rule 15c2–11(f)(3)(i)(B).

[532] *See* Proposing Release at 58222–23.

dealer to publish both bid and offer quotes is a red flag that may indicate manipulative trading (*e.g.,* wash trades) and may call for appropriate inquiry on the part of a broker-dealer or qualified IDQS.

s. *Issuer or promoter offers to pay a fee.* If a broker-dealer receives an offer from an issuer, any affiliate or promoter thereof, to pay a fee in connection with making a market in the issuer's security, this is both a red flag and a potential FINRA rule violation. Specifically, it is a violation of FINRA Rule 5250 for a broker-dealer or any person associated with a broker-dealer to accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.[533]

t. *Regulation S transactions of domestic issuers.* Regulation S provides a safe harbor from the registration requirements of the Securities Act for offers and sales of securities by both foreign and domestic issuers that are made outside the United States. In 1998, the Commission adopted amendments to Regulation S designed to prevent the abuses that relate to offshore offerings of equity securities of domestic issuers, in particular transactions involving large amounts of the securities of U.S. issuers for which little information was available. Broker-dealers and qualified IDQSs should be alert to any questionable activities involving Regulation S offerings.

u. *Form S–8 stock.* Form S–8 is the short-form registration statement for offers and sales of a company's securities to its employees, including its consultants and advisors.

v. ''*Hot industry*'' *OTC stocks.* Another characteristic of misconduct in the OTC market is that it often can involve stocks that are in vogue.

w. *Unusual activity in brokerage accounts of issuer affiliates, especially involving* ''*related*'' *shareholders.* Fraudulent and manipulative activity in the OTC market can begin with the deposit and sale of large blocks of an obscure stock by a new and unfamiliar customer who often is affiliated with an issuer and a simultaneous request by the issuer that the broker-dealer make a market in the stock.

x. *Companies that frequently change their names or lines of business.* The Commission and other regulators have brought enforcement actions in which this type of activity among OTC issuers has been a characteristic of the alleged misconduct.[534]

P. Compliance Date

The Commission is providing a compliance date that is nine months after the effective date of the amended Rule, except for the compliance date for paragraph (b)(5)(i)(M) of the amended Rule. The compliance date for paragraph (b)(5)(i)(M) of the amended Rule is two years after the effective date of the amended Rule.[535]

After considering the comments received regarding the transition period for compliance with the amended Rule's provisions,[536] the Commission believes that these compliance dates will provide sufficient time for broker-dealers to prepare to comply with the amended Rule, including by creating or updating any necessary systems or internal measures, such as training modules, and to develop and update any necessary policies and procedures, as appropriate, to achieve compliance with the amended Rule. The Commission further believes that these compliance dates provide sufficient time for qualified IDQSs and registered national securities associations to implement technological or other changes that they determine to make in light of the amended Rule.

The Commission recognizes that there are market participants who are concerned about the loss of a quoted market for certain securities as a result of the amended Rule and that such market participants may wish to seek relief from the provisions of the amended Rule. The Commission encourages such persons to submit relief requests expeditiously during the nine-month transition period. The Commission notes, however, that it will consider relief requests at any time, including after the nine-month transition period.

On and after the nine-month transition period, broker-dealers that publish or submit quotations in a quotation medium, qualified IDQSs that make known to others certain broker-dealer quotations and make certain publicly available determinations, and registered national securities associations that make certain publicly available determinations would be required to comply with the amended Rule when they perform those activities. The Commission staff intends to offer assistance and support to covered entities during the transition period and thereafter, with the aim of helping to ensure that the investor protections and other benefits of the amended Rule are implemented in an efficient and effective manner.

III. Comments on the Concept Release

A. Information Repositories

The Commission is not making any changes in the regulatory structure around information repositories. The Commission solicited comment on the designation of certain entities as information repositories, including whether investors and other market participants would benefit from having access to proposed paragraph (b) information solely through a centralized location, such as an information repository. Two commenters supported the idea of a centralized location for paragraph (b) information,[537] though both commenters stated that some companies may prefer to make current information available only on their websites or upon request.[538] Because the amended Rule's definition of ''publicly available'' already provides the opportunity for, among other things, free access to issuer information through the internet, the Commission is not taking further action in this regard. One commenter advocated for the public availability of past issuer information in addition to current issuer information.[539] On balance, the Commission believes that the requirement for the publicly availability of current paragraph (b) information provides appropriate information to

[533] *See* FINRA Rule 5250, *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/5250.* FINRA Rule 5250, however, does not preclude: (1) Payment for bona fide services, including, but not limited to, investment banking services (including underwriting compensation and fees); (2) reimbursement of any payment for registration imposed by the Commission or state regulatory authorities and for listing of an issue of securities imposed by a SRO; and (3) any payment expressly provided for under the rules of a national securities exchange that are effective after being filed with, or filed with and approved by, the Commission pursuant to the Exchange Act.

[534] *See, e.g.,* Press Release, SEC Charges Eight for Roles in Widespread Pump-and-Dump Scheme Involving California-Based Microcap Company (Sept. 18, 2014), *https://www.sec.gov/news/press-release/2014-202.*

[535] In this regard, the compliance date for the requirement in the piggyback exception that a catch-all issuer's information that is specified in paragraph (b)(5)(i)(M) must be current and publicly available is two years after the effective date of the amended Rule. This compliance date is designed to provide a sufficient window during which such current information can be prepared and made publicly available.

[536] FINRA Letter (requesting nine months for covered entities to comply with the provisions of the amended Rule); Jason Hirschman (Oct. 8, 2019) (stating that there should be an ''extended transition period'' for the amended Rule).

[537] Coral Capital Letter; Hamilton & Associates Letter (observing that some market participants might be more useful than others in serving as an information repository).

[538] Coral Capital Letter; Hamilton & Associates Letter.

[539] Coral Capital Letter.

facilitate informed investment decisions without adding the potential for an overly burdensome requirement to make older issuer information publicly available in addition to current information.

B. Other Issues

Certain commenters urged the Commission to take additional or different regulatory and non-regulatory actions than the approach adopted, including actions that the Commission did not propose. These suggestions covered a variety of areas, including settlement cycles,[540] short sale regulation,[541] rules governing stock splits,[542] state laws,[543] changes regarding publication of information and ''offers'' under the federal securities laws,[544] rules governing the sales of securities,[545] shareholder of record rules,[546] transfer agent rules,[547] sales practice issues,[548] paid promotions,[549] and alternative venues.[550] The Commission appreciates the helpful feedback on these issues and will take such views into account as part of its ongoing consideration of the markets and the federal securities rules and regulations. The Commission believes that they are outside the scope of the proposed Rule and that the amended Rule appropriately furthers the Commission's objectives of promoting investor protection, enhancing market efficiency, and facilitating capital formation by promoting greater transparency, efficiency, and capital formation and helping to prevent incidents of fraud and manipulation in OTC securities. Other suggestions covered FINRA rules.[551] As discussed above, the Commission's staff expects to work with FINRA on an ongoing basis regarding the implementation of the amended Rule.[552]

Some commenters advocated that persons complying with the information review requirement should have a reasonable basis for believing that the issuer's information is complete and from a reliable source, rather than accurate and from a reliable source.[553] The Commission believes a review for ''completeness'' rather than for ''accuracy'' would weaken the important investor protections that the Rule is designed to provide. Broker-dealers are required ''to give some measure of attention to financial and other information about the issuer of a security before it commences trading that security.'' [554] However, as discussed in above in Part II.O, the requirements of the amended Rule do not contemplate that, before submitting or publishing quotations for a security, a broker-dealer or qualified IDQS must conduct an independent ''due diligence'' investigation regarding the issuer or its business operations and financial condition such as the investigation expected to be conducted by an underwriter. The Commission is not aware of any developments in the OTC market since the initial adoption of the Rule that warrant changing this standard from ''accuracy'' to ''completeness.'' Moreover, the ''accuracy'' standard of review, specified in paragraphs (a)(1)(iii)(C) and (a)(2)(iii) of the amended Rule, is the same for a catch-all issuer as it is for all other categories of issuers (*i.e.,* a prospectus issuer, a Reg. A issuer, a reporting issuer, and an exempt foreign private issuer),[555] so the standard for compliance with the information review

[540] Alan S. Cameron (Nov. 24, 2019).

[541] OTC Markets Group Letter 2; *see also* Canaccord Letter; Christopher, DiIorio; GTS Letter; MCAP Letter; Professor Angel Letter; Securities Law USA Letter; Zuber Lawler Letter. In response to the Proposing Release's Q133, some commenters stated that it would be helpful to extend the close-out period for lower-volume securities. *See, e.g.,* OTC Markets Group Letter 2; *see also* Canaccord Letter; GTS Letter; Securities Law USA Letter; Zuber Lawler Letter. These commenters stated that doing so might, for example, increase short sale volume in the OTC market. *E.g.,* Canaccord Letter. Amending Regulation SHO to extend the close-out period for OTC securities is outside the scope of the proposed rulemaking.

[542] Christian Gabis (suggesting that any company trading below $1.00 for six months be required to perform a reverse split to ''remain listed''); John Guerriero (Oct. 4, 2019) (advocating for reform to the grey market).

[543] Braxton Gann; Daniel Raider.

[544] Beacon Redevelopment Letter (changes to allow non-reporting issuers to publish their information, in the spirit of the JOBS Act); Murphy & McGonigle Letter (changes necessary to allow exempt foreign private issuers to publish their Rule 12g3–2(b) information). One commenter also suggested that the Commission, as necessary, provide guidance that publication by an exempt foreign private issuer on its website (or on EDGAR) of the information required by Rule 12g3–2(b), ''without more,'' would not be an ''offer'' under the Securities Act. Murphy & McGonigle Letter.

[545] GUARDD Letter.

[546] *See* Anbec Partners Letter; Franklin Antonio; Caldwell Sutter Capital Comment; Brett Dorendorf; Lucas Elliott; David J. Flood; Jason Hirschman; Letter from James E. Mitchell, General Partner, Mitchell Partners, L.P., to Hon. Hester M. Peirce, Comm'r, SEC (Oct. 11, 2019) (''Mitchell Partners Letter 2''); Ariel Ozick; Anthony Perala; Daniel Raider; Michael E. Reiss; Dan Schum; Michael Tofias; Don C. Whitaker.

[547] GTS Letter; STA Letter.

[548] *See* Raymond Balser (Oct. 27, 2019); Coulson Comment; James Duade; GTS Letter; Michael Tofias; Alex Toppan; Kevin Ward. For example, commenters stated that some issuers issue ''toxic notes'' that are convertible into shares at a deep discount to the market price that dilute existing shareholders. R. Berkvens; Coral Capital Letter; John Guerriero; Leonard Burningham Letters. Another commenter, however, suggested that warnings like ''caveat emptor'' and ''buyer beware'' do nothing to restore what victims of fraudulent and manipulative schemes have lost. Coral Capital Letter; Brett Dorendorf; David J. Flood; Braxton Gann; Jason Hirschman; Lake Highlands Comment; Ron Lefton; Ariel Ozick.

[549] Ariel Ozick; STA Letter.

[550] *See* Todd Blue (Oct. 9, 2019); Andersen Letter; GTS Letter (advocating for a ''task force''); *see also supra* Part II.A.1 (discussing the suggestion to exempt quoting in OTC securities in a market for certain types of individuals).

[551] *See* Tyler Black (discussing securities that trade in the grey market for which broker-dealers desire to create a quoted market); Coral Capital Letter; CrowdCheck Letter; HTFL Letter; Mitchell Partners Letter 1; OTC Markets Group Letter 2 (stating that the process, which includes requests for additional information, can take anywhere from weeks to months, with the average amount of time for FINRA to process a Form 211 being 34 days); Sosnow & Associates Letter; *see also* Andersen Letter; Coral Capital Letter (stating that, as a result, only one broker-dealer remains that is willing to file a Form 211 for domestic issuers); FINRA Letter (requesting further guidance as to whether a new Form 211 would need to be filed when a broker-dealer relies on a publicly available determination that the piggyback exception—or any of the other exceptions—is available; whether such a requirement to file a new Form 211 for quotations that are published or submitted pursuant to the piggyback exception would apply only for securities of catch-all issuers; whether any transition period would be prolonged for the securities of catch-all issuers if a Form 211 were processed during the 12 months before the adoption of the amendments; and whether any grace period would apply if an issuer's shell company status becomes unclear); Leonard Burningham Letters; Lucosky Brookman Letter; OTC Markets Group Letter 2; Securities Law USA Letter; STA Letter (advocating for qualified IDQSs to be permitted to file a Form 211 with FINRA, or to allow broker-dealers to rely on a qualified IDQS's compliance with the information review requirement without filing a Form 211 at all); Zuber Lawler Letter. As explained in the Proposing Release, FINRA Rule 6432 requires broker-dealers to file a Form 211 when the Rule requires them to comply with the information review requirement. Proposing Release at 58242. The amended Rule does not impose obligations with respect to FINRA Rule 6432, as discussed above in Part II.A.3, and does not require broker-dealers that rely on a publicly available determination that the piggyback exception—or any of the other exceptions—is available to file Forms 211 with FINRA. The Commission will continue to monitor the operation of this market and expects FINRA to do the same, including through examinations of qualified IDQSs. *See supra* Part II.A.3.

[552] As discussed above in Part II.P, the Commission staff intends to offer assistance and support to covered entities during the transition period and thereafter, with the aim of helping to ensure that the investor protections and other benefits of the amended Rule are implemented in an efficient and effective manner.

[553] OTC Markets Group Letter 2; OTC Markets Group Letter 3; *see also* Canaccord Letter; Lucosky Brookman Letter; Robert E. Schermer, Jr.; Securities Law USA Letter; Sosnow & Associates Letter; Zuber Lawler Letter.

[554] 1991 Adopting Release at 19149.

[555] *See* Proposing Release at 58216.

requirement is the same notwithstanding whether a broker-dealer or qualified IDQS is reviewing the documents and information of an issuer that has an Exchange Act or Securities Act reporting obligation or has no such reporting obligation whatsoever.

In addition, some commenters stated their views regarding alternatives to the requirement that paragraph (b) information be current and publicly available [556] and exceptions to Rule 15c2–11 that were not proposed.[557] The Commission believes that the amendments that require paragraph (b) information to be current and publicly available, provide certain new exceptions, and modify exceptions that existed before the amendments were adopted are narrowly tailored to appropriately further the Commission's objectives of promoting investor protection while facilitating market efficiency. The Commission, however, will continue to monitor trading in this market to consider whether any further amendments to the Rule in this regard are warranted.

IV. Other Matters

Pursuant to the Congressional Review Act,[558] the Office of Information and Regulatory Affairs has designated these rules as a ''major rule,'' as defined by 5 U.S.C. 804(2).

If any of the provisions of these final 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.

V. Paperwork Reduction Act Analysis

A. Background

Certain provisions of the amended Rule impose ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[559]

The title for this collection of information is ''Publication or submission of quotations without specified information.'' In accordance with the PRA, the Commission submitted the collection of information for the proposed amendments to the Rule to the Office of Management and Budget (''OMB'') for review.[560] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number. OMB has assigned control number 3235–0202 to this collection of information.

The Commission published notice and solicited comments on the collection of information requirements for the proposed amendments in the Proposing Release.[561] The Commission received one comment regarding the collection of information requirements, which focused on the Commission's estimates of burdens and costs associated with determining an issuer's status as a shell company.[562] The Commission did not receive any other comments regarding its other estimates of burdens and costs that were included in the Proposing Release's PRA. In addition, the Commission's estimates of the collection of information for the amendments, as adopted, have been updated from the estimates included in the Proposing Release, as appropriate, with the updated estimates based on more recent data.

The Rule is designed to prevent broker-dealers from publishing or submitting quotations for OTC securities that may facilitate a fraudulent or manipulative scheme. Subject to certain exceptions, the Rule prohibits broker-dealers from publishing or submitting a quotation for a security, or submitting a quotation for publication, in a quotation medium, unless they have reviewed specified information regarding the issuer. The Commission is adopting amendments designed to modernize the Rule, promote investor protection, and help prevent incidents of fraud and manipulation by, among other things, requiring information about the issuers of securities that are quoted in the OTC market to be current and publicly available; narrowing certain exceptions from the Rule's requirements, including the piggyback exception and unsolicited quotation exception; adding new exceptions for the quotations of securities that may be less susceptible to fraud and manipulation; removing obsolete provisions; adding new definitions; and making technical amendments.

B. Respondents Subject to the Rule

Generally, the Rule applies to broker-dealers that participate in the quoted market for OTC securities. The amendments modify some of the existing information collection burdens on broker-dealers and create new record retention obligations on broker-dealers that rely on exceptions to the Rule. The Commission believes that approximately 34 broker-dealers will be subject to the burdens associated with publishing or submitting a quotation without an exception,[563] and approximately 80 broker-dealers will be subject to the burdens associated with documenting reliance on an exception in paragraph (f) of the amended Rule.[564] Additionally, the Commission estimates that, at this time, one qualified IDQS [565] and one registered national securities association [566] will be subject to burdens associated with making publicly available determinations pursuant to paragraph (a)(3) of the amended Rule.[567]

The amendments permit a qualified IDQS to comply with the information review requirement in certain circumstances.[568] A qualified IDQS

[556] Anbec Partners Letter; Tim Bergin; Brett Dorendorf; David J. Flood; Christian Gabis; Braxton Gann; Paul Lucot; Ariel Ozick (stating that companies should still be able to de-register but provide annual reporting at a lower standard); Dave Peirce; Michael E. Reiss; Mark Schepers; Dan Schum; John Sheehy; Symphony Financial Comment; Michael Tofias.

[557] *E.g.,* Alluvial Letter; Anbec Partners Letter; Caldwell Sutter Capital Comment; Brandon Cline; Coral Capital Letter; FINRA Letter; GTS Letter; Coral Capital Letter; Jason Hirschman; Aharon Levy; Mitchell Partners Letter 2; Mitchell Partners Letter 3; Doug Mohn; Monroe Letter; OTC Markets Group Letter 2; OTC Markets Group Letter 3; Ariel Ozick; Professor Angel Letter; Peter Quagliano; Securities Law USA Letter; Zuber Lawler Letter; Michael Tofias; Total Clarity Comment; Joep vd Berg (Dec. 15, 2019); David W. Wright; Samuel J. Yake.

[558] 5 U.S.C. 801 *et seq.*

[559] 44 U.S.C. 3501 *et seq.*

[560] *See* 44 U.S.C. 3507; 5 CFR 1320.11.

[561] *See* Proposing Release at 58249.

[562] Leonard Burningham Letters.

[563] Thirty-four broker-dealers submitted Forms 211 to FINRA in 2019. The Commission uses this number as a proxy for broker-dealers that comply with the information review requirement under paragraphs (a), (b), and (c) of the amended Rule.

[564] As of April 24, 2020, there are 80 broker-dealers that publish quotations on OTC Markets Group's systems. The Commission believes that this number reasonably estimates the number of broker-dealers that would engage in activities that would subject them to the requirements discussed in the section ''Other Burden Hours'' below because they are the only broker-dealers that are publishing or submitting quotations for OTC securities.

[565] Based on the current structure of the market for quoted OTC securities, the Commission believes that only one qualified IDQS would engage in a review pursuant to paragraph (a)(2) or make publicly available determinations pursuant to paragraph (a)(3).

[566] As of May 14, 2020, one registered national securities association exists.

[567] In making this estimate, the Commission is mindful that a qualified IDQS or a registered national securities association may elect not to make publicly available determinations pursuant to paragraph (a)(3), or may elect to do so at a later date. The Commission also recognizes that, in the future, other market participants may become qualified IDQSs, or new national securities associations may be established, that make publicly available determinations pursuant to paragraph (a)(3).

[568] More specifically, under the amended Rule, a qualified IDQS that makes known to others the quotation of a broker-dealer that is published or submitted pursuant to paragraph (a)(1)(ii) of the amended Rule must first have complied with paragraphs (a), (b), and (c) of the amended Rule.

must meet the definition of an alternative trading system under Rule 300(a) of Regulation ATS and operate pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Exchange Act. As such, a qualified IDQS must be registered as a broker-dealer.[569] The amendments modify only the allocation of burden from existing paragraphs (a), (b), and (c) between qualified IDQSs and broker-dealers that are not qualified IDQSs, rather than create new and distinct burdens.[570] Therefore, burdens of the amended Rule on qualified IDQSs have not been analyzed below in a manner that is distinct from those of broker-dealers. The analysis of burdens for qualified IDQSs and registered national securities associations are separated from those of broker-dealers in the section discussing the requirement in paragraph (a)(3) of the amended Rule that such entities must establish, maintain, and enforce reasonably designed written policies and procedures to make certain publicly available determinations.

For the purposes of the analysis below, the Commission has made assumptions regarding how respondents would comply with the amended Rule.

C. Summary of Collections of Information

The collections of information associated with the initial publication or submission of a quotation are intended to prevent broker-dealers from publishing or submitting quotations for OTC securities that may facilitate a fraudulent or manipulative scheme. In addition, information collections associated with recordkeeping and establishing, maintaining, and enforcing reasonably designed written policies and procedures under the amended Rule are intended to help ensure compliance with the Rule's exceptions.[571]

1. Burden Associated With the Initial Publication or Submission of a Quotation in a Quotation Medium

Absent an exception, broker-dealers must comply with the information review requirement of the Rule before initiating the publication or submission of a quotation for an OTC security. The Commission believes that, as was the case with the former Rule, the information collections associated with the information review requirement and recordkeeping requirement under the amended Rule involve conducting a review of and maintaining the specified information.[572]

A broker-dealer that initiates or resumes a quotation in an OTC equity security is subject to FINRA Rule 6432, which requires the broker-dealer to demonstrate compliance with, among other things, Rule 15c2–11 by filing a Form 211. Given the alignment of this FINRA requirement and the Rule, the Commission believes that the number of Forms 211 filed with FINRA in 2019 provides a reasonable baseline from which to estimate the burdens associated with the information review requirement under both the former Rule and the amended Rule. Based on information provided by FINRA, broker-dealers submitted a total of 384 Forms 211 to initiate the publication or submission of quotations of OTC securities in 2019: 87 of these Forms 211 concerned securities of prospectus issuers, Reg. A issuers, and reporting issuers; 253 concerned securities of exempt foreign private issuers; and 44 concerned securities of catch-all issuers. The Commission estimates that it takes approximately three hours to review, record, and retain the information pertaining to prospectus issuers, Reg. A issuers, and reporting issuers, and seven hours to review, record, and retain the information pertaining to exempt foreign private issuers and catch-all issuers.[573] Before taking into account any potential changes to burdens that could be imposed by the amendments, the estimated total annual burden of the information collection by the 34 broker-dealers that complied with the information review requirement for the 384 OTC securities referred to above would be 2,340 hours.[574]

The information review requirement is set forth in paragraphs (a), (b), and (c) of the amended Rule. The amendments change the information review requirement by adding, among other things, the requirement that paragraph (b) information be current and publicly available before the initial publication or submission of a quotation for an OTC security.[575] The Commission believes that these changes would not modify the burden hours for completion of the information review requirement that are estimated above. Additionally, it is not expected that these changes to the information review requirement would create any initial one-time burden as it is unlikely that a broker-dealer or qualified IDQS would need to modify its systems or training practices to comply with the information review requirement under the amended Rule.

(a) Amendments to the Piggyback Exception

As discussed above, the amendments would modify the piggyback exception in various ways, and these amendments would, in turn, impact the burdens associated with the information review requirement.[576] Paragraph (f)(3)(i)(A) of

[569] *See* Rule 301(a) of Regulation ATS.

[570] *See* Amended Rule 15c2–11(a)(2).

[571] The recordkeeping obligations under the amended Rule, including those relating to the creation of reasonable policies and procedures under paragraph (a)(3) of the amended Rule, are discussed in Part V.C.2.g below.

[572] As discussed in Part II.K above, the Commission is removing the disclosure requirement in paragraph (d)(1) of the former Rule. This disclosure requirement previously has been discussed as a component of the estimated burden associated with all types of issuers (regardless of their reporting obligations), and, as a result, is included in the existing burden estimates for the Rule.

[573] The Commission believes that these burden hour estimates reasonably measure the time required to comply with the information review requirement and recordkeeping requirement utilizing available technology. In addition, because the specified information regarding exempt foreign private issuers and catch-all issuers may not be as readily available as the specified information regarding prospectus, Reg. A, and reporting issuers, these burden hour estimates include four additional hours to review information about such issuers.

[574] (87 prospectus, Reg. A, and reporting issuers × 3 hours) + (253 exempt foreign private issuers × 7 hours) + (44 catch-all issuers × 7 hours review and recordkeeping) = (261 hours) + (1,771 hours) + (308 hours) = 2,340 hours. The burden hours for compliance with the information review requirement does not include securities that are piggyback eligible on the compliance date. A broker-dealer or qualified IDQS would not be required to comply with the information review requirement because broker-dealers would be able to publish quotations based on the piggyback exception. Burden hours associated with documenting that information is current and publicly available for purposes of relying on an exception are discussed below in Part V.C.2.

[575] The Commission does not believe that the expansion of the types of market participants that comply with the information review requirement—to include not only broker-dealers publishing or submitting a quotation for an OTC security in a quotation medium but also a qualified IDQS that makes known to others that the qualified IDQS conducted the information review (paragraph (a)(2))—will impact the hourly burden attributable to completion of the information review requirement. The adopted modification to the Rule does not affect the information review burden itself, but rather spreads that burden among more entities. Similarly, the Commission does not believe that the modifications to the information specified in paragraph (b) or the supplemental information in paragraph (c) affects the information review requirement itself because such information is already gathered and maintained, or the modifications to the previously existing information required by former Rule 15c2–1l are so minor that these changes are not expected to have an impact on the overall time burden related to the information review requirement.

Modifications to the Rule, as well as several of the proposed changes to exceptions from the requirements of the Rule, do, however, affect the recordkeeping obligations of broker-dealers and qualified IDQSs. The impact of paragraph (a)(1)(ii) on the recordkeeping requirement in paragraph (d)(1)(i), as well as the recordkeeping requirements in paragraph (d)(2) for revised and new exceptions, is discussed in Part V.C.2 below.

[576] *See supra* Part II.D.

the amended Rule limits broker-dealers' reliance on the piggyback exception to securities with a one-sided priced quotation in an IDQS.[577] Broker-dealers would have to comply with the information review requirement before initially publishing or submitting quotations on securities that currently are quoted and that would lose piggyback eligibility as a result of this provision. According to estimates based on data from OTC Markets Group for 2019, 264 out of 9,864 piggyback eligible quoted OTC securities, would lose piggyback eligibility under this amendment because there was no publication of either a bid or an offer quotation for five or more business days in succession on one or more occasions during that year.[578]

Based on the lack of quotes by broker-dealers for these securities in 2019, it is unclear whether broker-dealers would conduct the required review for most of these securities that would no longer be eligible for the piggyback exception provided under paragraph (f)(3)(i)(A). Taking a conservative approach in assessing the burden that may arise under this amendment, the Commission estimates that broker-dealers would comply with the information review requirement once annually for each security that would lose piggyback eligibility.[579] Therefore, it is estimated that broker-dealers would comply with the information review requirement 264 additional times annually. The Commission estimates that 88 (approximately 33%) would be securities of prospectus, Reg. A, or reporting issuers, 143 (approximately 54%) would be securities of exempt foreign private issuers, and 33 (approximately 13%) would be securities of catch-all issuers, leading to an increase in the total annual burden of 1,496 hours.[580]

The Commission is increasing the estimated overall burdens related to the information review requirement based on the provision in paragraph (f)(3)(i)(C) of the amended Rule, which would allow broker-dealers to rely on the piggyback exception to publish quotations for the securities of (1) issuers for which documents and information are specified in paragraphs (b)(4) or (b)(5) if paragraph (b) information is current and publicly available, (2) issuers for which documents and information are specified in paragraphs (b)(3)(i), (b)(3)(iv), or (b)(3)(v) if paragraph (b) information is filed within 180 calendar days from a specified time frame, *or* (3) issuers for which documents and information are specified in paragraphs (b)(3)(ii) or (b)(3)(iii) if paragraph (b) information is timely filed. Paragraphs (a)(1)(i)(B) and (a)(2)(ii) of the amended Rule require that paragraph (b) information be current and publicly available as a component of the review requirement, and thus a broker-dealer or qualified IDQS would not be able to comply with the information review requirement under the amended Rule for securities that lose piggyback eligibility as a result of their issuers' paragraph (b) information not being current and publicly available.

To the extent that paragraph (b) information becomes current and publicly available after the loss of the piggyback exception, a broker-dealer or qualified IDQS would need to comply with the information review requirement in order to be able to publish or submit a quotation for such OTC security.

There were 3,095 securities of issuers of quoted OTC securities in 2019 without current and publicly available information.[581] 946 of these issuers were issuers referenced in paragraph (f)(3)(i)(C)(1) that are delinquent in their filing obligations with the Commission.[582] As is the case in the context of one-way priced quotations, it is unclear whether broker-dealers would conduct the required review for securities of issuers subject to the provision in paragraph (f)(3)(i)(C) that lose piggyback eligibility. Taking a conservative approach in assessing the burden that may arise under this amendment to the piggyback exception, the Commission estimates that broker-dealers would comply with the information review requirement once annually for each such security that would lose piggyback eligibility. Accordingly, this amendment would increase burdens by 17,789 hours.[583]

The Commission is revising the estimates of current burdens of the information review requirement based on the provision in paragraph (f)(3)(i)(B) of the amended Rule, which eliminates piggyback eligibility for quotations for securities of shell companies that are published or submitted 18 months following the publication or submission of the initial priced quotation for such issuer's security in an IDQS and for securities within 60 calendar days following a trading suspension under Section 12(k) of the Exchange Act. With respect to shell companies, as stated in the Economic Analysis, the Commission believes that approximately 460 securities of shell companies that are quoted in the OTC market would lose piggyback eligibility. The Commission also believes that there are approximately 219 securities that were piggyback eligible within 60 calendar days following a trading suspension under Section 12(k) of the Exchange Act. As is the case in the context of one-way priced quotations, it is unclear whether broker-dealers would conduct the required review for securities of issuers subject to the provision in paragraph (f)(3)(i)(B) that lose piggyback eligibility. Taking a conservative approach in assessing the burden that may arise under this amendment to the piggyback exception, the Commission estimates that broker-dealers would comply with the information review requirement once annually for each such security that would lose piggyback eligibility. Accordingly, this amendment would increase burdens by 2,829 hours.[584]

[577] As discussed in Part II.D.2 above, after considering the comments, and in conjunction with the other requirements to the piggyback exception and SRO rules that apply to the quotations of a broker-dealer as a regulated entity, the Commission determined to narrowly tailor this part of the piggyback exception to require a one-sided priced quotation rather than a two-sided priced quotation, as proposed.

[578] The amended Rule, unlike the proposed Rule, permits broker-dealers to rely on the piggyback exception based on at least a one-way (rather than a two-way) priced quotation, as long as there are no more than four business days in succession without a quotation. *See, e.g., supra* Part II.D.2; *infra* Part VI.C.1.b. This modification increases the size of the subset of piggyback eligible quoted OTC securities, as reflected in these estimates.

[579] The Commission believes that this conservative approach is reasonable because it accounts for all securities that may lose piggyback eligibility under this amendment. While broker-dealers may not comply with the information review requirement for every security that loses piggyback eligibility, broker-dealers may comply with the requirement multiple times regarding the same issuer. Therefore, the Commission believes that this reasonably approximates the impact of the amendments industry-wide.

[580] The total annual burden is computed as follows: (88 prospectus, Reg. A, or reporting issuers × 3 hours) + (143 exempt foreign private issuers × 7 hours) + (33 catch-all issuers × 7 hours review and recordkeeping) = (264 hours) + (1,001 hours) + (231 hours) = 1,496 hours.

[581] This total consists of 969 securities of SEC reporting companies (including issuers that make filings pursuant to Regulation Crowdfunding)/Reg. A issuers/other reporting issuers, 85 foreign private issuers, and 2,041 catch-all issuers.

[582] For purposes of the PRA analysis, the Commission assumes that each delinquent filer has not timely filed a quarterly, semi-annual, or annual report, or filed a required report, within 180 calendar days from the end of a reporting period.

[583] (969 securities of SEC reporting companies/Reg. A issuers/other reporting issuers × 3 hours review and recordkeeping) + (85 foreign private issuers × 7 hours review and recordkeeping) + (2,041 catch-all issuers × 7 hours review and recordkeeping) = (2,907) + (595) + (14,287) = 17,789 hours.

[584] There were no securities of foreign issuers in either category below.

For securities of shell companies: (306 securities of SEC reporting companies/Reg. A issuers/other reporting issuers × 3 hours review and

In summary, the amendments to the piggyback exception would impact the burdens associated with the information review requirement in various ways. Paragraph (f)(3)(i)(A) of the amended Rule permits broker-dealers to piggyback on one-way priced quotations. The Commission estimates that this amendment would increase the annual burden by 1,496 hours. The provision in paragraph (f)(3)(i)(C) of the amended Rule permits broker-dealers to piggyback quotations of the securities of certain issuers only if paragraph (b) information is, depending on the regulatory status of the issuer, (1) current and publicly available, (2) timely filed, or (3) filed within 180 calendar days from a specified period. The Commission estimates that this amendment would increase the annual burden by 17,789 hours. The provision in paragraph (f)(3)(i)(B) of the amended Rule eliminates piggyback eligibility for quotations for securities of shell companies that are published or submitted 18 months following the publication or submission of the initial priced quotation for such issuer's security in an IDQS and for securities within 60 calendar days following a trading suspension under Section 12(k) of the Exchange Act. The Commission estimates that this amendment would increase the annual burden by 2,829 hours.

(b) Other Amendments

Amendments to the Rule create a new exception that is intended to reduce burdens related to publishing or submitting quotations for OTC securities that are highly liquid and of an issuer that is well-capitalized. Specifically, paragraph (f)(5) of the amended Rule provides an exception for securities with a worldwide ADTV value of at least $100,000 during the 60 calendar days immediately before the date of the publication of a quotation for such security, and of an issuer with $50 million in total assets and $10 million in shareholder's equity as reflected in the issuer's publicly available audited balance sheet issued within six months after the end of its most recent fiscal year. The amendment is estimated to reduce the burden of information collection by creating an exception from the information review requirement under the Rule for broker-dealers publishing or submitting quotations for OTC securities that are less susceptible to fraud or manipulation.

The Commission estimates that approximately 180 of quoted OTC securities on an average day during calendar year 2019 would be eligible for the ADTV and asset test exception set forth in paragraph (f)(5) of the amended Rule.[585] Approximately 35 percent (63) of these are securities of reporting issuers, approximately 63 percent (113) are securities of exempt foreign issuers, and approximately two percent (4) are securities of catch-all issuers.[586] From this number of excepted securities (180) and the total number of quoted OTC securities (11,542), it can be estimated that the amendments would reduce the number of times broker-dealers conduct the required review by approximately 1.6 percent annually. Therefore, after rounding, the Commission estimates that the exceptions would reduce the number of times broker-dealers conduct the required review by six per year,[587] twice with respect to securities of reporting issuers and four times with respect to securities of exempt foreign issuers and catch-all issuers,[588] resulting in a total reduction of 34 burden hours per year.[589]

The Commission also believes, however, that amendments to other Rule exceptions—namely, those set forth in paragraphs (f)(2)(ii) and (f)(6) of the amended Rule—do not impact the burden of the information review requirement. More specifically, paragraph (f)(2)(ii) of the amended Rule, which provides an exception for a broker-dealer to publish or submit a quotation by or on behalf of certain company insiders and affiliates of the issuer in reliance on the unsolicited quotation exception only if paragraph (b) information is current and publicly available,[590] limits the availability of the unsolicited quotation exception in certain circumstances. This amendment would not decrease the burden of the information review requirement, however, because under paragraph (f)(2) of the former Rule, broker-dealers were not required to conduct an information review before publishing or submitting a quotation that represented a customer's unsolicited indication of interest. Nor would this amendment increase the burden of the information review requirement: If the unsolicited quotation exception becomes unavailable due to this amendment, broker-dealers would not be able to comply with the information review requirement as an alternative to utilizing this exception because current and publicly available information is a condition of the information review requirement in paragraphs (a)(1)(ii) and (a)(2)(ii) of the amended Rule.[591]

Further, paragraph (f)(6) of the amended Rule provides an exception from the information review requirement for certain quotations of broker-dealers named as underwriters in the registration statement or offering statement of a security within the time frames specified in paragraphs (b)(1) or (b)(2) of the amended Rule, as applicable. The Commission believes that no broker-dealer would be required to comply with the information review requirement for quoted OTC securities that meet the requirements of the underwriter exception. While it is estimated that this amendment would result in a slight reduction in the number of times broker-dealers comply with the information review requirement annually, out of an abundance of caution given the lack of granular data, the Commission has not decreased the overall burden estimates associated with the information review requirement as a result of the underwritten offering exception provided in paragraph (f)(6) of the amended Rule.

recordkeeping) + (154 catch-all issuers × 7 hours review and recordkeeping) = (918) + (1,078) = 1,996 hours.

For securities subject to trading suspensions: (175 securities of SEC reporting companies/Reg. A issuers/other reporting issuers × 3 hours review and recordkeeping) + (44 catch-all issuers × 7 hours review and recordkeeping) = (525) + (308) = 833 hours.

Grand total: (1,996) + (833) = 2,829 hours.

[585] *See infra* Part VI.C.1.c.

[586] *See infra* Part VI.C.1.c.

[587] 384 completions of the information review requirement × 1.6% = 6.

[588] 6 × 35% for reporting issuers and 6 × 65% for exempt foreign issuers and catch-all issuers.

[589] [2 (regarding securities of reporting issuer) × 3 hours] + [4 (regarding securities of exempt foreign issuers and catch-all issuer) × 7 hours] = (6 hours) + (28 hours) = 34 hours.

[590] The burden related to a broker-dealer's determination of whether paragraph (b) is current and publicly available is discussed below.

[591] The unsolicited quotation exception, as adopted, adds the term ''affiliate'' to enhance the investor protections under the proposed amendments by capturing more fully the types of persons with the potential for a heightened incentive to manipulate the price of a security. The addition of the word ''affiliate'' has no impact on the burden of the information review requirement, for the reasons described above.

PRA TABLE 1—SUMMARY OF ESTIMATED BURDENS ASSOCIATED WITH INITIAL PUBLICATION OR SUBMISSION OF A QUOTATION IN A QUOTATION MEDIUM

	Type of issuer	Type of burden	Initial burden [a]	Number of times the specified information is reviewed	Annual burden per response (hours)	Total industry burden (hours)
Baseline Information Review Requirement Burdens.	Information review requirement absent changes [b]					
	Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review ...	0	87	3	261
	Exempt foreign private issuers	Recordkeeping and Review ...	0	253	7	1,771
	Catch-all issuers	Recordkeeping and Review ...	0	44	7	308
Changes to Exceptions	Limiting piggyback exception to at least a bid or offer quotation at a specified price					
	Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review ...	0	88	3	264
	Exempt foreign private issuers	Recordkeeping and Review ...	0	143	7	1,001
	Catch-all issuers	Recordkeeping and Review ...	0	33	7	231
	Requiring publicly available paragraph (b) information within specified time frames for issuers' securities to remain piggyback eligible					
	Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review ...	0	969	3	2,907
	Exempt foreign private issuers	Recordkeeping and Review ...	0	85	7	595
	Catch-all issuers	Recordkeeping and Review ...	0	2,041	7	14,287
	Eliminating piggyback eligibility for securities of shell companies					
	Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review ...	0	306	3	918
	Catch-all issuers	Recordkeeping and Review ...	0	154	7	1,078
	Eliminating piggyback eligibility for securities subject to a trading suspension order					
	Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review ...	0	175	3	525
	Catch-all issuers	Recordkeeping and Review ...	0	44	7	308
	Exception for securities that meet ADTV and asset test (decreases annual burden)					
	Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review ...	0	2	3	6
	Exempt foreign private issuers and catch-all issuers.	Recordkeeping and Review ...	0	4	7	28

[a] As mentioned above, it is not expected that the changes to the information review requirement effected by the amendments would create any initial one-time burden as it is unlikely that broker-dealers would need to modify their systems or conduct training to comply with the information review requirement under the amended Rule.

[b] Because the exception for securities that meet the ADTV and asset tests would decrease the annual burden from the 2019 baseline, the numbers in this section of the chart reflect the number of times the specified information was reviewed in 2019, multiplied by the hourly burden estimates for compliance with the information review requirement.

2. Other Burden Hours

The amendments also create burdens relating to recordkeeping obligations under the amended Rule. The amendments update the recordkeeping requirements under the Rule to require broker-dealers, qualified IDQSs, and registered national securities associations to keep records that demonstrate that the requirements of a Rule exception are met.[592] The types of documentation that a broker-dealer, qualified IDQS, or registered national securities association would need to maintain would vary based upon the exception. Certain exceptions, such as the unsolicited quotation exception,[593] require that paragraph (b) information be current and publicly available. Additionally, the piggyback exception [594] requires that paragraph (b) information be (1) filed within 180 calendar days from the end of a reporting period for issuers referenced in paragraph (f)(3)(i)(C)(1) of the amended Rule, (2) timely filed for issuers referenced in paragraph (f)(3)(i)(C)(2), or (3) current and publicly available for issuers referenced in paragraph (f)(3)(i)(C)(3). Notably, however, the amendments except from these recordkeeping requirements any paragraph (b) information that is available on EDGAR. The Commission believes that the requirement in these exceptions to have paragraph (b) information current and publicly available, timely filed, or filed within 180 calendar days from a specified period would create ongoing recordkeeping burdens for broker-dealers under paragraph (d)(2) of the amended Rule.

As shown in the Table 3 of the Economic Analysis, there are 9,895 unique issuers of quoted OTC securities for which broker-dealers would be required to maintain records to establish that paragraph (b) information is, depending on the regulatory status of the issuer, current and publicly available, timely filed, or filed within 180 calendar days from the specified period. Of these 9,895 issuers, 3,081 are SEC/Reg. A/Bank Reporting Obligation issuers, 4,413 are exempt foreign private issuers, and 2,401 are catch-all issuers.[595] It is estimated that it would take one minute to create documentation regarding the determination that paragraph (b)

[592] Amended Rule 15c2–11(d)(2).

[593] Amended Rule 15c2–11(f)(2).

[594] Amended Rule 15c2–11(f)(3).

[595] *See infra* Part VI.B, Table 3.

information is current and publicly available, timely filed, or filed within 180 calendar days from the specified period, as applicable; and that broker-dealers, qualified IDQSs, and registered national securities associations would create such documentation no more frequently than quarterly for SEC/Reg. A/bank reporting obligation issuers and foreign private issuers,[596] and annually for catch-all issuers.[597] Accordingly, each broker-dealer would spend approximately 540 hours on this task annually, leading to a total annual burden of 44,280 hours dispersed between 80 broker-dealers, one qualified IDQS, and one registered national securities association.[598] The Commission believes that broker-dealers, qualified IDQSs, and a registered national securities association would already have systems and personnel in place to create these records, so the initial burden of putting procedures in place to ensure compliance with the amendments would be one hour of internal cost per broker-dealer, qualified IDQS, and registered national securities association to reprogram systems and capture records pursuant to the recordkeeping requirement, leading to an initial burden of 82 hours for the industry. Adding these values together, it is estimated that the total industry-wide burden for this documentation requirement would be 44,362 hours for the first year, and 44,280 hours annually going forward.

The amendments would also create ongoing recordkeeping burdens for broker-dealers relying on exceptions under paragraphs (f)(2), (f)(3), (f)(5), (f)(6), or relying on a qualified IDQS's publicly available determination that it has complied with the information review requirement of the amended Rule (pursuant to paragraph (a)(1)(ii)).[599]

(a) Unsolicited Quotation Exception—Rule 15c2–11(f)(2)

Although there is current and publicly available information for many issuers of securities involving unsolicited customer order quotations, out of an abundance of caution, the Commission is basing its estimate of recordkeeping obligations under this exception on data regarding all unsolicited customer quotations, and assuming that the number would remain consistent on an annual basis. According to OTC Markets Group data, there were 5,782,286 quotations published in reliance on the unsolicited quotation exception in 2019. Therefore, it is estimated that there would be 5,782,286 quotations published in reliance on the unsolicited quotation exception annually that would require documentation and information to demonstrate that the quotation is not by or on behalf of a company insider or an affiliate of the issuer.

Further, it is estimated that it would take a broker-dealer approximately one minute to create a record regarding such unsolicited customer quotation or, pursuant to paragraph (f)(2)(iii) of the amended Rule, to review and document the written representation of a customer's broker that the quotation is not on behalf of a company insider or an affiliate of the issuer. Accordingly, it is estimated that annually, broker-dealers would spend approximately 96,371 hours[600] in the aggregate (after rounding) complying with this recordkeeping requirement. These 96,371 hours would be dispersed between 80 broker-dealers, leading to an annual burden of approximately 1,205 hours per broker-dealer.[601]

The Commission believes that broker-dealers would already have administrative systems and procedures, as well as personnel, in place to document and record the circumstances involved in unsolicited customer quotations, and that the initial burden of putting procedures in place to ensure compliance with this amendment would be three hours of internal burden per broker-dealer to reprogram systems and capture the requisite records relating to unsolicited quotations,[602] leading to an initial burden of 240 hours for the industry.[603] Adding these values together, it is estimated that the total industry-wide burden for this documentation requirement would be 96,611 hours for the first year, and 96,371 hours annually going forward.

(b) Piggyback Exception—Rule 15c2–11(f)(3)

The piggyback exception requires that there be no more than four business days in succession without a bid or offer priced quotation. To comply with the recordkeeping requirement in paragraph (d)(2) of the amended Rule, broker-dealers relying on the piggyback exception, and each qualified IDQS or registered national securities association that makes publicly available determinations regarding the availability of the piggyback exception, must preserve documents and

[596] The amended Rule defines ''current'' to mean, for the documents and information specified in paragraph (b)(3) of the amended Rule, the most recently required annual report or statement filed pursuant to Section 13 or 15(d) of the Exchange Act and any rule(s) thereunder, Regulation A, Regulation Crowdfunding, or section 12(g)(2)(g) of the Exchange Act, together with any subsequently required periodic reports or statements, filed pursuant to section 13 or 15(d) of the Act and any rule(s) thereunder, Regulation A, Regulation Crowdfunding, or Section 12(G)(2)(g) of the Exchange Act. Accordingly, the definition of ''current'' includes quarterly reports, as well as semi-annual reports, depending on the issuer's reporting obligations. Paragraph (b)(4) of the amended Rule provides a similar standard for exempt foreign private issuer information, and calls for the information the issuer has published pursuant to 12g3–2(b) since the first day of the issuer's most recently completed fiscal year. The Commission expects that respondents will preserve records to document compliance with this requirement on a quarterly basis to capture quarterly reporting for these issuers. For purposes of this PRA analysis, the Commission has adopted a more conservative approach of grouping Reg. A issuers, which have a semi-annual obligation, with issuers with quarterly reporting obligations.

[597] Paragraph (b)(5)(i) of the amended Rule requires that the catch-all issuer information be as of a date within twelve months before the publication or submission of the quotation, except for certain financial information: A balance sheet (as of a date less than 16 months before the publication or submission of a broker-dealer's quotation) and profit and loss and retained earnings statements (for the 12 months preceding the date of the most recent balance sheet). *See supra* Part II.B.3.

[598] [(3081 SEC/Reg. A/Bank Reporting Obligation issuers × 1 minute × 4 responses per year) + (4,413 exempt foreign private issuers × 1 minute × 4 responses per year) + (2,401 catch-all issuers × 1 minute × 1 response per year)]/60 = (12,324 + 17,652 + 2,401)/60 = 540 hours.

[599] As discussed in Part II.A.3 above, the amendments collapse the exception in proposed paragraph (f)(7) into an unlawful activity provision of the amended Rule, paragraph (a)(1)(ii).

[600] (5,782,286 quotations × 1 minute)/60 minutes = 96,371 hours.

[601] 96,371 hours/80 broker-dealers = 1,205 hours.

[602] This three-hour burden estimate to reprogram systems and capture records regarding the unsolicited quotation exception is separate from the information review requirement discussed in Part V.C.1, and is analogous to the time burden estimates in the 2010 amendments to Regulation SHO. *See Amendments to Regulation SHO,* Exchange Act Release No. 61595, at 183, 193 (Feb. 26, 2010), 75 FR 11232, 11283, 11286 (May 10, 2010) (''Regulation SHO Release'') (describing ongoing internal compliance time for SROs and ''non-SRO trading centers'' to ensure that their existing written policies and procedures are up-to-date and remain in compliance with 2010 amendments to Rule 201 of Regulation SHO).

[603] Supplemental Material .01 to FINRA Rule 6432 requires that broker-dealers initiating or resuming quotations in reliance on the exception provided by Rule 15c2–11(f)(2) (*i.e.,* the unsolicited quotation exception) must be able to demonstrate eligibility for the exception by making a contemporaneous record of (1) the identification of each associated person who receives the unsolicited customer order or indication of interest directly from the customer, if applicable; (2) the identity of the customer; (3) the date and time the unsolicited customer order or indication of interest was received; and (4) the terms of the unsolicited customer order or indication of interest that is the subject of the quotation (*e.g.,* security name and symbol, size, side of the market, duration (if specified) and, if priced, the price). Given this FINRA recordkeeping requirement, the Commission believes that broker-dealers will already have systems in place to document information related to the unsolicited quotation exception.

information regarding this frequency of priced bid or offer quotation requirement. The Commission estimates that broker-dealers, qualified IDQSs, and registered national securities associations would make determinations regarding the frequency of quotation requirement once per trading day.

Further, it is estimated that it would take a broker-dealer, a qualified IDQS, or a registered national securities association approximately one second to create a record regarding the frequency of a priced bid or offer quotation, pursuant to paragraph (f)(3)(i) of the amended Rule. The Commission believes that one second is an appropriate estimate regarding the time it will take to create such a record because the Commission believes that such a record will be created through an automated process that will require minimal direct human intervention, if any. Accordingly, it is estimated that, annually, broker-dealers, qualified IDQSs, and a registered national securities association would spend approximately 66,251 hours [604] in the aggregate (after rounding) complying with this recordkeeping requirement. These 66,251 hours would be dispersed between 80 broker-dealers, one qualified IDQS, and one registered national securities association leading to an annual burden of approximately 808 hours per entity.[605] The Commission believes that broker-dealers, qualified IDQSs, and a registered national securities association already have administrative systems and procedures, as well as personnel, in place to create these records, so the initial burden of putting procedures in place to ensure compliance with the amendments would be three hours of internal burden per broker-dealer, qualified IDQS, and registered national securities association leading to an initial burden of 246 hours for these market participants to reprogram systems and capture the record relating the frequency of a priced bid or offer quotation.[606] Adding these values together, it is estimated that the total industry-wide burden for this documentation requirement would be 66,497 hours for the first year, and 66,251 hours annually going forward.

A provision in paragraph (f)(3)(i)(B) of the amended Rule eliminates piggyback eligibility for quotations for securities of shell companies that are published or submitted 18 months following the publication or submission of the initial priced quotation for such issuer's security in an IDQS. To comply with the recordkeeping requirement in paragraph (d)(2) of the amended Rule, each broker-dealer relying on the piggyback exception, and each qualified IDQS or registered national securities association that makes publicly available determinations regarding the availability of the piggyback exception, must preserve documents and information regarding its determination that the issuer of a security is not a shell company. The Commission estimates that broker-dealers, qualified IDQSs, and registered national securities associations would make determinations regarding shell companies based on how frequently information for that issuer is filed or made current and publicly available. For example, a broker-dealer, qualified IDQS, or registered national securities association may determine that a reporting issuer is a shell company when its annual or periodic reports are filed. Similarly, a broker-dealer, qualified IDQS, or registered national securities association may determine that a catch-all issuer is a shell company on an annual basis.[607]

The Commission estimates that broker-dealers, qualified IDQSs, and registered national securities associations would each spend, on average, one minute making a determination and preserving documents and information that demonstrate that an issuer of the OTC security is not a shell company. As stated above, one commenter stated that the Commission significantly underestimated the amount of time it would take a broker-dealer to determine whether an issuer is a shell company.[608] Recognizing that there may be wide disparities in the time it may take to determine whether an issuer is a shell company, the Commission continues to believe that this one minute average estimate is correct for the PRA analysis.

Broker-dealers currently rely on the piggyback exception to publish quotations for 9,895 individual issuers. The time it takes to determine whether an individual issuer is a shell company varies, however, depending on whether the issuer discloses its shell company status. In some instances, it may take less than one minute to assess whether a company is a shell company, while in other instances, it may take longer than one minute.[609] As discussed above, a broker-dealer, qualified IDQS, or registered national securities association may rely on an issuer's self-identification as a shell company in its review of the issuer's documents and information, for example, as specified in paragraph (b)(5)(i)(H) of the amended Rule regarding a description of the issuer's business.[610] In such instances, broker-dealers, qualified IDQSs, and registered national securities associations will not need to conduct a detailed analysis regarding whether an issuer is a shell company for purposes of the piggyback exception based on the issuer's representation that it is (or is not) a shell company. The Commission believes that broker-dealers will have access to such statements made by issuers regarding shell company status in circumstances in which the issuer has an obligation to disclose its shell company status under the Federal securities laws,[611] or when the issuer opts to reduce burdens on broker-dealers by disclosing shell company status to facilitate broker-dealers maintaining a quoted market in the securities of the issuer. For the foregoing reasons the Commission believes that one minute is an appropriate average estimated length of time to review and create a record of whether an issuer is a shell company.

As stated in the Economic Analysis, there are 9,895 issuers of quoted OTC securities.[612] Accordingly, each broker-

[604] (80 broker-dealers + 1 qualified IDQS + 1 registered national securities association) × (1/3600 (one second)) × (252 trading days per year) × (11,542 securities) = 66,251 hours.

[605] 66,251 hours/(80 broker-dealers + 1 qualified IDQS + 1 registered national securities association) = 808 hours.

[606] This three-hour burden estimate to reprogram systems and capture records regarding the frequency of priced bid or offer quotations is separate from the information review requirement discussed in Part V.C.1, and is analogous to the time burden estimates in the 2010 amendments to Regulation SHO. *See* Regulation SHO Release at 11283, 11286 (describing ongoing internal compliance time for self-regulatory organizations and ''non-SRO trading centers'' to ensure that their existing written policies and procedures are up-to-date and remain in compliance with 2010 amendments to Rule 201 of Regulation SHO).

[607] As discussed in Part II.I above, paragraph (d)(2) of the amended Rule requires broker-dealers, qualified IDQSs, and registered national securities associations to preserve only documents and information ''that demonstrate that the requirements for an exception under paragraph (f)(2), (f)(3), (f)(5), (f)(6), or (f)(7)'' are met. Accordingly, the Commission believes that while it may be likely that broker-dealers document the availability of this exception quarterly, they may do so more or less often in practice.

[608] *See* Leonard Burningham Letters.

[609] This estimate is analogous to the estimate of de minimis amounts of time necessary to collect identifying information about customers in circumstances in which broker-dealers already obtain the specified information about their customers. *See Joint Final Rule: Customer Identification Programs for Broker-Dealers,* Exchange Act Release No. 47752 (Apr. 29, 2003), 68 FR 25113, 25127 n.160 (noting that requiring identifying information about customers ''should not impose a significant additional burden'').

[610] *See* Part II.J.2.

[611] *See, e.g.,* Forms 10–K, 10–Q, 1–A, and C.

[612] Some broker-dealers may not provide quotations for all OTC securities. Taking a

dealer would spend approximately 540 hours[613] on this task annually, leading to a total annual burden of 44,280 hours dispersed between 80 broker-dealers, one qualified IDQS, and one registered national securities association. The Commission believes that broker-dealers already have administrative systems and procedures, as well as personnel, in place to create these records, and that the initial burden of putting procedures in place to ensure compliance with the amendments would be three hours of internal burden per broker-dealer, qualified IDQS, and registered national securities association leading to an initial burden of 246 hours for the industry to reprogram systems and capture the record relating to the determination an issuer's shell company status.[614] Adding these values together, it is estimated that the total industry-wide burden for this documentation requirement would be 44,526 hours for the first year, and 44,280 hours annually going forward.

The amended Rule also limits the ability of a broker-dealer to rely on the piggyback exception with respect to a security that is the subject of a trading suspension order issued by the Commission pursuant to section 12(k) of the Exchange Act until 60 calendar days after the expiration of such order. The Commission believes that a broker-dealer, qualified IDQS, or registered national securities association would only create records for securities that have been the subject of a trading suspension issued by the Commission pursuant to section 12(k). In 2019, the Commission issued a trading suspension for 213 securities. Further, it is estimated that it would take a broker-dealer, qualified IDQS, or registered national securities association approximately one minute to create a record regarding whether a security has been subject to a trading suspension. Accordingly, it is estimated that, annually, broker-dealers, qualified IDQSs, and registered national securities associations would spend approximately 291 hours[615] in the aggregate (after rounding) complying with this recordkeeping requirement. These 291 hours would be dispersed among 80 broker-dealers, one qualified IDQS, and one registered national securities association leading to an annual burden of approximately 4 hours (after rounding) per entity.[616]

The Commission believes that broker-dealers, qualified IDQSs, and registered national securities associations already have administrative systems and procedures as well as personnel in place to create records regarding whether a security has been subject to a trading suspension, and that the initial burden of putting procedures in place to ensure compliance with the amendments would be three hours of internal burden per broker-dealer, qualified IDQS, and registered national securities association, leading to an initial burden of 246 hours for these market participants to reprogram systems and capture the record relating to the prohibition for reliance on the piggyback exception until 60 calendar days after the expiration of a Commission trading suspension order issued pursuant to section 12(k) of the Exchange Act.[617] Adding these values together, it is estimated that the total industry-wide burden for this documentation requirement would be 537 hours for the first year, and 291 hours annually going forward.

(c) ADTV and Asset Test Exception—Rule 15c2–11(f)(5)

As stated in the Economic Analysis, it is estimated that there would be approximately 180 securities that would meet the amended Rule paragraph (f)(5) ADTV and asset tests. In addition to preserving documents and information that demonstrate paragraph (b) information is current and publicly available, as discussed above, the broker-dealer, qualified IDQS, or registered national securities association would need to preserve documents and information that demonstrate that the various requirements of the ADTV test and asset test have been met. It is estimated that it would take one minute to create documentation supporting the broker-dealer's reliance on the asset test prong of the exception and that broker-dealers would do this once annually per issuer.[618] Accordingly, broker-dealers, qualified IDQSs, and registered national securities associations would spend approximately 3 hours[619] on this information collection annually, leading to an ongoing burden of approximately 246 hours dispersed between 80 broker-dealers, one qualified IDQS, and one registered national securities association.

Additionally, the Commission estimates that it would take one minute for a broker-dealer, qualified IDQS, or registered national securities association to preserve documents and information that demonstrate that the requirements of the ADTV test have been met and that each respondent would do this 252 times a year (*i.e.,* each trading day). Accordingly, each respondent would spend approximately 756 hours[620] on this information collection annually, leading to an ongoing burden of approximately 61,992 hours dispersed between 80 broker-dealers, one qualified IDQS, and one registered national securities association. The Commission believes that broker-dealers, the qualified IDQS, and the registered national securities association would already have administrative systems and procedures, as well as personnel, in place to create these records, and that the initial burden of putting procedures in place to ensure compliance would be three hours of internal burden per broker-dealer, qualified IDQS, and registered national securities association, leading to an initial burden of 246 hours for the industry to reprogram systems and capture the record regarding whether the requirements of the ADTV and asset

conservative approach, however, the Commission estimates that each broker-dealer would determine the shell status of each issuer of a quoted OTC security on a quarterly basis.

[613] [(3081 SEC/Reg. A/Bank Reporting Obligation issuers × 1 minute × 4 responses per year) + (4,413 exempt foreign private issuers × 1 minute × 4 responses per year) + (2,401 catch-all issuers × 1 minute × 1 response per year)]/60 = (12,324 + 17,652 + 2,401)/60 = 540 hours.

[614] This three-hour burden estimate to reprogram systems and capture records regarding the determination of shell company status is separate from the information review requirement discussed in Part V.C.1, and is analogous to the time burden estimates in the 2010 amendments to Regulation SHO. *See* Regulation SHO Release at 11283, 11286 (describing ongoing internal compliance time for self-regulatory organizations and ''non-SRO trading centers'' to ensure that their existing written policies and procedures are up-to-date and remain in compliance with 2010 amendments to Rule 201 of Regulation SHO).

[615] (80 broker-dealers + 1 qualified IDQS + 1 registered national securities association) × (1/60 hour) × (213 securities) = 291 hours.

[616] 291 hours/(80 broker-dealers + 1 qualified IDQS + 1 registered national securities association) = 4 hours.

[617] This three-hour burden estimate to reprogram systems and capture records regarding trading suspensions is separate from the information review requirement discussed in Part V.C.1, and is analogous to the time burden estimates in the 2010 amendments to Regulation SHO. *See* Regulation SHO Release (describing ongoing internal compliance time for self-regulatory organizations and ''non-SRO trading centers'' to ensure that their existing written policies and procedures are up-to-date and remain in compliance with 2010 amendments to Rule 201 of Regulation SHO).

[618] As discussed in Part II.I above, paragraph (d)(2) of the amended Rule requires broker-dealers, qualified IDQSs, and registered national securities associations to preserve only documents and information ''that demonstrate that the requirements for an exception under paragraph (f)(2), (f)(3), (f)(5), (f)(6), or (f)(7) are met.'' Accordingly, the Commission believes that broker-dealers would likely document the availability of this exception annually because the test is based on audited balance sheets issues within six months of the end of the most recent fiscal year.

[619] (180 securities × 1 minute)/60 minutes = 3 hours.

[620] (252 trading days per year × 180 securities × 1 minute)/60 minutes = 756 hours.

tests have been met.[621] Adding these values together, it is estimated that, after rounding, the total industry-wide requirement would be 62,238 hours for the first year, and 61,992 hours annually going forward.

(d) Underwritten Offering Exception—Rule 15c2–11(f)(6)

Paragraph (f)(6) of the amended Rule excepts from the information review requirement quotations for a security by a broker-dealer that is named as underwriter in a security's registration statement referenced in paragraph (b)(1) or in an offering statement referenced in paragraph (b)(2) of the amended Rule, subject to the time limitations contained in those sections of the amended Rule. Registration statements and offering statements are filed in EDGAR. Because the provision in paragraph (d)(2)(ii) of the amended Rule does not require broker-dealers to preserve paragraph (b) information that is available on EDGAR, the Commission is not estimating any initial or ongoing recordkeeping burden to be associated with this exception.

(e) Exchange-Traded Security Exception and Municipal Security Exception—Rule 15c2–11(f)(1), (f)(4)

Amendments to the amended Rule provide exceptions for quotations for: (1) A security admitted to trading on a national securities exchange and which is traded on such an exchange on the same day as, or on the business day immediately preceding, the day of the quote (paragraph (f)(1)), and (2) a municipal security (paragraph (f)(4)). The Commission is not estimating any initial or ongoing burden with respect to these exceptions because the provision in paragraph (d)(2) of the amended Rule does not require broker-dealers, qualified IDQSs, or registered national securities association to preserve records under paragraph (d)(2) for the paragraph (f)(1) or paragraph (f)(4) exceptions.

(f) Broker-Dealer That Publishes a Qualified IDQS Review Quotation—Rule 15c2–11(a)(1)(ii)

Paragraph (a)(1)(ii) of the amended Rule allows broker-dealers to rely on a qualified IDQS's publicly available determination that it complied with the information review requirement. Paragraph (d)(1)(ii) of the amended Rule requires that broker-dealers maintain a record of the name of the qualified IDQS that made such publicly available determination. It is unclear for how many OTC securities qualified IDQSs might choose to comply with the information review requirement under the amended Rule.

This provision, which collapses the proposed qualified IDQS review exception into an unlawful activity provision of the amended Rule, pertains to the application of the information review requirement with respect to certain securities that are less likely to be targeted for fraudulent activity (*e.g.,* securities of large cap foreign issuers). The Commission conservatively estimates that qualified IDQSs would conduct the required review for five percent of this subset of quoted OTC securities[622] and that each broker-dealer would document its reliance on a qualified IDQS's compliance with the information review requirement once per year per issuer.[623] Assuming that the information required to document compliance with the information review requirement for this subset of OTC securities would be publicly available, the Commission estimates that each broker-dealer would spend approximately one minute creating each record. Accordingly, broker-dealers would spend approximately 0.22 hours[624] on this information collection annually leading to an ongoing burden of approximately 18 hours (after rounding)[625] dispersed between 80 broker-dealers. The Commission believes that broker-dealers would already have administrative systems and procedures, as well as personnel, in place to create these records, and that the initial burden of putting procedures in place to ensure compliance with the amendments would be three hours of internal burden per broker-dealer leading to an initial burden of 240 hours for the industry to reprogram systems and capture the record documenting its reliance the publicly available determination by a qualified IDQS that such qualified IDQS complied with the information review requirement.[626] Adding these values together, it is estimated that the total industry-wide burden for this documentation requirement would be 258 hours for the first year, and 18 hours annually going forward.

(g) Policies and Procedures for a Qualified IDQS or Registered National Securities Association To Make a Publicly Available Determination—Rule 15c2–11(a)(3)

Under the amended Rule, a qualified IDQS or registered national securities association must establish, maintain, and enforce reasonably designed written policies and procedures to make certain publicly available determinations.[627] The Commission estimates that it would take one qualified IDQS and one registered national securities association subject to the amended Rule approximately 18 hours of initial burden each to initially prepare these written policies and procedures, and an ongoing annual burden of 10 hours each to review and update policies and procedures. Given the sophistication of the qualified IDQS and the registered national securities association, the Commission estimates that this burden would be borne internally. Accordingly, the total industry-wide burden for this documentation requirement would be

[621] This three-hour burden estimate to reprogram systems and capture records regarding ADTV and asset tests is separate from the information review requirement discussed in Part V.C.1, and is analogous to the time burden estimates in the 2010 amendments to Regulation SHO. *See* Regulation SHO Release at 11283, 11286 (describing ongoing internal compliance time for self-regulatory organizations and ''non-SRO trading centers'' to ensure that their existing written policies and procedures are up-to-date and remain in compliance with 2010 amendments to Rule 201 of Regulation SHO).

[622] According to FINRA Form 211 data, broker-dealers complied with the information review requirement 384 times, five percent of which, after rounding, is 19 issuers. The Commission believes that, given the relatively large number of foreign issuers of quoted OTC securities, five percent is a reasonable estimate for the proportion of securities that would be reviewed by qualified IDQSs.

[623] As discussed in Part II.A.3 above, under the amended Rule, broker-dealers can only rely on this provision for a limited period of time. The Commission, therefore, estimates that the securities that are quoted under this provision would either become eligible for the piggyback exception or would not be eligible for quotations for the remainder of the year given the lack of interest in the market.

[624] 13 issuers × 1 minute = 13 minutes or 0.22 hours.

[625] 0.22 hours × 80 broker-dealers = 18 hours.

[626] This three-hour burden estimate to reprogram systems and capture records regarding publicly available determinations that a qualified IDQS complied with the information review requirement is separate from the information review requirement discussed in Part V.C.1, and is analogous to the time burden estimates in the 2010 amendments to Regulation SHO. *See* Regulation SHO Release at 11283, 11286 (describing ongoing internal compliance time for self-regulatory organizations and ''non-SRO trading centers'' to ensure that their existing written policies and procedures are up-to-date and remain in compliance with 2010 amendments to Rule 201 of Regulation SHO).

[627] Amended Rule 15c2–11(a)(3). The amended Rule replaces the proposed requirement that a qualified IDQS or registered national securities association make a publicly available determination that it has reasonably designed written policies and procedures, with a requirement that such an entity establish, maintain, and enforce reasonably designed policies and procedures to make certain publicly available determinations—namely, whether issuer information is current and publicly available, and, in some instances, whether the requirements of an exception under the Rule are met. *See supra* Part II.A.4. The time burden under both the proposed requirement and the requirement under the amended Rule is the same—the time to initially prepare such written policies and procedures, and any ongoing annual burden to review and update such policies and procedures.

36 hours for the first year, and 20 hours annually going forward.

(h) Broker-Dealer Recordkeeping in Reliance on Publicly Available Determinations by a Qualified IDQS or Registered National Securities Association—Rule 15c2–11(d)(2)(ii)

Paragraph (d)(2)(ii) of the amended Rule requires broker-dealers that rely on publicly available determinations described in paragraph (f)(2)(iii)(B) or (f)(3)(ii)(A) to preserve the name of the qualified IDQS or registered national securities association that made such a determination. Paragraph (d)(2)(ii) of the amended Rule also requires that broker-dealers that rely on publicly available determinations described in paragraph (f)(7) of the amended Rule preserve a record of the exception upon which the broker-dealer is relying and the name of the qualified IDQS or registered national securities association that determined that the requirements of that exception are met. The Commission estimates that broker-dealers would create documents as required by paragraph (d)(2)(ii) each trading day. The Commission estimates that each broker-dealer would spend approximately one second creating such a record. The Commission believes that one second is an appropriate estimate regarding the time it will take to create such a record because the Commission believes that such a record will be created through an automated process that will require minimal direct human intervention, if any. Accordingly, broker-dealers would spend approximately 808 hours [628] on this information collection annually leading to an ongoing burden of approximately 64,635 hours [629] dispersed between 80 broker-dealers. The Commission believes that broker-dealers would already have administrative systems and procedures, as well as personnel, in place to create these records, and that the initial burden of putting procedures in place to ensure compliance with the recordkeeping requirement under paragraph (d)(2)(ii) would be three hours of internal cost per broker-dealer leading to an initial burden of 240 hours for the industry to reprogram systems and capture the record documenting its reliance the publicly available determination by a qualified IDQS or registered national securities association.[630] Adding these values together, it is estimated that the total industry-wide burden for this documentation requirement would be 64,875 hours for the first year, and 64,635 hours annually going forward.

PRA TABLE 2—SUMMARY OF ESTIMATED OTHER BURDENS

Requirement	Type of burden	Number of entities impacted	Total initial industry burden	Total annual industry burden
Recordkeeping when relying on an exception under paragraph (f), that paragraph (b) information is current and publicly available.	Recordkeeping	82	82	44,280
Recordkeeping obligations under unsolicited quotation exception under paragraph (f)(2).	Recordkeeping	80	240	96,371
Recordkeeping obligations regarding frequency of a priced bid or offer quotation under paragraph (f)(3)(i)(A).	Recordkeeping	82	246	66,251
Recordkeeping obligations regarding determining shell status under the provision in paragraph (f)(3)(i)(B).	Recordkeeping	82	246	44,280
Recordkeeping obligations regarding trading suspensions under the provision in paragraph (f)(3)(i)(B).	Recordkeeping	82	246	291
Recordkeeping obligations for the exceptions under paragraph (f)(5)—Asset Test.	Recordkeeping	82	246	246
Recordkeeping obligations for the exceptions under paragraph (f)(5)—ADTV Test.	Recordkeeping	82	0	61,992
Recordkeeping obligations of qualified IDQS complying with information review requirement pursuant to paragraph (a)(2).	Recordkeeping	80	240	18
Recordkeeping obligations related to the creation of reasonable written policies and procedures under paragraph (a)(3).	Recordkeeping	2	36	20
Recordkeeping obligations of broker-dealers relying on publicly available determinations by qualified IDQSs or registered national securities associations pursuant to paragraph (d)(2)(ii).	Recordkeeping	80	240	64,635

3. Collection of Information Is Mandatory

The information collections for the information review requirement and recordkeeping requirement are mandatory under the amendments to the Rule if a broker-dealer wishes to provide the initial publication or submission of a quotation for an OTC security. Additionally, the information collections involving documentation and information that demonstrate that the requirements for an exception have been met are mandatory under the amendments if a broker-dealer submits or publishes quotations that rely on an exception in paragraph (f) of the amended Rule.

4. Confidentiality

The Commission would not typically receive confidential information as a result of this collection of information. To the extent that the Commission receives—through its examination and oversight program, through an investigation, or by some other means—records or disclosures from a qualified IDQS or registered broker-dealer that concern the information review requirement and that are not publicly available, such information would be kept confidential, subject to the provisions of applicable law. Likewise, to the extent that the Commission receives—through its examination and oversight program, or through an investigation, or by some other means—

[628] 64,635 hours/80 broker-dealers = 808 hours.

[629] (80 broker-dealers) × (1/3600 (one second)) × (252 trading days per year) × (11,542 securities) = 64,635 hours.

[630] This three-hour burden estimate to reprogram systems and capture records regarding publicly available determinations by a qualified IDQS or registered national securities association is separate from the information review requirement discussed in Part V.C.1, and is analogous to the time burden estimates in the 2010 amendments to Regulation SHO. *See* Regulation SHO Release at 11283, 11286 (describing ongoing internal compliance time for self-regulatory organizations and ''non-SRO trading centers'' to ensure that their existing written policies and procedures are up-to-date and remain in compliance with 2010 amendments to Rule 201 of Regulation SHO).

records from a qualified IDQS, registered national securities association, or registered broker-dealer that are related to reliance on an exception contained in paragraph (f) of the amended Rule and that are not publicly available, such information would be kept confidential, subject to the provisions of applicable law.

5. Retention Period of Recordkeeping Requirement

Under paragraph (d)(1) of the amended Rule, a broker-dealer publishing or submitting a quotation, or a qualified IDQS that makes known to others the quotation of a broker-dealer pursuant to paragraph (a)(2) of the amended Rule, must preserve the documents and information for a period of not less than three years, the first two years in an easily accessible place. Under paragraph (d)(2) of the amended Rule, a broker-dealer publishing or submitting a quotation, or a qualified IDQS, or a registered national securities association that makes a publicly available determination pursuant to paragraphs (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7) of the amended Rule must preserve the documents and information for a period of not less than three years, the first two years in an easily accessible place.

VI. Economic Analysis

A. Background

The amended Rule updates investor protection requirements in light of the substantial reductions in costs for information acquisition and dissemination due to modern technology. These changes are expected to better protect retail investors from incidents of fraud and manipulation in OTC securities, particularly the securities of issuers for which there is no or limited publicly available information. These amendments are also intended to reduce regulatory burdens on broker-dealers for publication of quotations of certain OTC securities that may be less susceptible to potential fraud and manipulation, such as highly liquid securities of certain well-capitalized issuers and securities that were issued in offerings underwritten by the broker-dealer publishing the quote.

The Commission is mindful of the costs imposed by and the benefits obtained from the Commission's rules. Exchange Act Section 3(f) requires the Commission, when engaging in rulemaking that requires consideration or determination of whether an action is necessary or appropriate in the public interest, also to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, Exchange Act Section 23(a)(2) requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition and not to adopt any rule that will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The discussion below addresses the expected economic effects of these amendments, including the likely benefits and costs, as well as the likely effects of the amendments on efficiency, competition, and capital formation. The Commission has, where possible, quantified the economic effects that are expected to result from these amendments in the analysis below. However, the Commission is unable to quantify some of the potential effects discussed below.

First, it is unclear to what extent current and publicly available paragraph (b) information would influence OTC investors' investment decisions and how these decisions might affect the welfare of these investors.[631] In addition, the Commission is unable to estimate certain costs with precision because it lacks data on the degree of activity by and concentration in this market of individual broker-dealers with respect to publishing quotes for OTC securities.[632] Wherever possible, if more precise estimates were not feasible, the Commission has estimated a range or bound associated with the costs of the amendments. Lastly, the Commission is unable to quantify the extent to which the amendments to the Rule would impact entry of issuers into the quoted OTC market or the migration between securities in the quoted OTC market and the grey market, in which trades in OTC securities occur without broker-dealers publishing quotations in a quotation medium. Therefore, much of the discussion below is qualitative in nature, although the Commission describes, where possible, the direction of these effects.

[631] For example, the effect of investment decisions on the welfare of the investor depends on the individual's preference for risk and return. The Commission lacks data not only on the effect of disclosure on investment decisions, but also the preferences of OTC investors.

[632] For example, the Commission lacks data on the number and identities of broker-dealers that are publishing quotes for OTC securities in reliance on the piggyback exception or other exceptions to the Rule; much of the analysis in this release is done at the security- or issuer-level.

B. Baseline and Affected Parties

1. Affected Parties

The final amendments to the Rule would affect broker-dealers that publish or submit quotations for OTC securities. Besides broker-dealers and qualified IDQSs, affected parties include issuers of quoted OTC securities and investors in these securities (either investors already holding a position in OTC securities or those seeking to acquire such a position).[633] The Commission assesses the economic effects of the amendments relative to the baseline of existing requirements and practices in the OTC market. Registered broker-dealers participate in the market for quoted OTC securities by publishing priced and unpriced quotations representing customer interest in trading, executing customer orders, and acting as market makers.[634] OTC Markets Group identifies 80 broker-dealers that are active on the OTC Link ATS in OTC securities.[635] Thirty-four broker-dealers filed at least one FINRA Form 211 in order to initiate the publication or submission of quotations for an OTC security during the calendar year 2019.[636]

[633] The Commission does not have data to estimate the number of investors currently participating in the OTC securities market.

[634] In addition to the Rule, the regulatory baseline includes SRO rules governing the process of broker-dealers' publication of quotations for OTC securities. In particular, FINRA Rule 6432 requires broker-dealers to file Form 211 when initiating or resuming quotations in OTC securities to ensure compliance with the information requirements of the Rule. *See supra* Part II.J.1.

[635] *See Broker-Dealer Directory,* OTC Mkts. Grp. Inc., *https://www.otcmarkets.com/otc-link/broker-dealer-directory* (last visited Apr. 24, 2020, 2:35 PM). The Commission expects that not all of the broker-dealers included in the directory are actively engaged in quoting OTC securities.

[636] The Commission received information on FINRA Form 211 filings from FINRA. The total number of FINRA Form 211 filings for calendar year 2019 was 384 and each broker-dealer filed this form for approximately 11 OTC securities on average. The total number of FINRA Form 211 filings has been declining since 2013, the earliest year of data available to the Commission, when the total number of FINRA Form 211 filings was 830.

One commenter stated that the count of unique broker-dealers filing FINRA Form 211 does not accurately represent the concentration of broker-dealers conducting the initial information review because the vast majority of securities that were approved for trading were foreign securities that were already listed on a foreign exchange. In addition, the commenter stated that only four broker-dealers conducted the initial information review for the remaining domestic issuers and since 2018, three of these broker-dealers have ceased this activity. *See* Coral Capital Letter. Based on information provided by FINRA, 66 percent of FINRA FORM 211 filings were for securities of foreign issuers, and that fraction has been relatively stable since 2013. Further, the commenter's analysis may not fully capture all FINRA Form 211 filing activity because according to data available to the Commission, 28 unique broker-dealers filed these

2. Baseline

(a) OTC Securities

Securities that are quoted on the OTC market differ from those listed on national securities exchanges. In particular, the average OTC security issuer is smaller, and its securities trade less, on average. Table 1 below compares quoted OTC securities to those listed on the New York Stock Exchange (''NYSE'') or Nasdaq.[637] On average, issuers of quoted OTC securities have a lower market capitalization than those with securities that are listed on a national securities exchange.[638] Panel B of Table 1 shows that this difference is more pronounced when companies with securities listed on foreign exchanges, such as the Tokyo Stock Exchange or the TSX Venture Exchange, are excluded from the sample of quoted OTC securities. Further, Table 1 demonstrates that quoted OTC securities are characterized by significantly lower dollar trading volumes than listed stocks, even when comparing securities of similar size as measured by market capitalization.[639]

TABLE 1—COMPARISON OF QUOTED OTC SECURITIES AND LISTED SECURITIES, CY 2019

	Quoted OTC			Exchange listed	
	All	Unlisted	$50M–$5B Market cap	All	$50M–$5B Market cap
	(A)	(B)	(C)	(D)	(E)
Market Cap—median ($M)	20.99	3.92	472.74	517.90	485.74
Market Cap—mean ($M)	3,601.17	393.19	1158.18	5,890.43	993.98
Volume—median ($M)	0.29	0.15	0.84	760.02	693.19
Volume—mean ($M)	107.76	51.02	29.05	10,375.73	2,549.60
Number of Securities	11,542	6,253	2,626	6,166	4,277

Table 2 provides more detail on the characteristics of quoted OTC securities and their issuers for the 2019 calendar year.[640] The Commission estimates that, on average, 9,998 quoted OTC securities had published quotations per day during the calendar year 2019.[641] A majority of these had published either bid or offer quotations (93 percent).[642] The Commission identified that broker-dealers could rely on the piggyback exception to publish or submit quotations for 90 percent of these quoted OTC securities.[643] Many quoted OTC securities are illiquid. For example, the Commission estimates that, on average, only 44 percent of these quoted securities reported a positive daily trading volume, with two percent of quoted securities being ''inactive,'' which the Commission defines as not having reported any trading volume within the last year.[644] Conversely, only eight percent of quoted

forms for domestic issuers in 2018 and 13 broker-dealers filed forms for catch-all issuers.

Filing of FINRA Form 211 is associated with initiating or resuming quotations only. The Commission lacks data that would allow it to estimate the number of quotes that broker-dealers published pursuant to paragraph (a) or in reliance on the piggyback exception, national securities exchange, or municipal security exceptions to the Rule. Based on data from OTC Markets Group, broker-dealers published a total of approximately 3.8 billion quotations during calendar year 2019, of which 5,782,286 were published in reliance on the unsolicited quotation exception. See *supra* note 632 for a discussion of data limitations. Because broker-dealers could rely on the piggyback exception for the vast majority (90 percent) of quoted OTC securities on an average day during 2019, the Commission believes that it is reasonable to assume that the majority of quotes that broker-dealers published during 2019 relied on the piggyback exception. See Table 2 below, which describes average daily activity for securities that are quoted in the OTC market.

[637] See *infra* note 640 for a description of OTC securities data sources. All information for stocks listed on NYSE and Nasdaq comes from The Center for Research in Security Prices (CRSP). Statistics are computed by averaging market capitalization and trading volume for each security across all trading days during the calendar year 2019. The conclusions drawn from this analysis regarding how OTC securities compare to exchange-listed securities with respect to size and volume traded remain qualitatively unchanged if the Commission extends the analysis to include securities listed on additional smaller national exchanges.

[638] The Commission estimates that securities listed on NYSE and Nasdaq were valued at approximately $35.7 trillion in total during calendar year 2019, while quoted OTC securities were valued at approximately $32.3 trillion with 94.7 percent of the total market capitalization coming from companies that also have securities listed on public foreign exchanges.

[639] Total dollar volume is annualized by taking the average daily trading volume and multiplying it by the number of trading days in 2019. Panels C and E of Table 1 provide statistics for comparable samples of quoted OTC and exchange listed securities with a market capitalization between $50 million and $5 billion. Several academic studies document the differences in liquidity between OTC and listed stocks using older data. *See* Bjorn Eraker & Mark Ready, *Do Investors Overpay for Stocks with Lottery-Like Payoffs? An Examination of the Returns of OTC Stocks,* 115 J. Fin. Econ. 486–504 (2015); Ang *et al., supra* note 3.

Commenters generally agreed that the key difference between quoted OTC securities and those listed on national exchanges were size and trading volume. *See, e.g.,* Mitchell Partners Letter 1.

[640] The Commission uses three sources of data on OTC securities. OTC Markets Group's ''End-of-Day Pricing Service'' and ''OTC Security Data File'' provide closing trade and quote data for the U.S. OTC equity market and include identifying information for securities and issuers, as well as securities' piggyback eligibility. The Commission also uses information from the weekly OTC Markets Group's ''OTC Company Data File.'' Company Data Files include information about issuer reporting, shell, and bankruptcy status, as well as the SEC Central Index Key (CIK) identifier and whether an issuer's financial statements are audited.

All statistics in Table 1 represent characteristics of OTC securities and OTC issuers on a typical trading day and are computed by averaging across all trading days for the 2019 calendar year. The Commission identified 19,141 unique OTC securities for 16,059 unique companies from aggregated OTC Markets Group data for the calendar year 2019. Of these, 11,542 unique OTC securities had at least one published quotation and 9,895 unique companies had a security that was quoted at least once during the calendar year 2019. The Commission believes that OTC Markets Group data are reasonably representative of all OTC quoting and trading activity in the U.S.

[641] The number of securities quoted includes those with published priced and unpriced quotations. The Commission estimates that approximately seven percent of quoted OTC securities did not have priced quotations. The number of OTC securities quoted on an average day is lower than the total number of OTC securities with published quotations in 2019 because some securities did not have published quotations for every trading day in 2019.

[642] The Commission estimates the number of securities with quotations with either bid or offer prices from close of trading day data. This estimate is a lower bound as the Commission is not able to identify cases in which a security had a published priced quotation during the day but was no longer published at day close.

[643] *See supra* Part II.D. A security would qualify for the piggyback exception if it satisfies the frequency of quotation requirements pursuant to paragraph (f)(3) of the Rule. For such securities, a broker-dealer would not need to comply with the Rule's information review requirement before publishing a quotation on an IDQS.

[644] Broker-dealers trading in quoted OTC securities are required to report their trades to FINRA, which then disseminates this information to the market. OTC Markets Group receives trading data from FINRA's Trade Data Dissemination Service (TDDS) feed and incudes aggregated daily trading volume data for OTC securities in the ''End-of-Day Pricing Data File.''

securities had an ADTV value greater than $100,000.[645]

TABLE 2—MARKET FOR QUOTED OTC SECURITIES, CY 2019

Average Daily Activity	
Number of Securities	9,998
Priced Quotes with Either Bid or Offer	93%
Piggyback Eligible	90%
Traded	44%
Inactive	2%
ADTV value >$100,000	8%

Some OTC securities are traded without having published quotation.[646] Broker-dealers might not publicly quote these securities due to a lack of available issuer information necessary to satisfy the information review requirement or due to insufficient investor interest. The Commission estimates that 5,915 OTC securities were traded at some point during 2018 without having published quotations, with 553 securities of 538 issuers traded on average per day during 2018. Despite not having published quotations, some of these OTC securities were actively traded, with three percent having an ADTV value greater than $100,000.[647]

(b) Issuers of OTC Securities

Table 3 below provides detail on issuers of quoted OTC securities.[648] The Commission estimates that brokers participating in the OTC market published quotations for the securities of 9,895 issuers during the calendar year 2019.[649] These issuers differed in regulatory status, which determines the information that needs to be provided to comply with securities regulations and the type of paragraph (b) information that would be required to be current and publicly available by the amendments. Thirty-one percent of issuers followed the Exchange Act, Regulation A, or the U.S. Bank reporting standards; 45 percent followed international reporting standards; and the remaining 24 percent followed an alternative reporting standard.[650] Given that issuers of quoted OTC securities follow different reporting standards, current financials are available for some issuers but not others. The Commission estimates that current financials were publicly available for approximately 70 percent of issuers of quoted OTC securities.[651] In particular, the Commission estimates that broker-dealers published quotations for a total of 3,008 issuers of OTC securities with no current and publicly available information, although, as commenters stated, the Commission recognizes that some of these issuers may have published current financial information somewhere other than on the OTC Markets Group platform.[652] Of these, 946 issuers had an obligation to disclose information under the Exchange Act, Regulation A, or the U.S. Bank reporting standards; 82 issuers had an obligation under an international reporting standard; and the remaining 1,980 issuers did not have a reporting or disclosure obligation. Although the majority of issuers of quoted OTC securities provided current financial information publicly, financial statements of these issuers are not always audited.

[645] The Commission computes the ADTV on a given day by taking the average of reported dollar trading volume over the previous 60 calendar days. The computed ADTV for each security is a lower bound estimate of its worldwide ADTV if some of the trading activity was not reported to FINRA. As such, it is possible that there were more securities than the Commission identifies that would satisfy the volume threshold. The Commission estimates that approximately eight percent of quoted securities had an ADTV value greater than $100,000 and current and publicly available information.

[646] On the OTC Markets Group platform, OTC securities trade without published quotations on the grey market and on the ''Expert Market.'' According to OTC Markets Group, the Expert Market is a ''private market to serve broker-dealer pricing and best execution needs in securities that are restricted from public quoting or trading.'' OTC Markets Group notes that the restrictions on quoting or trading can be based on issuer requirements, security attributes, investor accreditation and/or suitability risks.

[647] Conditional on having been traded, the average (median) dollar trading volume on a given day during 2019 for a security trading on the grey market was $33,913 ($830) as compared to $293,608 ($4,000) for quoted OTC securities.

[648] See *supra* note 640 for information on data sources. Numbers in parenthesis represent percentages of the row totals.

[649] During the 2019 calendar year, 14 percent of issuers of quoted OTC securities had multiple (two or more) quoted OTC securities with published quotations.

[650] The Exchange Act reporting standard requires that issuers are in compliance with their SEC reporting requirements. The Regulation A reporting standard applies to companies subject to reporting obligations under Tier 2 of Regulation A under the Securities Act. These companies must file annual, semi-annual, and other interim reports on EDGAR. The U.S. Bank reporting standard applies to companies in the OTCQX U.S. Bank Tier on OTC Markets Group's system and may be satisfied by following the SEC reporting standards, Regulation A reporting standards, or reporting standards outlined in OTCQX Rules for U.S. Banks (*https://www.otcmarkets.com/files/OTCQX_Rules_for_US_Banks.pdf*). Foreign issuers that are exempt from registering a class of equity securities under Section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b) follow international disclosure requirements. Lastly, the alternative reporting standard, which could apply to all remaining OTC security issuers and is based on the information required by former Rule 15c2–11(a)(5), has varying requirements for disclosure depending on the OTC Markets Group Tier in which quotations for the security are published.

The Commission observed several instances in the data in which issuers of quoted OTC securities changed their reporting standard during 2019, for example, by switching from following an alternative reporting standard to the Exchange Act reporting standard. In these instances, for the computation of statistics in Table 3, the Commission attributed a reporting standard that the issuer followed for the majority of the days that its securities had published quotations during 2019.

[651] See *supra* note 640 for information on data sources. The Commission uses information on the IDQS and the OTC Markets Group tier classification to estimate the number of issuers with current and publicly available information. In particular, the Commission counts all issuers with securities quoted on OTC Bulletin Board (''OTCBB'') and specific tiers on OTC Markets Group's system: OTCQX, OTXQB, and OTC Pink: Current Information. This includes all quoted securities other than in the OTC Market OTC Pink: Limited Information and OTC Pink: No Information tiers. OTC Bulletin Board requires that quoted securities are current in their required filings with the SEC or other federal regulatory authority with proper jurisdiction. All OTC Markets Group tiers other than OTC Pink: Limited Information and OTC Pink: No Information require financial information to be at most six months old and available on *www.otcmarkets.com* or on the Commission's EDGAR system.

The number the Commission computes here is a rough estimate as it is possible that some issuers of securities in the OTC Pink: Limited Information or OTC Pink: No Information tiers voluntarily release current and public information somewhere other than on the OTC Markets Group platform. In particular, some commenters stated that certain issuers of quoted OTC securities publish current financial information on their websites. *See, e.g.,* Beacon Redevelopment Letter; Braxton Gann; Hamilton & Associates Letter; Dave Peirce; Peter Quagliano; Dan Schum.

Of all the quoted securities that qualified for the piggyback exception in calendar year 2019, the Commission estimates that 69 percent of them had publicly available current disclosures based on data from OTC Markets Group.

[652] *See, e.g.,* Beacon Redevelopment Letter; Braxton Gann; Hamilton & Associates Letter; Dave Peirce; Peter Quagliano; Dan Schum.

The Commission estimates that 48 percent of issuers with publicly available financial statements with quoted OTC securities in 2019 provided audited financial statements.[653] Several commenters stated that certain issuers of quoted OTC securities provide current financial information to their shareholders, including in connection with disclosure requirements under the laws of the state in which the company is incorporated.[654] Other commenters stated difficulties that investors may face when trying to access financial information for companies in which they hold shares, such as having to provide proof of ownership or having to sign a non-disclosure agreement.[655] Commenters also argued that while certain issuers provide information to their shareholders, they are hesitant to do so more widely because they do not want to reveal information to their competitors.[656] In summary, current information is either not readily available, especially for persons not holding these securities, or not available at all for a subset of OTC securities.

Three percent of issuers with quoted OTC securities were shell companies, and broker-dealers were able to rely on the piggyback exception to publish or submit quotations for nearly all securities of shell companies (99 percent).[657] Lastly, the Commission estimates that 1,030 (10 percent) of issuers with quoted OTC securities and current and publicly available information had total assets greater than $50 million and shareholder equity greater than $10 million on their most recent audited balance sheets.[658]

TABLE 3—ISSUERS OF QUOTED OTC SECURITIES, CY 2019 [a]

	SEC/Reg. A/ Bank reporting obligation [b]	International reporting obligation	No reporting/ disclosure obligation	Total
Public Information Available				
	(A)	(B)	(C)	
Issuers	2,134 (30.99)	4,331 (62.90)	421 (6.11)	6,886
Securities	2,531 (29.97)	5,470 (64.76)	445 (5.27)	8,446
Shell Company	136 (80.95)	0 (0)	32 (19.05)	168
Audited Financials	1,908 (58.17)	1,254 (38.23)	118 (3.60)	3,280
Assets >$50 mil & SE >$10mil	571 (55.44)	448 (43.50)	11 (1.07)	1,030
No Public Information Available				
	(D)	(E)	(F)	
Issuers	946 (31.45)	82 (2.73)	1,980 (65.82)	3,008
Securities	969 (31.31)	85 (2.75)	2,041 (65.95)	3,095
Shell Company	96 (55.81)	0(0)	76 (44.19)	172
Total (by Reporting Status)				
Issuers	3,081 (31.14)	4,413 (44.60)	2,401 (24.26)	9,895
Securities	3,501 (30.33)	5,555 (48.13)	2,486 (21.54)	11,542

[a] See *supra* note 640 for information on data sources. The Commission observes that issuers of OTC securities that trade on the grey or expert markets differ from issuers of quoted OTC securities. The majority of these issuers followed the alternative reporting standard (63 percent) and a few (one percent) were identified as shell companies. In addition, three percent of these issuers had total assets greater than $50 million and shareholder equity greater than $10 million on their most recent audited balance sheets.

[b] Estimates of issuers in this column include issuers that make filings pursuant to Regulation Crowdfunding. The Commission estimates that there were five such issuers that had quoted OTC securities, of which four (80 percent) had publicly available financial information. These issuers were included in the economic analysis of the Proposing Release, but not discussed separately as they are in this note.

[653] OTC Markets Group classifies issuers that provide audited financial statements. In the analysis, the Commission assumes that all issuers that have been identified as providing audited financial statements provide audited balance sheets.

Although current FINRA and Commission rules do not require the financial statements of non-SEC reporting OTC securities issuers to be audited, OTC Markets Group requires audited financials from OTC issuers with securities quoted in the OTCQX U.S.® and OTCQB® tiers. Issuers with securities quoted in the OTC Pink: Current Information tier must provide an Attorney Letter with Respect to Current Information if they do not file with the SEC and do not publish audited financial information.

[654] *See, e.g.,* James Duade; Caldwell Sutter Capital Comment; Drinker Letter; Christian Gabis; Mitchell Partners Letter 1; Dan Schum; Michael Tofias.

[655] *See, e.g.,* Tim Bergin; Richard Kogut; Jim Rivest.

[656] *See, e.g.,* Drinker Letter; Peter Quagliano.

[657] See *supra* Part II.D.4 for a detailed discussion of shell companies. Even though broker-dealers had the ability to publish quotes for these securities relying on the piggyback exception, some quotes broker-dealers published for these securities may have relied on other exceptions to the Rule.

In its comment letter, OTC Markets Group stated that, as of December, 2019, 339 issuers of OTC securities have self-reported in their public filings as shell companies, as defined by Rule 405 of Regulation C. OTC Markets Group has flagged an additional 534 issuers as ''shell risk,'' based on the following annual financial metrics: (i) Revenue less than $100,000; (ii) total assets (less cash and cash equivalents) less than $100,000; (iii) gross profit or loss less than $100,000; and (iv) research and development costs under $50,000. See OTC Markets Group Letter 2.

[658] The Commission reviewed information on assets and shareholder equity of OTC issuers from a combination of three data sources: (1) S&P Global Market Intelligence Compustat North America and Compustat Global databases, (2) the OTC Markets Group website (*https://www.otcmarkets.com*), and (3) Bloomberg. For the analysis in the Proposing Release, the Commission also reviewed information from quarterly and annual filings in EDGAR. However, there is significant overlap in these datasets and data from annual and quarterly filings did not provide any additional information to what was already contained in the three datasets described above. The Commission used data on the most recent financial information available, as the Commission does not have access to historical financial data for many issuers. In some cases, the most recent financial data available is outdated. Specifically, for approximately 30 percent of OTC issuers, for which the Commission has data, the financial data are from calendar year 2018 or earlier. Of the 16,059 unique OTC issuers that appear in the data for calendar year 2019, the Commission is able to draw financial data for 2,791 (17 percent) of them from Compustat, 7,461 (46 percent) from Bloomberg, and 3,300 (21 percent) from the OTC Markets Group website. The Commission is unable to collect financial information for 2,507 (16 percent) of OTC issuers because financial statement information for these issuers was absent in the three data sources the Commission reviewed.

(c) Risk of Fraud and Manipulation

The OTC market may be attractive to those seeking to engage in fraudulent practices, such as pump-and-dump schemes, due to a lack of publicly available current information about certain issuers of quoted OTC securities.[659] Two academic studies have found that market manipulation and pump-and-dump cases are concentrated among issuers of OTC securities relative to exchange-listed securities.[660] Another study has highlighted a higher incidence of cases involving delinquent filings and pump-and-dump schemes brought against issuers of OTC securities relative to cases brought against issuers of exchange-listed securities.[661] A Commission staff analysis of 4,000 SEC litigation releases between 2003 and 2012 found that the majority of alleged violations involving issuers of OTC securities were primarily classified as reverse mergers of shell companies or as market manipulation.[662] One commenter stated that the majority of the pump-and-dump schemes that he has observed involved shell companies.[663] In addition, the Commission estimates, from a sample of 323 Commission enforcement actions filed in fiscal years 2017 to 2019 involving 689 OTC securities, that 250 enforcement actions (77 percent) were classified as involving delinquent filings and 11 enforcement actions (three percent) were classified as involving market manipulation.[664] In contrast, the Commission estimates, from a sample of 109 Commission enforcement actions filed in fiscal years 2017 to 2019 involving listed securities, that four enforcement actions (four percent) was classified as involving delinquent filings and three enforcement actions (three percent) were classified as involving market manipulation.

To highlight characteristics of securities and issuers in the OTC market that tend to involve risk of fraud and manipulation, the Commission examined quoted OTC securities that had been the subject of Commission-ordered trading suspensions and those that have been assigned a ''caveat emptor'' designation by OTC Markets Group during the 2019 calendar year.[665] The Commission summarizes the findings below, in Table 4.[666]

TABLE 4—QUOTED OTC SECURITIES, SUSPENSIONS AND OTC MARKETS GROUP ''CAVEAT EMPTOR'' STATUS, CY 2018

	SEC suspensions		OTC markets group ''caveat emptor'' status	
Issue Characteristics:				
Number of Securities	213		241	
Quotes with Either Bid or Offer	209	(98%)	230	(95%)
Piggyback Eligible	212	(100%)	238	(98%)
Issuer Characteristics:				
Number of Issuers	213		236	
SEC/Reg. A/Bank Reporting Standard	169	(79%)	176	(75%)
International Reporting Standard	0	(0%)	1	(0%)
Alternative Reporting Standard (ARS)	44	(21%)	62	(26%)
Public Information Available	13	(6%)	33	(14%)
Audited Financials	162	(76%)	173	(73%)
Shell Company	20	(9%)	23	(10%)

Overall, 213 quoted OTC securities were the subject of Commission-ordered trading suspensions over the calendar year 2019.[667] Relative to the characteristics of the overall quoted OTC security market, broker-dealers were more likely to be able to rely on the piggyback exception to publish or submit quotations for quoted OTC

[659] The Commission lacks data on the costs associated with fraudulent schemes involving OTC securities. One study found that pump-and-dump schemes result in sizable losses for market participants. *See* Hackethal *et al., supra* note 407 (finding an average loss of 30 percent per investor and a loss of at least €1.2 million per tout aggregated across investors in a sample of 421 pump-and-dump schemes from 2002 to 2015 involving 6,569 German investors).

[660] One study analyzed 142 stock manipulation cases, including pump-and-dump cases, in SEC litigation releases from 1990 to 2001 and found that that 48 percent involved OTC securities, while 17 percent involved securities listed on national exchanges. *See* Aggarwal & Wu, *supra* note 6. A more recent study looked at 150 pump-and-dump manipulation cases between 2002 and 2015 and found that 86 percent of those cases involved OTC securities. *See* Renault, *supra* note 6.

[661] This study looked at a broader sample of securities cases filed between January 2005 and June 2011 and identified 1,880 cases involving OTC securities and 1,157 cases involving securities listed on exchanges in the United States. The majority of OTC securities cases, 1,148 (61 percent), were related to delinquent filings, while 151 (eight percent) were related to a pump-and-dump scheme, 159 (eight percent) were related to financial fraud, 12 (one percent) were related to insider trading, and 212 (11 percent) were related to other fraudulent misrepresentation or disclosure. In contrast, only 26 (two percent) of listed securities cases involved delinquent filings, 43 (four percent) involved pump-and-dumps, 278 (24 percent) involved financial fraud, 399 (34 percent) involved insider trading, and 173 (15 percent) involved other fraudulent misrepresentation or disclosure. *See* Cumming & Johan, *supra* note 7.

[662] *See* Spotlight on Microcap Fraud (Feb. 22, 2019), *https://www.sec.gov/spotlight/microcap-fraud.shtml.*

[663] Morning Light Mountain Comment. It is difficult to draw conclusions about shell companies' involvement in fraudulent schemes from the commenter's statement without information on the sample of pump-and-dump schemes that the commenter has observed.

[664] One commenter stated that it is difficult to infer a causal relationship between delinquent or unavailable financial information about the OTC security issuer and fraud because the OTC market is complex. *See* GTS Letter.

[665] *See* Trading Suspensions (2019), *https://www.sec.gov/litigation/suspensions.shtml*; Annual Report, SEC, Div. Enforcement, 5 (2018), *https://www.sec.gov/files/enforcement-annual-report-2018.pdf*; Addendum to Annual Report, SEC, Div. Enforcement, 2 (2017), *https://www.sec.gov/files/enforcement-annual-report-2017-addendum-061918.pdf*; Select SEC and Market Data Fiscal 2016, 2 (2016), *https://www.sec.gov/files/2017-03/secstats2016.pdf.* OTC Markets Group explains that a ''caveat emptor'' designation may be assigned to a security if OTC Markets Group becomes aware of a misleading or a manipulative promotion; a company is under investigation for fraudulent activity; there is a regulatory suspension on the security; the company fails to disclose a corporate action, such as a reverse merger; or there is another public interest concern associated with the security. *See Caveat Emptor Policy,* OTC Mkts. Grp. Inc., *https://www.otcmarkets.com/learn/caveat-emptor* (last visited Apr. 28, 2020).

[666] All statistics in Table 4 were estimated by analyzing security and issuer characteristics on the trading day before the start of a Commission-ordered trading suspension or an assignment of a ''caveat emptor'' designation by OTC Markets Group.

[667] The results are qualitatively similar for the set of 1,369 Commission-ordered trading suspensions in the past five calendar years, 2015–2019. In particular, the Commission estimates that almost all quoted OTC securities subject to Commission-ordered trading suspensions (1,364) were piggyback eligible, approximately seven percent had publicly available current financial information, and 10 percent were shell companies.

securities subject to trading suspensions on the trading day immediately prior to the commencement of the trading suspension. Although issuers of suspended quoted OTC securities tended to be mostly reporting companies, they were less likely to have current public information available relative to the full sample of quoted OTC securities because many failed to file required reports.[668] Several of these companies were identified as shell companies (nine percent).

In addition, the Commission examined 241 instances in which quoted OTC securities were flagged with the ''caveat emptor'' designation by OTC Markets Group to inform investors to exercise additional care when considering whether to transact in these securities. Most of these companies had Commission-ordered trading suspensions.[669] Similar to the sample of OTC issuers with suspended securities, issuers of these securities were less likely to have publicly available information.

Increasing the availability of information about OTC issuers has the potential to counteract misinformation, which can proliferate through promotions and other channels. Several recent studies have examined the effects of stock promotions on investor trading in the OTC market.[670] For example, one study has found large price and trading volume movements following spam email campaigns that conveyed optimism about a particular OTC security's price and were viewed by investors as containing credible information about the security.[671] Others have documented that cases in which issuers have secretly hired stock promoters for campaigns to increase their stock price and liquidity often are accompanied by trading by company insiders.[672] Based on publicly available website information reviewed by the Commission on OTC securities that were subjects of promotion campaigns, the Commission identified 288 OTC securities (two percent of all quoted OTC securities) that were featured in at least one promotion campaign during 2019.[673] The vast majority of these OTC securities, 240 (83 percent), were issued by companies that did not otherwise provide current and publicly available financial information.[674]

(d) Investors

One academic study has found that OTC stocks are owned primarily by retail investors rather than institutional investors.[675] However, retail investors' access to OTC securities is not frictionless in all cases. For instance, several commenters stated that broker-dealers put up ''gates'' that restrict retail investors' access to OTC securities, such as signing agreements and disclaimers before allowing these investors to purchase OTC stocks. Studies have also found that, on average, quoted OTC securities earn lower returns than exchange-listed stocks.[676] These investment decisions by individuals may be due to investors misestimating payoff probabilities for OTC stocks by overweighting extreme positive outcomes, particularly in cases where there is a lack of available information about the issuer.[677] Some investors in OTC securities may be driven by a speculative motive.[678] Demographic analysis of OTC investors suggests that they tend toward higher wealth and education.[679] However, OTC security holding period returns are worse for investors residing in locations with populations that may be more vulnerable in that they are older, lower-income, and less educated.[680] Overall, findings in these studies suggest that investors in the OTC market might benefit from additional information regarding company fundamentals.[681] For example, some retail investors could more readily find, through online searches, information that refutes misinformation disseminated through promotions with publicly available paragraph (b) information. One commenter argued that OTC investors lose money in OTC securities because they are not educated on how to interpret the information that issuers provide and are thus susceptible to misinformation campaigns.[682] Nevertheless, these investors could benefit from more efficient prices that are less susceptible to manipulation as a result of the trading activity of better-informed investors who acquire and are better equipped at interpreting this information.

C. Discussion of Economic Effects

1. Effects of Rule 15c2–11 Amendments

In this section, the Commission discusses the expected costs and benefits of the amendments to Rule 15c2–11. These amendments modify

[668] Issuers typically become subject to Commission-ordered trading suspensions under circumstances where there is a lack of publicly available current, accurate, or adequate information about the company. This may happen, for example, when a company is not current in its filings of periodic reports. As a result, it is not surprising that many of these issuers were not quoted in OTCBB or OTC market tiers that require current and publicly available financial information.

[669] For 187 of the 241 ''caveat emptor'' securities, this designation was assigned at the start of the suspension. In the remaining 26 suspensions over the calendar year 2019, the security had already been designated with a ''caveat emptor'' status prior to 2019. The remaining 54 instances of ''caveat emptor'' assignment were associated with fraud or public interest concerns other than trading suspensions.

[670] *See* White, *supra* note 5.

[671] *See* Nelson *et al., supra* note 252 (''[T]rading volume more than doubles in the days immediately following the spam campaign, and the mean return is positive and significant. However, the median return is zero, with nearly as many firms experiencing negative returns as positive on the spam date . . . . [C]ombining optimistic target price projections with credible, but stale, information from old press releases increase the return and volume reaction to spam. Moreover, the larger the return implied by the target price, the larger the market reaction.'').

[672] *See* Nadia Massoud *et al., Does It Help Firms to Secretly Pay for Stock Promoters?,* 26 J. Fin. Stability 45–61 (2016) (sampling both OTC securities and exchange-listed securities).

[673] One commenter stated that sometimes it is not the absence of current information, but rather the abundance of false information that facilitates fraudulent behavior in the OTC market. *See* Caldwell Sutter Capital Comment. However, current financial information can serve to limit the effectiveness of misinformation in the OTC market.

[674] The Proposing Release included additional information from OTC Markets Group data that identified 241 OTC securities (two percent of all quoted OTC securities) that were involved in at least one promotion campaign during 2018 with 58 of these securities (24 percent) issued by companies that did not provide current and publicly available information. The Commission did not receive updated promotion data from OTC markets for calendar year 2019.

[675] *See* Ang *et al., supra* note 3 (stating that retail investors are ''the primary owners of most OTC stocks, whereas institutional investors hold significant stakes in nearly all stocks on listed exchanges, including small stocks'').

[676] *See* White, *supra* note 5; *see also* Ang *et al., supra* note 3; Eraker & Ready, *supra* note 639.

[677] *See* White, *supra* note 670.

[678] *See* Hackethal *et al., supra* note 407 (finding an average loss of 30 percent in a sample of 421 pump-and-dump schemes from 2002 to 2015 involving 6,569 German investors). The study finds that ''35% of the tout investors have been day-trading in penny stocks or are frequent traders with short investment horizons. These investors appear to be willing to take substantial risks and trade aggressively also in other stocks. These investor types are more likely to invest in touts, place larger bets and have better returns. Their participation in touts looks quite differently from more conservative traders, who trade infrequently and do not invest in penny stocks. This group could be the ones that were tricked into the schemes.'' *Id.*

[679] *See* White, *supra* note 5; *see also* John R. Nofsinger & Abhishek Varma, *Pound Wise and Penny Foolish? OTC Stock Investor Behavior,* 6 Rev. Behav. Fin. 2–25 (2014).

[680] *See* White, *supra* note 5 (''[M]edian holding period returns deteriorate for zip codes with greater percentages of elderly, less education and residence stability, and lower income and wealth. All of the return differences are economically and statistically significant.'').

[681] Some commenters stated that investors are aware of the risks associated with trading in OTC securities. *See, e.g.,* David Aldridge; R. Berkvens; Dana Blanc; Caldwell Sutter Capital Comment; Frank Danna III; Ralf Erz; Philippe Goodwill; Richard Kogut; Aharon Levy; Tracy Michaels; Michael E. Reiss; Robert Ringelberg; Jim Rivest; David Sanders; Thomas Schiessling; Lucas H. Selvidge; Terravoir Venture Letter; Kevin Ward.

[682] Alexandra Elliott.

rule requirements to account for the reduction in information acquisition costs, and generally seek to increase the availability of current company financial information within the quoted OTC market.

The amendments would affect OTC investors, issuers, and intermediaries such as broker-dealers. The Commission anticipates the principal economic effects of the amendments to be as follows. First, the transparency requirements could enable investors to learn more about the fundamental value of certain companies in the OTC market, which may direct their funds toward higher-return investments. These benefits are directly linked to modern technology that enables relatively low cost access to and dissemination of company filings. In addition, other investors could benefit from more efficient prices that are less susceptible to manipulation as a result of the trading activity of better-informed investors who acquire this information. Second, the amendments may reduce the incidence of fraudulent schemes, such as pump-and-dump activity, as a result of heightened information requirements and restrictions on the piggyback exception being applied to securities without current and publicly available information. Finally, broker-dealers could bear additional costs from the information review requirement as well as filing FINRA Forms 211 more frequently (*e.g.,* if paragraph (b) information is not publicly available) as a result of, among other things, limitations on relying on the piggyback exception.[683] Costs borne by broker-dealers may be heterogeneous and depend on whether the broker-dealer specializes in retail or institutional orders, market making, or some combination of these services. To the extent that broker-dealers currently incur costs associated with disseminating paragraph (b)(5) information, such costs on broker-dealers may be mitigated to some extent. The requirement for paragraph (b)(5) information to be publicly available would reduce the broker-dealer's obligation to make paragraph (b) information available upon request to interested investors electronically.

In specific circumstances, other provisions of the amended Rule seek to relieve broker-dealers of costs related to the information review requirement and filing FINRA Form 211. For example, the exception for issuers with ADTV value greater than $100,000, total assets greater than $50 million, and shareholder equity greater than $10 million will relieve broker-dealers of the information review requirement for larger, more liquid issuers which are potentially less susceptible to fraud.[684]

Broker-dealers and investors could also incur costs and benefits associated with possible migration in trading activity from certain issuers and markets to others (*e.g.,* between quoted and grey markets). For example, commenters highlighted difficulties that broker-dealers and issuers of such OTC securities may face in resuming a quoted market once the securities have migrated to the grey market.[685] On the other hand, to the extent that the Rule amendments lead to a net increase in the demand for OTC securities that continue to be quoted, broker-dealers and issuers of these securities may accrue benefits. Some of these costs and benefits to broker-dealers may be passed on to investors in the form of higher or lower transaction costs and account fees. Further, as discussed in more detail below, OTC investors may incur costs associated with a decrease in liquidity and share value as a result of losing piggyback eligibility for OTC securities without current and publicly available information.

The costs and benefits associated with the specific amended Rule provisions are discussed below.

(a) Making Paragraph (b) Information Current and Publicly Available

The costs and benefits discussed below pertain to the general requirements for paragraph (b) information to be current and publicly available to publish or submit quotations for, or to maintain a quoted market in, quoted OTC securities. They also pertain to the new public information requirements for the unsolicited quotation exception. The Commission expects that investors would benefit from easier access to paragraph (b) information through public media, such as EDGAR or the website of a qualified IDQS, a registered national securities association, the issuer, or a registered broker-dealer that publishes paragraph (b) information related to quoted OTC securities.

Presently, not all issuers of quoted OTC securities provide current and publicly available financial information.[686] Some of these OTC issuers may choose to provide such information under the amended Rule in order to maintain the liquidity of their securities in the quoted market. The Commission further believes that the rule amendments should incentivize issuers to make information current and publicly available to allow broker-dealers to continuously quote their securities. This information could allow investors to better assess the quality of the issuer and help them to avoid lower-return investments, such as those involved in a fraudulent scheme. By enabling investors to compare information contained in promotion campaigns to that in current company information, the new requirement for paragraph (b) information to be publicly available may help investors avoid trading on false information. In general, the ease of accessing information on the internet should allow investors to migrate toward forming inferences about the value of OTC securities based upon paragraph (b) information and away from inferences based principally upon quoted prices. Investors could also use this information to make better-informed corporate voting decisions to the extent that OTC issuers put matters to a shareholder vote in annual or special meetings.[687] Investors could also benefit from more efficient prices that are less susceptible to manipulation as a result of the trading activity of better-informed investors who acquire this information. The amended Rule provides flexibility with respect to the format of the paragraph (b) information issuers may opt to provide. Certain formats such as machine-readable content might facilitate processing of information by sophisticated or institutional investors and thereby promote arbitrage activity as well as price efficiency in OTC securities. However, issuers may opt to not submit information in this format as the final Rule maintains flexibility with respect

[683] Several of these amendments would provide additional exceptions to the Rule (*e.g.,* eliminating the requirement for 12 business days of quotes within the previous 30 calendar days to establish piggyback eligibility). However, the Commission does not expect these amendments to have a significant impact on the costs and benefits of the Rule, as discussed below.

[684] The Commission estimates that approximately 180 (two percent) of quoted OTC securities on an average day during calendar year 2019 would be eligible for the ADTV and assets exception.

[685] In particular, commenters have highlighted the costs to issuers associated with providing current disclosures and to broker-dealers associated with complying with the information review requirement to resume quoting. *See, e.g.,* Coral Capital Letter; Tyler Black; Woessner & Associates Letter.

[686] Notably, there are no requirements to make financial disclosures publicly available for OTC securities quoted on the OTC Market OTC Pink: No Information tier. An analysis of quoted OTC securities during the calendar year 2019 has revealed that approximately 30 percent of issuers do not provide current and publicly available financial information. *See supra* Part VI.B.

[687] The Commission lacks data on the quantity and nature of matters put to a vote at annual or special meetings of issuers of quoted OTC securities not subject to Commission reporting obligations.

to information format.[688] In addition, broker-dealers will be restricted from publishing quotations for securities without publicly available paragraph (b) information, which would likely push trading activity in these dark issuers' (*i.e.,* issuers that do not make their information publicly available) securities into the grey market.[689] The lack of a quoted market could curtail the trading activity of retail investors, making such securities less attractive to perpetrators of fraud. Therefore, these new requirements could deter fraudulent activity related to quoted OTC securities. Investors could benefit from decreased exposure to investment losses as a result of diminished frequency of fraudulent activity in the OTC market.

Higher quality issuers (*i.e.,* issuers more likely to have productive investment opportunities) could benefit from increased access to capital to the extent that the change leads to a net increase in demand for higher quality issuers' OTC stocks.[690] Previous academic studies have highlighted the relationship between the breadth and quality of firm disclosures and liquidity in the OTC market.[691] Therefore, investors in these higher quality issuers could benefit from greater liquidity and an associated reduction in trading costs. According to studies, these more liquid securities should trade at higher prices based on lower costs associated with their resale.[692]

Conversely, issuers may also incur costs associated with making paragraph (b) information publicly available before broker-dealers can publish or submit quotations for their securities. We focus our discussion below on the costs of providing current and publicly available information for non-transparent catch-all issuers as any issuers that make disclosures pursuant to reporting obligations other than those contained within the amended Rule would incur costs attributable to those obligations and not to Rule 15c2–11. These costs could include preparing and producing paragraph (b) information in document form and ensuring that the paragraph (b) information is publicly available.[693] Some commenters stated that certain OTC security issuers that do not make financial information widely available make the information available to their current shareholders either on a periodic basis or upon request.[694] In addition, certain issuers may prepare financial information to meet state-level public reporting requirements. These issuers would likely face minimal costs associated with the preparation of paragraph (b) information. One commenter stated that because issuers of OTC securities have to prepare financial reports for reasons such as tax reporting, there would not be a burden associated with publishing unaudited financial statements on their websites.[695] Other commenters stated that a qualified IDQS may charge a fee for publication of an OTC issuer's financial information on its website.[696] However, the costs associated with making current information publicly available are mitigated by the fact that these amendments would offer several possible alternatives for releasing paragraph (b) materials, including making this information available on an issuer's website.[697] The availability of multiple acceptable locations will provide issuers or other publishers of paragraph (b) information with flexibility in meeting the public availability requirement. To facilitate investor access to information, the amended Rule requires broker-dealers to make catch-all issuer information available upon the request of a person expressing an interest in a proposed transaction in the issuer's security, such as by providing the requesting person with appropriate instructions regarding how to obtain publicly available information electronically. In this regard, if such information is located on different websites, broker-dealers may provide the website addresses at which investors can find the information that is required to be publicly available. The amended Rule also provides flexibility with respect to the format of the paragraph (b) information issuers may opt to post on these websites. Certain formats such as standard text might reduce direct costs of information production for issuers.

Finally, there may also be indirect costs to OTC issuers of disclosing paragraph (b) information, such as costs of revealing sensitive financial information that might be exploited by competitor firms, as discussed by commenters.[698] The Commission recognizes that compliance with this requirement, including with respect to the financial information for an issuer that does not have a statute- or rule-based reporting obligation, such as a catch-all issuer, may reveal confidential financial or business information to competitors. The Commission nevertheless believes that, on balance, requiring current and publicly available information can help to better facilitate informed investment decisions by both existing investors and potential

[688] In the Proposing Release, recognizing the value that machine-readable information can have to market participants, the Commission solicited commenters' views on whether at a later date the Commission might propose that paragraph (b) information should be published in this format. The Commission did not receive any comments directly supporting or opposing whether paragraph (b) information should be published in this format. One commenter supported requiring issuers to have their latest filings and investor information immediately downloadable from a centralized site or from issuer websites, and noted that the information could be provided in XML or XBRL format. *See* Lake Highlands Comment.

[689] Using data on daily dollar trading volume for quoted OTC securities during the 2019 calendar year, the Commission finds that quoting activity and trading activity are correlated. In particular, the Commission finds that OTC securities with published quotations were 4.9 times more likely to have reported a positive dollar trading volume on a given day in 2019 relative to securities trading on the grey or Expert markets. In addition, if they were traded, OTC securities with published quotations had, on average, 1.98 times greater daily dollar trading volume than securities trading on the grey market. See *supra* note 640 for a description of OTC securities data sources.

[690] The potential increase in access to capital for issuers is based on the likelihood that market changes as a result of the amendments could result in the divestiture of OTC securities more susceptible to fraud and manipulation and increased investment in OTC securities less susceptible to fraud and manipulation. However, to the extent that investment decisions are driven by other factors, such as a personal interest in specific companies, there might be no increase in access to capital for issuers.

[691] *See* John (Xuefeng) Jiang *et al., Private Intermediary Innovation and Market Liquidity: Evidence from the Pink Sheets Market,* 33 Contemp. Acct. Res. 920–48 (2016) (finding that, following the introduction of Pink tiers in OTC Markets Group, each associated with different self-established eligibility requirements pertaining to disclosure, firms with higher levels of disclosure experienced an increase in liquidity, while firms that did not disclose information experienced a decrease in liquidity); *see also* Brüggemann *et al., supra* note 72 (finding that market liquidity and the propensity of a security to experience a crash in returns, both used as proxies for the quality of a security in the analysis, decrease monotonically when moving across OTC tiers from those with high regulatory strictness and disclosure requirements to those with lower requirements); Ryan Davis *et al., Information and Liquidity in the Modern Marketplace* (Working Paper, Nov. 21, 2016), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2873853.*

[692] *See* Ang *et al., supra* note 3.

[693] Issuers that presently make disclosures publicly available, either voluntarily or because of a reporting obligation, and have systems in place for the preparation of these disclosures, would not face additional costs as a result of this amendment. An analysis of quoted OTC securities during the calendar year 2019 has revealed that approximately 18 percent of all catch-all issuers provide current and publicly available financial information. This estimate represents a lower bound as it is possible that some catch-all issuers provide current and publicly available information somewhere other than on the OTC Markets Group platform, such as the issuer's website. *See supra* Part VI.B.

[694] *See supra* notes 257 and 258.

[695] Michael Hess.

[696] *See, e.g.,* Beacon Redevelopment Letter; Virtu Letter.

[697] Presumably, issuers, investors, qualified IDQSs, the registered national securities association, or broker-dealers would choose the most cost-effective method to disseminate paragraph (b) information.

[698] *See, e.g.,* Drinker Letter; Peter Quagliano.

investors in addition to better protecting retail investors from incidents of fraud and manipulation in OTC securities.

Alternatively, OTC issuers, including dark catch-all issuers and delinquent reporting issuers, may elect not to provide paragraph (b) information to the public. The securities of these dark OTC issuers may exit from the quoted market as a result. A number of commenters stated that the absence of published quotes may limit liquidity in OTC securities without current and publicly available information and lead to losses for existing investors in these securities.[699] One commenter argued that this effect may be more pronounced among retail investors because institutional investors may be able to sell stakes in dark companies through block trades.[700] On the other hand, one commenter observed that published quotes for OTC securities without current and publicly available information may not be representative of the underlying value of the security.[701]

The Commission acknowledges that OTC investors may incur costs associated with a loss of liquidity and possible associated decrease in share value if OTC issuers elect not to provide current and publicly available paragraph (b) information. While these costs to investors may be significant, the Commission believes that deterring fraud and manipulation in OTC securities justifies the requirement for paragraph (b) information to be current and publicly available to maintain a quoted market in these securities. This loss in share value, if it occurred, could arise from an increase in the costs of resale associated with the OTC stock when migrating to the grey market. The Commission does not believe that the securities of issuers with operations and profitability (or the prospect of future profitability) will become ''worthless'' as a result of the amendments, as suggested by one commenter.[702] Issuers with operations and profits, even without a quotation for their securities by a broker-dealer, would presumably continue to operate and generate profits for their shareholders; thus, OTC shares will continue to represent a claim on these profits and assets. For newer issuers with prospective future profits, OTC shares would similarly represent a claim on these prospective profits. Therefore, they should continue to have some positive value. The Commission recognizes, however, that the share value may be lower than it would have been for the same financials due to a perceived loss of liquidity when losing the quoted market.

The Commission is unable to reasonably predict the extent to which OTC securities issuers that do not presently provide current and publicly available information will choose to do so, or continue not to, as a result of final amendments.[703] Further, to the extent that certain OTC security issuers may choose to remain dark, the Commission is unable to quantify the potential impact on liquidity and value.[704] Prior academic research and the Commission's own analysis suggests that there is presently limited liquidity and price discovery in the market for OTC securities of dark issuers, even when broker-dealers are frequently publishing quotations for such securities.[705] In addition, the potential costs associated with a loss in liquidity may be partially mitigated by the ability of broker-dealers to publish quotations on behalf of existing shareholders relying on other exceptions (*e.g.,* the unsolicited quotation exception), provided the requirements of the exception are met, as all investors, other than company insiders and issuer affiliates, will continue to have access to the quoted market. Any potential loss of liquidity for certain dark companies also may be mitigated to the extent the Commission issues exemptions to permit broker-dealers, subject to certain conditions and in limited circumstances, to continue to publish or submit quotations for dark issuers in reliance on the piggyback exception. Lastly, the amendments do not restrict investors from trading OTC securities without quotations on the grey market, and so investors will continue to be able to trade OTC securities of dark issuers.[706]

Some commenters were concerned that the amendments would encourage issuers to remain dark[707] and make minority shareholders vulnerable to management buyouts at unfair discount prices.[708] The Commission acknowledges that existing shareholders, including minority shareholders, of companies that do not have current and publicly available paragraph (b) information could incur costs if broker-dealers cease publishing quotations for the securities of such companies and, for example, OTC company insiders are able to repurchase shares from outside investors at lower

[699] *See supra* notes 207 and 209.

[700] Richard Krejcarek.

[701] *See* Jim Rivest (describing purchasing OTC securities of dark issuers at bargain prices relative to the value).

[702] Andersen Letter.

[703] For example, the Commission is unable to quantify the benefits of disclosure to an issuer in terms of enhanced liquidity and access to capital. This benefit net of the costs of disclosure should, in principle, inform whether an issuer elects to provide current and publicly available paragraph (b) information or not.

[704] Using data available to the Commission, it is impossible to reliably isolate the effect of the presence and characteristics of published quotations from other factors that may affect liquidity and value of a particular OTC security. While the Commission does observe instances in which cessation of published quotations and migration to the grey market for some OTC securities is followed by subsequent drops in price and share volume, a causal relationship is difficult to establish because of other confounding factors contributing to the migration to the grey market (*i.e.,* Commission-ordered trading suspensions, financial distress, negative news releases, etc.).

[705] See *supra* note 64 for a discussion of academic studies examining the relationship between transparency and liquidity in the OTC market.

The Commission estimates that an average (median) quoted OTC security of a dark issuer reported a positive dollar trading volume for 70 (51) days during calendar year 2019, while an average (median) quoted OTC security of an issuer with current and publicly available information reported trading for 100 (71) days during the same period. Further, on an average trading day during 2019, trading in quoted OTC security of dark issuers accounted for approximately one percent of aggregate daily trading volume across all OTC securities. Among OTC securities of catch-all issuers only, trading in dark OTC securities accounted for 12 percent of aggregate daily trading.

In addition, the Commission finds that bid-offer spreads for dark OTC securities are significantly higher than those of OTC securities with current and publicly available information. In particular, during the average trading day during 2019, the average (median) bid-offer spread for a dark OTC security was 63 (50) percent, which was approximately 3 (8) times higher than the bid-offer spread for OTC security with current and publicly available information. Bid-offer spreads are computed as the absolute difference between best closing bid and closing offer prices, divided by the midpoint of the bid and offer prices. See *supra* note 640 for a description of OTC securities data sources.

Lastly, based on data provided to the Commission by OTC Markets Group on the total counts of quote updates for each OTC security for calendar year 2019, the Commission finds that the mean (median) OTC security of a dark issuer saw 70 (6) times fewer quotation updates as compared to an OTC security of an issuer with current and publicly available information. Among OTC securities of catch-all issuers only, the mean (median) number of quotation updates during 2019 was 4 (3) times lower for OTC securities of dark issuers.

[706] See *supra* note 647 for a comparison of daily trading volumes between quoted and grey OTC securities. The Commission also finds that while a lower number of grey securities traded on an average trading day during the calendar year 2019 as compared to the number of quoted OTC securities of dark issuers (553 grey securities vs. 965 dark quoted OTC securities), the total daily dollar volume in the grey market was approximately 43 percent higher than the total dollar trading volume of dark OTC securities. Among OTC securities of catch-all issuers only, the total daily dollar volume in the grey market was approximately 47 percent higher than the total dollar trading volume of dark OTC securities.

[707] *See, e.g.,* Anbec Partners Letter; Tim Bergin; Lucas Elliott; Ralf Erz; Braxton Gann; James Gibson; Han Han; William E. Mitchell; Daniel Raider; Michael E. Reiss; Mark Schepers; Dan Schum; Michael Tofias; Raymond Webb.

[708] Caldwell Sutter Capital Comment; Professor Angel Letter.

stock prices. However, the Commission believes that such impact would affect a limited number of existing shareholders in the overall market, since the Commission expects a majority of issuers may not engage in such activity. In addition, broker-dealers would not be able to publish a quotation relying on the unsolicited quotation exception on behalf of insiders of dark OTC issuers, possibly limiting insiders' ability to engage in these transactions. Furthermore, the Commission believes this impact is justified by the benefits of deterring fraud and manipulation and incentivizing greater issuer transparency, and contributing to more efficient price formation. The requirement for current and publicly available issuer information for a broker-dealer to rely on the piggyback exception to maintain a quoted market could also benefit existing shareholders, including minority shareholders or non-company insiders, due to more efficient pricing of securities that are less susceptible to manipulation.

Lastly, one commenter stated that a lack of quotations may make certain OTC securities more susceptible to manipulation.[709] However, the Commission believes that the lack of a quoted market will be more likely to curtail trading by retail investors, making such securities less attractive to perpetrators of fraud.

The Commission estimates that the cost to a catch-all issuer in connection with preparing and publishing the information required by the amended Rule may be comparable to the cost of completing and filing a Form C–AR under Regulation Crowdfunding.[710] The staff report on Regulation Crowdfunding cites survey data and estimates related costs to issuers to be, at most $12,804.[711] The Commission estimates that 3,008 issuers of quoted OTC securities in 2019 did not provide current and publicly available information subject to the requirements of paragraph (b)(5).[712] These non-transparent OTC issuers could make the specified information current and publicly available pursuant to the amended Rule's requirements for catch-all issuers and become eligible for a quoted market.[713] Therefore, the Commission estimates that the maximum annual monetized cost of producing and updating paragraph (b) information and making it publicly available annually to be $38,514,432 across OTC issuers.[714] This cost may be mitigated by a number of factors, including whether some of the cost associated with ensuring that the paragraph (b) information is publicly available may be borne by broker-dealers intending to quote the security of this issuer.[715] In addition, this estimate likely overstates the costs of preparing information as certain dark OTC issuers currently make financial information available to their current shareholders either on a periodic basis or upon request. Other OTC issuers on OTC Market's Pink Limited Information and Pink No Information tiers prepare financial information to meet state-level public reporting requirements. Both sets of issuers would likely face minimal costs associated with the preparation of paragraph (b) information.

Broker-dealers will also incur costs related to determining and documenting whether or not OTC issuers have current and publicly available paragraph (b) information. The Commission believes that broker-dealers could set up information systems to assess whether these conditions apply to OTC securities such that there would be a one-time cost plus an ongoing cost for each security. The Commission believes that the hours in all of the following compliance cost estimates will be borne by internal staff at a rate of $70 per hour.[716] Consistent with the PRA section,[717] the Commission estimates that it would take a broker-dealer, IDQS, or national securities association one hour to establish a system to determine whether issuers have current and publicly available paragraph (b) information as well as to create associated documentation, for an aggregate cost of $5,740.[718] Consistent with the PRA section,[719] the Commission also estimates that it would take a broker-dealer, IDQS, or national securities association at most one minute per each OTC issuer to determine and document whether the issuer has current and publicly available paragraph (b) information; and that broker-dealers, qualified IDQSs, and registered national securities associations would create

[709] *See* Brad Christensen.

[710] Costs associated with preparing and publishing the information required by the amended Rule may depend on issuer characteristics (*e.g.,* age, size, state of incorporation, etc.) and catch-all issuers of quoted OTC securities may differ from those subject to Regulation Crowdfunding. The Commission recognizes that the methodology above may underestimate or overestimate the costs of preparing and publishing the information for certain catch-all issuers.

[711] *See* SEC Staff, *Report to the Commission: Regulation Crowdfunding* (June 18, 2019), *available at https://www.sec.gov/files/regulation-crowdfunding-2019_0.pdf.* This report cites survey data and estimates costs to issuers undertaking a crowdfunding offering, including accounting costs of $3289, legal costs of $3297, and certain disclosure costs of $6218. Some of these costs may include costs unrelated to Form C–AR (such as legal review of promotional materials). Therefore, the cost cited above serves as an upper bound for the cost of completing and filing Form C–AR.

[712] See *supra* Part VI.B for an analysis of quoted OTC securities issuers for which there was no public information in 2019.

The number of issuer estimates here represents an upper bound on the number of issuers impacted by this amendment to the Rule for two reasons. First, certain issuers may be making current information publicly available (*e.g.,* via the issuer's website or the website of a state of federal agency), but the issuer's security may still be quoted on the Pink Limited Information or Pink No Information tiers on the OTC Markets Platform. *See supra* note 651. Second, because OTC Markets Group's alternative reporting standard for catch-all issuers requires more frequent updating of financial information than this amendment to the Rule, some of the 1,980 catch-all issuers with OTC securities that are quoted on the Pink Limited Information or Pink No Information tiers may actually meet the amended Rule's requirement for current and publicly available information. In particular, using data from financial statements of quoted OTC securities, the Commission estimates that 222 dark catch-all issuers of quoted OTC securities (approximately seven percent of 3,008 dark issuers) had publicly available financial information dated within 12 months of their OTC securities being quoted. See *supra* note 658 for information on the data used.

[713] Any delinquent issuers that provide information pursuant to reporting obligations other than those contained within the amended Rule would incur costs attributable to those obligations and not to Rule 15c2–11.

[714] $12,804 × 3,008 issuers = $38,514,432. In the Commission's estimate of the maximum total cost to issuers of providing paragraph (b) information publicly, the Commission has assumed that all issuers of quoted OTC securities that do not currently provide information publicly will choose to do so consistent with the rule provisions. In addition, the Commission has assumed that these issuers will update this information annually to maintain eligibility for quotes in their securities to be initiated or submitted within an IDQS. It may be the case that some of these issuers will choose not to provide current and publicly available paragraph (b) information and quoting in their securities will cease. In these cases, costs associated with providing paragraph (b) information for these issuers will be null.

[715] For example, it is unclear the extent to which specific OTC issuers without current and publicly available paragraph (b) information may already be producing financial information internally or even have operations producing income and other accounting items. In these cases, the Commission expects the cost for these issuers would be less than the Commission's estimate.

[716] The $70 per hour figure for a compliance clerk is based on SIFMA's ''Office Salaries in the Securities Industry 2013,'' and has been modified by Commission staff to account for an 1,800-hour work year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[717] *See supra* Part V.C.2. The one hour burden in the PRA section includes the establishment of systems to both determine and document that paragraph (b) information is current and publicly available.

[718] (80 broker-dealers + 1 IDQS + 1 national securities association) × 1 hour × $70 = $5,740. These costs are an upper bound of the total costs on broker-dealers because the actual number of broker-dealers quoting OTC securities may be a subset of the 80 broker-dealers identified by OTC Markets Group.

[719] *See supra* Part V.C.2. The one minute burden in the PRA section includes the time required to both determine and document that paragraph (b) information is current and publicly available.

such documentation no more frequently than quarterly for issuers with reporting obligations under the federal securities laws, Regulation A or bank reporting obligations, foreign private issuers,[720] and annually for catch-all issuers.[721] Therefore, the total cost per year of this determination and documentation would be $37,773 per year.[722] However, the costs on individual broker-dealers may be substantially mitigated by permitting broker-dealers to rely on publicly available determinations by qualified IDQSs and national securities associations that an issuer has current and publicly available paragraph (b) information.

Broker-dealers may also incur costs or accrue benefits from changes in the liquidity of quoted OTC securities as a result of changes in demand associated with new current and publicly available information within quoted markets. For example, there may be changes in trading volume which alter the number of transactions from which broker-dealers earn fees. As discussed below, there may be migration from the quoted market to the grey market for OTC issuers avoiding these requirements. Therefore, the proportion of rents earned by broker-dealers from the grey market for OTC securities may increase relative to the quoted market. The net effect of these changes on the profits of trading intermediaries is unclear. Some of these costs and benefits to broker-dealers may be passed on to investors in the form of higher or lower transaction costs and account fees. The Commission anticipates that costs and benefits would be passed on more readily as competition increases among broker-dealers for OTC transactions.

(b) Amendments to Rule 15c2–11 Exceptions

The following amendments to the piggyback exception would serve to limit the circumstances under which the exception would apply relative to the baseline: The requirement for paragraph (b) information to be, depending on the regulatory status of the issuer, filed within 180 calendar days from a specified period, timely filed, or current and publicly available for broker-dealers to continue to rely on the piggyback exception; the requirement that reliance on the piggyback exception be based upon priced quotations with either bid or offer prices; and the elimination of piggyback eligibility for quotations for securities of shell companies that are published or submitted 18 months following the publication or submission of the initial priced quotation for such issuer's security in an IDQS or for securities within 60 calendar days of a trading suspension. Such amendments generally would serve to draw quotation and trading activity away from less liquid and less transparent quoted OTC securities. Hence, these amendments to the piggyback exception are designed to provide narrowly tailored updates to prevent fraud and manipulation, while otherwise maintaining liquidity in OTC market.

Currently, broker-dealers may rely on the piggyback exception to publish or submit quotations for the vast majority of quoted OTC securities, but many issuers of these securities do not provide current and publicly available financial information.[723] The requirement that an issuer's paragraph (b) information be, depending on the regulatory status of the issuer, filed within 180 calendar days from a specified period, timely filed, or current and publicly available, would encourage the production and publication of such information so that broker-dealers could continue to publish quotations in reliance on the piggyback exception. The Commission discusses in detail the expected benefits and costs associated with providing current information publicly for investors, issuers of quoted OTC securities, and broker-dealers.[724] In general, the ease of accessing information on the internet should allow investors to migrate toward forming inferences about the value of OTC securities based upon paragraph (b) information and away from inferences based principally upon the prices of piggybacked quotes.

Generally, these amendments could benefit investors by drawing their trading activity away from less liquid and less transparent quoted OTC securities that could attract fraudulent activity, thereby potentially deterring fraudulent activity. For example, the inability of broker-dealers to rely on the piggyback exception where there is no current and publicly available information about the issuer could draw trading activity away from these securities. Currently, many publications of quotations for quoted OTC securities associated with completely dark issuers are eligible for broker-dealers to rely on the piggyback exception. Potential fraudsters could incur costs in providing paragraph (b) information to perpetrate fraud in these dark issuers. Alternatively, quotations for OTC securities would not be easily accessible to retail investors if the issuer does not provide current and publicly available information, which could cause fraudsters to have more difficulty in driving up the price for an OTC security. In addition, higher quality issuers in the OTC market could benefit from greater access to capital to the extent that the change leads to a net increase in demand for higher quality OTC stocks and a net decrease in demand for less liquid quoted OTC securities that could attract fraudulent activity.[725] However, to the extent that investment decisions are driven by other factors, such as a personal interest in specific companies, there might be no increase in access to capital for certain issuers.

These amendments could also cause broker-dealers to incur additional costs. In particular, broker-dealers may need to comply with the information review requirement as well as file FINRA Forms 211 to resume a quoted market in securities that lose piggyback eligibility as a result of the amendments. The Commission estimates that it will take broker-dealers four hours to complete the information review and file Form 211 for prospectus issuers, Reg. A issuers, and reporting issuers and eight hours to do so for exempt foreign private issuers or catch-all issuers whenever a broker-dealer initiates the publication or submission of a quotation for an OTC security.[726] These costs are

[720] For purposes of paragraph (b)(3) of the amended Rule, the reporting issuer information considered timely filed and made publicly available would be the issuer's most recent annual report, together with any periodic or current reports filed thereafter by the issuer. Paragraph (b)(4) of the amended Rule provides a similar standard for foreign private issuer information, and calls for the information the issuer has published pursuant to 12g3–2(b) since the first day of the issuer's most recently completed fiscal year. The Commission expects that respondents will preserve records to document compliance with this requirement on a quarterly basis to capture quarterly reporting for these issuers. For purposes of this Economic Analysis, the Commission has adopted a more conservative approach of grouping Reg. A issuers, which have a semi-annual obligation, with issuers with quarterly reporting obligations.

[721] Paragraph (b)(5) of the amended Rule requires that the catch-all issuer information be ''current'' and publicly available annually, except for certain financial information: A balance sheet (as of a date less than 16 months before the publication or submission of a broker-dealer's quotation) and profit and loss and retained earnings statements (for the 12 months preceding the date of the most recent balance sheet). *See supra* Part II.B.3.

[722] (3081 SEC/Reg. A/Bank Reporting Obligation issuers x 1 minute x 4 responses per year) + (4,413 exempt foreign private issuers × 1 minute × 4 responses per year) + (2,401 catch-all issuers × 1 minute × 1 response per year)]/60 × $70 = $37,773.

[723] *See supra* note 686. The Commission estimates that during the calendar year 2019, issuers of 3,014 quoted OTC securities for which broker-dealers could rely on the piggyback exception when publishing quotations, did not have current and publicly available information.

[724] *See supra* Part V.C.1.a.

[725] *See supra* note 690.

[726] The Commission estimates that it would take one hour for a broker-dealer to complete and file

mitigated by the fact that information can be readily accessed through the internet. Therefore, broker-dealers will bear a monetized cost of $280 for prospectus issuers, Reg. A issuers, crowdfunding issuers, and reporting issuers, $560 for exempt foreign private issuers and catch-all issuers whenever a broker-dealer initiates the publication or submission of a quotation in an OTC security.[727] The Commission estimates that 3,489 securities would lose piggyback eligibility as a result of the changes to the piggyback exception.[728] Therefore, the aggregate monetized cost on broker-dealers would be $1,612,240 assuming that 1,220 securities were from prospectus, Reg. A, crowdfunding, or reporting issuers, 216 were from exempt foreign private issuers, and 2,053 were from catch-all issuers.[729] However, these costs of individual broker-dealers may be mitigated by allowing a qualified IDQS to satisfy the information review requirement under the Rule, as these amendments permit.[730]

Broker-dealers will also incur costs related to determining and documenting whether or not these conditions apply to the issuer (*i.e.,* whether the issuer is a shell company within the Rule definition). The Commission believes that broker-dealers could set up information systems to assess whether these conditions apply to OTC securities such that there would be a one-time cost plus an ongoing cost for each security. Several comments stated that it may be difficult for broker-dealers to determine whether an OTC securities issuer is a shell company.[731] However, costs associated with determinations of whether conditions of the Rule apply to OTC securities may be mitigated by permitting broker-dealers to rely on publicly available determinations by qualified IDQSs and national securities associations that an exception to the Rule applies. Consistent with the PRA section,[732] the Commission estimates that it would take a broker-dealer, IDQS, or national securities association a total of nine hours to establish a system to determine whether or not the piggyback exception applies to a particular security as well as to create associated documentation, for an aggregate cost of $51,660.[733] Consistent with the PRA section,[734] the Commission estimates that it would take a broker-dealer, IDQS, or national securities association at most one minute per each OTC security per quarter to determine and document whether the issuer is a shell company in order to rely upon the piggyback exception. Therefore, the maximum aggregate ongoing cost of this determination and documentation would be $3,097,400 per year.[735] In addition, the Commission estimates that it would take one second for a broker-dealer, qualified IDQS, or registered national securities association to create a record regarding the frequency of a priced bid or offer quotation when the piggyback exception applies and that each respondent would do this 252 times a year (*i.e.,* each trading day). Therefore, the maximum aggregate ongoing cost of this determination and documentation would be $4,637,576 per year.[736] The Commission believes that a broker-dealer, qualified IDQS, or registered national securities association needs to create records for securities that have been the subject of a trading suspension in order to fulfill the amended requirements of the piggyback exception. In 2019, the Commission issued a trading suspension for 213 securities. Consistent with the PRA section,[737] it is estimated that it would take a broker-dealer, qualified IDQS, or registered national securities association approximately one minute to create a record regarding whether a security has been subject to a trading suspension.[738] Therefore, the maximum aggregate ongoing cost of this determination and documentation would be $20,377 per year.[739]

Alternatively, broker-dealers could withdraw from publishing or submitting quotations for certain OTC securities as a result of the requirements related to paragraph (b) information, including the requirements to review and retain this information, as suggested by commenters.[740] This withdrawal may

FINRA Form 211. The estimate above represents an average number of hours per security across the set of all securities for which broker-dealers comply with the information review requirement and file a Form 211 to resume a quoted market. The Commission recognizes that broker-dealers may spend more time than the average to comply with the information review requirement for certain securities, such as those that raise multiple red flags.

[727] 4 hours × $70 per hour = $280 for prospectus, Reg. A, and reporting issuers; 8 hours × $70 per hour = $560 for exempt foreign private issuers and for catch-all issuers.

[728] The Commission estimates that during 2019, broker-dealers could publish quotations relying on the piggyback exception for 9,864 quoted OTC securities. The Commission estimates the total number of securities that would lose piggyback eligibility under these amendments by considering the number of securities that were piggyback eligible, but also would meet at least one of the following conditions: (1) The issuer of the quoted OTC security did not provide public information (3,059 securities); (2) the issuer of the quoted OTC security was a shell company and the initial priced quotation for its security was more than 18 months ago (460 securities); (3) the security did not have either a priced bid or offer quotations for four or more consecutive days (264 securities); and (4) the security was piggyback eligible after having been suspended (219 securities).

Of the 3,489 securities that would lose piggyback eligibility under these amendments, 1,220 were securities of prospectus issuers, Reg. A issuers, and reporting issuers, 216 were securities of exempt foreign private issuers, and 2,053 were securities of catch-all issuers.

The estimated number securities that would lose piggyback eligibility (as a result of their issuers' paragraph (b) information not being current and publicly available) represents an upper bound. *See supra* note 651.

[729] 1,220 × $280 + 216 × $560 + 2,053 × $560 = $1,612,240. To the extent that broker-dealers may maintain the ability to rely on the piggyback exception by starting to publish either bid or offer quotations for securities that are presently piggyback eligible with only unpriced quotations, fewer securities may lose piggyback eligibility under these amendments than the estimates the Commission presents. As noted in the PRA section, broker-dealers may also withdraw from quoting in securities such as shell companies and suspended securities. Therefore, the Commission expects the costs for broker-dealers computed here to be an upper bound.

[730] One commenter stated that there is uncertainty around the costs that broker-dealers may incur for the services provided by a qualified IDQS and the extent to which the costs for such services may be passed down to issuers and investors. *See* Virtu Letter. The Commission acknowledges that there may be uncertainty in the costs broker-dealers incur for the services provided by a qualified IDQS as a result of these amendments. These costs are included in the upper bound estimates above, which aggregates the cost of information review for OTC securities losing piggyback eligibility irrespective of whether this review is conducted by a broker-dealer or qualified IDQS.

[731] *See, e.g.,* Coral Capital Letter; OTC Markets Letter 1; STA Letter; Virtu Letter. *See supra* Part II.D.4.

[732] *See supra* Part V.C.2.b. The nine hour burden in the PRA section includes the establishment of systems to both determine and document that the piggyback exception applies to a particular OTC security. In the PRA section, the documentation of trading suspensions, determination and documentation of shell company status, as well as documentation of the frequency of bid and offer prices are each attributed three hours of this systems cost.

[733] (80 broker-dealers + 1 IDQS + 1 national securities association) × 3 hours × $70 = $17,220. These costs are an upper bound of the total costs on broker-dealers because the actual number of broker-dealers quoting OTC securities may be a subset of the 80 broker-dealers identified by OTC Markets Group.

[734] *See supra* Part V.C.2.b. The one minute burden in the PRA section includes the time required to both determine and document that an OTC issuer is a shell company.

[735] (80 broker-dealers + 1 IDQS + 1 national securities association) × [(3081 SEC/Reg. A/Bank Reporting Obligation issuers × 1 minute × 4 responses per year) + (4413 exempt foreign private issuers × 1 minute × 4 responses per year) + (2401 catch-all issuers × 1 minute × 1 response per year)] × 1/60 hours × $70 = $3,097,400.

[736] (80 broker-dealers + 1 IDQS + 1 national securities association) × (11,542 OTC issuers) × 1/3600 hours × 252 trading days per year × $70 = $4,637,576.

[737] *See supra* Part V.C.2.b.

[738] *See supra* Part V.C.2.b.

[739] (80 broker-dealers + 1 IDQS + 1 registered national securities association) × (213 trading suspensions) × 1/60 hours × $70 = $20,377.

[740] *See, e.g.,* Coral Capital Letter. The Commission is unable to quantify the extent of any such

Continued

impose costs on investors by reducing liquidity for OTC securities they might want to purchase or already owned before the withdrawal of liquidity. In addition, such withdrawal might impose costs of raising capital for OTC issuers. Broker-dealers, again, could incur costs and benefits associated with possible migration in trading activity from certain issuers to others as well as from the quoted to non-quoted market. Some of these costs and benefits to broker-dealers, again, may be passed on to investors.

The amended requirement that reliance on the piggyback exception be conditioned on quotations with at least a bid or offer quotation at a specified price also could impose costs on broker-dealers and issuers of quoted OTC securities by possibly limiting the formation of an active quoted market for OTC securities for which broker-dealers initially publish unpriced quotes. The Commission estimates that, out of 345 quoted OTC securities for which broker-dealers could start relying on the piggyback exception to publish or submit quotations during the calendar year 2019, 34 (10 percent) had unpriced quotes only for the entire first 30-days of being quoted.[741] At the same time, however, if the requirement were to encourage broker-dealers to shift away from publishing unpriced quotations to publishing priced quotations for some quoted OTC securities, the amended requirement may expedite the development of a priced market and facilitate price discovery and liquidity in these securities.

In contrast, eliminating from the piggyback exception the requirement for 12 days of quotations within the previous 30 calendar days has the potential to widen the circumstances under which broker-dealers may rely on the piggyback exception relative to the baseline. This amendment could make publishing quotations and trading easier in less liquid securities. Therefore, this amendment could, in principle, mitigate both the benefits and costs of the amendments described above. However, the Commission expects that eliminating the 12-day publication-of-quotations requirement would have an insignificant effect on the OTC market as it should only impact a small fraction of quoting activity. In particular, of all quoted OTC securities in the calendar year 2019, the Commission estimates that only 16 of more than 10,000 securities had fewer than 12 days of published quotations within the 30 previous calendar days, with no more than four business days in succession without a priced quotation.

Eliminating the 30-day requirement before OTC securities become eligible for the piggyback exception can increase price competition between broker-dealers. In particular, all broker-dealers would be able to rely on the piggyback exception to begin quoting an OTC security during the 30-day period after the initial quote under the amended Rule. This increased competition could decrease the cost of bid-offer spreads for OTC investors during this 30-day period. However, this increased competition may deter broker-dealers from conducting the initial information review and filing of FINRA Form 211. Therefore, the net effect on the liquidity of OTC securities and the trading costs of OTC investors is unclear.

These amendments also include changes to the exception for unsolicited customer quotations. In particular, the amendments limit reliance on the unsolicited quotation exception on behalf of company insiders and affiliates of the issuer when paragraph (b) information is not current and publicly available. These amendments could increase costs for broker-dealers because they may need to verify whether paragraph (b) information is current and publicly available. Broker-dealers could also be required to document and record the circumstances involved in an unsolicited customer quotation. Two commenters stated that it may be difficult for broker-dealers to determine whether quotations are submitted on behalf of company insiders or affiliates, especially in cases when market makers receive order flow from retail broker-dealers.[742] However, this cost may be mitigated by the possibility under these amendments that the quoting broker-dealer may rely upon a written representation from a customer's broker that such customer is not a company insider.

Consistent with the PRA section,[743] the Commission estimates that it would take a broker-dealer, IDQS, or national securities association at most three hours to establish a system to document and record the circumstances of an unsolicited customer quotation, for an aggregate cost of $17,220.[744] Consistent with the PRA section,[745] the Commission also estimates that it would take a broker-dealer one minute to document and record these circumstances for each customer order arising from a distinct customer and circumstance. There were 5,782,286 quotations published in reliance on the unsolicited quotation exception in 2019 based on OTC Markets Group data. Therefore, it is estimated that annually, broker-dealers would spend at most $6,746,000[746] in the aggregate complying with this requirement. Broker-dealers could withdraw from quoting for unsolicited customer orders as result of these costs, which could impose costs on OTC investors and issuers as discussed previously.

The costs incurred by broker-dealers related to the unsolicited quotation exception could be passed on to OTC investors. For example, OTC investors may be required to provide documentation supporting the fact that they are not a prohibited person within this exception. The magnitude of this potential cost to OTC investors could vary significantly depending on the manner in which the supporting documentation is or is not acquired by broker-dealers. However, the Commission believes that this cost could be minimal because there are means to provide documentation such as through attestations which would require minimal resources on the part of the investor. In addition, OTC investors seeking to transact using unsolicited orders may incur costs related to reduced liquidity if broker-dealers withdraw from quoting unsolicited customer orders as a result of costs. This reduced liquidity would pertain to certain OTC securities for which the issuer elects not to make paragraph (b)

withdrawal by broker-dealers as a result of information review requirements. For example, the Commission lacks data on profits earned from market making activity in OTC stocks which would inform this decision. Furthermore, the Commission is unable to quantify the effect of any such withdrawal on liquidity in the OTC market. For example, the Commission lacks data on the number and identities of broker-dealers are that are publishing quotes for OTC securities in reliance on the piggyback or other exceptions to the Rule. As such, it cannot estimate the degree of activity and concentration in this market by individual broker-dealers with respect to piggybacking quotes. *See supra* Part VI.A.

[741] Of the 34 quoted OTC securities that became piggyback eligible based on unpriced quotations, 22 (65 percent) had a published priced quote within the first 60 days after becoming piggyback eligible.

[742] *See, e.g.,* Canaccord Letter; OTC Markets Letter 3.

[743] *See supra* Part V.C.2.a.

[744] (80 broker-dealers + 1 IDQS + 1 national securities association) × 3 hours × $70 = $17,220. These costs are an upper bound of the total costs on broker-dealers because the actual number of broker-dealers quoting OTC securities may be a subset of the 80 broker-dealers identified by OTC Markets Group.

[745] *See supra* Part V.C.2.a.

[746] (5,782,286 quotations × 1 minute)/60 minutes × $70 = $6,746,000. This estimate reflects an upper bound as not all of these quotations necessarily represent distinct customers under distinct circumstances, such that not all of these quotations would require a separate document and record.

information current and publicly available.

There could also be benefits to OTC investors from the requirement for broker-dealers to obtain and review paragraph (b) information when the unsolicited quotation exception does not apply. For example, the review of paragraph (b) information in order to provide a quotation for an unsolicited customer quotation of a company insider or issuer affiliate could deter fraud by alerting broker-dealers to potential sales by company insiders or issuer affiliates related to fraud. In addition, as discussed above in relation to the new limitations on the piggyback exception, the costs and benefits to investors, issuers and broker-dealers would be qualitatively similar. OTC investors could benefit if quotations and trading activity migrate away from fraudulent investments. Higher quality issuers in the OTC market could also benefit from greater access to capital. Broker-dealers could also incur costs and benefits associated with possible migration in trading activity if unsolicited customer orders move from quoted to non-quoted markets. These costs and benefits could be passed on to OTC investors. Finally, there would be benefits and costs associated with the requirements pertaining to current and publicly available paragraph (b) information, as the unsolicited quotation exception for a company insider or issuer affiliate would be contingent on this information being current and publicly available.

(c) New Exceptions to Rule 15c2–11 To Reduce Burdens

The amended Rule introduces three new exceptions to except publications of quotations for certain OTC securities from the provisions of Rule 15c2–11, primarily the requirement for broker-dealers to obtain and review paragraph (b) information. The first of the three new exceptions would apply to securities with (1) a $100,000 ADTV value and where (2) the issuer of such security has $50 million total assets value and $10 million shareholders' equity on the issuer's publicly available audited balance sheet issued within six months after the end of the most recent fiscal year. This exception would apply only to securities for which paragraph (b) information is current and publicly available. This exception is meant to target more visible quoted OTC securities for which current and reliable information about the issuer is publicly available to investors, specifically for larger issuers, and for more liquid securities. Larger companies with greater trading activity may be less vulnerable to fraud for a number of reasons. For example, there may be a greater likelihood of arbitrage or information-based trading with higher trading activity, which can drive prices toward fundamental values. Larger issuers may also attract this type of trading activity through their visibility. In addition, companies with higher shareholder equity may be more expensive to acquire, making them less vulnerable to being purchased for the purposes of perpetrating a fraudulent scheme. The analysis in the baseline revealed no issuers that had financial information publicly available to investors and that had been the subject of Commission-ordered trading suspensions or assigned a ''caveat emptor'' designation by OTC Markets Group in calendar year 2019 would have met both the ADTV and assets test prongs of the ADTV and asset test exception.[747] Therefore, the Commission expects that many other quoted OTC securities that would qualify for these exceptions would be less susceptible to misinformation campaigns and share price run-ups as a result of buying pressure.

The main economic effect of the ADTV and assets test exception should be to relieve broker-dealers from the information review requirement and filing a FINRA Form 211 to publish quotations in a quotation medium. As before, the Commission estimates that broker-dealers will incur relief from a monetized cost of $280 for prospectus issuers, Reg. A issuers, crowdfunding, and reporting issuers, $560 for exempt foreign private and catch-all issuers whenever a broker-dealer publishes or submits a quotation for issuers satisfying these requirements. Consistent with the PRA section,[748] the Commission estimates that two reporting issuers and four exempt foreign private or catch-all issuers per year would satisfy these requirement so that the total cost savings would be $2,800.[749] Broker-dealers would also need to incur the costs of determining and creating documentation supporting the broker-dealer's reliance on the ADTV and asset test. Consistent with the PRA section,[750] the Commission estimates that it would take one minute to create documentation supporting the broker-dealer's reliance on the asset test prong of the exception and that broker-dealers would do this at most once annually per issuer.[751] In addition, the Commission estimates that it would take one minute for a broker-dealer, qualified IDQS, or registered national securities association to preserve documents and information that demonstrate that the requirements of the ADTV test have been met and that each respondent would do this 252 times a year (*i.e.,* each trading day).[752] Therefore, the total cost of determination and documentation related to the ADTV and asset test would be $4,356,660 each year.[753] Broker-dealers would also need to incur costs to establish systems to verify and document that OTC issuers

[747] The Commission finds that in 2019, seven suspended securities and nine ''caveat emptor'' securities had an ADTV value in excess of $100,000. However, issuers of these securities would not have satisfied the thresholds for assets and shareholder equity required to qualify for the exemption under these amendments. Similarly, three issuers of suspended securities and three issuers of securities with the ''caveat emptor'' designation that would have met the assets and the shareholder thresholds but would not have had sufficient trading volume to meet the liquidity threshold.

Because delinquent filings may be the reason for the trading suspension, the Commission is aware that the Commission's analysis using data on total assets and shareholder equity of issuers with suspended OTC securities may rely on information which is outdated and no longer representative of issuer fundamentals.

[748] *See supra* Part V.C.2.c.

[749] (2 reporting issuers × $280) + (4 foreign private or catch-all issuers × $560) = $2,800.

The Commission estimates that approximately 180 (two percent) of quoted OTC securities on an average day during calendar year 2019 would be eligible for the ADTV and assets exception. Of these securities, approximately 35 percent were of reporting issuers, 63 percent were of exempt foreign private issuers and the remaining two percent were of catch-all issuers. Applying these proportions to the 384 OTC securities for which broker-dealers were required to conduct an information review for the initiation or the resumption of quotations, yields securities of two reporting issuers and four exempt foreign private or catch-all issuers.

There could be additional relief as a result of the ADTV and assets exception for broker-dealers quoting securities that end up losing piggyback eligibility under the paragraph (f)(3) exception. The Commission estimates that out of the 3,489 securities that would lose piggyback eligibility under these amendments five securities of prospectus issuers, Reg. A issuers, crowdfunding, and reporting issuers and one security of an exempt foreign private issuer would have satisfied the ADTV value and assets thresholds. The ability of broker-dealers to rely on the paragraph (f)(5) exception for securities for which they could no longer rely on the paragraph (f)(3) exception could lead to an additional relief of five × $240 + 1 × $480 = $1,680.

[750] *See supra* Part V.C.2.c.

[751] The one minute burden in the PRA section for the ADTV prong of the exception includes the time required to both determine and document that the threshold applies to a particular OTC issuer.

[752] *See supra* Part V.C.2.c. The one minute burden in the PRA section for the asset prong of the exception includes the time required to both determine and document that the threshold applies to a particular OTC issuer.

[753] (252 days × 180 securities × 1 minute)/60 minutes × $70 + (180 securities × 1 minute)/60 minutes × $70 = $53,130. (80 broker-dealers + 1 IDQS + 1 national securities association) × $53,130 = $4,356,660. The Commission estimates that approximately 180 (two percent) of quoted OTC securities on an average day during calendar year 2019 would be eligible for the ADTV and assets exception.

satisfy these ADTV and size thresholds. Consistent with the PRA section,[754] the Commission estimates that it would take a broker-dealer, IDQS, or national securities association three hours to establish a system to determine whether or not the ADTV and assets test exception applies to a particular security as well as to create associated documentation, for an aggregate cost of $17,220.[755]

Some of these benefits and costs may be passed on to OTC investors. Certain issuers or securities that would meet the Rule's ADTV and asset test exception but that currently trade in the grey market may benefit from a broker-dealer establishing a quoted market without incurring costs associated with complying with the Rule's provisions. This migration may result in a benefit to investors to the extent that it may establish a new quoted market that facilitates price discovery and liquidity for higher quality securities previously traded in the grey market.

The second of the three new exceptions would apply to quotations following a registered or Regulation A offering, where the broker-dealer was named as an underwriter in the registration statement or offering circular and publishes or submits quotations for the same class of security in an IDQS within certain specified time frames. This exception is targeted towards those OTC securities that were recently offered in a transaction in which a regulated entity may have conducted a due diligence review. Because of the liability attached to underwriting activity, an underwriter typically conducts a due diligence review to mitigate potential liability associated with underwriting an offering of securities. Depending on its breadth and quality, this review may permit an underwriter to assert a defense to liability under Section 11 or Section 12(a)(2) of the Securities Act. As a result, underwriters of registered and Regulation A offerings are incentivized to confirm that the information provided to investors in the prospectus for a registered offering and offering circular for a Regulation A offering is materially accurate and obtained from a reliable source. Thus, excepting publications or submissions of quotations by underwriters from the Rule's provisions is expected to reduce the burden of complying with the Rule for such broker-dealers without sacrificing investor protection. The Commission does not currently have data that allow it to estimate the propensity with which broker-dealers are underwriting offerings for the same securities for which they are publishing quotations and thus quantify the effect of this exception on broker-dealers.

In addition, the Commission is adopting an exception for publications or submissions of quotations respecting securities where a qualified IDQS complies with the Rule's provisions. Broker-dealers could rely on a publicly available determination by a qualified IDQS that paragraph (b) information is current and publicly available for a given security, as well as whether a broker-dealer may rely on certain exceptions to the Rule. This exception is expected to reduce the burden on some broker-dealers with respect to publishing or submitting quotations for certain OTC securities. In particular, the Commission expects the main economic effect of this exception to be mitigating costs broker-dealers are expected to incur associated with determining certain characteristics about an issuer (*e.g.,* whether the security satisfies the criteria for the ADTV and asset test exception).

Lastly, the Commission is also adopting an exception for publications or submissions of quotations by broker-dealers that rely on publicly available determinations by a qualified IDQS or a registered national securities association that paragraph (b) information is current and publicly available, as well as whether a broker-dealer may rely on certain exceptions to the Rule. The Commission expects the main economic effect of this exception to be mitigating costs broker-dealers are expected to incur associated with determining certain characteristics about an issuer (*e.g.,* whether the issuer is a shell company within the definition, or whether the security jointly satisfies the ADTV and assets tests). The quantified costs above for these determinations provide an upper bound for aggregate costs irrespective of whether they are made by a broker-dealer, qualified IDQS, or registered National Securities Association.

Under the amended Rule, a qualified IDQS or registered national securities association must also establish, maintain, and enforce reasonably designed written policies and procedures to make certain publicly available determinations.[756] Consistent with the PRA section,[757] the Commission estimates that it would take one qualified IDQS and one registered national securities association subject to the amended Rule approximately 9 hours each to initially prepare these written policies and procedures, and 5 hours each on an ongoing annual basis to review and update policies and procedures, resulting in an aggregate cost of $1,260 initially[758] and $700 annually[759] thereafter.

2. Efficiency, Competition, and Capital Formation

In this section, the Commission discusses the impact that these amendments to Rule 15c2–11 may have on efficiency, competition, and capital formation. As discussed above, these amendments generally would increase transparency by requiring public availability of paragraph (b) information that is current to enable broker-dealers to publish or submit quotations for OTC securities. As a result, these amendments may cause capital to migrate from opaque to more transparent companies. A transfer of capital could occur as a result of OTC issuers without current and publicly available information either exiting the OTC market altogether because broker-dealers could no longer publish quotations for the securities of such issuer or migrating from the quoted OTC market to the grey market. Less liquid OTC securities could also migrate away from the quoted OTC market as a result of these restrictions on the piggyback exception pertaining to (1) shell companies, (2) recently suspended securities, and (3) securities without a sufficient prior history of either bid or offer prices. One academic study finds that valuations decrease when firms migrate from more liquid markets to less liquid markets, possibly as a result of decreased access to capital.[760] Therefore, investors may reallocate capital away from OTC issuers of these less liquid securities as these issuers exit the quoted OTC market. The loss of a quoted market and the information embedded in prices may affect an issuer's ability to raise capital through stock issuances or through other channels of finance, such as debt. These amendments could decrease investors' exposure to fraudulent activity involving non-transparent securities.

[754] *See supra* Part V.C.2.c. The three hour burden in the PRA section includes the establishment of systems to both determine and document that the ADTV and assets test applies to a particular OTC security.

[755] (80 broker-dealers + 1 IDQS + 1 national securities association) × 3 hours × $70 = $17,220. These costs are an upper bound of the total costs on broker-dealers because the actual number of broker-dealers quoting OTC securities may be a subset of the 80 broker-dealers identified by OTC Markets Group.

[756] Amended Rule 15c2–11(a)(3).

[757] *See supra* Part V.C.2.f.

[758] (1 IDQS + 1 national securities association) × 9 hours × $70 = $,1260.

[759] (1 IDQS + 1 national securities association) × 5 hours × $70 = $700.

[760] *See* Angel *et al., supra* note 243.

Capital formation could improve as investors' funds are diverted away from fraudulent OTC securities, which would migrate away from the quoted OTC market, and investors move toward the investments that remain.

In addition, the transparency of the market for quoted OTC securities should generally improve, particularly for previously dark issuers where paragraph (b) information is made current and publicly available for broker-dealers to continue to publish quotations. Capital formation could improve as investors allocate funds toward more productive investments based on enhanced availability of paragraph (b) information in the quoted market for OTC securities. In particular, investors may be able to better discern the value of an OTC security from the financial and qualitative data contained in paragraph (b) information. As a result of these effects, these amendments could generally enhance the efficiency of capital allocation, *i.e.,* the degree to which funds are diverted away from low value investments and toward high value investments. Previous academic studies have documented a relationship between greater quality of a firm's disclosures and a decreased cost of capital for the firm.[761] Other studies find a relationship between increased quality and frequency of accounting disclosures and the productivity of corporate investment.[762] As discussed previously, certain OTC issuers may withdraw from quoted markets as a result of the amended requirements pertaining to current and publicly available paragraph (b) information and, as a result, lose access to capital. Indeed, some commenters were concerned that these information requirements would encourage issuers to remain dark and that access to capital would diminish for these firms as a result.[763] The Commission acknowledges that issuers could opt to remain dark for various reasons including the cost of providing current and publicly available information or the strategic value of withholding information from competitor firms. The resulting migration to the grey market could, in principle, adversely impact capital formation for these firms. However, issuers with productive investment opportunities should be more likely to elect to provide current and publicly available paragraph (b) information as they would realize more value from access to capital by providing this information. Therefore, remaining non-transparent issuers may be less likely to have productive investment opportunities than those that opt to provide current and publicly available information.

The efficiency of prices (*i.e.,* the degree to which prices reflect the fundamental value of the security) could also improve in the OTC market as a result of greater transparency. In particular, prices could become less susceptible to manipulation as a result of the trading activity of informed investors who would have access to paragraph (b) information. These investors could buy underpriced securities and sell overpriced securities, pushing mispriced securities toward fundamental values.

The heightened transparency that would arise from these amendments could increase competition among both broker-dealers and issuers of quoted OTC securities. For example, broker-dealers could access paragraph (b) information at a low cost and establish more competitive prices. Before these amendments, broker-dealers could have had differential access to paragraph (b) information in the quoted OTC market and potentially benefited from non-competitive pricing as a result. As mentioned previously, some broker-dealers may withdraw from quoting certain OTC securities (*e.g.,* those of shell companies that are published or submitted 18 months following the publication or submission of the initial priced quotation for such issuer's security in an IDQS) as a result of the costs of initiating and resuming quotations associated with these amendments. As a result, there may be diminished price competition in these types of securities.

Eliminating the 30-day requirement before OTC securities become eligible for the piggyback exception can increase price competition between broker-dealers. In particular, all broker-dealers can begin quoting an OTC security during the 30-day period after the initial quote based upon the piggyback exception under the amended Rule. However, this increased competition may deter broker-dealers from conducting the initial information review and filing of FINRA Form 211. Fewer OTC securities may remain in the grey market where there may be diminished price competition relative to the quoted market.

Issuers of quoted OTC securities may also need to price seasoned equity offerings more competitively because investors would have improved access to information and might be able to more easily compare the financials of OTC issuers when allocating their investment dollars. This information could again enable OTC investors to divert funds more easily from higher to lower cost issues. As a result, OTC issuers would have less ability to price their issues high relative to the fundamental value of the securities being offered.

D. Reasonable Alternatives

In this section, reasonable alternatives to these amendments to Rule 15c2–11 are discussed.

1. Eliminating the Piggyback Exception

The 1999 Reproposing Release proposed to eliminate the piggyback exception from Rule 15c2–11. This amendment would have required all broker-dealers to complete the information review requirement and file FINRA Form 211 before publishing or submitting a quotation in a quotation medium. One commenter also suggested this alternative.[764] Relative to the baseline (*i.e.,* the existing provisions of Rule 15c2–11), this alternative would have increased the costs of broker-dealers that complied with the Rule's review, document collection, and recordkeeping provisions before publishing or submitting a quotation for an OTC security. These costs could be passed on to OTC investors. Alternatively, some broker-dealers could withdraw from publishing quotations in the OTC market as a result of the information review requirement, which could lead to the disappearance of a quoted market for some OTC securities and a migration of these securities to the grey market. Both possible effects could benefit investors by imposing costs on potential fraudsters in the OTC market.

First, review of paragraph (b) information could help broker-dealers increase price efficiency, while deterring fraudsters. Second, broker-dealers' withdrawal from publishing quotations for OTC securities could benefit investors by inhibiting fraudulent and manipulative schemes. Higher quality OTC issuers could also benefit from increased access to capital.

However, broker-dealers might also withdraw from publishing quotations

[761] *See supra* note 693; Luzi Hail & Christian Leuz, *International Differences in the Cost of Equity Capital: Do Legal Institutions and Securities Regulation Matter?,* 44 J. Acct. Res. 485–531 (2006) (finding that stock markets with greater disclosure requirements have lower costs of capital in cross-country comparisons).

[762] *See, e.g.,* Sugata Roychowdhury *et al., The Effects of Financial Reporting and Disclosure on Corporate Investment: A Review,* 68 J. Acct. & Econ. 1–27 (2019), *available at https://www.sciencedirect.com/science/article/pii/S0165410119300412.*

[763] Paul Lucot Letter; Michael Tofias; Anbec Partners; Michael A. Zgayb; Laura Coffman; Caldwell Sutter Capital; Coral Capital Comment.

[764] Better Markets Letter.

for securities of higher quality issuers at the same time. Therefore, eliminating the piggyback exception could increase capital raising costs for OTC issuers. This withdrawal may also impose costs on investors by reducing the liquidity of OTC securities. The net effect of this alternative on OTC investors and issuers is unclear.

The Commission believes that the amended Rule more appropriately meets the Commission's policy goals because the alternative places the additional burdens upon broker-dealers and OTC issuers relative to these amendments. In particular, broker-dealers would incur additional costs associated with review of paragraph (b) information and filing FINRA Form 211 for all OTC securities they wish to quote. In addition, this alternative could raise the costs for OTC issuers and investors relative to these amendments.

2. Maintaining the Piggyback Exception for the Securities of Non-Transparent Issuers

A number of commenters suggested that the amended Rule include a greater set of OTC securities within the piggyback exception than the amended Rule permits. For example, commenters raised concerns about potential negative impacts on persons who are invested in OTC securities of well-established, non-reporting issuers that do not make their information current and publicly available.[765] Therefore, one alternative to the amended Rule would be to maintain piggyback eligibility for well-established non-disclosing issuers, which could include non-penny stocks or existing OTC securities vis-à-vis a grandfather exception. Some commenters supported grandfathering presently quoted OTC securities without current and publicly available information.[766]

Eliminating transparency requirements related to the piggyback exception for certain OTC securities may cause more OTC issuers to remain non-transparent relative to the amended Rule. These additional issuers would incur lower costs of providing current and publicly available paragraph (b) information as a result. In addition, OTC investors may incur costs from less informed investment and voting decisions as well as less efficient pricing.

Such an alternative would increase the number of OTC securities included within the piggyback exception relative to the amended Rule. Consequently, this alternative would be anticipated to decrease broker-dealer costs related to information review and filing FINRA Form 211 relative to the amended Rule. Some of these costs savings could be passed on to OTC investors. Fewer broker-dealers may withdraw from quoting OTC securities, which could increase liquidity for OTC investors and access to capital for OTC issuers. This alternative may also increase investors' exposure to fraud and manipulation in non-transparent securities or that may be the targeted for these activities. Indeed, risk of fraud and manipulation may be more pronounced in OTC securities without current and publicly available information, as discussed previously.[767]

This alternative could also diminish possible costs associated with the ability of OTC firm insiders to manipulate the stock's price downward when seeking to repurchase shares by keeping their firm dark and causing migration to the grey market. However, the amended Rule provides a grace period of up to 15 calendar days for the piggyback exception to continue once a qualified IDQS or registered national securities association makes a publicly available determination that the requisite information is no longer current and/or publicly available. This grace period should allow existing investors in an OTC issuer to exit positions before such a potential manipulation could occur.

3. Eliminating or Maintaining the Piggyback Exception for Shell Companies

The proposed Rule presented an alternative to these amendments whereby the piggyback exception would be eliminated entirely for shell companies. Therefore, one possible alternative to the amended Rule would be to eliminate the piggyback exception for shell companies or maintain it under a stricter set of conditions (*e.g.,* permitting its use for less than 18 months from the initial priced quotation in an IDQS). Alternatively, some commenters suggested that the piggyback exception should include shell companies since they can be used for non-fraudulent purposes.[768] Therefore, an additional alternative to the amended Rule would be to maintain the piggyback exception under a looser set of conditions (*e.g.,* permitting its use for more than 18 months from the initial priced quotation in an IDQS).

Relative to these amendments, the first alternative of maintaining the piggyback exception for shell companies under a stricter set of conditions could increase the costs of broker-dealers that comply with the Rule's review, document collection, and recordkeeping provisions before publishing or submitting a quotation for an OTC security. These costs could be passed on to OTC investors. Alternatively, some broker-dealers could withdraw from publishing quotations for shell companies under these conditions in the OTC market as a result of the information review requirement, which could lead to the disappearance of a quoted market for their securities and their migration to the grey market. Both possible effects could benefit investors by imposing costs on potential fraudsters in the OTC market.

First, review of paragraph (b) information could help broker-dealers increase price efficiency, while deterring fraudsters. Second, broker-dealers' withdrawal from publishing quotations for OTC securities could benefit investors by inhibiting fraudulent and manipulative schemes. As discussed previously, pump-and-dump schemes are often targeted toward shell companies.[769] Higher quality OTC issuers could also benefit from increased access to capital.

However, broker-dealers might withdraw from publishing quotations for securities of shell companies seeking to execute a reverse merger with an operating company seeking capital on the public markets. Therefore, eliminating the piggyback exception could increase capital raising costs for issuers, although it may benefit investors by limiting the potential for fraud arising from shell companies in the context of reverse mergers.[770] This withdrawal may also impose costs on investors by reducing the liquidity of OTC securities of shell companies. The net effect of this alternative on OTC investors and issuers is unclear.

The second alternative of maintaining the piggyback exception for shell companies under a looser set of conditions could have the opposite effects listed above relative to the amended Rule. In particular, broker-dealers could benefit from diminished costs associated with information review and filing FINRA Form 211. Fewer broker-dealers may withdraw from quoting the OTC securities of shell companies and maintain liquidity in these securities as a result. Investors and issuers may benefit as result relative to

[765] *See, e.g.,* Don C. Whitaker; Jim Rivest; Lawrence Goldstein.

[766] *See, e.g.,* Alluvial Letter; Anbec Partners Letter; Ariel Ozick; Michael Tofias; Mitchell Partners Letter 3.

[767] *See supra* Part VI.B.2.c.

[768] Philippe Goodwill Letter; Tom Amenda; Coral Capital Letter.

[769] *See supra* Part VI.B.2.c.

[770] *See supra* note 345 and accompanying text.

these amendments. However, investors may incur costs from additional fraud utilizing shell companies as a result of looser restrictions on the piggyback exception.

As discussed previously, the Commission believes that the amended Rule appropriately balances the promotion of investor protection and the facilitation of capital formation by allowing broker-dealers to maintain a quoted market for the securities of shell company issuers, which could become public companies as a result of engaging in a reverse merger, but providing this piggyback exception for a limited period of 18 months.

4. Alternative Thresholds for Exceptions

The 1999 Reproposing Release proposed to except publications of quotations from the provisions of Rule 15c2–11 for OTC securities with at least: (1) $100,000 ADTV value, (2) $50 million total assets value and $10 million shareholders' equity on the issuer's audited balance sheet or (3) $50 bid price. These exceptions were less restrictive than the ones in the current amendments as the exception would apply if an OTC security could conform to only one of these three conditions. Therefore, one possible alternative would be to establish thresholds which conform to these conditions from the 1999 Reproposing Release.

Relative to the baseline, the main economic effect of this alternative would be to relieve broker-dealers from complying with the Rule's provisions and filing FINRA Form 211 to publish quotations in a quotation medium. Some of these benefits may be passed on to OTC investors. Certain issuers or securities that would qualify for these exceptions but currently trade in the grey market may benefit from a broker-dealer establishing a quoted market without incurring costs associated with complying with the Rule's provisions. This migration may result in a benefit to investors to the extent that it may establish a new quoted market that facilitates price discovery and liquidity for quality securities previously trading in the grey market.

Relative to these amendments, however, this alternative may be more likely to except securities that may be targeted for fraudulent activity from the Rule's review and document collection provisions. For example, there were seven suspended OTC securities in 2019 with ADTV value in excess of $100,000 and three issuers of suspended OTC securities that exceeded the thresholds for $50 million in total assets and $10 million in shareholders' equity. Therefore, though trading suspensions are not necessarily indicative of fraud, investors may face greater exposure to fraud and manipulation under this alternative. In addition, companies may be able to circumvent thresholds based on stock price. For example, an OTC issuer could, in principle, conduct reverse share splits in order to achieve a share price that exceeds a given threshold. As a result, the Commission believes the amended Rule is better than the alternative. However, investors in higher quality OTC issuers could benefit in that a greater number would qualify for the quoted market relative to these amendments. In addition, broker-dealers would benefit from even greater relief from the Rule's provisions and from filing FINRA Form 211.

The proposed Rule provided an exception from the information review requirement for OTC securities with at least: (1) $100,000 ADTV value and (2) $50 million total assets value and $10 million unaffiliated shareholders' equity on the issuer's audited balance sheet. These previously proposed thresholds would potentially compel broker-dealers to conduct the specified information review for more OTC securities relative to the amended Rule as issuers with more than $10 million shareholders' equity (but less than $10 million unaffiliated equity) could be included in the requirement. As a result, the previous proposal would potentially increase broker-dealers' costs associated with information review, filing of FINRA Form 211, and their possible withdrawal from quoting activity relative to the amended Rule. These additional costs could be passed on to OTC investors. In addition, OTC issuers could incur additional costs associated with raising capital, and OTC investors could incur costs associated with diminished liquidity.

However, OTC investors may benefit from decreased exposure to fraud and manipulation relative to the amended Rule. In particular, the amended Rule may exempt OTC securities with small public float but total shareholder equity exceeding $10 million. Such securities may be prone to manipulation if they are controlled by insiders complicit with a fraudulent scheme. Nonetheless, the Commission believes that the thresholds of the amended Rule will still confine the exception to OTC securities not prone to fraudulent or manipulative activity. In particular, the Commission has found that zero issuers in 2019 that simultaneously met the $50 million total assets, $10 million shareholders' equity, and $100,000 ADTV value thresholds were subject to trading suspensions or caveat emptor status.

As pointed out by commenters, it can be difficult to accurately determine unaffiliated shareholder ownership.[771] As a result, broker-dealers could bear costs associated with this determination relative to the amended Rule. Alternatively, broker-dealers may forgo such a determination, in which case they may instead assess the amount of an issuer's total shareholder equity. In this case, the costs and benefits associated with the thresholds of the proposed Rule would be equivalent to those of the amended Rule.

One commenter also recommended replacing the previously proposed threshold for shareholder equity with a threshold of $150 million market capitalization. Similar to the amended Rule, this alternative would decrease broker-dealers' costs of complying with the Rule's provisions and filing FINRA Form 211 to publish quotations in a quotation medium relative to the baseline. Some of these benefits may be passed on to OTC investors. Certain issuers or securities that would qualify for these exceptions but currently trade in the grey market may benefit from a broker-dealer establishing a quoted market without incurring costs associated with complying with the Rule's provisions. This migration may result in a benefit to investors to the extent that it may establish a new quoted market that facilitates price discovery and liquidity for quality securities previously trading in the grey market.

Relative to the amended Rule, this alternative could possibly allow for more issuers that could be vulnerable to pump-and-dump schemes to be admitted within the exception, thus increasing investor exposure to fraud. Unlike shareholders' equity, which is based on book value, market capitalization can fluctuate with market share price and can be susceptible to volatility, especially in a fraudulent or manipulative scheme, such as a pump-and-dump scheme. Indeed, the Commission estimates that that approximately three percent of issuers with OTC securities that were the subject of Commission-ordered trading suspensions over the calendar year 2019 had a market capitalization in excess of $150 million.

5. Quotations With Both Bid and Offer Prices for the Piggyback Exception

The proposed Rule conditioned the piggyback exception on both bid and offer prices for the prior 30 calendar days with no gap in quoting of more

[771] OTC Markets Group Letter 2; SIFMA Letter; Professor Angel Letter.

than four days. After considering feedback from commenters,[772] the amended Rule instead conditions the piggyback exception on quotations with either bid or offer quotation at a specified price with no more than four consecutive business days in succession without a quotation. One alternative would be to condition the exception on quotations with both a bid and offer price. Relative to the amended Rule, this alternative would allow fewer securities to become eligible for the piggyback exception. As such, broker-dealers would incur higher costs associated with the Rule's review, document collection, and record-keeping provisions (as well as filing with FINRA a Form 211) before publishing or submitting a quotation for an OTC security relative to the amended Rule. The Commission has estimated that 629 OTC securities for which broker-dealers could publish quotations relying on the piggyback exception during 2019 had quotations with either a bid or offer price—but not both—for four days one or more times in a year. Of these securities, 308 were of prospectus, Reg. A, crowdfunding, and reporting issuers, 81 were of exempt foreign private issuers, and 240 were of catch-all issuers. Therefore, the Commission estimates that the additional dollar cost to broker-dealers from this alternative would be $266,000.[773]

OTC investors in higher quality issuers could suffer from lower liquidity if this cost results in fewer securities remaining in the quoted market. However, this alternative may also cause less liquid securities to lose eligibility for piggyback quotations relative to the amended Rule. As a result, OTC investors may benefit from this alternative if these securities are more prone to fraud than securities with both bid and offer prices.

Nonetheless, the Commission believes that the amended Rule more appropriately meets the Commission's policy goals of reducing burdens on broker-dealers while retaining OTC securities in the quoted markets with a legitimate, independent market interest. One commenter stated that a priced bid is a valid price discovery mechanism and that existing self-regulatory organization rules require broker-dealers to trade at their publicly quoted prices (*i.e.,* FINRA Rule 5220).[774] This commenter also stated that the development of liquidity begins with, and frequently depends on, the ability of a broker-dealer to publish a one-sided priced bid.[775]

Eliminating the 30-day requirement before OTC securities can become eligible for the piggyback exception can increase price competition between broker-dealers. In particular, broker-dealers can begin quoting in these securities during the initial 30-day period based on the piggyback exception under the amended Rule. This increased competition could decrease the cost of bid-offer spreads for OTC investors during this 30-day period. However, this increased competition may deter broker-dealers from conducting the initial information review and filing of FINRA Form 211. Therefore, the net effect on the liquidity of OTC securities and the trading costs of OTC investors is unclear.

6. Alternative Required Frequency of Current and Publicly Available Information

The Commission has sought to align the amended Rule with existing regulatory requirements for publicly available information, as well as with private market solutions that have developed since the Commission last proposed to amend the Rule. Notwithstanding this, an alternative to these amendments would be to define paragraph (b) information as ''current'' for issuers based on a different lengths of time (*e.g.,* six months instead of twelve months for catch-all issuers) for the purposes of the initiation and resumption of quotes or reliance upon the piggyback exception. For example, the proposed Rule would have conditioned broker-dealer quotations on the paragraph (b) information of catch-all issuers being publicly available and current within six months of the broker-dealer's quotation (unless the unsolicited customer exception applied).

Increasing the frequency of publicly available information required to qualify as ''current'' relative to the amended Rule could benefit investors by improving the relevance of information used for investment and voting decisions relative to the information available under the existing Rule. Investors could also benefit from decreased exposure to loss from fraud as additional current and publicly available information that is more frequently provided could push trading activity in less transparent securities out of the OTC market or to the grey market. Higher quality OTC issuers could benefit from increased access to capital to the extent that more frequent information requirements lead to a net increase in demand for higher quality OTC stocks.

Although the amended Rule does not require any issuer to make paragraph (b) information current and publicly available, a broker-dealer could not publish a quotation in the absence of such information. OTC issuers would face increased costs of providing current and publicly available information if the amended Rule required such information to be provided more frequently. In particular, OTC issuers with no reporting obligations or minimal reporting obligations have to make current information publicly available more frequently under such an alternative. In order for a broker-dealer to continue to publish quotations, some OTC issuers might find they have to prepare current information and make it publicly available more frequently than their current annual or semi-annual reporting obligations as an issuer under the federal securities laws, such as reporting requirements under the Securities Act or exchange listing requirements under the Exchange Act. OTC issuers may find that they must prepare current information and make it available more often than they are required to do so under state law, as well. Broker-dealers, qualified IDQSs, and national securities associations may also be required to review paragraph (b) information more frequently under this alternative in order to initially publish or submit, or maintain, quotes in the OTC market. Some OTC issuers may opt not to provide information with a greater required frequency relative to the amended Rule. Similarly, more broker-dealers may withdraw from quoted OTC markets as a result of more frequent information review. Both effects could adversely affect OTC investors' liquidity and increase their trading costs. The Commission believes the amended Rule is better than the alternative because the additional benefits from more frequently available information are likely to be relatively minor, while the costs for issuers, broker-dealers, and other market participants could increase in proportion to the required frequency of making current information publicly available.

Decreasing the frequency of publishing current and publicly available information to relative to the amended Rule (*e.g.,* requiring current and publicly available information every two years instead of twelve months for catch-all issuers) could have effects opposite to those discussed relating to increased frequency of making current information publicly

[772] *See supra* Part II.D.2.

[773] (308 × $280) + (81 × $560) + (240 × $560) = $266,000.

[774] OTC Markets Group Letter 2.

[775] *Id.*

available. For example, decreasing the frequency of making current information publicly available could provide relief, relative to the requirements of the amended Rule, from the costs to OTC issuers of preparing and disseminating such information. The Commission is not pursuing such an alternative because a significant decrease in the frequency in the availability of current and publicly available paragraph (b) information could make the information less relevant for decision making and investor protection purposes, driving down their potential benefit to investors.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [776] requires federal agencies, in promulgating rules, to consider the impact of those rules on ''small entities,'' [777] a term that includes ''small businesses.'' [778] Section 603(a) [779] of the Administrative Procedure Act,[780] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, unless the Commission certifies that the amendments, if adopted, would not have a significant impact on a substantial number of small entities.[781]

A broker-dealer is a small entity if it has total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d), or, if not required to file such statements, has total capital of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[782] In the Proposing Release, the Commission certified, pursuant to Section 605(b) of the RFA, that the proposed amendments to Rule 15c2–11 would not have a significant economic impact on a substantial number of small entities.[783] The Commission did not receive any comments on the certification as it related to the entities impacted by the Rule.[784]

As discussed in the PRA and Economic Analysis sections above, the Commission believes that the proposed amendments will impact the 80 broker-dealers that publish or submit quotations on OTC Markets Group's systems.[785] Based on the Commission's analysis of existing information relating to broker-dealers that would be subject to the amended Rule, the Commission does not believe that any of the 80 broker-dealers impacted by the Rule are small entities under the above definition because they either have at least $500,000 in total capital or are affiliated with a person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. Based on experience with broker-dealers that participate in the market for OTC securities, the Commission believes that it is unlikely that in the future a small entity may become impacted by the amendments since firms that enter the market are likely to have at least $500,000 in total capital or be affiliated with a person that is not a small business or small organization under Rule 0–10.

For the foregoing reasons, the Commission certifies that the amendments to Exchange Act Rule 15c2–11 will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VIII. Statutory Authority

The rule amendments are being adopted pursuant to sections 3, 10(b), 15(c), 15(h), 17(a), 23(a), and 36 of the Securities Exchange Act of 1934, 15 U.S.C. 78c, 78j(b), 78o(c), 78o(g), 78q(a), 78w(a), and 78mm.

List of Subjects in 17 CFR Parts 230 and 240

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of the Federal Regulations as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The general authority for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

§ 230.144 [Amended]

■ 2. Section 230.144, paragraph (c)(2), is amended by removing the text ''(a)(5)(i) to (xiv), inclusive, and paragraph (a)(5)(xvi)'' and adding ''(b)(5)(i)(A) to (N), inclusive, and paragraph (b)(5)(i)(P)'' in its place.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. 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, 78o–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. 5221(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.

* * * * *

Section 240.15c2–11 also issued under 15 U.S.C. 78j(b), 78o(c), 78q(a), and 78w(a).

* * * * *

■ 4. Section 240.15c2–11 is revised to read as follows:

§ 240.15c2–11 Publication or submission of quotations without specified information.

(a) *Unlawful activity.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for:

(1) *Brokers or dealers.* A broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium, unless:

(i)(A) Such broker or dealer has in its records the documents and information specified in paragraph (b) of this section;

(B) Such documents and information specified in paragraph (b) of this section

[776] 5 U.S.C. 601 *et seq.*

[777] 5 U.S.C. 605(b).

[778] Although Section 601(b) of the RFA defines the term ''small business,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small business for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Exchange Act Rule 0–10 (''Rule 0–10''). Rule 0–10 also provides that the Commission may, if warranted by the circumstances, use a different definition for particular rulemakings.

[779] 5 U.S.C. 603(a).

[780] 5 U.S.C. 551 *et seq.*

[781] 5 U.S.C. 605(b).

[782] Rule 0–10(c).

[783] *See* Proposing Release at 58262.

[784] The Commission received one comment that mentioned the Regulatory Flexibility Act in relation to other market participants. *See* Virtu Letter, at 8. The costs and benefits of the amended Rule with respect to other market participants are considered in the Economic Analysis section. *See supra* Part VI.

[785] *See supra* Parts V.B, VI.B.

(excluding paragraphs (b)(5)(i)(N) through (P) of this section) are current and publicly available; and

(C) Based upon a review of the documents and information specified in paragraph (b) of this section, together with any other documents and information required by paragraph (c) of this section, such broker or dealer has a reasonable basis under the circumstances for believing that:

(*1*) The documents and information specified in paragraph (b) of this section are accurate in all material respects; and

(*2*) The sources of the documents and information specified in paragraph (b) of this section are reliable; or

(ii)(A) The quotation medium is a qualified interdealer quotation system that made a publicly available determination that it has performed the activities described in paragraph (a)(2)(i) through (iii) of this section; and

(B) Such quotation is published or submitted for publication within three business days after such qualified interdealer quotation system makes such publicly available determination.

(2) *Qualified interdealer quotation systems.* A qualified interdealer quotation system to make known to others the quotation of a broker or dealer that is published or submitted for publication pursuant to paragraph (a)(1)(ii) of this section, unless:

(i) Such qualified interdealer quotation system has in its records the documents and information specified in paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P) of this section except where the qualified interdealer quotation system has knowledge or possession of this information);

(ii) Such documents and information specified in paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P) of this section) are current and publicly available;

(iii) Based upon a review of the documents and information specified in paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P) of this section, except where the qualified interdealer quotation system has knowledge or possession of this information), together with any other documents and information required by paragraph (c) of this section, such qualified interdealer quotation system has a reasonable basis under the circumstances for believing that:

(A) The documents and information specified in paragraph (b) of this section are accurate in all material respects; and

(B) The sources of the documents and information specified in paragraph (b) of this section are reliable; and

(iv) The qualified interdealer quotation system makes a publicly available determination that it has performed the activities described in paragraphs (a)(2)(i) through (iii) of this section; or

(3) *Qualified interdealer quotation systems or registered national securities Associations.* A qualified interdealer quotation system or registered national securities association to make a publicly available determination described in paragraph (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7) of this section, unless such qualified interdealer quotation system or registered national securities association establishes, maintains, and enforces reasonably designed written policies and procedures to determine whether:

(i) The documents and information specified in paragraph (b) of this section are current and publicly available; and

(ii) The requirements of an exception under paragraph (f) of this section are met, if it makes a publicly available determination described in paragraph (f)(7) of this section.

(b) *Specified information.* (1) A copy of the prospectus specified by section 10(a) of the Securities Act of 1933 for an issuer that has filed a registration statement under the Securities Act of 1933, other than a registration statement on Form F–6, that became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium; *Provided,* That such registration statement has not thereafter been the subject of a stop order that is still in effect when the quotation is published or submitted; or

(2) A copy of the offering circular provided for under Regulation A (§§ 230.251 through 230.263 of this chapter) for an issuer that has filed an offering statement under Regulation A that was qualified less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium; *Provided,* That the Regulation A exemption, with respect to such issuer, has not thereafter become subject to a suspension order that is still in effect when the quotation is published or submitted; or

(3) A current copy of:

(i) An annual report filed pursuant to section 13 or 15(d) of the Act, together with any periodic and current reports that have been filed thereafter under the Act by the issuer, except for current reports filed during the three business days prior to the publication or submission of the quotation; *Provided, however,* That, until such issuer has filed its first such annual report, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F–6, that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act that became effective within the prior 16 months, together with any periodic and current reports filed thereafter under section 13 or 15(d) of the Act;

(ii) An annual report filed pursuant to Regulation A, together with any periodic and current reports filed thereafter under Regulation A by the issuer, except for current reports filed during the three business days prior to the publication or submission of the quotation; *Provided, however,* That, until such issuer has filed its first such annual report, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the offering statement filed by the issuer under Regulation A, that was qualified within the prior 16 months, together with any periodic and current reports filed thereafter under Regulation A;

(iii) An annual report filed pursuant to Regulation Crowdfunding (§§ 227.100 through 227.503 of this chapter); *Provided, however,* that, until such issuer has filed its first such annual report, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the Form C filed by the issuer under Regulation Crowdfunding within the prior 16 months, together with any Form C/A and Form C/U filed thereafter under Regulation Crowdfunding;

(iv) An annual statement referred to in section 12(g)(2)(G)(i) of the Act (in the case of an issuer required to file reports pursuant to section 13 or 15(d) of the Act), together with any periodic and current reports filed thereafter under the Act by the issuer, except for current reports filed during the three business days prior to the publication or submission of the quotation; *Provided, however,* that, until such issuer has filed its first such annual statement, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F–6, that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act, that became effective within the prior 16 months, together with any periodic and current reports filed thereafter under section 13 or 15(d) of the Act; or

(v) An annual statement referred to in section 12(g)(2)(G)(i) of the Act (in the case of an issuer of a security that falls within the provisions of section 12(g)(2)(G) of the Act); or

(4) A copy of the information that, since the first day of its most recently completed fiscal year, the issuer has published as required to establish the exemption from registration under section 12(g) of the Act pursuant to § 240.12g3–2(b) of this chapter, which the broker or dealer must make available upon the request of a person expressing an interest in a proposed transaction in the issuer's security with the broker or dealer, such as by providing the requesting person with appropriate instructions regarding how to obtain the information electronically; or

(5)(i) The following information, which must be (excluding paragraphs (b)(5)(i)(N) through (P) of this section) as of a date within 12 months prior to the publication or submission of the quotation, unless otherwise specified:

(A) The name of the issuer and any predecessors during the past five years;

(B) The address(es) of the issuer's principal executive office and of its principal place of business;

(C) The state of incorporation or registration of the issuer and of each of its predecessors (if any) during the past five years;

(D) The title, class, and ticker symbol (if assigned) of the security;

(E) The par or stated value of the security;

(F) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;

(G) The name and address of the transfer agent;

(H) A description of the issuer's business;

(I) A description of products or services offered by the issuer;

(J) A description and extent of the issuer's facilities;

(K) The name and title of all company insiders;

(L) The issuer's most recent balance sheet (as of a date less than 16 months before the publication or submission of the quotation) and profit and loss and retained earnings statements (for the 12 months preceding the date of the most recent balance sheet);

(M) Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessors has been in existence;

(N) Whether the broker or dealer or any associated person of the broker or dealer is affiliated, directly or indirectly, with the issuer;

(O) Whether the quotation is being published or submitted on behalf of any other broker or dealer and, if so, the name of such broker or dealer; and

(P) Whether the quotation is being submitted or published, directly or indirectly, by or on behalf of the issuer or a company insider and, if so, the name of such person and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.

(ii) The broker or dealer must make the documents and information specified in paragraph (b)(5)(i) of this section available upon the request of a person expressing an interest in a proposed transaction in the issuer's security with the broker or dealer, such as by providing the requesting person with appropriate instructions regarding how to obtain such publicly available documents and information electronically. If such information is made available to others upon request pursuant to this paragraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is accurate but shall constitute a representation by such broker or dealer that the information is current in relation to the day the quotation is submitted, the broker or dealer has a reasonable basis under the circumstances for believing the information is accurate in all material respects, and the information was obtained from sources that the broker or dealer has a reasonable basis under the circumstances for believing are reliable. The documents and information specified in paragraph (b)(5) of this section must be reviewed where paragraphs (b)(1) through (4) of this section do not apply to such issuer. For purposes of compliance with paragraph (a)(1)(i)(B) or (a)(2)(ii) of this section, the documents and information specified in paragraph (b)(5) of this section must be reviewed for an issuer for which the documents and information specified in paragraph (b)(1), (2), (3), or (4) of this section regarding such issuer are not current.

(c) *Supplemental information.* With respect to any security the quotation of which is within the provisions of this section, the broker or dealer submitting or publishing such quotation, or any qualified interdealer quotation system that makes known to others the quotation of a broker or dealer pursuant to paragraph (a)(2) of this section, shall have in its records the following documents and information:

(1) Records related to the submission or publication of such quotation, including the identity of the person or persons for whom the quotation is being published or submitted, whether such person or persons is the issuer or a company insider, and any information regarding the transactions provided to the broker, dealer, or qualified interdealer quotation system by such person or persons;

(2) A copy of any trading suspension order issued by the Commission pursuant to section 12(k) of the Act regarding any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation or a copy of the public release issued by the Commission announcing such trading suspension order; and

(3) A copy or a written record of any other material information (including adverse information) regarding the issuer that comes to the knowledge or possession of the broker, dealer, or qualified interdealer quotation system before the publication or submission of the quotation.

(d) *Recordkeeping.* (1)(i) The following persons shall preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information required under paragraphs (a), (b), and (c) of this section, except for the documents and information that are available on the Commission's *Electronic Data Gathering, Analysis and Retrieval System* (EDGAR):

(A) Any broker or dealer that publishes or submits a quotation pursuant to paragraph (a)(1) of this section for a security; or

(B) Any qualified interdealer quotation system that makes known to others the quotation of a broker or dealer pursuant to paragraph (a)(2) of this section for a security;

(ii) Any broker or dealer that publishes or submits a quotation pursuant to paragraph (a)(1)(ii) of this section shall preserve for a period of not less than three years, the first two years in an easily accessible place, the name of the qualified interdealer quotation system that made a publicly available determination that it has performed the activities described in paragraph (a)(2)(i) through (iii) of this section.

(2) The following persons shall preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information that demonstrate that the requirements for an exception under paragraph (f)(2), (3), (5), (6), or (7) of this section are met, except for the documents and information that are available on EDGAR:

(i) Any qualified interdealer quotation system or registered national securities association that makes a publicly available determination described in

paragraph (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7) of this section; and

(ii) Any broker or dealer that publishes or submits a quotation pursuant to paragraph (f) of this section; *Provided, however,* That any broker or dealer that relies on a publicly available determination described in paragraph (f)(2)(iii)(B) or (f)(3)(ii)(A) of this section shall preserve only a record of the name of the qualified interdealer quotation system or registered national securities association that determined whether the documents and information specified in paragraph (b) of this section are current and publicly available in addition to the documents and information that demonstrate that the other requirements of the exception provided in paragraph (f)(2) or (3), respectively, are met; and that any broker or dealer that relies on a publicly available determination described in paragraph (f)(7) of this section shall preserve only a record of the exception provided in paragraph (f)(1), (f)(3)(i), or (f)(4) or (5) for which the publicly available determination is made and the name of the qualified interdealer quotation system or registered national securities association that determined that the requirements of that exception are met.

(e) *Definitions.* For purposes of this section:

(1) *Company insider* shall mean any officer or director of the issuer, or person that performs a similar function, or any person who is, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer.

(2) *Current* shall mean, for the documents and information specified in:

(i) Paragraph (b)(1), (2), (4), or (5) of this section, filed, published, or are as of a date in accordance with the time frames specified in the applicable paragraph for such documents and information; or

(ii) Paragraph (b)(3) of this section, the most recently required annual report or statement filed pursuant to section 13 or 15(d) of the Act and any rule(s) thereunder, Regulation A, Regulation Crowdfunding, or section 12(G)(2)(g) of the Act, together with any subsequently required periodic reports or statements, filed pursuant to section 13 or 15(d) of the Act and any rule(s) thereunder, Regulation A, Regulation Crowdfunding, or section 12(G)(2)(g) of the Act.

(3) *Interdealer quotation system* shall mean any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(4) *Issuer,* in the case of quotations for American Depositary Receipts, shall mean the issuer of the deposited shares represented by such American Depositary Receipts.

(5) *Publicly available* shall mean available on EDGAR; on the website of a state or federal agency, a qualified interdealer quotation system, a registered national securities association, an issuer, or a registered broker or dealer; or through an electronic information delivery system that is generally available to the public in the primary trading market of a foreign private issuer as defined in § 240.3b–4 of this chapter; *Provided, however,* that *publicly available* shall mean where access is not restricted by user name, password, fees, or other restraints.

(6) *Qualified interdealer quotation system* shall mean any interdealer quotation system that meets the definition of an ''alternative trading system'' under § 242.300(a) of this chapter and operates pursuant to the exemption from the definition of an ''exchange'' under § 240.3a1–1(a)(2) of this chapter.

(7) *Quotation,* except as otherwise specified in this section, shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that wishes to advertise its general interest in buying or selling a particular security.

(8) *Quotation medium* shall mean any ''interdealer quotation system'' or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(9) *Shell company* shall mean any issuer, other than a business combination related shell company, as defined in § 230.405 of this chapter, or an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(i) No or nominal operations; and

(ii) Either:

(A) No or nominal assets;

(B) Assets consisting solely of cash and cash equivalents; or

(C) Assets consisting of any amount of cash and cash equivalents and nominal other assets.

(f) *Exceptions.* Except as provided in paragraph (d)(2) of this section, the provisions of this section shall not apply to:

(1) The publication or submission of a quotation for a security that is admitted to trading on a national securities exchange and that is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted.

(2)(i) The publication or submission by a broker or dealer, solely on behalf of a customer (other than a person acting as or for a dealer), of a quotation that represents the customer's unsolicited indication of interest;

(ii) Provided, however, that this paragraph (f)(2) shall not apply to a quotation:

(A) Consisting of both a bid and an offer, each of which is at a specified price, unless the quotation medium specifically identifies the quotation as representing such an unsolicited customer interest; or

(B) Published or submitted, directly or indirectly on behalf of a company insider or affiliate as defined in § 230.144(a)(1) of this chapter, unless the documents and information specified in paragraph (b) of this section are current and publicly available.

(iii) For purposes of paragraph (f)(2)(ii)(B) of this section, a broker or dealer that publishes or submits quotations may rely on either a:

(A) Written representation from the customer's broker that such customer is not a company insider or an affiliate if:

(*1*) Such representation is received prior to, and on the same day that, the quotation representing the customer's unsolicited indication of interest is published or submitted; and

(*2*) The broker or dealer has a reasonable basis under the circumstances for believing that the customer's broker is a reliable source; or

(B) Publicly available determination by a qualified interdealer quotation system or registered national securities association that the documents and information specified in paragraph (b) of this section are current and publicly available.

(3)(i)(A) The publication or submission, in an interdealer quotation system that specifically identifies as such unsolicited customer indications of interest of the kind described in paragraph (f)(2) of this section, of a quotation for a security that has been the subject of a bid or offer quotation (exclusive of any identified customer interests) in such a system at a specified price, with no more than four business days in succession without such a quotation;

(B) Provided, however, that this paragraph (f)(3) shall not apply to a quotation that is published or submitted

by a broker or dealer for the security of an issuer that:

(*1*) Was the subject of a trading suspension order issued by the Commission pursuant to section 12(k) of the Act until 60 calendar days after the expiration of such order;

(*2*) Such broker or dealer, or any qualified interdealer quotation system or registered national securities association, has a reasonable basis under the circumstances for believing is a shell company, unless such quotation is published or submitted within the 18 months following the initial quotation for such issuer's security that is the subject of a bid or offer quotation in an interdealer quotation system at a specified price;

(C) Provided further, that this paragraph (f)(3) shall apply to the publication or submission of a quotation for a security of an issuer only if the documents and information regarding such issuer that are specified in:

(*1*) Paragraph (b)(3)(i), (iv), or (v) of this section are filed within 180 calendar days from the end of the issuer's most recent fiscal year or any quarterly reporting period that is covered by a report required by section 13 or 15(d) of the Act, as applicable;

(*2*) Paragraph (b)(3)(ii) or (iii) of this section are timely filed;

(*3*) Paragraph (b)(4) or (b)(5)(i) (excluding paragraphs (b)(5)(i)(N) through (P)) are current and publicly available; or

(*4*) Paragraph (b)(3)(i), (ii), (iii), (iv), or (v) are filed within 15 calendar days starting on the date on which a publicly available determination is made pursuant to paragraph (f)(3)(ii)(A) of this section; or

(ii) If the documents and information specified in paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P)) regarding an issuer are no longer current and publicly available, timely filed, or filed within 180 calendar days, as specified in paragraph (f)(3)(i)(C) of this section, a broker or dealer may continue to publish or submit a quotation for such issuer's security in an interdealer quotation system during the time frame specified in in paragraph (f)(3)(ii)(C) if:

(A) Within the first four business days that such documents and information are no longer current and publicly available, timely filed, or filed within 180 calendar days, as applicable, a qualified interdealer quotation system or registered national securities association makes a publicly available determination that:

(*1*) Such documents and information are no longer current and publicly available, timely filed, or filed within 180 calendar days, as specified in paragraph (f)(3)(i)(C) of this section; and

(*2*) The exception provided in paragraph (f)(3)(ii) of this section is available only during the 15 calendar days starting on the date on which the publicly available determination described in paragraph (f)(3)(ii)(A)(*1*) of this section is made; and

(B) The broker or dealer complies with the requirements of paragraphs (d)(2) and (f)(3)(i) of this section, except for the requirement that the documents and information specified in paragraph (b) (excluding paragraphs (b)(5)(i)(N) through (P)) regarding such issuer be current and publicly available, timely filed, or filed within 180 calendar days, as applicable;

(C) Provided, however, that the provisions of this paragraph (f)(3)(ii) shall apply only during the shorter of the period beginning with the date on which a qualified interdealer quotation system or registered national securities association makes a publicly available determination identified in paragraph (f)(3)(ii)(A) and ending on:

(*1*) The date on which the documents and information specified in paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P)) regarding such issuer become current and publicly available or filed; or

(*2*) The fourteenth calendar day following the date on which such publicly available determination was made.

(4) The publication or submission of a quotation for a municipal security.

(5) The publication or submission of a quotation for:

(i) A security with a worldwide average daily trading volume value of at least $100,000 reported during the 60 calendar days immediately before the publication of the quotation of such security; and

(ii) The issuer of such security has at least $50 million in total assets and $10 million in shareholders' equity as reflected in the issuer's publicly available audited balance sheet issued within six months after the end of its most recent fiscal year.

(6) The publication or submission of a quotation for a security by a broker or dealer that is named as an underwriter in a registration statement for an offering of that class of security referenced in paragraph (b)(1) of this section or in an offering statement for an offering of that class of security referenced in paragraph (b)(2) of this section; *Provided, however,* that this paragraph (f)(6) shall apply only to the publication or submission of a quotation for such security within the time frames specified in paragraph (b)(1) or (2) of this section.

(7) The publication or submission of a quotation by a broker or dealer that relies on a publicly available determination by a qualified interdealer quotation system or registered national securities association that the requirements of an exception provided in paragraph (f)(1), (f)(3)(i), or (f)(4) or (5) of this section are met; *Provided, however,* that any qualified interdealer quotation system or registered national securities association that makes a publicly available determination that the requirements of the exception provided in paragraph (f)(3)(i) of this section are met must subsequently make a publicly available determination under paragraph (f)(3)(ii)(A) of this section, as applicable.

(g) *Exemptive authority.* Upon written application or upon its own motion, the Commission may, conditionally or unconditionally, exempt by order any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

By the Commission.

Dated: September 16, 2020.

Vanessa A. Countryman,

Secretary.

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Department of Homeland Security

Coast Guard

46 CFR Parts 401 and 404

Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology; Proposed Rules

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[USCG–2020–0457]

RIN 1625–AC67

Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: In accordance with the Great Lakes Pilotage Act of 1960, the Coast Guard is proposing new base pilotage rates for the 2021 shipping season. This proposed rule would adjust the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. Additionally, this proposed rule would make one change to the ratemaking methodology to account for actual inflation, in step 4, and two policy changes. The first policy change would be to always round up numbers, as opposed to rounding to the nearest whole integer, in the staffing model. The second policy change would be to exclude litigation fees incurred in litigation against the Coast Guard regarding ratemaking from necessary and reasonable pilot association operating expenses. The Coast Guard estimates that this proposed rule would result in a 4-percent net increase in pilotage costs compared to the 2020 season. Finally, the Coast Guard is requesting comments on how apprentice pilots (a mariner with a limited registration) should be compensated in future rulemakings.

DATES: Comments and related material must be received by the Coast Guard on or before November 27, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0457 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Brian Rogers, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–1535, email *Brian.Rogers@uscg.mil,* or fax 202–372–1914.

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I. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions. Documents mentioned in this proposed rule, and all public comments, will be available in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

We do not plan to hold a public meeting, but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

AMOU American Maritime Officers Union

APA American Pilots Association
BLS Bureau of Labor Statistics
CAD Canadian dollars
CFR Code of Federal Regulations
CPA Certified public accountant
CPI Consumer Price Index
DHS Department of Homeland Security
Director U.S. Coast Guard's Director of the Great Lakes Pilotage
EAJA Equal Access to Justice Act
FOMC Federal Open Market Committee
FR Federal Register
GLPA Great Lakes Pilotage Authority (Canadian)
GLPMS Great Lakes Pilotage Management System
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
Pilots Working pilots
SBA Small Business Administration
§ Section
The Act Great Lakes Pilotage Act of 1960
U.S.C. United States Code

III. Executive Summary

Pursuant to the Great Lakes Pilotage Act of 1960 (''the Act''),[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway—including setting the rates for pilotage services and adjusting them on an annual basis. The rates, which for the 2020 season range from $337 to $758 per pilot hour (depending on which of the specific six areas pilotage service is provided), are paid by shippers to pilot associations. The three pilot associations, which are the exclusive U.S. source of registered pilots on the Great Lakes, use this revenue to cover operating expenses, maintain infrastructure, compensate applicant and registered pilots, acquire and implement technological advances, train new personnel, and allow partners to participate in professional development.

To compute the rate for pilotage services, we use a ratemaking methodology that we have developed since 2016, in accordance with our statutory requirements and regulations. Our ratemaking methodology calculates the revenue needed for each pilotage association (operating expenses, compensation for the number of pilots, and anticipated inflation), and then divides that amount by the expected shipping traffic over the course of the coming year, to produce an hourly rate. This process is currently effected through a 10-step methodology, which is explained in detail in the Summary of Ratemaking Methodology in section V of the preamble to this notice of proposed rulemaking (NPRM).

As part of our annual review, in this NPRM we are proposing new pilotage rates for 2021 based on the existing methodology. The result is a decrease in rates for all areas. These changes are due to a combination of four factors: (1) A decrease in the amount of money needed for the working capital fund, (2) adjusting pilot compensation for inflation, (3) the net addition of three working pilots (''pilots'') at the beginning of the 2021 shipping season in District One, and (4) an increase in the average hours of traffic for each area. This increase in the average hours of traffic resulted in lower hourly rates despite a net increase in the amount of revenue needed by the pilot association, because when calculating the base hourly rates the total revenue needed is divided by the average hours of traffic annually (see Step 7 of the ratemaking process). The proposed rates for 2021 do not account for the impacts COVID–19 may have on shipping traffic in the Great Lakes, because we use the most recent 10-years of complete data in our average traffic calculations. For this proposed ratemaking, that means the years 2010 through 2019. The rates for 2022 will take into account the impact of COVID–19 on shipping traffic, because that ratemaking will include 2020 traffic data. The Coast Guard uses a 10-year average when calculating traffic to smooth out variations in traffic caused by global economic conditions, such as those caused by the COVID–19 pandemic.

In addition, the Coast Guard proposes one methodological change to the way we calculate the inflation of pilot compensation to account for actual inflation; modifying the way we round the numbers used in the staffing model (82 **Federal Register** (FR) at 41466 and table 6 at 41480, August 31, 2017); and disallowing legal fees used in litigation against the Coast Guard regarding the ratemaking rulemakings as redeemable operating expenses. Last, the Coast Guard is requesting comments, for consideration in a future rulemaking, on whether apprentice pilot compensation should be calculated by using a percentage of the target pilot compensation. These proposed changes are discussed in detail in Section VI of this preamble.

Based on the ratemaking model discussed in this NPRM, we are proposing the rates shown in table 1.

TABLE 1—CURRENT AND PROPOSED PILOTAGE RATES ON THE GREAT LAKES

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate
District One: Designated	St. Lawrence River	$758	$757
District One: Undesignated	Lake Ontario	463	428
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	618	577
District Two: Undesignated	Lake Erie	586	566
District Three: Designated	St. Marys River	632	584
District Three: Undesignated	Lakes Huron, Michigan, and Superior	337	335

This proposed rule would impact 55 U.S. Great Lakes pilots, 3 pilot associations, and the owners and operators of an average of 279 oceangoing vessels that transit the Great Lakes annually. This proposed rule is not economically significant under Executive Order 12866 and would not affect the Coast Guard's budget or increase Federal spending. The estimated overall annual regulatory economic impact of this rate change is a net increase of $1,059,966 in estimated payments made by shippers during the 2020 shipping season. Because the Coast Guard must review, and, if necessary, adjust rates each year, we analyze these as single-year costs and do not annualize them over 10 years. Section IX of this preamble provides the regulatory impact analyses of this proposed rule.

[1] 46 U.S.C. Chapter 93; Public Law 86–555, 74 Stat. 259, as amended.

IV. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960 (''the Act''),[2] which requires foreign merchant vessels and U.S. vessels operating ''on register,'' meaning U.S. vessels engaged in foreign trade, to use U.S. or Canadian pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system.[3] For U.S. Great Lakes pilots, the Act requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' [4] The Act requires that rates be established or reviewed and adjusted each year, not later than March 1.[5] The Act also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted.[6] The Secretary's duties and authority under the Act have been delegated to the Coast Guard.[7]

The purpose of this NPRM is to propose new pilotage rates for the 2021 shipping season. The Coast Guard believes that the new rates would continue to promote pilot retention, ensure safe, efficient, and reliable pilotage services in order to facilitate maritime commerce throughout the Great Lakes and Saint Lawrence River System, and provide adequate funds to upgrade and maintain infrastructure.

V. Background

Pursuant to the Act, the Coast Guard, in conjunction with the Canadian Great Lakes Pilotage Authority (GLPA), regulates shipping practices and rates on the Great Lakes. Under Coast Guard regulations, all vessels engaged in foreign trade (often referred to as ''salties'') are required to engage U.S. or Canadian pilots during their transit through the regulated waters.[8] U.S. and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not affected.[9] Generally, vessels are assigned a U.S. or Canadian pilot depending on the order in which they transit a particular area of the Great Lakes and do not choose the pilot they receive. If a vessel is assigned a U.S. pilot, that pilot will be assigned by the pilotage association responsible for the particular district in which the vessel is operating, and the vessel operator will pay the pilotage association for the pilotage services. The Canadian GLPA establishes the rates for Canadian working pilots.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard's Director of the Great Lakes Pilotage (''the Director'') to operate a pilotage pool. The Saint Lawrence Seaway Pilotage Association provides pilotage services in District One, which includes all U.S. waters of the St. Lawrence River and Lake Ontario. The Lakes Pilotage Association provides pilotage services in District Two, which includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. Finally, the Western Great Lakes Pilotage Association provides pilotage services in District Three, which includes all U.S. waters of the St. Marys River; Sault Ste. Marie Locks; and Lakes Huron, Michigan, and Superior.

Each pilotage district is further divided into ''designated'' and ''undesignated'' areas, which is depicted in table 2 below. Designated areas, classified as such by Presidential Proclamation, are waters in which pilots must, at all times, be fully engaged in the navigation of vessels in their charge.[10] Undesignated areas, on the other hand, are open bodies of water not subject to the same pilotage requirements. While working in undesignated areas, pilots must ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' [11] For these reasons, pilotage rates in designated areas can be significantly higher than those in undesignated areas.

TABLE 2—AREAS OF THE GREAT LAKES AND ST. LAWRENCE SEAWAY

District	Pilotage association	Designation	Area No.[12]	Area name[13]
One	Saint Lawrence Seaway Pilotage Association	Designated	1	St. Lawrence River.
		Undesignated	2	Lake Ontario.
Two	Lake Pilotage Association	Designated	5	Navigable waters from Southeast Shoal to Port Huron, MI.
		Undesignated	4	Lake Erie.
Three	Western Great Lakes Pilotage Association	Designated	7	St. Marys River.
		Undesignated	6	Lakes Huron and Michigan.
		Undesignated	8	Lake Superior.

Each pilot association is an independent business and is the sole provider of pilotage services in the district in which it operates. Each pilot association is responsible for funding its own operating expenses, maintaining infrastructure, compensating pilots and applicant pilots, acquiring and implementing technological advances, and training personnel and partners. The Coast Guard developed a 10-step ratemaking methodology to derive a pilotage rate, based on the estimated amount of traffic, which covers these expenses. The methodology is designed to measure how much revenue each pilotage association would need to cover expenses and provide competitive compensation goals to working pilots. We then divide that amount by the historic 10-year average for pilotage demand. We recognize that in years where traffic is above average, pilot associations will accrue more revenue than projected, while in years where traffic is below average, they will take in less. We believe that over the long term, however, this system ensures that infrastructure would be maintained and that pilots will receive adequate

[2] 46 U.S.C. Chapter 93; Public Law 86–555, 74 Stat. 259, as amended.

[3] 46 U.S.C. 9302(a)(1).

[4] 46 U.S.C. 9303(f).

[5] *Id.*

[6] *Id.*

[7] Department of Homeland Security (DHS) Delegation No. 0170.1, para. II (92.f).

[8] See 46 CFR part 401.

[9] 46 U.S.C. 9302(f). A ''laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes.

[10] Presidential Proclamation 3385, *Designation of restricted waters under the Great Lakes Pilotage Act of 1960,* December 22, 1960.

[11] 46 U.S.C. 9302(a)(1)(B).

[12] Area 3 is the Welland Canal, which is serviced exclusively by the Canadian GLPA and, accordingly, is not included in the U.S. pilotage rate structure.

[13] The areas are listed by name at 46 CFR 401.405.

compensation and work a reasonable number of hours, with adequate rest between assignments, to ensure retention of highly trained personnel.

Over the past 4 years, the Coast Guard has made adjustments to the Great Lakes pilotage ratemaking methodology. In 2016, we made significant changes to the methodology, moving to an hourly billing rate for pilotage services and changing the compensation benchmark to a more transparent model. In 2017, we added additional steps to the ratemaking methodology, including new steps that accurately account for the additional revenue produced by the application of weighting factors (discussed in detail in Steps 7 through 9 for each district, in Section VIII of this preamble). In 2018, we revised the methodology by which we develop the compensation benchmark, based upon U.S. mariners rather than Canadian working pilots. The current methodology, which was finalized in the Great Lakes Pilotage Rates-2020 Annual Review and Revisions to Methodology final rule (85 FR 20088), published April 9, 2020, is designed to accurately capture all of the costs and revenues associated with Great Lakes pilotage requirements and produce an hourly rate that adequately and accurately compensates pilots and covers expenses. The current methodology is summarized in the section below.

Summary of Ratemaking Methodology

As stated above, the ratemaking methodology, outlined in 46 CFR 404.101 through 404.110, consists of 10 steps that are designed to account for the revenues needed and total traffic expected in each district. The result is an hourly rate, determined separately for each of the areas administered by the Coast Guard.

In Step 1, ''Recognize previous operating expenses,'' (§ 404.101) the Director reviews audited operating expenses from each of the three pilotage associations. Operating expenses include all allowable expenses minus wages and benefits. This number forms the baseline amount that each association is budgeted. Because of the time delay between when the association submits raw numbers and the Coast Guard receives audited numbers, this number is 3 years behind the projected year of expenses. So, in calculating the 2021 rates in this proposal, we begin with the audited expenses from the 2018 shipping season.

While each pilotage association operates in an entire district, the Coast Guard tries to determine costs by area. Thus, with regard to operating expenses, we allocate certain operating expenses to designated areas, and certain operating expenses to undesignated areas. In some cases, we can allocate the costs based on where they are actually accrued. For example, we can allocate the costs for insurance for applicant pilots who operate in undesignated areas only. In other situations, such as general legal expenses, expenses are distributed between designated and undesignated waters on a *pro rata* basis, based upon the proportion of income forecasted from the respective portions of the district.

In Step 2, ''Project operating expenses, adjusting for inflation or deflation,'' (§ 404.102) the Director develops the 2020 projected operating expenses. To do this, we apply inflation adjustors for 3 years to the operating expense baseline received in Step 1. The inflation factors are from the Bureau of Labor Statistics' (BLS) Consumer Price Index (CPI) for the Midwest Region, or, if not available, the Federal Open Market Committee (FOMC) median economic projections for Personal Consumption Expenditures (PCE) inflation. This step produces the total operating expenses for each area and district.

In Step 3, ''Estimate number of working pilots,'' (§ 404.103) the Director calculates how many pilots are needed for each district. To do this, we employ a ''staffing model,'' described in § 401.220, paragraphs (a)(1) through (a)(3), to estimate how many pilots would be needed to handle shipping during the beginning and close of the season. This number is helpful in providing guidance to the Director in approving an appropriate number of credentials for pilots.

For the purpose of the ratemaking calculation, we determine the number of pilots provided by the pilotage associations (see § 404.103), which is what we use to determine how many pilots need to be compensated via the pilotage fees collected.

In the first part of Step 4, ''Determine target pilot compensation benchmark,'' (§ 404.104) the Director determines the revenue needed for pilot compensation in each area and district. For the 2020 ratemaking, the Coast Guard updated the benchmark compensation model in accordance with § 404.104(b), switching from using the American Maritime Officers Union (AMOU) 2015 aggregated wage and benefit information, to the 2019 compensation benchmark. Based on our experience over the past two ratemakings, the Coast Guard has determined that the level of target pilot compensation for those years provides an appropriate level of compensation for American Great Lakes pilots. The Coast Guard, therefore, will not, at this time, seek alternative benchmarks for target compensation for future ratemakings and will instead simply adjust the amount of target pilot compensation for inflation. This benchmark has advanced the Coast Guard's goals of safety through rate and compensation stability while also promoting recruitment and retention of qualified U.S. pilots.

In order to further this goal, for the 2021 ratemaking, the Coast Guard is proposing to change the way inflation is calculated in this step to account for actual inflation instead of predicted inflation. See the Discussion of Proposed Methodological and Other Changes at section VI of this preamble for a detailed description of the changes proposed.

In the second part of Step 4, set forth in § 404.104(c), the Director determines the total compensation figure for each district. To do this, the Director multiplies the compensation benchmark by the number of pilots for each area and District (from Step 3), producing a figure for total pilot compensation.

In Step 5, ''Project working capital fund,'' (§ 404.105) the Director calculates a value that is added to pay for needed capital improvements and other non-recurring expenses, such as technology investments and infrastructure maintenance. This value is calculated by adding the total operating expenses (derived in Step 2) to the total pilot compensation (derived in Step 4), and multiplying that figure by the preceding year's average annual rate of return for new issues of high-grade corporate securities. This figure constitutes the ''working capital fund'' for each area and district.

In Step 6, ''Project needed revenue,'' (§ 404.106) the Director simply adds up the totals produced by the preceding steps. The projected operating expense for each area and district (from Step 2) is added to the total pilot compensation (from Step 4) and the working capital fund contribution (from Step 5). The total figure, calculated separately for each area and district, is the ''needed revenue.''

In Step 7, ''Calculate initial base rates,'' (§ 404.107) the Director calculates an hourly pilotage rate to cover the needed revenue as calculated in Step 6. This step consists of first calculating the 10-year hours of traffic average for each area. Next, the revenue needed in each area (calculated in Step 6) is divided by the 10-year hours of traffic average to produce an initial base rate.

An additional element, the ''weighting factor,'' is required under § 401.400. Pursuant to that section, ships pay a multiple of the ''base rate'' as calculated in Step 7 by a number ranging from 1.0 (for the smallest ships, or ''Class I'' vessels) to 1.45 (for the largest ships, or ''Class IV'' vessels). As this significantly increases the revenue collected, we need to account for the added revenue produced by the weighting factors to ensure that shippers are not overpaying for pilotage services. We do this in the next step.

In Step 8, ''Calculate average weighting factors by area,'' (§ 404.108) the Director calculates how much extra revenue, as a percentage of total revenue, has historically been produced by the weighting factors in each area. We do this by using a historical average of the applied weighting factors for each year since 2014 (the first year the current weighting factors were applied).

In Step 9, ''Calculate revised base rates,'' (§ 404.109) the Director modifies the base rates by accounting for the extra revenue generated by the weighting factors. We do this by dividing the initial pilotage rate for each area (from Step 7) by the corresponding average weighting factor (from Step 8), to produce a revised rate.

In Step 10, ''Review and finalize rates,'' (§ 404.110) often referred to informally as ''Director's discretion,'' the Director reviews the revised base rates (from Step 9) to ensure that they meet the goals set forth in the Act and 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating trained and rested pilots fairly; and providing appropriate profit for improvements.

After the base rates are set, § 401.401 permits the Coast Guard to apply surcharges. As stated in the 2020 rulemaking, as the vast majority of working pilots are not anticipated to reach the regulatory required retirement age of 70 in the next 20 years, we continue to believe that the pilot associations are now able to plan for the costs associated with retirements without relying on the Coast Guard to impose surcharges.

VI. Discussion of Proposed Methodological and Other Changes

For 2021, the Coast Guard is proposing one methodological change to the ratemaking model and two policy changes. The proposed changes, discussed in detail below, include changes to how we calculate inflation of pilot compensation in step 4, how we round numbers in the staffing model, and the proposed exclusion of legal expenses associated with lawsuits against the Coast Guard's ratemaking rulemakings from operating expenses. For consideration in a future rulemaking, we are also requesting comments on how to calculate compensation for apprentice pilots.

A. Inflation of Pilot Compensation Calculation in Step 4

Based on public comments received on the 2020 proposed rule, the Coast Guard is proposing to change the inflation calculation in Step 4 of the ratemaking. This step discusses the use of the Federal Reserve's projected PCE data, as opposed to using historic BLS ECI data. Currently in Step 4, we adjust the existing target pilot compensation to account for inflation, following the procedures outlined in § 404.104(b), which require that PCE data only be used when ECI data is not available. In each year's ratemaking, the Coast Guard projects future values that requires forecasted inflation data. The BLS ECI only provides historic data; consequently we use PCE data, in accordance with § 404.104(b), as the PCE provides estimates of future inflation. The forecasted PCE inflation data is generated by the Federal Reserve. The Federal Reserve is responsible for setting monetary policy in the United States, which in turn influences inflation. The Federal Reserve bases these estimates on predictions of economic growth, the unemployment rate, other economic data, and the future policy path the Federal Reserve expects to take to meet its goals of maximizing employment and setting stable prices. The PCE is a reflection of the government's best prediction of what will happen, and the Coast Guard will continue to use it as our predicted inflation value in Step 4 of the ratemaking.

However, as the Coast Guard updates the previous year's target compensation value for inflation in each ratemaking, any differences between the predicted inflation rate and the actual inflation rate will be compounded with each ratemaking, if the predicted PCE value is continually higher or lower than actual inflation. Therefore, for this ratemaking, the Coast Guard is proposing to modify the way inflation is calculated in Step 4 of the ratemaking to account for the difference between the predicted inflation and actual inflation.

In this NPRM, the Coast Guard is proposing that the previous year's target compensation value would first be adjusted by the difference between predicted PCE inflation value and actual ECI inflation value, to ensure the target compensation value accounts for actual inflation. We would then multiply this adjusted target compensation value by the predicted future inflation value from the PCE to account for future inflation.

For 2020, the actual ECI inflation is 3.4 percent, which is 1.4 percent greater than the predicted PCE inflation of 2 percent. Therefore, this proposed use of the difference between predicted PCE inflation rates and historic ECI inflation data to account for actual inflation in § 401.104(b) would result in a 1.4 percent increase for the 2021 pilotage fees versus continuing to use the predicted PCE inflation value. In some years, however, it is possible that the actual ECI inflation will be lower than the predicted PCE inflation, resulting in a decrease for the pilotage fees.

B. Changes to Rounding in the Staffing Model

The first policy change is to how we round numbers in the staffing model in 46 CFR 401.220(a)(2). This proposed rule would amend the text to always round up in the staffing model, instead of rounding to the nearest whole integer. We are proposing this change in response to three comments we received on the proposed rule, ''Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology'' (84 FR 58099, Oct. 30, 2019), which are posted within docket number USCG–2019–0736. The St. Lawrence Seaway Pilot's Association asserted that the regulatory burden on the three pilotage associations has increased substantially. The commenter suggested that rounding in the staffing model does not account for the administrative time and effort required of the three associations' Presidents and therefore one additional pilot per district is necessary to cover the President's pilotage duties. Lakes Pilots Association, Inc. also stated that the staffing model should include an additional pilot in the rate for administrative work of the president and committee members. Another commenter, on behalf of all pilots within the three pilot associations, made similar assertions that the pilot associations' presidents are spending more time at meetings, conferences, traveling, and facilitating communication between the pilots and Coast Guard. They requested that we authorize an administrative position for each district to account for these increased duties and prevent delays in responsiveness to the Coast Guard. We rejected the proposal to add an ''administrative pilot'' because this is

not consistent with industry standards. According to our discussions with the American Pilots Association (APA), aside from the largest pilot groups, many state and local groups recognize that the pool president continues to work as a pilot. However, due to the presidential duties, the president is expected to spend less time engaged in piloting vessels.

Rounding up in the staffing model would account for extra staff or extra time spent by the pilot associations' presidents, including attending meetings and conferences, providing additional financial and traffic information to increase transparency and accountability, overseeing and ensuring the integrity of the association training program, evaluating technology, and coordinating with the APA to implement and share best practices. Rounding up in the staff model is also consistent with industry standards, as is it not possible to have a portion of a person. Therefore, if the staffing model requires 8.1 pilots for an area, 9 pilots are actually needed. In addition, we currently estimate how many pilots each district needs for the upcoming year without taking into account the administrative work that takes the president of each association away from their role as a Great Lakes pilot. We believe rounding up is prudent with regard to maritime safety to help ensure enough pilots are allocated to each district to cover the extra hours the association's president spends engaged in the non-pilot tasks and administrative work discussed above. In sum, rounding down in the staffing model could result in too few pilots allocated to a district which, when coupled with the president's spending less time serving as pilot, may adversely impact recuperative rest goals for working pilots that are essential for safe navigation.

The Coast Guard agrees that, where the pilot associations' presidents are spending an increased amount of their time on administrative issues, the staffing model should account for that time and allow for additional staff to assist. In light of the information presented by the pilot association's comments, the Coast Guard is proposing to always round up the final number, rather than round to the nearest integer when determining the maximum number of pilots in the staffing model. For the 2021 ratemaking, this proposed change to the rounding in the staffing model would allow each association one additional pilot that would not have otherwise been allowed.

C. Exclusion of Legal Fees Incurred in Lawsuits Against the Coast Guard Related To Ratemaking and Regulating From Pilots Associations' Approved Operating Expenses

This is the second policy change. The Coast Guard is proposing to exclude legal fees incurred in litigation against the Coast Guard in relation to the ratemaking and oversight requirements in Title 46 of the United States Code (U.S.C.) at sections 9303, 9304, and 9305 from approved pilot associations' operating expenses used in the calculation of pilotage rates. We believe causing the shippers to pay for the pilots' litigation expenses against the Coast Guard's annual ratemaking is an undue burden, because the shippers are not responsible for the ratemaking and the pilots can be reimbursed through other means.

The Coast Guard acknowledges that many legal fees are appropriately included in the operating expenses of the pilot associations, and that excluding legal fees incurred in lawsuits against the Coast Guard related to ratemaking is a departure from our past policies. The regulations will still provide for the inclusion of the legal fees needed for the pilots to run their businesses, defend their licenses, and to protect their interests when the shippers litigate. To clarify, pilot associations who intervene as defendants alongside the Coast Guard in a shipper-initiated lawsuit related to the ratemaking would be able to continue to include those legal fees in their operating expenses, because they are not incurred in a lawsuit against the Coast Guard. As the U.S. District Court recently noted, ''each year, it seems, either the shipping companies or the associations that supply the pilots sue the Coast Guard to challenge aspects of the rulemaking. The shippers perennially complain that the rates are too high, while the pilots gripe that they are too low.'' [14] The pilots have an incentive to sue the Coast Guard annually on the ratemaking, regardless of the outcome of the case, because the costs associated with the lawsuit will inflate the pilot's associations operating expenses, and, in turn, increase their annual rates. Regardless of outcome, those legal fees go into the calculations that, ultimately, the shipper pays. From the shippers' perspective, shippers are generally paying legal fees for pilots to try and obtain higher fees from the shippers.

The Coast Guard is proposing to remove this expense from the ratemaking calculation, noting that under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412, the Coast Guard can reimburse pilots if they prevail on the merits. This more equitable solution places the burden of paying legal fees on the Coast Guard when the pilots prevail in such litigation. Excluding legal fees incurred by suing the Coast Guard from the operating expenses on the annual ratemaking is a change consistent with giving consideration to the public interest and the costs of providing the services, as the pilots would be eligible for reimbursement from the Coast Guard if their challenge prevails.

Additionally, shippers become a party in interest when the pilots sue the Coast Guard. In some cases, shipping companies have intervened as defendants in legal challenges to the ratemakings. Under the present scheme, pilots are reimbursed for their legal expenses when they sue the Coast Guard, irrespective of whether they win or lose. But it is not the Government that bears the expense—shippers pay the pilots' legal expenses, in the form of higher pilotage rates, when those legal expenses are included in the operating expenses.

The general proposition in the American system of jurisprudence is that litigants bears their own expenses for the litigation. ''In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser.'' [15] Under this jurisprudence, the shippers, as a party in interest, should not continue to bear the legal expenses each time the pilots sue the Coast Guard in relation to the ratemaking and regulation, because the shippers are not responsible for the ratemaking and regulatory function.

The pilots have alternative remedies to recoup their legal fees in lawsuits against the Coast Guard related to the ratemaking and oversight requirements. Under the EAJA, a prevailing party in a suit where the government agency is an opposing party can apply for its legal fees under certain conditions. To be considered a prevailing party entitled to an award of attorney fees under the EAJA, it is sufficient if the claimant prevails on an important matter that directly benefits them, but they need not prevail on all issues.[16] One D.C. Circuit

[14] *Am. Great Lake Ports Ass'n* v. *Coast Guard,* 443 F. Supp. 3d 44, 47 (D.D.C. Mar. 10, 2020).

[15] *Alyeska Pipeline Service Co.* v. *Wilderness Soc'y,* 421 U.S. 240, 247 (1975).

[16] *Ctr. for Food Safety* v. *Burwell,* 126 F. Supp. 3d 114, 120 (D.D.C. 2015) (citing *Tex. State Teachers Ass'n* v. *Garland Indep. Sch. Dist.,* 489 U.S. 782, 790 (1989) (''At the same time, however, a plaintiff need not prevail on the ''central issue'' in the litigation to be a prevailing party under the EAJA; it is sufficient for a party to prevail on an ''important matter'' in the course of litigation, even when that party ''does not prevail on all issues.'').

Court of Appeals opinion, *Select Milk Producers, Inc.* v. *Johanns,* affirmed that plaintiffs were prevailing parties entitled to attorney fees under the EAJA even where the plaintiff secured a preliminary injunction but a subsequent change in regulation rendered the case moot.[17] Plaintiffs can also become a prevailing party if they enter a favorable settlement agreement under a court's consent decree.[18] If the prevailing party is awarded legal fees, the government agency, in this case the Coast Guard, pays those fees. Similarly, if a case involving the Coast Guard settles, attorney fees can be included as a term of the settlement.

Excluding these legal fees from operating expenses in the ratemaking and regulatory function is consistent with ''giving consideration to the public interest and the costs of providing the services,'' [19] as it would place the burden of paying the legal fees on the Coast Guard as the regulatory agency, rather than the shipping companies that pay for pilotage services. The Coast Guard finds that continuing to allow these legal expenses to be included in the operating expenses is not necessary for the costs of providing services, because the legal fees incurred by the pilot associations are eligible for reimbursement through settlement negotiations or through the EAJA, when the pilots prevail on the merits. For these reasons, we do not believe that excluding these narrowly defined legal expenses from operating expenses when the pilots sue the Coast Guard will have a deleterious effect on the safe, efficient operation of pilots or otherwise militate against the public interest in the regulation of pilotage services.

As such, we believe that repositioning the financial responsibility for legal fees on the proper entity by removing them from pilots' operating expenses is an equitable resolution that comports with our statutory mandate to give consideration to both the public interest and the costs of providing the services.

Our process to exclude the legal fees in our annual ratemaking would be as follows. First, the unreimbursed pilot associations' legal fees incurred in litigation against the Coast Guard would be identified as an individual line item in the operating expenses. Second, we would remove the same amount by way of a Director's adjustment in a later step. If the pilot association is not reimbursed at all by the EAJA or other settlement means, then the full unreimbursed cost of legal fees for that year would be listed as an operating expense, and then the same dollar amount would be excluded by a Director's adjustment. Where a pilot association's legal fees are reimbursed fully or partially by way of the EAJA or settlement, then the operating expense amount would be reduced to represent only the unreimbursed dollar amount, and that same dollar amount would be excluded by a Director's adjustment. Only the outstanding cost of legal fees incurred in litigation against the Coast Guard related to ratemaking and oversight would be listed, representing the true cost to the association. Listing the dollar amount of unreimbursed legal expenses and removing it from the operating expenses would provide transparency to the pilot associations of the exact amount of legal fees excluded by this proposed change.

D. Request for Comments on Changes to Apprentice Pilot Compensation for Consideration in a Future Rulemaking

For consideration in a future ratemaking, we are requesting comments on how we calculate compensation for apprentice pilots and pilots with a limited registration. We are requesting comments on setting the reimbursable cost associated with apprentice pilot salaries at a set amount based on a percentage of the previous year's target pilot compensation. This reimbursable cost would be included in the approved operating expenses for pilotage associations.

Apprentice pilot salaries are currently based on a Director's adjustment made in the 2019 rulemaking, which adjusted these salaries to approximately 36 percent of target pilot compensation. The Coast Guard is requesting comments on setting all future apprentice pilot salaries at a rate equivalent to 36 percent of target pilot compensation. This would align the compensation practices for apprentice pilots across all three districts. The Coast Guard believes setting this benchmark for apprentice pilot salaries would help recruit highly qualified mariners to join and remain with the pilot associations by providing apprentice pilots with the ability to earn an equitable income during the training process, which can last from 6 to 48 months. This could also ensure that the pilot associations have sufficient personnel to continue providing service, despite retirements and unscheduled turn-over.

We would like to hear any comments, suggestions, or questions you have pertaining to the Coast Guard's proposed recommendation to set future apprentice pilot salaries at an amount equivalent to 36 percent of the target pilot compensation. If you disagree with this proposed percentage, please address your concerns and provide a substitute amount or percentage along with your rationale supporting the proposed substitution. If you agree with the proposed percentage for different reasons than the Coast Guard noted above, please explain your rationale and reasoning.

VII. Coast Guard's Authority To Remedy Harms From Past Ratemakings in Response to 2020 D.C. Appellate Court Opinion

In *American Great Lakes Ports Association, et al.,* v. *Shultz,* the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision with regard to the remedy in the challenge to the 2016 pilotage rates.[20] The D.C. Circuit agreed that the District Court properly decided not to vacate the 2016 rates, noting the ''numerous disruptive consequences that would follow from vacating the 2016 Rule.'' [21] The D.C. Circuit Court further affirmed that the precise amount of any funds that would be needed to recoup and redistribute funds was unknown, since there would be no operative 2016 rate.[22] Finally, the Circuit Court urged the Coast Guard, in this annual rate review, to ''consider if it has the statutory authority to remedy the harms from the 2016 Rule and if doing so would comport with its mandate to consider 'the public interest and the costs of providing services' 46 U.S.C. 9303(f).'' [23]

A. Coast Guard's Authority To Remedy Harms From Past Ratemakings

First, the Coast Guard's longstanding position is that it has no statutory authority to retroactively recalculate rates. The District Court, in *American Great Lakes Ports Assoc.* v. *Zukunft,* confirmed that no such statutory authority existed.[24] Therefore, the question is whether the Act authorizes discretionary prospective rate adjustments to correct for or offset in part a past error. The relevant authority in § 9303(f) states ''[t]he Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and

[17] 400 F. 3d 939, 195 (D.C. Cir. 2005).

[18] *Buckhannon Bd. & Care Home Inc.* v. *W. Va. Dep't of Health and Human Res.,* 532 U.S. 598, 604 (2001).

[19] 46 U.S.C. 9303(f).

[20] *Am. Great Lakes Ports Ass'n.* v. *Shultz,* 962 F. 3d 510 (D.C. Cir. June 16, 2020).

[21] *Id.* at 519–520.

[22] *Id.* at 516.

[23] *Am. Great Lakes Ports Ass'n.* v. *Shultz,* 962 F. 3d at 520.

[24] *Am. Great Lakes Ports Ass'n* v. *Zukunft,* 301 F. Supp. 3d 99, 104 (D.D.C. Mar. 13, 2018).

the costs of providing the services. The Secretary shall establish new pilotage rates by March 1 of each year.'' [25] While the statute does not allow the Coast Guard to retroactively re-calculate rates, based on the broad grant of authority in the statute, the Coast Guard believes that the statute grants the Coast Guard discretion to consider the impact of past rates in setting annual rates that are just and reasonable to ensure the public safety and reliability of the pilotage services while also covering the allowable and reasonable costs of those services.

Within the existing methodology, the Coast Guard includes an allowance for the discretionary adjustment of rates. In Step 10, ''Review and finalize rates,'' (§ 404.110), often referred to informally as Director's discretion, the Director of the Great Lakes Pilotage reviews the revised base rates (from Step 9) to ensure that they meet the goals set forth in the Act and in 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating trained and rested pilots fairly; and providing appropriate capital for improvements.

The Coast Guard has yet to exercise this discretion under the 2016 methodology, and generally believes that its discretion is properly limited to circumstances of clear error or mistake resulting in an unjust rate or extraordinary circumstances. The annual ratemaking ensures that the consequences of any error is limited in time. The 2016 methodology, as currently implemented, has survived legal challenge and is producing stable rates based on, among other factors, an ever-increasing amount of historical data.

The consideration of the impact of past rates includes the consequences of any identified errors. The Coast Guard clarifies that its longstanding policy against calculating retroactive rates does not prevent its estimation of correcting for past rates when reliable information for doing so is available, and it is in the public interest and provides for the cost of services. In considering whether to exercise our discretion to adjust current rates for issues in past rates, the Coast Guard takes a retrospective look for extraordinary circumstances associated with past rates that the Coast Guard concludes were both unjust and unreasonable.

B. Does remedying harms from past ratemakings comport with our statutory mandate?

Next, the Coast Guard will consider whether remedying any portion of the identified harms from the 2016 ratemaking final rule in this ratemaking is appropriate. More specifically, the Coast Guard will consider whether a prospective rate adjustment aligns with our mandate to consider the public interest and the costs of providing services per 46 U.S.C. 9303(f). Consistent with its longstanding position; [26] that is, that adjusting rates annually to correct for past events will tend to result in greater swings in the rate from year to year, as the rates constantly seek to correct for possible miscalculations used in past ratemakings, the Coast Guard is generally of the view that exercising its discretion to consider adjustments based on possible past errors should be limited to clear error or extraordinary circumstances.[27] The Coast Guard strives to accurately project demand for pilotage services and required revenue each year, generally resulting in incremental changes and rate stability. We believe this is in the public interest, as it provides greater predictability to both shipping companies and the pilots and promotes public confidence in the Coast Guard.[28]

The Coast Guard exercises discretion to adjust the final rates in step 10, to produce adequate revenue for the upcoming year. Ensuring the rates are adjusted to sufficiently cover all the approved operating expenses is consistent with our mandate to consider the public interest and safety of navigating through the Great Lakes. Having considered all of the information before it carefully, the Coast Guard does not intend to make a prospective change in the 2021 rates to correct for 2016 errors for the following three reasons.

One: By the time the 2021 final rule publishes, 5 years will have passed since the 2016 pilotage rates final rule was issued and implemented. Since then, the Coast Guard has improved its ratemaking methodology to remove the arbitrary calculations that led to the harm identified in the opinions of the D.C. district court and the D.C. Circuit. The passage of time weighs against a rate adjustment, and even more significantly, we cannot calculate the actual error in 2016 because of the inherent difficulty of determining what the correct target compensation should have been. As the D.C. District Court opinion noted, with regard to target pilot compensation, there was evidence in the record to support either a higher or a lower target compensation, and the Coast Guard could, on remand, have supported the 10-percent adjustment.[29] Therefore, it is not a simple arithmetic exercise to determine what the 2016 rates should have been; indeed it is unclear on the existing record whether they should have been higher or lower or that some should have been higher and some lower. Due to the changes in the methodology, the Coast Guard has no data from subsequent years on which to estimate with reasonable reliability what the 2016 rate would have been without the consideration of factors found to be arbitrary or insufficiently justified by the courts. Because the target compensation adjustment could have been lower or higher than our 10-percent estimate, we cannot adjust the weighting factors to produce a number without acting arbitrarily or risking being perceived as arbitrary. Determining how to make all the necessary corrections would be resource intensive, and likely controversial and disruptive to the current participants in the market for pilotage services, and we believe that our resources are better devoted to getting this year's rates correct and published in a timely fashion without adjustment for the 2016 errors. The Coast Guard does not believe that, to date, either the pilots or the shippers have convincingly showed a methodology for correcting the 2016 rate that reliably produces a just and reasonable rate.

Two: Also related to the passage of significant time, pilot turnover and changes in operators render a remedial rate adjustment to compensate for circumstances 5 years ago less equitable and less in the public interest because the remedy may not benefit those who were actually disadvantaged by the ratemaking. As we stated in the 2020 ratemaking proposed rule, we found that 457 unique vessels used pilotage services during the years 2016 through 2018.[30] Of these vessels, 420 were

[25] *See* 46 U.S.C. 9303(f). This authority has been delegated to the Coast Guard through DHS Delegation No. 0170.1, para. II (92.f).

[26] Memorandum of Points and Authorities in Reply to Plaintiffs' Opposition at par. III.B, *Am. Great Lakes Ports Ass'n.* v. *Zukunft,* 301 F. Supp. 3d 99 (D.D.C. Mar. 13, 2018) (Civil Action No.: 16–1019) 2017 WL 632501.

[27] Memorandum of Points and Authorities in Reply to Plaintiffs' Opposition at 3, par. III.B, *Am. Great Lakes Ports Ass'n.* v. *Zukunft,* 301 F. Supp. 3d 99 (D.D.C. Mar. 13, 2018) (Civil Action No.: 16–1019) 2017 WL 632501.

[28] *Id.*

[29] *Am. Great Lakes Ports Ass'n* v. *Zukunft,* 301 F. Supp. 3d at 103 (D.D.C. Mar. 13, 2018).

[30] Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology, 84 FR 58099 at 58120, Oct. 30, 2019.

foreign-flagged vessels and 37 were U.S.-flagged vessels. In 2016, 245 unique vessels used pilotage services compared with 287 unique vessels in 2019. In addition, of those 287 vessels only 63 percent used pilotage services in both 2016 and 2019. The number of unique vessels that transit the area is an indication that any changes made for the 2021 ratemaking period would be unlikely to reach all those who were disadvantaged by the 2016 ratemaking.

Three: Using the discretionary adjustment in step 10 to correct for potential overcharges in past years, by lowering the pilotage rates from the result of the multi-step process, risks imposing rates below the level needed to adequately fund operational expenses. In fact, imposing a remedy through even a small, discretionary adjustment to the 2021 rate could disadvantage or harm pilots or shipping companies unjustly for the upcoming year, and the harms likely outweigh the uncertain benefits. As we have seen in the past, when the rates or actual traffic volume do not produce predicted revenue, pilot attrition increases, which leads to fewer qualified pilots and the additional costs of training new pilots, which can take from 6 months to 48 months.

VIII. Discussion of Proposed Rate Adjustments

In this NPRM, based on the proposed changes to the existing methodology described in the previous section, we are proposing new pilotage rates for 2021. We propose to conduct the 2021 ratemaking as an ''interim year,'' as was done in 2020, rather than a full ratemaking as was conducted in 2018. Thus, the Coast Guard proposes to adjust the compensation benchmark pursuant to § 404.104(b) for this purpose, rather than § 404.104(a).

This section discusses the proposed rate changes using the ratemaking steps provided in 46 CFR part 404, incorporating the proposed changes discussed in section VI. We will detail all 10 steps of the ratemaking procedure for each of the 3 districts to show how we arrive at the proposed new rates.

District One

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2018 expenses and revenues.[31] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. In certain instances, costs are applied to the designated or undesignated area based on where they were actually accrued.

As noted above, in 2016 the Coast Guard began authorizing surcharges to cover the training costs of applicant pilots. The surcharges were intended to reimburse pilot associations for training applicants in a more timely fashion than if those costs were listed as operating expenses, which would have required 3 years to reimburse. The rationale for using surcharges to cover these expenses, rather than including the costs as operating expenses, was so these non-recurring costs could be recovered in a more timely fashion, and so that retiring pilots would not have to cover the costs of training their replacements. Because operating expenses incurred are not actually recouped for a period of 3 years, the Coast Guard added a $150,000 surcharge per applicant pilot, beginning in 2016, to recoup those costs in the year incurred. Although the districts did not collect any surcharges for the 2020 shipping season, they did collect a surcharge for the 2018 season, which will need to be reflected in the operating expenses of the districts.

For District One, we propose several Director's adjustments. District One had two applicant pilots during the 2018 season. In total, the District paid these two pilots $594,521, or $297,261 each. The Coast Guard believes this amount is above what is necessary and reasonable for retention and recruitment. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Two's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot based on discussions with other pilot associations at the time. This standard went into the final rule for 2019 and was not opposed. To determine this percentage, we reached out to several of the pilot associations throughout the United States to see what percentage they pay their applicant pilots, then factored in the sea time and experience required to become an applicant pilot on the Great Lakes. Finally, we discussed the percentage with the presidents of each association to determine if it was fair and reasonable. If we adopt this methodology, the Coast Guard would continue to use the same ratio of applicant-to-target compensation for all districts. For 2019, this was approximately 36 percent ($128,783 ÷ $359,887 = 35.78 percent), so the Coast Guard is proposing to use the rounded up value of 36.0 percent of target compensation as the benchmark for applicant pilot compensation, for a 2021 target pilot compensation of $132,151 ($367,085 × .36). This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation.

The other Director's adjustments to expenses occurred because District One did not break out any costs associated with applicant pilots after the audit, and included these costs as part of pilotage costs. For transparency, the Coast Guard has included the applicant pilot costs as Director's adjustments and has then deducted the same amount to avoid any double counting of these costs. These costs are necessary and reasonable for district operations and should, therefore, be implemented in the rate.

A Director's adjustment has also been proposed for the amount collected using the 2018 surcharge. A final Director's adjustment is proposed for the amount of Coast Guard litigation legal fees. Other adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking where indicated under the Public Participation and Request for Comments portion of the preamble.

[31] These reports are available in the docket for this rulemaking (see Docket #USCG–2019–0736).

TABLE 3—2018 RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported operating expenses for 2018	District one		
	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Pilotage Costs:			
Subsistence/travel—Pilot	$799,507	$533,005	$1,332,512
License insurance—Pilots	45,859	30,573	76,432
Payroll taxes—Pilots	202,848	135,232	338,080
Other	15,474	10,316	25,790
Total Other Pilotage Costs	1,063,688	709,126	1,772,814
Pilot Boat and Dispatch Costs:			
Pilot Boat Expense	267,420	178,280	445,700
Dispatch Expense	55,280	36,853	92,133
Payroll Taxes	19,100	12,733	31,833
Total Pilot and Dispatch Costs	341,800	227,866	569,666
Administrative Expenses:			
Legal—general counsel	8,550	5,700	14,250
Legal—shared counsel (K&L Gates)	34,607	23,071	57,678
Legal—USCG Litigation	7,743	5,162	12,905
Office Rent	0	0	0
Insurance	24,423	16,282	40,705
Employee benefits	8,064	5,376	13,440
Other taxes	50,963	33,976	84,939
Real Estate taxes	22,280	14,853	37,133
Depreciation/auto leasing/other	101,140	67,426	168,566
Interest	28,270	18,846	47,116
APA Dues	26,416	17,610	44,026
Dues and subscriptions	3,960	2,640	6,600
CPA DEDUCTION	(3,960)	(2,640)	(6,600)
Utilities	21,887	14,591	36,478
Travel	4,314	2,876	7,190
Salaries	74,763	49,842	124,605
Pay Roll Tax	7,323	4,882	12,205
Accounting/Professional fees	7,800	5,200	13,000
Pilot Training	0	0	0
Other	21,276	14,184	35,460
Total Administrative Expenses	449,819	299,877	749,696
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,855,307	1,236,869	3,092,176
Proposed Adjustments (Director):			
Directors Adjustment (Applicant Salaries)	356,712	237,809	594,521
Directors Adjustment (Applicant Salaries) Deduction	(356,712)	(237,809)	(594,521)
Directors Adjustment (Applicant Salaries) *Deduction (Salary Adjustment)*	(132,088)	(198,132)	(330,220)
Directors Adjustment (Applicant License insurance)	2,540	1,693	4,233
Directors Adjustment (Applicant License insurance) *Deduction*	(2,540)	(1,693)	(4,233)
Directors Adjustment (Applicant Health insurance)	10,336	6,891	17,227
Directors Adjustment (Applicant Health insurance) *Deduction*	(10,336)	(6,891)	(17,227)
Directors Adjustment (Applicant Expenses)	93,296	62,197	155,493
Directors Adjustment (Applicant Expenses) *Deduction*	(93,296)	(62,197)	(155,493)
Directors Adjustment (Applicant payroll tax)	30,944	20,629	51,573
Directors Adjustment (Applicant payroll tax) *Deduction*	(30,944)	(20,629)	(51,573)
Directors Adjustment Surcharge Collected in 2018	(144,770)	(144,770)	(289,540)
Directors Adjustment Legal—USCG Litigation	(7,743)	(5,162)	(12,905)
Total Director's Adjustments	(284,601)	(348,064)	(632,665)
Total Operating Expenses (OpEx + Adjustments)	1,570,706	888,805	2,459,511

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2018 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2019 inflation rate.[32] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020

[32] The 2019 inflation rate is available at *https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_midwest_table.pdf.* Specifically the CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4 = 100''. Downloaded June 11, 2020.

inflation modification.[33] Based on that information, the calculations for Step 2 are as follows:

TABLE 4—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

	District one		
	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	$1,570,706	$888,805	$2,459,511
2019 Inflation Modification (@1.5%)	23,561	13,332	36,893
2020 Inflation Modification (@0.8%)	12,754	7,217	19,971
2021 Inflation Modification (@1.6%)	25,712	14,550	40,262
Adjusted 2021 Operating Expenses	1,632,733	923,904	2,556,637

C. Step 3: Estimate Number of Registered Pilots

In accordance with the text in § 404.103, we estimate the number of registered pilots in each district. We determine the number of registered pilots based on data provided by the Saint Lawrence Seaway Pilots Association. Using these numbers, we estimate that there will be 18 registered pilots in 2021 in District One. Based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), and our proposed changes to that staffing model, we assigned a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 5. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 5—AUTHORIZED PILOTS

Item	District one
Proposed Maximum number of pilots (per § 401.220(a)) [34]	18
2021 Authorized pilots (total)	18
Pilots assigned to designated areas	11
Pilots assigned to undesignated areas	7

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section VI.A of the preamble, we are proposing to use a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 value by 1.4 percent for a total adjusted value of $372,224. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.4 percent.[35] [36] Because we do not have a value for the ECI for 2021, we multiply the adjusted 2020 compensation benchmark of $372,224 by the Median PCE inflation value of 1.60 percent.[37] Based on the projected 2021 inflation estimate, the proposed compensation benchmark for 2021 is $378,180 per pilot.

TABLE 6—TARGET PILOT COMPENSATION

2020 Target Compensation	$367,085
Difference between Q12020 ECI Inflation Rate (3.4%) and the 2020 PCE Predicted Inflation Rate (2.0%)	1.400%
Adjusted 2020 Compensation	$372,224
2020 to 2021 Inflation Factor	1.60%
2021 Target Compensation	$378,180

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the proposed changes to the staffing model in § 401.220(a). The proposed changes to the staffing model suggest that the number of pilots needed is 18 pilots for District One, which is more than or equal to 18, the number of registered pilots provided by the pilot associations. In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District One, as shown in table 7.

[33] The 2020 and 2021 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200610.pdf*. We used the PCE median inflation value found in table 1, Downloaded June 11, 2020.

[34] For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[35] U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Q1 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The first quarter data was the most recently available data at the time of analysis for this NPRM. The Coast Guard will use updated 2020 ECI data in the final rule. *https://www.bls.gov/news.release/archives/eci_01312020.pdf.*

[36] In Step 2 of the ratemaking, the Coast Guard uses the Federal Reserve's predicted PCE inflation rate of 0.8% to inflate operating expenses to 2020 dollars. This value differs from the ECI Q1 inflation rate of 3.4%. The reason for the large deviation between the values is the timing of each dataset. The ECI data is only for Q1 of 2020 (January–March) and therefore does not capture the impact of COVID–19. The PCE inflation predictions are from the June 2020 and account for the impacts of the pandemic on the U.S. economy.

[37] The Federal Reserve, Table 1. Economic projections of Federal Reserve Board members and Federal Reserve Bank presidents, under their individual assumptions of projected appropriate monetary policy, June 2020, (June 10, 2020, 2:00 p.m.), *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200610.pdf.*

TABLE 7—TARGET COMPENSATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Target Pilot Compensation	$378,180	$378,180	$378,180
Number of Pilots	11	7	18
Total Target Pilot Compensation	4,159,980	2,647,260	6,807,240

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 3.3875 percent.[38] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 8.

TABLE 8—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

	District one		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$1,632,733	$923,904	$2,556,637
Total Target Pilot Compensation (Step 4)	4,159,980	2,647,260	6,807,240
Total 2021 Expenses	5,792,713	3,571,164	9,363,877
Working Capital Fund (3. 3.875%)	196,228	120,973	317,201

F. Step 6: Project Needed Revenue

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 9.

TABLE 9—REVENUE NEEDED FOR DISTRICT ONE

	District one		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2, see table 4)	$1,632,733	$923,904	$2,556,637
Total Target Pilot Compensation (Step 4, see table 6)	4,159,980	2,647,260	6,807,240
Working Capital Fund (Step 5, see table 8)	196,228	120,973	317,201
Total Revenue Needed	5,988,941	3,692,137	9,681,078

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District One, using the total time on task or pilot bridge hours.[39] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 10.

TABLE 10—TIME ON TASK FOR DISTRICT ONE

[Hours]

Year	District one	
	Designated	Undesignated
2019	8,232	8,405
2018	6,943	8,445
2017	7,605	8,679
2016	5,434	6,217

[38] Moody's Seasoned Aaa Corporate Bond Yield, average of 2019 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (June 11, 2020)

[39] To calculate the time on task for each district, the Coast Guard uses billing data from the Great Lakes Pilotage Management System (GLPMS). We pull the data from the system filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). After we have downloaded the data, we remove any overland transfers from the dataset, if necessary, and sum the total bridge hours, by area. We then subtract any non-billable delay hours from the total.

TABLE 10—TIME ON TASK FOR DISTRICT ONE—Continued

[Hours]

Year	District one	
	Designated	Undesignated
2015	5,743	6,667
2014	6,810	6,853
2013	5,864	5,529
2012	4,771	5,121
2011	5,045	5,377
2010	4,839	5,649
Average	6,129	6,694

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for each area in table 11.

TABLE 11—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

	Designated	Undesignated
Needed revenue (Step 6)	$5,988,941	$3,692,137
Average time on task (hours)	6,129	6,694
Initial rate	$977	$552

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 12 and 13.[40]

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	41	1	41
Class 1 (2016)	31	1	31
Class 1 (2017)	28	1	28
Class 1 (2018)	54	1	54
Class 1 (2019)	72	1	72
Class 2 (2014)	285	1.15	327.75
Class 2 (2015)	295	1.15	339.25
Class 2 (2016)	185	1.15	212.75
Class 2 (2017)	352	1.15	404.8
Class 2 (2018)	559	1.15	642.85
Class 2 (2019)	378	1.15	434.7
Class 3 (2014)	50	1.3	65
Class 3 (2015)	28	1.3	36.4
Class 3 (2016)	50	1.3	65
Class 3 (2017)	67	1.3	87.1
Class 3 (2018)	86	1.3	111.8
Class 3 (2019)	122	1.3	158.6
Class 4 (2014)	271	1.45	392.95
Class 4 (2015)	251	1.45	363.95
Class 4 (2016)	214	1.45	310.3
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	393	1.45	569.85
Class 4 (2019)	730	1.45	1,058.5
Total	4,858		6,252
Average weighting factor (weighted transits/number of transits)		1.29	

[40] To calculate the number of transits by vessel class, we use the billing data from GLPMS, filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). We then count the number of jobs by vessel class and area.

TABLE 13—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	25	1	25
Class 1 (2015)	28	1	28
Class 1 (2016)	18	1	18
Class 1 (2017)	19	1	19
Class 1 (2018)	22	1	22
Class 1 (2019)	30	1	30
Class 2 (2014)	238	1.15	273.7
Class 2 (2015)	263	1.15	302.45
Class 2 (2016)	169	1.15	194.35
Class 2 (2017)	290	1.15	333.5
Class 2 (2018)	352	1.15	404.8
Class 2 (2019)	366	1.15	420.9
Class 3 (2014)	60	1.3	78
Class 3 (2015)	42	1.3	54.6
Class 3 (2016)	28	1.3	36.4
Class 3 (2017)	45	1.3	58.5
Class 3 (2018)	63	1.3	81.9
Class 3 (2019)	58	1.3	75.4
Class 4 (2014)	289	1.45	419.05
Class 4 (2015)	269	1.45	390.05
Class 4 (2016)	222	1.45	321.9
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	382	1.45	553.9
Class 4 (2019)	326	1.45	472.7
Total	3,889		5,027
Average weighting factor (weighted transits/number of transits)		1.29	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that once the impact of the weighting factors is considered; the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 14.

TABLE 14—REVISED BASE RATES FOR DISTRICT ONE

Area	Initial rate (step 7)	Average weighting factor (step 8)	Revised rate (initial rate ÷ average weighting factor)
District One: Designated	$977	1.29	$757
District One: Undesignated	552	1.29	428

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, including average traffic and weighting factions. Based on the financial information submitted by the pilots, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in table 15.

TABLE 15—PROPOSED FINAL RATES FOR DISTRICT ONE

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate
District One: Designated	St. Lawrence River	$758	$757
District One: Undesignated	Lake Ontario	463	427

District Two

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2018 expenses and revenues.[41] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Two are shown in table 16.

For District Two, we propose three Director's adjustments: (1) For the amount collected from the 2018 surcharge; (2) for the amount in Coast Guard litigation legal fees; and (3) for the amount paid to the District's applicant pilot. District Two had one applicant pilot during the 2018 season and paid $334,659 in salary. The Coast Guard believes this amount is above what is necessary and reasonable for retention and recruitment. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Two's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot. This proposal went into the final rule for 2019 and was not opposed. Going forward, the Coast Guard will continue to use the same ratio of applicant to target compensation. For 2019, this was approximately 36 percent ($128,783 ÷ $359,887 = 35.78 percent), so the Coast Guard is proposing to use the rounded up value of 36.0 percent of target compensation as the benchmark for applicant pilot compensation, for a 2021 target pilot compensation of $132,151 ($367,085 × .36). This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation. Other adjustments made by the auditors are explained in the auditors' reports (available in the docket where indicated in the Public Participation and Request for Comments portion of this document).

TABLE 16—2018 RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported operating expenses for 2018	District two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Other Pilotage Costs:			
Subsistence/Travel—Pilots	$115,073	$172,608	$287,681
CPA DEDUCTION	(3,457)	(5,185)	(8,642)
Hotel/Lodging Cost	50,464	75,696	126,160
License Insurance	138	207	345
Payroll taxes	82,960	124,441	207,401
Other	860	1,291	2,151
Total Other Pilotage Costs	246,038	369,058	615,096
Applicant Pilot Costs:			
Applicant Salaries	133,864	200,795	334,659
Applicant Health Insurance	18,691	28,036	46,727
Applicant Payroll Tax	4,496	6,745	11,241
Applicant Subsistence	9,872	14,807	24,679
Total Applicant Pilot Cost	166,923	250,383	417,306
Pilot Boat and Dispatch Costs:			
Pilot Boat Cost	206,998	310,496	517,494
Employee Benefits	80,906	121,358	202,264
Payroll Taxes	12,523	18,785	31,308
Total Pilot and Dispatch Costs	300,427	450,639	751,066
Administrative Expenses:			
Legal—general counsel	35,711	53,567	$89,278
Legal—shared counsel (K&L Gates)	17,037	25,555	42,592
Legal—USCG litigation	2,185	3,277	5,462
Office rent	33,326	49,988	83,314
Insurance	20,357	30,536	50,893
Employee Benefits	89,999	134,999	224,998
Other taxes	25,620	38,430	64,050
Real Estate taxes	6,066	9,099	15,165
Depreciation/Auto lease/Other	29,392	44,087	73,479
Interest	586	880	1,466
APA dues	13,703	20,554	34,257
Dues and Subscriptions	676	1,015	1,691
Utilities	19,413	29,119	48,532
Salaries—Admin employees	53,170	79,755	132,925
Payroll taxes	5,558	8,338	13,896
Accounting	14,276	21,414	35,690

[41] These reports are available in the docket for this rulemaking (see Docket No. USCG–2019–0736).

TABLE 16—2018 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported operating expenses for 2018	District two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Pilot Training	14,434	21,414	35,848
Other	15,310	22,966	38,276
Total Administrative Expenses	396,819	594,993	991,812
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,110,207	1,665,073	2,775,280
Proposed Adjustments (Director):			
Directors Adjustment Surcharge Collected in 2018	(65,962)	(65,962)	(131,924)
Directors Adjustment Applicant Pilot Salary	(66,828)	(135,680)	(202,508)
Proposed Legal Fee Removal—USCG Litigation	(2,185)	(3,277)	(5,462)
Total Director's Adjustments	(134,975)	(204,919)	(339,894)
Total Operating Expenses (OpEx + Adjustments)	975,232	1,460,154	2,435,386

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2019 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2019 inflation rate.[42] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2020 and 2021 inflation modification.[43] Based on that information, the calculations for Step 1 are as follows:

TABLE 17—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

Item	District two		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$975,232	$1,460,154	$2,435,386
2019 Inflation Modification (@1.5%)	14,628	21,902	36,530
2020 Inflation Modification (@0.8%)	7,919	11,856	19,775
2021 Inflation Modification (@1.6%)	15,964	23,903	39,867
Adjusted 2021 Operating Expenses	1,013,743	1,517,815	2,531,558

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.103, we estimate the number of working pilots in each district. We determine the number of registered pilots based on data provided by the Lakes Pilots Association. Using these numbers, we estimate that there will be 15 registered pilots in 2021 in District Two. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466) and our proposed changes to that staffing model, we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 18. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 18—AUTHORIZED PILOTS

Item	District two
Proposed Maximum number of pilots (per § 401.220(a)) [44]	16
2021 Authorized pilots (total)	15
Pilots assigned to designated areas	7
Pilots assigned to undesignated areas	8

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section VI.A of the preamble, we are proposing to use a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085

[42] *Supra* footnote 29, at 30.

[43] *Supra* footnote 30, at 32.

[44] For a detailed calculation refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

by 1.4 percent, for a total adjusted value of $372,224. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.4 percent.[45] [46] Because we do not have a value for the employment cost index for 2021, we multiply the adjusted 2020 compensation benchmark of $372,224 by the Median PCE inflation value of 1.60 percent.[47] Based on the projected 2021 inflation estimate, the proposed compensation benchmark for 2021 is $378,180 per pilot (see table 6 for calculations).

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the proposed changes to the staffing model in § 401.220(a). The proposed changes to the staffing model suggest that the number of pilots needed is 16 pilots for District Two, which is more than or equal to 15, the number of registered pilots provided by the pilot associations.[48]

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Two, as shown in table 19.

TABLE 19—TARGET COMPENSATION FOR DISTRICT TWO

	Undesignated	Designated	Total
Target Pilot Compensation	$378,180	$378,180	$378,180
Number of Pilots	8	7	15
Total Target Pilot Compensation	$3,025,440	$2,647,260	$5,672,700

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 3.3875 percent.[49] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 20.

TABLE 20—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

Item	District two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,013,743	$1,517,815	$2,531,558
Total Target Pilot Compensation (Step 4)	3,025,440	2,647,260	5,672,700
Total Expenses	4,039,183	4,165,075	8,204,258
Working Capital Fund (3.3875%)	136,827	141,092	277,919

F. Step 6: Project Needed Revenue

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 21.

TABLE 21—REVENUE NEEDED FOR DISTRICT TWO

	District two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, see Table 17)	$1,013,743	$1,517,815	$2,531,558
Total Target Pilot Compensation (Step 4, see Table 19)	3,025,440	2,647,260	5,672,700
Working Capital Fund (Step 5, see Table 20)	136,827	141,092	277,919
Total Revenue Needed	4,176,010	4,306,167	8,482,177

[45] U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Q1 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The first quarter data was the most recently available data at the time of analysis for this NPRM. The Coast Guard will use updated 2020 ECI data in the final rule. *https://www.bls.gov/news.release/archives/eci_01312020.pdf.*

[46] In Step 2 of the ratemaking, the Coast Guard uses the Federal Reserve's predicted PCE inflation rate of 0.8% to inflate operating expenses to 2020 dollars. This value differs from the ECI Q1 inflation rate of 3.4%. The reason for the large deviation between the values is the timing of each dataset. The ECI data is only for Q1 of 2020 (January–March) and therefore does not capture the impact of COVID–19. The PCE inflation predictions are from the June 2020 and account for the impacts of the pandemic on the US economy.

[47] The Federal Reserve, *Table 1. Economic projections of Federal Reserve Board members and Federal Reserve Bank presidents, under their individual assumptions of projected appropriate monetary policy, June 2020,* (June 10, 2020, 2:00 p.m.), *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200610.pdf).*

[48] See table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

[49] See footnote 33.

G. Step 7: Calculate Initial Base Rates

Having determined the needed revenue for each area in the previous six steps, to develop an hourly rate we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Two, using the total time on task or pilot bridge hours.[50] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 22.

TABLE 22—TIME ON TASK FOR DISTRICT TWO

[Hours]

Year	Undesignated	Designated
2019	6,512	7,715
2018	6,150	6,655
2017	5,139	6,074
2016	6,425	5,615
2015	6,535	5,967
2014	7,856	7,001
2013	4,603	4,750
2012	3,848	3,922
2011	3,708	3,680
2010	5,565	5,235
Average	5,634	5,661

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in table 23.

TABLE 23—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

Item	Undesignated	Designated
Needed revenue (Step 6)	$4,176,010	$4,306,167
Average time on task (hours)	5,634	5,661
Initial rate	$741	$761

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculated the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 24 and 25.[51]

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	35	1	35
Class 1 (2016)	32	1	32
Class 1 (2017)	21	1	21
Class 1 (2018)	37	1	37
Class 1 (2019)	54	1	54
Class 2 (2014)	356	1.15	409.4
Class 2 (2015)	354	1.15	407.1
Class 2 (2016)	380	1.15	437
Class 2 (2017)	222	1.15	255.3
Class 2 (2018)	123	1.15	141.45
Class 2 (2019)	127	1.15	146.05
Class 3 (2014)	20	1.3	26
Class 3 (2015)	0	1.3	0
Class 3 (2016)	9	1.3	11.7
Class 3 (2017)	12	1.3	15.6
Class 3 (2018)	3	1.3	3.9
Class 3 (2019)	1	1.3	1.3
Class 4 (2014)	636	1.45	922.2
Class 4 (2015)	560	1.45	812
Class 4 (2016)	468	1.45	678.6
Class 4 (2017)	319	1.45	462.55
Class 4 (2018)	196	1.45	284.20

[50] See footnote 34 for more information.

[51] *Supra* footnote 35, at 41.

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 4 (2019)	210	1.45	304.5
Total	4,206		5,529
Average weighting factor (weighted transits/number of transits)		1.31	

TABLE 25—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	20	1	20
Class 1 (2015)	15	1	15
Class 1 (2016)	28	1	28
Class 1 (2017)	15	1	15
Class 1 (2018)	42	1	42
Class 1 (2019)	48	1	48
Class 2 (2014)	237	1.15	272.55
Class 2 (2015)	217	1.15	249.55
Class 2 (2016)	224	1.15	257.6
Class 2 (2017)	127	1.15	146.05
Class 2 (2018)	153	1.15	175.95
Class 2 (2019)	281	1.15	323.15
Class 3 (2014)	8	1.3	10.4
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	4	1.3	5.2
Class 3 (2017)	4	1.3	5.2
Class 3 (2018)	14	1.3	18.2
Class 3 (2019)	1	1.3	1.3
Class 4 (2014)	359	1.45	520.55
Class 4 (2015)	340	1.45	493
Class 4 (2016)	281	1.45	407.45
Class 4 (2017)	185	1.45	268.25
Class 4 (2018)	379	1.45	549.55
Class 4 (2019)	403	1.45	584.35
Total	3,393		4,467
Average weighting factor (weighted transits/number of transits)		1.32	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that once the impact of the weighting factors are considered, the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 26.

TABLE 26—REVISED BASE RATES FOR DISTRICT TWO

Area	Initial rate (step 7)	Average weighting factor (step 8)	Revised Rate (initial rate ÷ average weighting factor)
District Two: Designated	$741	1.31	$566
District Two: Undesignated	761	1.32	577

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in table 27.

TABLE 27—PROPOSED FINAL RATES FOR DISTRICT TWO

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	$586	$566
District Two: Undesignated	Lake Erie	618	577

District Three

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2018 expenses and revenues.[52] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Three are shown in table 28.

For District Three, we propose two Director's adjustments. One would be for the amount collected from the 2018 surcharge and the other for the amount of Coast Guard litigation legal fees. Other adjustments made by the auditors are explained in the auditors' reports (available in the docket where indicated in the Public Participation and Request for Comments portion of this document).

We would make no adjustments to the District Three compensation for applicant pilots. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Three's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot. This proposal went into the final rule for 2019 and was not opposed. Going forward, the Coast Guard will to continue to use the same ratio of applicant to target compensation for all districts. For 2019, this was approximately 36 percent ($128,783 ÷ $359,887 = 35.78 percent), so the Coast Guard will use 36 percent of target compensation as the benchmark for applicant pilot compensation. This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation.

TABLE 28—2018 RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported expenses for 2018	District three			
	Undesignated[53] (Area 6)	Designated (area 7)	Undesignated (area 8)	Total
	Lakes Huron and Michigan	St. Marys River	Lake Superior	
Operating Expenses:				
Other Pilotage Costs:				
Pilot subsistence/travel	$208,110	$110,697	$123,980	$442,787
Hotel/Lodging Cost	88,982	47,331	53,011	189,324
License Insurance—Pilots	13,516	7,189	8,052	28,757
Payroll taxes	122,954	65,401	73,249	261,604
Other	19,521	10,383	11,629	41,533
Total Other Pilotage Costs	453,083	241,001	269,921	964,005
Applicant Pilot Costs:				
Applicant Salaries	183,485	97,598	109,310	390,393
Applicant pilot subsistence/travel	16,411	8,729	9,777	34,917
Applicant Insurance	38,312	20,379	22,823	81,514
Applicant Payroll Tax	16,411	8,729	9,777	34,917
Applicant Total Cost	254,619	135,435	151,687	541,741
Pilot Boat and Dispatch Costs:				
Pilot boat costs	346,160	184,127	206,223	736,510
Dispatch costs	99,982	53,182	59,563	212,727
Payroll taxes	13,609	7,239	8,108	28,956
Total Pilot and Dispatch Costs	459,751	244,548	273,894	978,193
Administrative Expenses:				
Legal—general counsel	22,766	12,109	13,563	48,438
Legal—shared counsel (K&L Gates)	19,426	10,333	11,573	41,332
Legal—USCG litigation	8,611	4,580	5,130	18,321
Office rent	4,020	2,138	2,395	8,553
Insurance	11,354	6,040	6,764	24,158
Employee benefits	68,303	36,331	40,691	145,325
Other taxes	131	70	78	279

[52] These reports are available in the docket for this rulemaking (see Docket No. USCG–2019–0736).

TABLE 28—2018 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported expenses for 2018	District three			
	Undesignated [53] (Area 6)	Designated (area 7)	Undesignated (area 8)	Total
	Lakes Huron and Michigan	St. Marys River	Lake Superior	
Depreciation/Auto leasing/Other	57,315	30,487	34,145	121,947
Interest	7	4	4	15
APA Dues	20,628	10,973	12,289	43,890
Dues and subscriptions	3,290	1,750	1,960	7,000
Utilities	31,860	16,947	18,980	67,787
Salaries	60,876	32,381	36,267	129,524
Payroll taxes	5,406	2,875	3,220	11,501
Accounting/Professional fees	8,069	4,292	4,807	17,168
Pilot training	18,586	9,886	11,073	39,545
Other expenses (D3–18–01)	8,907	4,738	5,306	18,951
(D3–18–01) CPA Deduction	(2,030)	(1,080)	(1,210)	(4,320)
Total Administrative Expenses	347,525	184,854	207,035	739,414
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,514,978	805,838	902,537	3,223,353
Proposed Adjustments (Director):				
Directors Adjustment Surcharge Collected in 2018	(273,168)	(273,168)	(273,168)	(819,504)
Proposed Legal Fee Removal—USCG Litigation	(8,611)	(4,580)	(5,130)	(18,321)
Total Director's Adjustments	(281,779)	(277,748)	(278,298)	(837,825)
Total Operating Expenses (OpEx + Adjustments)	1,233,199	528,090	624,239	2,385,528

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2018 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2019 inflation rate.[54] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2020 and 2021 inflation modification.[55] Based on that information, the calculations for Step 1 are as follows:

TABLE 29—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$1,857,438	$528,090	$2,385,528
2019 Inflation Modification (@1.5%)	27,862	7,921	35,783
2020 Inflation Modification (@0.8%)	15,082	4,288	19,370
2021 Inflation Modification (@1.6%)	30,406	8,645	39,051
Adjusted 2021 Operating Expenses	1,930,788	548,944	2,479,732

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.104(c), we estimate the number of working pilots in each district. We determine the number of registered pilots based on data provided by the Western Great Lakes Pilots Association. Using these numbers, we estimate that there will be 22 registered pilots in 2021 in District Three. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), and our proposed changes to that staffing model, we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 30. These numbers are used to determine the amount of revenue needed in their respective areas.

[53] The undesignated areas in District Three (areas 6 and 8) are treated separately in table 28. In table 29 and subsequent tables, both undesignated areas are combined and analyzed as a single undesignated area.

[54] *Supra* footnote 29, at 30.

[55] *Supra* footnote 30, at 31.

TABLE 30—AUTHORIZED PILOTS

	District three
Proposed Maximum number of pilots (per § 401.220(a)) [56]	23
2021 Authorized pilots (total)	22
Pilots assigned to designated areas	4
Pilots assigned to undesignated areas	18

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section VI.A of the preamble, we are proposing to use a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 by 1.4 percent, for a total adjusted value of $372,224. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.4 percent.[57] [58] Because we do not have a value for the ECI for 2021, we multiply the adjusted 2020 compensation benchmark of $372,224 by the Median PCE inflation value of 1.60 percent.[59] Based on the projected 2020 inflation estimate, the proposed compensation benchmark for 2021 is $378,180 per pilot (see table 6 for calculations).

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the proposed changes to the staffing model in § 401.220(a). The proposed changes to the staffing model suggest that the number of pilots needed is 23 pilots for District Three,[60] which is more than or equal to 22, the number of registered pilots provided by the pilot associations.

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Three, as shown in table 31.

TABLE 31—TARGET COMPENSATION FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Target Pilot Compensation	$378,180	$378,180	$378,180
Number of Pilots	18	4	22
Total Target Pilot Compensation	$6,807,240	$1,512,720	$8,319,960

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high grade corporate securities. Using Moody's data, the number is 3.3875 percent.[61] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 32.

TABLE 32—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,930,788	$548,944	$2,479,732
Total Target Pilot Compensation (Step 4)	6,807,240	1,512,720	8,319,960
Total Expenses	8,738,028	2,061,664	10,799,692
Working Capital Fund (3.3875)	296,001	69,839	365,840

[56] For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[57] U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Q1 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The first quarter data was the most recently available data at the time of analysis for this NPRM. The Coast Guard will use updated 2020 ECI data in the final rule. *https://www.bls.gov/news.release/archives/eci_01312020.pdf.*

[58] In Step 2 of the ratemaking, the Coast Guard uses the Federal Reserve's predicted PCE inflation rate of 0.8% to inflate operating expenses to 2020 dollars. This value differs from the ECI Q1 inflation rate of 3.4%. The reason for the large deviation between the values is the timing of each dataset. The ECI data is only for Q1 of 2020 (January–March) and therefore does not capture the impact of COVID–19. The PCE inflation predictions are from the June 2020 and account for the impacts of the pandemic on the U.S. economy.

[59] *Supra* footnote 33, at 39.

[60] See Table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

[61] Moody's Seasoned Aaa Corporate Bond Yield, average of 2018 monthly data. The Coast Guard uses the most recent complete year of data. See *https://fred.stlouisfed.org/series/AAA.* (June 12, 2019).

F. Step 6: Project Needed Revenue

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). The calculations are shown in table 33.

TABLE 33—REVENUE NEEDED FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, see Table 9)	$1,930,788	$548,944	$2,479,732
Total Target Pilot Compensation (Step 4, see Table 31)	6,807,240	1,512,720	8,319,960
Working Capital Fund (Step 5, see Table 32)	296,001	69,839	365,840
Total Revenue Needed	9,034,029	2,131,503	11,165,532

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Three, using the total time on task or pilot bridge hours.[62] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 34.

TABLE 34—TIME ON TASK FOR DISTRICT THREE

[Hours]

Year	District three	
	Undesignated	Designated
2019	24,851	3,395
2018	19,967	3,455
2017	20,955	2,997
2016	23,421	2,769
2015	22,824	2,696
2014	25,833	3,835
2013	17,115	2,631
2012	15,906	2,163
2011	16,012	1,678
2010	20,211	2,461
Average	20,710	2,808

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in table 35.

TABLE 35—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

	Undesignated	Designated
Revenue needed (Step 6)	$9,034,029	$2,131,503
Average time on task (hours)	20,710	2,808
Initial rate	$436	$759

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 36 and 37.[63]

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Area 6:			

[62] *See supra* footnote 34, at 40 for more information.

[63] *See supra* footnote 35, at 41 for more information.

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	45	1	45
Class 1 (2015)	56	1	56
Class 1 (2016)	136	1	136
Class 1 (2017)	148	1	148
Class 1 (2018)	103	1	103
Class 1 (2019)	173	1	173
Class 2 (2014)	274	1.15	315.1
Class 2 (2015)	207	1.15	238.05
Class 2 (2016)	236	1.15	271.4
Class 2 (2017)	264	1.15	303.6
Class 2 (2018)	169	1.15	194.35
Class 2 (2019)	279	1.15	320.85
Class 3 (2014)	15	1.3	19.5
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	10	1.3	13
Class 3 (2017)	19	1.3	24.7
Class 3 (2018)	9	1.3	11.7
Class 3 (2019)	9	1.3	11.7
Class 4 (2014)	394	1.45	571.3
Class 4 (2015)	375	1.45	543.75
Class 4 (2016)	332	1.45	481.4
Class 4 (2017)	367	1.45	532.15
Class 4 (2018)	337	1.45	488.65
Class 4 (2019)	334	1.45	484.3
Total for Area 6	4,299	.....	5,497
Area 8:			
Class 1 (2014)	3	1	3
Class 1 (2015)	0	1	0
Class 1 (2016)	4	1	4
Class 1 (2017)	4	1	4
Class 1 (2018)	0	1	0
Class 1 (2019)	0	1	0
Class 2 (2014)	177	1.15	203.55
Class 2 (2015)	169	1.15	194.35
Class 2 (2016)	174	1.15	200.1
Class 2 (2017)	151	1.15	173.65
Class 2 (2018)	102	1.15	117.3
Class 2 (2019)	120	1.15	138
Class 3 (2014)	3	1.3	3.9
Class 3 (2015)	0	1.3	0
Class 3 (2016)	7	1.3	9.1
Class 3 (2017)	18	1.3	23.4
Class 3 (2018)	7	1.3	9.1
Class 3 (2019)	6	1.3	7.8
Class 4 (2014)	243	1.45	352.35
Class 4 (2015)	253	1.45	366.85
Class 4 (2016)	204	1.45	295.8
Class 4 (2017)	269	1.45	390.05
Class 4 (2018)	188	1.45	272.6
Class 4 (2019)	254	1.45	368.3
Total for Area 8	2,356	.....	3,137
Combined total	6,655	.....	8,634.10
Average weighting factor (weighted transits/number of transits)	.....	1.30	.....

TABLE 37—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

Vessel class per year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	27	1	27
Class 1 (2015)	23	1	23
Class 1 (2016)	55	1	55
Class 1 (2017)	62	1	62
Class 1 (2018)	47	1	47
Class 1 (2019)	45	1	45
Class 2 (2014)	221	1.15	254.15
Class 2 (2015)	145	1.15	166.75

TABLE 37—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS—Continued

Vessel class per year	Number of transits	Weighting factor	Weighted transits
Class 2 (2016)	174	1.15	200.1
Class 2 (2017)	170	1.15	195.5
Class 2 (2018)	126	1.15	144.9
Class 2 (2019)	162	1.15	186.3
Class 3 (2014)	4	1.3	5.2
Class 3 (2015)	0	1.3	0
Class 3 (2016)	6	1.3	7.8
Class 3 (2017)	14	1.3	18.2
Class 3 (2018)	6	1.3	7.8
Class 3 (2019)	3	1.3	3.9
Class 4 (2014)	321	1.45	465.45
Class 4 (2015)	245	1.45	355.25
Class 4 (2016)	191	1.45	276.95
Class 4 (2017)	234	1.45	339.3
Class 4 (2018)	225	1.45	326.25
Class 4 (2019)	308	1.45	446.6
Total	2,814		3,659
Average weighting factor (weighted transits per number of transits)		1.30	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that once the impact of the weighting factors are considered, the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 38.

TABLE 38—REVISED BASE RATES FOR DISTRICT THREE

Area	Initial rate (step 7)	Average weighting factor (step 8)	Revised rate (Initial rate ÷ average weighting factor)
District Three: Designated	$759	1.30	$584
District Three: Undesignated	436	1.30	335

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in table 39.

TABLE 39—PROPOSED FINAL RATES FOR DISTRICT THREE

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate
District Three: Designated	St. Marys River	$632	$584
District Three: Undesignated	Lakes Huron, Michigan, and Superior	337	335

IX. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations

be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this proposed rule is not a significant regulatory action, it is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). A regulatory analysis (RA) follows.

The purpose of this proposed rule is to establish new base pilotage rates. The Great Lakes Pilotage Act of 1960 requires that rates be established or reviewed and adjusted each year. The Act requires that base rates be established by a full ratemaking at least once every five years, and in years when base rates are not established, they must be reviewed and, if necessary, adjusted. The last full ratemaking was concluded in June of 2018.[64] For this ratemaking, the Coast Guard estimates an increase in cost of approximately $1.06 million to industry as a result of the change in revenue needed in 2021 compared to the revenue needed in 2020.

Table 40 summarizes proposed changes with no cost impacts or where the cost impacts are captured in the proposed rate change. Table 41 summarizes the affected population, costs, and benefits of the proposed rate change.

TABLE 40—PROPOSED CHANGES WITH NO COSTS OR COST CAPTURED IN THE PROPOSED RATE CHANGE

Change	Description	Affected population	Basis for no cost or cost captured in the rate	Benefits
Legal expenses for lawsuits against the U.S. Government are not allowable operating expenses.	The Coast Guard is proposing to exclude legal fees for litigation against the Coast Guard from operating expenses for calculation of pilotage rates. This proposal would only apply to legal fees when pilots associations sue the Coast Guard in relation to the ratemaking and oversight requirement in 46 U.S.C. 9303, 9304 and 9305. As part of this proposed change, the Coast Guard is also proposing to create a new paragraph 46 CFR 404.2(b)(6) which defines legal expenses.	Owners and operators of 279 vessels journeying the Great Lakes system annually, 55 U.S. Great Lakes pilots, and 3 pilotage associations.	Changes in operating expenses are accounted for in the base pilotage rates. For the 2020 ratemaking, these legal fees total $36,688 for all three districts. After adjusting for inflation and the working capital fund, these expenses are $39,430, or 0.13% of the total revenue needed for 2021. The pilotage associations may still be reimbursed for these expenses by the Coast Guard under the EAJA.	The change would remove the undue cost to shippers of effectively paying for the pilots' litigation expenses to sue the Coast Guard.
Changes to Staffing Model.	The Coast Guard is proposing to modify the staffing model at 46 CFR 401.220(a)(3) to round up to the nearest integer, as opposed to the existing method, which rounds to the nearest integer. In total, this would increase the maximum number of allowable pilots by 3.	Owners and operators of 279 vessels journeying the Great Lakes system annually, 55 U.S. Great Lakes pilots, and 3 pilotage associations.	The total number of pilots is accounted for in the base pilotage rates. For the 2021 ratemaking, this proposed change would allow for one additional pilot that would not have otherwise been allowed.	Rounding up in the staffing model accounts for extra staff or extra time spent by the pilot associations presidents, including attending mandatory meetings with the Coast Guard, complying with new reporting requirements, and overseeing projects that enable the associations to provide safe, efficient, and reliable pilotage service in order to facilitate maritime commerce.
Inflation of Target pilot compensation.	The Coast Guard is proposing to modify 46 CFR 404.104(b) to change how inflation of pilot compensation is calculated by accounting for the difference between the predicted PCE inflation rated and the actual ECI inflation rate.	Owners and operators of 279 vessels journeying the Great Lakes system annually, 55 U.S. Great Lakes pilots, and 3 pilotage associations.	Pilot compensation costs are accounted for in the base pilotage rates.	This proposed change ensures the Coast Guard will be able to correct any under- or over-estimates in inflation rather than keeping these errors continuously in the rate.

TABLE 41—ECONOMIC IMPACTS DUE TO PROPOSED CHANGES

Change	Description	Affected population	Costs	Benefits
Rate and surcharge changes.	Under the Great Lakes Pilotage Act of 1960, the Coast Guard is required to review and adjust base pilotage rates annually.	Owners and operators of 279 vessels transiting the Great Lakes system annually, 55 U.S. Great Lakes pilots, and 3 pilotage associations.	Increase of $1,060,757 due to change in revenue needed for 2021 ($29,328,787) from revenue needed for 2020 ($28,268,030), as shown in table 42 below.	New rates cover an association's necessary and reasonable operating expenses. Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for pilots. Ensures the association receives sufficient revenues to fund future improvements.

[64] Great Lakes Pilotage Rates—2018 Annual Review and Revisions to Methodology (83 FR 26162), published June 5, 2018.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Sections IV and V of this preamble for detailed discussions of the legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this rulemaking, we are proposing to adjust the pilotage rates for the 2021 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate working capital fund to use for improvements. The rate changes in this proposed rule would decrease the rates for all three districts. In addition, the proposed rule would not implement a surcharge for the training of apprentice pilots as was last implemented in the 2019 ratemaking.[65] These changes lead to a net increase in the cost of service to shippers. However, because the proposed rates would increase for some areas and decrease for others, the change in per unit cost to each individual shipper would be dependent on their area of operation, and if they previously paid a surcharge.

A detailed discussion of our economic impact analysis follows.

Affected Population

This rule would impact U.S. Great Lakes pilots, the 3 pilot associations, and the owners and operators of 279 oceangoing vessels that transit the Great Lakes annually. We estimate that there would be 55 pilots registered during the 2021 shipping season. The shippers affected by these rate changes are those owners and operators of domestic vessels operating ''on register'' (engaged in foreign trade) and owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels. U.S.-flagged vessels not operating on register and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these U.S. and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2017 through 2019 from the Great Lakes Pilotage Management System (GLPMS) to estimate the average annual number of vessels affected by the rate adjustment. The GLPMS tracks data related to managing and coordinating the dispatch of pilots on the Great Lakes, and billing in accordance with the services. As described in Step 7 of the methodology, we use a 10-year average to estimate the traffic. We used 3 years of the most recent billing data to estimate the affected population. When we reviewed 10 years of the most recent billing data, we found the data included vessels that have not used pilotage services in recent years. We believe using 3 years of billing data is a better representation of the vessel population that is currently using pilotage services and would be impacted by this rulemaking. We found that 474 unique vessels used pilotage services during the years 2017 through 2019. That is, these vessels had a pilot dispatched to the vessel and billing information was recorded in the GLPMS. Of these vessels, 434 were foreign-flagged vessels and 40 were U.S.-flagged vessels. As previously stated, U.S.-flagged vessels not operating on register are not required to have a registered pilot per 46 U.S.C. 9302, but they can voluntarily choose to have one.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, we took an average of the unique vessels using pilotage services from the years 2017 through 2019 as the best representation of vessels estimated to be affected by the rates in this rulemaking. From 2017 through 2019, an average of 279 vessels used pilotage services annually.[66] On average, 261 of these vessels were foreign-flagged vessels and 18 were U.S.-flagged vessels that voluntarily opted into the pilotage service.

Total Cost to Shippers

The proposed rate changes resulting from this adjustment to the rates would result in a net decrease in the cost of service to shippers. However, the proposed change in per unit cost to each individual shipper would be dependent on their area of operation.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2020 with the total projected revenues to cover costs in 2021, including any temporary surcharges we have authorized.[67] We set pilotage rates so pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they have a pilot as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services. The change in revenue from the previous year is the additional cost to shippers discussed in this rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in tables 9, 21, and 33 of this preamble). The Coast Guard estimates that for the 2021 shipping season, the projected revenue needed for all three districts is $29,328,787.

To estimate the change in cost to shippers from this rule, the Coast Guard compared the 2021 total projected revenues to the 2020 projected revenues. Because we review and prescribe rates for the Great Lakes Pilotage annually, the effects are estimated as a single-year cost rather than annualized over a 10-year period. In the 2020 rulemaking, we estimated the total projected revenue needed for 2020 as $28,268,030.[68] This is the best approximation of 2020 revenues, as at the time of this publication, the Coast Guard does not have enough audited data available for the 2020 shipping season to revise these projections.[69] Table 42 shows the revenue projections for 2020 and 2021 and details the additional cost increases to shippers by area and district as a result of the rate changes on traffic in Districts One, Two, and Three.

[65] See, 84 FR 20551 (May 10, 2019).

[66] Some vessels entered the Great Lakes multiple times in a single year, affecting the average number of unique vessels utilizing pilotage services in any given year.

[67] While the Coast Guard implemented a surcharge in 2019, we are not proposing any surcharges for 2021.

[68] 85 FR 20088, see table 41.

[69] The proposed rates for 2021 do not account for the impacts COVID–19 may have on shipping traffic and subsequently pilotage revenue, as we do not have complete data for 2020. The rates for 2022 will take into account the impact of COVID–19 on shipping traffic, because that future ratemaking will include 2020 traffic data. However, the Coast Guard uses 10-year average when calculating traffic in order to smooth out variations in traffic caused by global economic conditions, such as those caused by the COVID–19 pandemic.

TABLE 42—EFFECT OF THE RULE BY AREA AND DISTRICT

[$U.S.; non-discounted]

Area	Revenue needed in 2020	Revenue needed in 2021	Change in costs of this proposed rule
Total, District One	$9,210,888	$9,681,078	$470,190
Total, District Two	8,345,871	8,482,177	136,306
Total, District Three	10,711,271	11,165,532	454,261
System Total	28,268,030	29,328,787	1,060,757

The resulting difference between the projected revenue in 2020 and the projected revenue in 2021 is the annual change in payments from shippers to pilots as a result of the rate change imposed by this proposed rule. The effect of the rate change to shippers varies by area and district. After taking into account the change in pilotage rates, the rate changes would lead to affected shippers operating in District One experiencing an increase in payments of $470,190 over the previous year. District Two and District Three would experience an increase in payments of $136,306 and $454,261, respectively, when compared with 2020. The overall adjustment in payments would be an increase in payments by shippers of $1,060,757 across all three districts (a 4-percent increase when compared with 2020). Again, because the Coast Guard reviews and sets rates for Great Lakes Pilotage annually, we estimate the impacts as single-year costs rather than annualizing them over a 10-year period.

Table 43 shows the difference in revenue by revenue-component from 2020 to 2021 and presents each revenue-component as a percentage of the total revenue needed. In both 2020 and 2021, the largest revenue-component was pilotage compensation (68 percent of total revenue needed in 2020 and 71 percent of total revenue needed in 2021), followed by operating expenses (29 percent of total revenue needed in 2020 and 26 percent of total revenue needed in 2021).

TABLE 43—DIFFERENCE IN REVENUE BY COMPONENT

Revenue component	Revenue needed in 2020	Percentage of total revenue needed in 2020	Revenue needed in 2021	Percentage of total revenue needed in 2021	Difference (2021 revenue–2020 revenue)	Percentage change from previous year
Adjusted Operating Expenses	$8,110,685	29	$7,567,927	26	($542,758)	(7)
Total Target Pilot Compensation	19,088,420	68	20,799,900	71	1,711,480	9
Working Capital Fund	1,068,925	4	960,960	3	(107,965)	(10)
Total Revenue Needed	28,268,030	100	29,328,787	100	1,060,757	4

Note: Totals may not sum due to rounding.

As stated above, we estimate that there will be a total increase in revenue needed by the pilot associations of $1,060,757. This represents an increase in revenue needed for target pilot compensation of $1,711,480, and a decrease in the revenue needed for adjusted operating expenses and the working capital fund of $542,758 and $107,965, respectively. The proposed removal of legal fees associated with litigation against the Coast Guard would reduce the revenue needed in 2021 by $39,430. While the shippers would no longer reimburse the legal fees associated with litigation via the rate under the proposed rule, the pilot associations may still be reimbursed for these expenses by the Coast Guard under the EAJA.

The majority of the increase in revenue needed, $1,711,480, is the result of changes to target pilot compensation. These changes are due to three factors: (1) The proposed changes to adjust 2020 pilotage compensation to account for the difference between actual and predicted inflation; (2) the net addition of three additional pilots; and (3) inflation of pilotage compensation.

The proposed target compensation is $378,180 per pilot in 2021, compared to $367,085 in 2020. The proposed changes to modify the 2020 pilot compensation to account for the difference between predicted and actual inflation would increase the 2020 target compensation value by 1.4 percent. As show in table 43, this inflation adjustment would increase total compensation by $5,139 per pilot, and the total revenue needed by $282,655 when accounting for all 55 pilots.

TABLE 44—CHANGE IN REVENUE RESULTING FROM THE PROPOSED CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

2020 Target Compensation	$367,085
Adjusted 2020 Compensation ($367,085 × 1.014)	372,224
Difference between Target 2020 Compensation and Target 2020 Compensation ($372,224 − $367,085)	5,139
Increase in total Revenue for 55 Pilots ($5,139 × 55)	282,655

The addition of 3 pilots to full registered status accounts for $1,119,122 of the increase in needed revenue. As shown in table 44, to avoid double counting, this value excludes the change in revenue resulting from the proposed

change to adjust 2020 pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 45—CHANGE IN REVENUE RESULTING FROM ADDING THREE ADDITIONAL PILOTS

2021 Target Compensation	$378,180
Total Number of New Pilots	3
Total Cost of new Pilots ($378,180 × 3)	$1,134,540
Difference between Target 2020 Compensation and Target 2020 Compensation ($372,224 − $367,085)	$5,139
Increase in total Revenue for 3 Pilots ($5,139 × 3)	$15,418
Net Increase in total Revenue 3 Pilots ($1,134,540 − $15,418)	$1,119,122

Finally, the remainder of the increase, $309,702, is the result of increasing compensation for the other 52 pilots to account for future inflation of 1.6 percent in 2021. This would increase total compensation by $5,965 per pilot.

TABLE 46—CHANGE IN REVENUE RESULTING FROM INFLATING 2020 COMPENSATION TO 2021

Adjusted 2020 Compensation	$372,224
2021 Target Compensation ($372,224 × 1.016)	378,180
Difference between Target 2020 Compensation and Target 2020 Compensation ($378,180 − $372,224)	5,956
Increase in total Revenue for 52 Pilots ($5,956 × 52)	309,702

Table 46 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[70]

TABLE 47—DIFFERENCE IN REVENUE BY COMPONENT AND AREA

Area	Adjusted operating expenses			Total target pilot compensation			Working capital fund			Total revenue needed		
	2020	2021	Percentage change	2020	2021	Percentage change	2020	2021	Percentage change	2020	2021	Percentage change
District One: Designated	$1,573,286	$1,632,733	4	$3,670,850	$4,159,980	12	$206,095	$196,228	(5)	$5,450,231	$5,988,941	9
District One: Undesignated	1,048,857	923,904	(14)	2,569,595	2,647,260	3	142,205	120,973	(18)	3,760,657	3,692,137	(2)
District Two: Undesignated	1,019,371	1,013,743	(1)	2,936,680	3,025,440	3	155,473	136,827	(14)	4,111,524	4,176,010	2
District Two: Designated	1,504,635	1,517,815	1	2,569,595	2,647,260	3	160,117	141,092	(13)	4,234,347	4,306,167	2
District Three: Undesignated	2,336,354	1,930,788	(21)	5,873,360	6,807,240	14	322,642	296,001	(9)	8,532,356	9,034,029	6
District Three: Designated	628,182	548,944	(14)	1,468,340	1,512,720	3	82,393	69,839	(18)	2,178,915	2,131,503	(2)

Benefits

This proposed rule would allow the Coast Guard to meet requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes would promote safe, efficient, and reliable pilotage service on the Great Lakes by (1) ensuring that rates cover an association's operating expenses; (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots; and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes would also help recruit and retain pilots, which would ensure a sufficient number of pilots to meet peak shipping demand, helping to reduce delays caused by pilot shortages.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the proposed rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in the GLPMS, and we reviewed business revenue and size data provided by publicly available sources such as Manta[71] and ReferenceUSA.[72] As described in Section IX.A of this preamble, Regulatory Planning and Review, we found that a total of 474 unique vessels used pilotage services from 2017 through 2019. These vessels are owned by 49 entities. We found that of the 49 entities that own or operate vessels engaged in trade on the Great Lakes that would be affected by this rule, 38 are foreign entities that operate primarily outside the United States, and the remaining 11 entities are U.S. entities. We compared the revenue and employee data found in the company search to the Small Business Administration's (SBA) small business threshold as defined in the SBA's ''Table of Size Standards'' for small businesses to determine how many of these companies are considered small entities.[73] Table 48 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

[70] The 2020 projected revenues are from the Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology final rule (85 FR 20088) Tables 8, 20, and 32. The 2021 projected revenues are from tables 9, 21, and 33 of this proposed rule.

[71] See *https://www.manta.com/.*

[72] See *http://resource.referenceusa.com/.*

[73] See: *https://www.sba.gov/document/support--table-size-standards.* SBA has established a ''Table of Size Standards'' for small businesses that sets small business size standards by NAICS code. A size standard, which is usually stated in number of employees or average annual receipts (''revenues''), represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs.

TABLE 48—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

NAICS	Description	Small entity size standard
211120	Crude Petroleum Extraction	1,250 employees.
237990	Other Heavy and Civil Engineering Construction	$39.5 million.
238910	Site Preparation Contractors	$16.5 million.
483212	Inland Water Passenger Transportation	500 employees.
487210	Scenic and Sightseeing Transportation, Water	$8.0 million.
488330	Navigational Services to Shipping	$41.5 million.
523910	Miscellaneous Intermediation	$41.5 million.
561599	All Other Travel Arrangement and Reservation Services	$22.0 million.
982100	National Security	Population of 50,000 People.

Of the 11 U.S. entities, 8 exceed the SBA's small business standards for small entities. To estimate the potential impact on the 3 small entities, the Coast Guard used their 2019 invoice data to estimate their pilotage costs in 2021. We increased their 2019 costs to account for the changes in pilotage rates resulting from this proposed rule and the Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology final rule (85 FR 20088). We estimated the change in cost to these entities resulting from this rule by subtracting their estimated 2020 costs from their estimated 2021 costs, and found the average costs to small firms would be approximately $1,226. We then compared the estimated change in pilotage costs between 2020 and 2021 with each firm's annual revenue. In all cases, their estimated pilotage expenses were below 1 percent of their annual revenue.

In addition to the owners and operators discussed above, three U.S. entities that receive revenue from pilotage services would be affected by this proposed rule. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships, and one operates as a corporation. These associations are designated with the same NAICS code and small-entity size standards described above, but have fewer than 500 employees. Combined, they have approximately 65 employees in total and, therefore, are designated as small entities. The Coast Guard expects no adverse effect on these entities from this rule because the three pilot associations would receive enough revenue to balance the projected expenses associated with the projected number of bridge hours (time on task) and pilots.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that would be impacted by this rule. We did not find any small governmental jurisdictions with populations of fewer than 50,000 people that would be impacted by this rule. Based on this analysis, we conclude this rulemaking would not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Based on our analysis, this proposed rule would have a less than 1 percent annual impact on 3 small entities; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

The Paperwork Reduction Act of 1995 (44 3501–3520) requires that the Coast Guard consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320(b)(2)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The Coast Guard has determined that there would be no new information collection associated with this proposed rule. Approval to collect such information previously was approved by OMB and was assigned OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. Federalism

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

Congress directed the Coast Guard to establish ''rates and charges for pilotage services''. See 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political

subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. Unfunded Mandates

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

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. If you disagree with our analysis or are aware of voluntary consensus standards that might apply, please send a comment explaining your disagreement or identifying appropriate standards to the docket using the method listed in the **ADDRESSES** section of this preamble.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1 (DHS Directive 023–01), associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** portion of this preamble.

This proposed rule meets the criteria for categorical exclusion (CATEX) under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1.[74] Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; or (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; and (d) those that interpret or amend an existing regulation without changing its environmental effect. Paragraph L54 pertains to regulations, which are editorial or procedural.

This proposed rule involves adjusting the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. In addition, the Coast Guard is proposing how apprentice pilots will be compensated in future rulemakings. All of these proposed changes are consistent with the Coast Guard's maritime safety missions. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 401

Administrative practice and procedure, Great Lakes; Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 404

Great Lakes, Navigation (water), Seamen.

[74] *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 401, and 404 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

§ 401.220 [Amended]

■ 2. Amend § 401.220, by revising the first sentence of paragraph (a)(3) to read as follows:

§ 401.220 Registration of pilots.

(a) * * *

(3) The number of pilots needed in each district is calculated by totaling the area results by district and rounding them up to a whole integer.* * *

* * * * *

§ 401.405 Pilotage Rates and Charges.

■ 3. Amend § 401.405 by revising paragraphs (a)(1) through (6) to read as follows:

(a) * * *

(1) The St. Lawrence River is $757;

(2) Lake Ontario is $428;

(3) Lake Erie is $566;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $577;

(5) Lakes Huron, Michigan, and Superior is $335; and

(6) The St. Marys River is $584.

* * * * *

PART 404—GREAT LAKES PILOTAGE RATEMAKING

■ 4. The authority citation for part 404 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.f).

■ 5. Amend § 404.2 by adding paragraph (b)(6) to read as follows:

§ 404.2 Procedure and criteria for recognizing association expenses.

* * * * *

(b) * * *

(6) *Legal Expenses.* These association expenses are recognizable except for any and all expenses associated with legal action against the U.S. Coast Guard or its agents in relation to the ratemaking and oversight requirements in 46 U.S.C. 9303, 9304 and 9305.

* * * * *

■ 6. Amend § 404.104 by revising paragraph (b) to read as follows:

§ 404.104 Ratemaking step 4: Determine target pilot compensation benchmark.

* * * * *

(b) In an interim year, the Director adjusts the previous year's individual target pilot compensation level by the Bureau of Labor Statistics' Employment Cost Index for the Transportation and Materials sector, or if that is unavailable, the Director adjusts the previous year's individual target pilot compensation level using a two-step process:

(1) First, the Director adjusts the previous year's individual target pilot by the difference between the previous year's Bureau of Labor Statistics' Employment Cost Index for the Transportation and Materials sector and the Federal Open Market Committee median economic projections for Personal Consumption Expenditures inflation value used to inflate the previous year's target pilot compensation.

(2) Second, the Director then adjusts that value by the Federal Open Market Committee median economic projections for Personal Consumption Expenditures inflation for the upcoming year.

* * * * *

Dated: October 16, 2020.

R.V. Timme,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Prevention Policy.

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