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Presidential Documents

Title 3—

The President

Proclamation 10108 of October 30, 2020

Critical Infrastructure Security and Resilience Month, 2020

By the President of the United States of America

A Proclamation

Critical infrastructure provides the foundation for our national security and prosperity. During Critical Infrastructure Security and Resilience Month, we renew our commitment to protecting and securing our Nation's essential systems for food and water, healthcare and public health, electric power supplies, emergency services, telecommunications, transportation, government and banking services, the administration of elections, and beyond. These vital functions and services are powered by a broad ecosystem of critical infrastructure assets, systems, networks, and workers, and underpin our American way of life.

While advances in technology have enhanced the safety, security, and comprehensive integration of our Nation's critical infrastructure, vulnerabilities still exist, particularly those that can be exploited by cyber adversaries. Manipulation of our data networks can interfere with healthcare, financial, and government services. Interruption of the electric power grid can disrupt water and food supplies, telecommunications, manufacturing, and transportation. Our Nation relies on these complex and interdependent networks to sustain our economic growth and ensure public health and security.

To coordinate our security and resilience efforts and protect our critical infrastructure now and in the future, I signed into law the Cybersecurity and Infrastructure Security Agency (CISA) Act of 2018. CISA works with businesses, communities, and government to help make the Nation's critical infrastructure more resilient to cyber and physical threats. From the onset of the coronavirus pandemic, CISA has released guidance to promote the health and safety of our Nation's essential workforce and provided critical information to assist owners and operators in categorizing risk, identifying opportunities for remote work, determining the criticality of specific roles, and deciding the allocation of resources, such as personal protective equipment and medical testing.

Additionally, my Administration has further advanced and strengthened the security and resilience of our critical infrastructure throughout the pandemic. In February, I signed an Executive Order on Strengthening National Resilience through Responsible Use of Positioning, Navigation, and Timing (PNT) Services to prevent any efforts to disrupt or manipulate PNT services, such as the Global Positioning System, from being undermined. In March, I signed the Secure and Trusted Communications Networks Act of 2019 and issued the National Strategy to Secure 5G to ensure the security, reliability, and trustworthiness of America's communications networks. In May, I signed an Executive Order on Securing the United States Bulk-Power System to prevent foreign actors from creating and exploiting vulnerabilities in bulk-power system electric equipment. In August, I signed an Executive Order on Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States to reduce our dependence on foreign chemical and medical supply chains and promote American-made production of essential medicines. And in September and October, my Administration completed implementation of a Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West, and

I signed an Executive Order on Modernizing America's Water Resource Management and Water Infrastructure. Both of these actions ensure that Americans have abundant, safe, and reliable supplies of water and world-class water infrastructure to support our economy. These actions and many more, like restocking personal protective equipment in the Strategic National Stockpile, will ensure our national self-sufficiency and security for our children, grandchildren, and generations to come.

During Critical Infrastructure Security and Resilience Month, we recommit to staying alert and continuously adapting to evolving threats and hazards, promoting the security of all critical infrastructure systems, and boosting resilience to potential disruptions, in partnership with State, local, Tribal, and private organizations. We thank the incredible workers who are on the frontlines night and day to sustain our vital systems, functions, and services, and we recognize that each and every American can help protect and strengthen our country's critical infrastructure.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2020 as Critical Infrastructure Security and Resilience Month. I call on the people of the United States to recognize the importance of protecting our Nation's infrastructure and to observe this month with appropriate measures to enhance our national security and resilience.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.

[FR Doc. 2020–24737
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Presidential Documents

Proclamation 10109 of October 30, 2020

National Adoption Month, 2020

By the President of the United States of America

A Proclamation

For children, parents, and families, adoption paves the way for new beginnings and provides children with a forever family who can help them reach their full potential. During National Adoption Month, we recognize birth families who make the difficult decision to place their children up for adoption, commend foster parents who care for children from different backgrounds, and celebrate adoptive parents who open their families to those children in need.

All children deserve a stable home with parents and families who can ensure their well-being. Sadly, last year, 153,258 children were placed in the foster care system due to neglect, and 86,694 children were removed from their homes due to drug abuse. My Administration is committed to addressing the causes of child abuse and neglect, bringing healing to families who are struggling with addiction, and expanding the avenues for adoption. Additionally, we are continuing our efforts to strengthen families and prevent abuse and neglect to help ensure that children are able to remain with birth parents whenever possible. These efforts include unprecedented action to end the opioid crisis in our country, increased funding and oversight of the foster care system, and opening more adoption channels to faith-based adoption and foster care providers. Additionally, the Department of Health and Human Services is now providing States with guidance regarding the use of Federal funds to support the legal representation of parents and children in family legal proceedings. The good news is that the number of children entering foster care is declining and the number of adoptions last year was the highest on record.

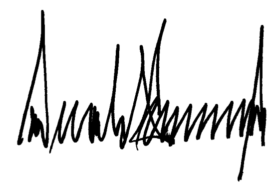
Nevertheless, those still in the foster care system often have to wait too long for adoption—sometimes 2 years or more. Even worse, thousands of children age out of foster care without finding a forever family, with profound and unacceptable consequences. Of those young Americans who age out of foster care, 40 percent experience homelessness, 50 percent are unemployed at age 24, and 25 percent experience post-traumatic stress. To help solve this problem, in June, I signed an Executive Order on Strengthening the Child Welfare System for America's Children. This order prioritizes the partnerships between private, public, and faith-based organizations to keep American families together and, when that is not possible, to find children forever families. It also provides resources for trauma training, support for guardianship, and kinship care for those who age out of foster care. Additionally, through her ''Be Best'' initiative, the First Lady continues to advocate for a safe, forever family for every child.

Adoption also offers a loving option for women who experience unexpected pregnancies or are unable to provide for their children. Every year, countless families—including many who cannot have children of their own—cherish the priceless gift of an adopted child. My Administration believes that every human life has inherent value, and encourages adoption as an alternative to abortion. All children, born and unborn, deserve a chance to have a better, more prosperous future. I commend the selfless men and women who preserve the majesty of God's creation by providing children with a chance at a better life.

This month, we celebrate the blessings of adoption and renew our resolve to promote a culture of respect for every human life. Countless Americans dedicate their time, energy, and resources to the adoption process, and we honor their selfless contributions as community members, faith leaders, caregivers, role models, and families. Our Nation is strengthened by the sacred institution of the family, and devoted parents who love and protect their adopted children. As a Nation, let us commit to ensuring a brighter future for all of our Nation's children.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2020 as National Adoption Month. I encourage all Americans to observe this month by helping children and youth in need of a permanent home secure a more promising future with a forever family and enter adulthood with the love and connections we all need.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–24738
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Presidential Documents

Proclamation 10110 of October 30, 2020

National American History and Founders Month, 2020

By the President of the United States of America

A Proclamation

In the Black Hills of South Dakota stands an enduring tribute to four of our greatest Presidents—George Washington, Thomas Jefferson, Abraham Lincoln, and Teddy Roosevelt. Mount Rushmore symbolizes the proud history of our Nation, a history that began on July 4, 1776, with the revolutionary words written in the Declaration of Independence. This summer, I spoke before this beautiful monument in celebration of Independence Day to call attention to the brilliant vision of our Founding Fathers and their profound, momentous statement that ''all men are created equal.'' And, earlier this year at the National Archives, the sacred home of the Declaration of Independence, the Constitution, and the Bill of Rights—our Nation's Charters of Freedom—I pledged that our great American heroes will never be forgotten, our schools will teach the story of our Nation as it happened, and the truth of our history will never be erased or rewritten. Throughout this month, we celebrate the incredible history of the United States and commit to continually work toward the promise of a more perfect Union.

The story of our Nation is one of tireless progress toward realizing and defending our founding principles—individual liberty, representative self-government, and equality of opportunity. In the 18th century, the founding generation sacrificed blood and treasure to defend the spark of liberty on this continent, constructing the framework of our new American society. In the 19th century, the mettle of that foundation was tested as Americans took up arms against one another in a struggle that ultimately eradicated the great injustice of slavery from our country, a conflict that, though it left a dark stain on the fabric of our Nation, ultimately strengthened our commitment to freedom and helped us further realize the true promise of the founding. The American 20th century saw great strides in progress for civil rights, as women won the right to vote and timeless voices like Martin Luther King, Jr., illuminated the path toward true equality for Black Americans. Abroad, American service members carried the torch of liberty to those in need, liberating Europe and Asia from fascist oppression and freeing billions of people around the world from the suffocating yoke of communism.

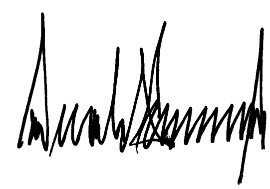
This is the inheritance of today's generation of Americans. A history defined by righteous struggle in service to our founding ideals of liberty and justice for all. A history populated by heroes and warriors for freedom. And a history marked by an unyielding commitment to virtue and principle. This history is what distinguishes our Nation as the most free and just society in the world.

Today, however, a fringe element of radical politicians, media voices, corporate executives, and other activists seek to use their immense power to obscure the ideals of our country, rewrite our Nation's proud history, and desecrate the memory of our Founders. Statues have been torn down and destroyed, violent mobs have masqueraded under the false banner of peaceful protests, and free speech has come under siege in the public square and on online platforms. As one example among many, theoretical frameworks like ''Critical Race Theory'' have corrupted our United States history and civic education courses in public schools, board rooms, the military, and government agencies, promoting racial division and discrimination. Adherents to Critical Race Theory and other associated ideologies believe that America is an inherently racist and sexist country, defined by oppression and hierarchies of victimhood, rather than freedom and equality. Critical Race Theory and those who promote it seek to strip individual agency from all Americans and instead relegate them into pre-determined categories of belief based on their racial or sexual identity. If Americans are distracted by such theories from studying the true history of our great Nation—its mistakes and its triumphs—we risk the dissolution of our common bonds and we will be weakened as a country. That is why I recently signed an Executive Order that bans executive departments and agencies and Federal contractors from teaching Critical Race Theory, in an effort to prevent the indoctrination of the American people by these dangerous ideologies. Now, more than ever, we must continue to forge an even brighter future for our Nation by preserving its past. As President, I will always honor the great legacy of America's history and its Founders.

Throughout this month, we recommit to protecting the great American story, one of a Nation that has promoted liberty and ensured freedom for millions. We know that when we collectively recognize and cherish our history, we are made stronger as one people. The divine truth our Founders enshrined in the fabric of our Nation—that all people are created equal—will, if we cherish and protect it, ensure the blessings of unparalleled freedom and prosperity for all posterity.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the laws of the United States, do hereby proclaim November 2020 as National American History and Founders Month. I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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Presidential Documents

Proclamation 10111 of October 30, 2020

National Entrepreneurship Month, 2020

By the President of the United States of America

A Proclamation

The United States is home to the most creative, passionate, and talented minds anywhere in the world. Throughout our history, we have pioneered revolutionary innovations, and we continue to reach new heights in business, science, and technology. During National Entrepreneurship Month, we celebrate the determination of those who strike out on their own to fuel our robust economy.

American entrepreneurs employ more than 60 million people nationwide and strengthen our communities with their hard work and ingenuity. Since taking office, I have cut onerous regulations at a historic rate, saving these businesses nearly $50 billion in compliance costs, unleashing the might of the American economy, and empowering proud American business owners. When the Government removes barriers to success, all Americans benefit. For the first time in decades, deregulation is saving small businesses from wasting precious hours on regulatory compliance and creating a dynamic economic landscape. Our policies have empowered entrepreneurs to do what they do best: innovate, create, and succeed.

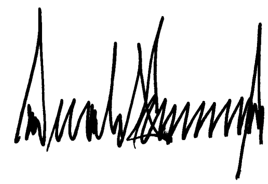
We must continue supporting our Nation's economic success by preparing the next generation of American workers for the jobs of today and tomorrow. That is why I established the President's National Council for the American Worker, which is engaging with companies to invest in and develop programs for workplace education and skills training and retraining. I encourage more entrepreneurs to take the Pledge to America's Workers and join the 450 companies and trade associations that have already committed to providing more than 16 million education and training opportunities for American students and workers. Additionally, the United States-Mexico-Canada Agreement, which replaced the outdated and unfair North American Free Trade Agreement, is now in full effect, fulfilling my promise to level the playing field for American businesses and workers. This landmark agreement will help bring our manufacturing jobs back home while ensuring that more American innovators can run their businesses without shipping jobs overseas.

Our Nation's entrepreneurs have also been at the heart of our ongoing efforts to defeat the coronavirus. Working with private-sector companies, my Administration launched the largest industrial mobilization since World War II. In addition to helping to rapidly expand our Nation's testing capabilities and to produce unparalleled levels of personal protective equipment, many American innovators have been at the forefront of developing safe vaccines and effective therapeutics as quickly as possible. Entrepreneurs, especially small business owners, are key to our surging economy. That is why I pushed for and signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law. This landmark legislation provided $2.2 trillion to our great American workers, businesses, and entrepreneurs. Under the CARES Act, the Small Business Administration and the Department of the Treasury approved 5.2 million Paycheck Protection Program loans to help our entrepreneurs across the country navigate the economic difficulties of this pandemic.

This month, we recognize the bold spirit of America's entrepreneurs who continue to prove that the American dream is alive and more obtainable than ever before. As we continue our great American comeback, we know that these innovative men and women will remain at the forefront of our efforts to create a brighter future for our country.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2020 as National Entrepreneurship Month. I call upon all Americans to commemorate this month with appropriate programs and activities and to celebrate November 17, 2020, as National Entrepreneurs' Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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Presidential Documents

Proclamation 10112 of October 30, 2020

National Family Caregivers Month, 2020

By the President of the United States of America

A Proclamation

Each day in homes throughout our Nation, Americans with chronic or terminal illnesses, functional impairment, or disabilities receive compassionate care and support from family members and loved ones. During National Family Caregivers Month, we salute the more than 40 million people in the United States who serve as unpaid caregivers. With generous hearts and faithful devotion, they honor the sanctity of life and affirm the inherent value of all human beings.

Caregivers work long days and spend countless hours to meet and anticipate the needs of their loved ones, often facing challenges that can seem impossible to navigate. Errands, medical appointments, transportation, meal preparation, grooming, and companionship can consume significant time and effort, especially when caregivers must balance these duties with the pressures and responsibilities of their own lives, including employment and raising children. In spite of all of this, these extraordinary moms and dads, sons and daughters, siblings, and friends showcase compassion and selflessness for the ones they love. Their faithfulness and dedication is indicative of the generosity of the American Spirit and reflects the very best of our Nation.

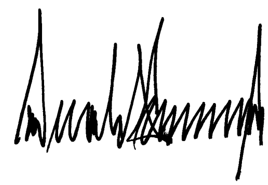
Because of the essential role they play in ensuring the health and wellbeing of those most in need, family caregivers deserve our unending support. In 2018, I signed into law two pieces of legislation, the RAISE Family Caregivers Act and the Supporting Grandparents Raising Grandchildren Act, which provide for the development of strategies and support networks for family caregivers. Over the last year, the Advisory Councils created by these acts have made significant progress toward raising awareness and giving a voice to family caregivers. The work of these Councils, led by the Administration for Community Living at the Department of Health and Human Services (HHS), will yield a National Caregiving Strategy in 2021 that will include recommended actions that States, communities, health systems, and other private-sector entities and stakeholders can take to improve the lives and conditions of family caregivers. Working alongside existing initiatives like HHS' National Family Caregiver Support Program, we are ensuring that family caregivers have the resources they need to provide essential care and support for their loved ones.

Our great veterans living with illness or injury are one of the largest groups who receive care from family members and friends. These caregivers, more than 5 million strong, play a vital role in the lives of these extraordinary men and women who have sacrificed so much for our country. In order to improve services and outcomes for patients and families who are dealing with the stress and uncertainty of caregiving, the Department of Veterans Affairs established the first National Center of Excellence for veteran and caregiver research. The advances made through this initiative, coupled with the resources and capabilities made available through the VA MISSION Act, which I signed into law in 2018, are helping to educate and equip families with the tools they need to provide even better care for our Nation's veterans. America's heroes have earned and deserve our respect and gratitude, and their caregivers deserve the same.

Family caregivers provide a vital lifeline of connection and hope to loved ones during challenging and uncertain days. These caregivers, who devote immeasurable time, energy, resources, and heart, need our understanding, support, gratitude, and encouragement. Throughout this month, let us remember these men and women who spend their days caring for others, and let us pray that they are sustained by grace and strength as they carry on this important work.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2020 as National Family Caregivers Month. I encourage all Americans to reach out to those who provide care for their family members, friends, and neighbors in need, to honor and thank them.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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Presidential Documents

Proclamation 10113 of October 30, 2020

National Native American Heritage Month, 2020

By the President of the United States of America

A Proclamation

During National Native American Heritage Month, we honor the storied legacy of American Indians and Alaska Natives in our Nation. Their cherished legacy, rich cultures, and heroic history of military service inspire us all. This month, as we recommit to supporting Native American Tribes and people, we resolve to work side-by-side with their leaders to secure stronger, safer communities and preserve their sacred heritage for future generations.

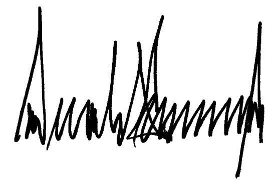
In recognition of the importance of Indian Country to the cultural identity of our Nation and the strength of our economy, my Administration has taken unprecedented action to promote the health and wellbeing of Native American communities. In response to the coronavirus pandemic, we secured the largest investment in Indian Country in our Nation's history, providing $8 billion in Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to ensure Native American communities have the resources they need to combat the virus. In August, I signed into law the Great American Outdoors Act, the largest conservation effort in a generation, which includes up to $475 million in guaranteed funding over the next 5 years to improve American Indian school infrastructure. I recently secured the return from Finland of a number of cultural artifacts and human remains originating from Native American Tribes in the Mesa Verde region, and I will continue to work to identify Native American artifacts wrongfully taken abroad and will work with Tribal partners to bring them home. And we are continuing to work alongside Native American leaders to combat crime and violence through important initiatives like Operation Lady Justice, addressing the long-ignored tragedy of missing and murdered American Indians and Alaska Natives.

To further our commitment to Native American communities, my Administration recently released our policy vision for Indian Country entitled ''Putting America's First Peoples First—Forgotten No More!'' This comprehensive plan protects Tribal sovereignty and economic self-determination while also promoting public safety, providing for high-quality education, and delivering lasting solutions to long-unresolved healthcare challenges in Indian Country. Through concrete actions like my Administration's reform of National Environmental Policy Act (NEPA) regulations, we are helping increase access to water, broadband, electric, and other utility infrastructure in Indian Country. Working with Tribal leaders, we are creating investment opportunities in Native American communities, building on their storied traditions while looking toward a shared future of prosperity and cooperation.

Native Americans play a critical role in the health and vitality of our great Nation. During National Native American Heritage Month, we honor their vibrant cultures. As business owners, artists, teachers, writers, courageous members of our Armed Forces, and so much more, their contributions to our society are cause for celebration and appreciation by all Americans. This month, as we honor the heritage of Native American Tribes and people, we resolve to support their legacy and communities for generations to come.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2020 as National Native American Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities and to celebrate November 27, 2020, as Native American Heritage Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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Presidential Documents

Proclamation 10114 of October 30, 2020

National Veterans and Military Families Month, 2020

By the President of the United States of America

A Proclamation

Our Nation's service members—past and present—and their families represent the very best of America. Motivated by patriotism and love of country, our Soldiers, Sailors, Airmen, Marines, Coast Guardsmen, and Space Warfighters serve at home and abroad with professionalism, ingenuity, integrity, and devotion. Their families always stand beside them in their missions and as they transition to civilian life. During National Veterans and Military Families Month, we celebrate the loved ones of our country's men and women in uniform and recognize the sacrifices they have made in support of our Nation's heroes.

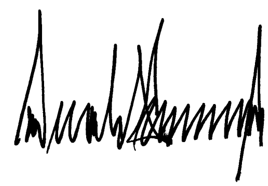
When I first took office, I pledged to our Armed Forces that I would always have their backs; and that means providing for military families as well. The demands and challenges of military life are shared by the loved ones of our heroes. Spouses, parents, siblings, and children often shoulder increased burdens and responsibilities when their servicemen and women are called to duty. Military families, and especially spouses have to endure the stress of frequent relocations and deal with job searches under state licensing regulations that can prevent them from working in their chosen occupations. To address this issue, my Administration eliminated unnecessary and cumbersome red tape that stifled career opportunities for military spouses, and the Department of Defense has implemented programs to enhance childcare opportunities for military families.

Too many veterans carry painful memories and bear physical and emotional scars from their service. We will never forget our veterans who are suffering from mental health issues or the military families that are left behind by veteran suicide. As President, I have prioritized changing the culture surrounding mental health and promoting a society that recognizes the infinite value and purpose of every life. Last year, I mobilized every available Federal resource to develop and implement the President's Roadmap to Empower Veterans and End a National Tragedy of Suicide. I also fought for and secured a record $8.6 billion in funding for mental health services in the most recent Department of Veterans Affairs appropriations bill. In October, I signed the Commander John Scott Hannon Veterans Mental Health Care Improvement Act, which will bolster these efforts even further. Like never before, we are using a whole-of-government approach to better understand and prevent suicide. No American warrior should ever be forgotten, and no military family should ever be left behind.

Since the beginning of my Administration, it has been a top priority and my solemn pledge to honor, equip, and protect our service members, veterans, and their families. My commitment has not wavered. America's military might is essential to our safety, prosperity, and national security. Caring for the brave Americans in our Armed Forces, and their families, and upholding our sacred obligation to those who have served with honor is the least we can do for those who have given so much for so many. This month, we pledge our gratitude to every man and woman currently serving this Nation in uniform, to all our veterans who helped preserve and defend our precious freedom, and to every family member who shares in the service and sacrifice of military life. My Administration will never stop fighting to enhance and improve the quality of life for these exceptional Americans.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2020 as National Veterans and Military Families Month. I encourage all communities, all sectors of society, and all Americans to acknowledge and honor the service, sacrifices, and contributions of veterans and military families for what they have done and for what they do every day to support our great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–24743
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Billing code 3295–F1–P

Presidential Documents

Proclamation 10115 of October 30, 2020

National Day of Remembrance for Americans Killed by Illegal Aliens, 2020

By the President of the United States of America

A Proclamation

On this National Day of Remembrance, we pause to honor the memory of every American life so egregiously taken from us by criminal illegal aliens. As sons and daughters, mothers and fathers, brothers and sisters, and as American citizens, these precious lives are an irreplaceable piece of our national community. We solemnly stand with their families—our Angel Families—who have endured what no American family should ever have to suffer. Today, we recommit to ensuring that those responsible for these tragedies face justice, while taking every action to prevent these horrific acts from occurring in our Nation.

As President, I have no higher duty than to ensure the safety and security of all Americans. Accordingly, I will never rest until our border is fully secure and our communities safe. The laws of our country, including immigration laws, must be respected and followed so that every American citizen may have a bright and prosperous future. I proudly support our dedicated Immigration and Customs Enforcement (ICE) Officers, Customs and Border Protection Officers (CBPOs), Border Patrol Agents, and other law enforcement officials who work every day to protect Americans from the senseless crimes that our Angel Families have had to endure.

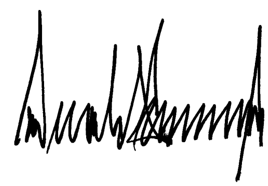
For years, our politicians and leaders met the pain and plight of Angel Families with silence and indifference. Under my watch, the voices of our Angel Families no longer fall on deaf ears. Americans who are killed by illegal aliens are no longer forgotten, and we are ensuring that they will not have died in vain. Our Nation solemnly stands alongside the mothers and fathers who are no longer able to see their children grow up and have families of their own and for the sons and daughters who have lost a parent or loved one at the hands of someone who never should have been inside our country in the first place. It is because of these brave families who have suffered unimaginable loss that my Administration created a new office in the Department of Homeland Security called Victims Of Immigration Crime Engagement (VOICE). This program has already assisted hundreds of families and will continue providing critical services until no American suffers the harm or loss of a loved one due to the violent actions of a criminal alien.

My Administration recognizes that a secure border is essential to a safe and prosperous Nation. Accordingly, we have devoted time and resources to constructing a strong border wall and ending the disastrous immigration policies of previous administrations. Four hundred miles of wall have already been built, and we are on pace to complete more than 500 miles by early next year. We have ended the terrible practice of catch-and-release, deployed approximately 4,000 National Guard personnel to the Southern Border in the last 2 years to support Federal border security and wall construction efforts, restored integrity and safety to the asylum process through the Migrant Protection Protocols, and deported more than 20,000 gang members and over 500,000 criminal illegal aliens. During my Administration, our courageous ICE Officers, CBPOs, Border Patrol Agents, and law enforcement personnel have seized thousands of pounds of lethal narcotics at our border—enough to kill every American four times over. Through these efforts, we are saving American lives, curbing crime, and honoring the precious lives tragically taken from us.

On this National Day of Remembrance, we pay tribute to the enduring memory of every American killed by an illegal alien. They will never be forgotten, and we will stand by their families and fight for a future where every American is safe. Together, we will pursue the promise of a proud, noble, and secure future while protecting our families and communities from those who seek to do us harm.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 1, 2020, as a National Day of Remembrance for Americans Killed by Illegal Aliens. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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Rules and Regulations

Federal Register

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Thursday, November 5, 2020

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–19–0023; NOP–19–01]

RIN 0581 AD83

National Organic Program; Amendments to the National List of Allowed and Prohibited Substances per October 2018 NOSB Recommendations (Crops and Handling)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the National List of Allowed and Prohibited Substances (National List) section of the United States Department of Agriculture's (USDA's) organic regulations. This rule adds non-organic tamarind seed gum as an allowed ingredient in organic products when certified organic tamarind seed gum is not commercially available.

DATES: This final rule is effective December 7, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Standards Division, National Organic Program. Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established the National List within part 205 of the USDA organic regulations (7 CFR 205.600 through 205.607). The National List identifies the synthetic substances allowed in organic farming and the nonsynthetic substances prohibited in organic farming. The National List also identifies nonagricultural and nonorganic agricultural substances (ingredients) that may be used in organic handling.

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6524), and the USDA organic regulations (7 CFR part 205) specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List (7 CFR 205.601–205.606). Section 205.105 also requires that any nonorganic agricultural substance and any nonsynthetic nonagricultural substance used in organic handling be on the National List. Under the authority of OFPA, the National List can be amended by the Secretary based on recommendations presented by the NOSB. Since the final rule establishing the National Organic Program (NOP) became effective on October 21, 2002, USDA's Agricultural Marketing Service (AMS) has published multiple rules amending the National List.

This final rule addresses one NOSB recommendation to amend the National List that was submitted to the Secretary on October 26, 2018. The amendment in this final rule is discussed in the section on Overview of Amendments below.

II. Overview of Amendments

The following provides an overview of the amendment to a designated section of the National List regulations. This rule adds tamarind seed gum to the National List. This rule does not add blood meal made with sodium citrate or natamycin to the National List, as proposed by AMS (84 FR 55866, October 18, 2019).

The background information on each substance and the basis for each NOSB recommendation was addressed in the proposed rule. The NOSB evaluated each substance by applying the OFPA substance evaluation criteria to determine if the substance was compatible with organic production and handling. For each substance, AMS reviewed the recommendation submitted by the NOSB to the Secretary to determine if the OFPA evaluation criteria had been appropriately applied and whether the addition to or amendment of the National List would not supersede other federal regulations.

AMS received 45 comments on the proposed rule. After considering the comments, AMS determined that the addition of nonorganic tamarind seed gum to the National List for use in organic handling will be finalized as proposed. The proposed amendments to add blood meal made with sodium citrate and to prohibit the use of natamycin in organic production have not been finalized for the reasons discussed below. Section F of this final rule provides an overview of the comments received and AMS's response to these comments.

Tamarind Seed Gum

This rule amends the National List to allow nonorganic tamarind seed gum (by addition to § 205.606) in organic products when organic tamarind seed gum is not commercially available. Tamarind seed gum is used as a thickener, stabilizer, emulsifier or gelling agent in processed foods. The U.S. Food and Drug Administration (FDA) has been informed that tamarind seed is Generally Recognized as Safe (GRAS) for the above uses.[1] During its October 24–26, 2018, public meeting, the NOSB recommended adding tamarind seed gum as an allowed nonorganic agricultural ingredient to § 205.606 of the National List. As required by the USDA organic regulations (§ 205.606), the nonorganic form of the ingredient will only be permitted when organic tamarind seed gum is not commercially available.[2] To use nonorganic forms of ingredients listed at § 205.606, organic handling operations must demonstrate and document that organic forms of the ingredient(s) are not commercially available. Certifying agents (''certifiers'') review the operation's use of nonorganic ingredients for compliance with the regulations in the course of reviewing an organic operation's organic system plan.

Amendments Not Finalized in This Rule

Based upon public comments received on the proposed rule, AMS is not finalizing the proposed amendments to (1) list blood meal made with sodium citrate as an allowed synthetic substance for organic crop production or (2) prohibit natamycin use in crop

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[1] Agency Response Letter GRAS Notice No. GRN 000503, August 12, 2014; *https://wayback.archive-it.org/7993/20171031004449/https://www.fda.gov/Food/IngredientsPackagingLabeling/GRAS/NoticeInventory/ucm413748.htm.*

[2] The USDA organic regulations (7 CFR 205.2) define ''commercially available'' as, ''The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.''

production. A summary of the comments received on the proposed rule and AMS's responses to these comments are included in Section F of this final rule.

III. Related Documents

On October 18, 2019, AMS published in the **Federal Register** (84 FR 55866) a proposed rule to amend the National List to include blood meal made with sodium citrate; natamycin; and nonorganic tamarind seed gum. On August 9, 2018, AMS published a Notice in the **Federal Register** (83 FR 39376) announcing the fall 2018 NOSB meeting. One purpose of that meeting was to deliberate recommendations for the substances addressed in this rule.

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB (7 U.S.C. 6517(d)). Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop recommendations for submission to the Secretary to amend the National List and establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. Section 205.607 of the USDA organic regulations permits any person to petition to add or remove a substance from the National List and directs petitioners to obtain the petition procedures from USDA. The current petition procedures published in the **Federal Register** (81 FR 12680, March 10, 2016) for amending the National List can be accessed through the NOP Program Handbook on the NOP website at *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

A. Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) has exempted from Executive Order 12866. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS) [3] to delineate which operations qualify as small businesses. The SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than $1,00,000. Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector, ''All other professional, scientific and technical services.'' For this category, the small business threshold is average annual receipts of less than $16.5 million.

AMS has considered the economic impact of this proposed rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service and the NOP indicate most of the certified organic production operations in the United States would be considered small entities. According to the 2017 Census of Agriculture, 18,166 organic farms in the United States reported sales of organic products and total farmgate sales in excess of $7.2 billion.[4] Based on that data, organic sales average $400,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $1,000,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database, there are 19,764 organic handlers that are certified under the USDA organic regulations (10,492 of these handlers are based in the U.S.).[5] The Organic Trade Association's 2018 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The USDA has 78 accredited certifying agents who provide organic certification services to producers and handlers. The certifying agent that reports the most certified operations, nearly 3,500, would need to charge approximately $4,200 in certification fees in order to exceed the SBA's small business threshold of $16.5 million. The costs for certification generally range from $500 to $3,500, depending on the complexity of the operation. Therefore, AMS expects that most of the accredited certifying agents would qualify as small entities under the SBA criteria.

The economic impact on entities affected by this rule would not be significant. The effect of this rule, if implemented as final, would be to allow the use of one substance in organic handling. Adding this substance to the National List would increase regulatory flexibility and would give small entities more tools to use in day-to-day operations. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This rule is not intended to have a retroactive effect. Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under sections 6503 through 6507 of the OFPA

[3] North American Industry Classification System: *https://www.census.gov/eos/www/naics/.*

[4] U.S. Department of Agriculture, National Agricultural Statistics Service. 2017 Census of Agriculture. *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/.* The number of organic farms includes both certified and exempt farms.

[5] Organic Integrity Database: *https://organic.ams.usda.gov/Integrity/.* Accessed on June 15, 2020.

from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to section 6519(c)(6) of the OFPA, this rule would not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (U.S. EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

D. Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on tribal governments and will not have significant tribal implications.

E. Congressional Review Act

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

F. Comments Received on Proposed Rule

During a 60-day comment period that closed on December 17, 2019, AMS received 45 comments on the proposed rule (84 FR 55866). These comments were submitted by organic farmers and handlers, certifying agents, researchers, trade associations, nonprofit organizations, and consumers. The comments can be viewed at *https://www.regulations.gov* by searching for docket ID ''AMS–NOP–19–0023.''

Comments Received on the Proposed Addition to § 205.601

AMS received several comments on the proposed amendment to add blood meal made with sodium citrate to the National List for use in organic crop production. Most of these comments opposed the proposed listing. These comments argued that classifying blood meal made with sodium citrate as a synthetic substance contradicts guidance in NOP 5033 Classification of Materials and NOP 5034–1 Materials for Organic Crop Production, which lists blood meal as a nonsynthetic substance.[6] Some comments noted that the use of anticoagulants, such as sodium citrate, is part of the ''standard of identity'' of blood meal, and, therefore, blood meal made with anticoagulants should be considered a nonsynthetic substance. Some comments stated that the use of sodium citrate in the making of blood meal has no technical effect, does not transform the blood into a different substance through a chemical change, and is not present in the final product. A few comments stated that sodium citrate binds with calcium in blood, making blood meal processed with sodium citrate the same as blood meal derived from processed animal blood where no anticoagulant was used. These comments suggested that the blood meal processed with sodium citrate is not altered into a form that does not occur in nature and should be classified as nonsynthetic.

A few comments expressed concern about the potential impact of adding processing aids used to manufacture crop inputs to the National List. These comments postulate that adding blood meal made with sodium citrate to the National List sets a precedent for reviewing and approving processing aids that may be used in other currently approved inputs that are considered to be nonsynthetic, such as bone meal or feather meal, but which in turn, could become prohibited.

Several comments opposed or questioned the allowance of blood meal in organic production generally. A comment indicated that blood meal can be made without the use of sodium citrate and several comments were concerned that there are no restrictions on or required information about the source of the blood meal used in organic production, for example, to prohibit blood meal from nonorganic animals. One comment was concerned about disease transmission resulting from the use of blood meal and proposed that blood meal should be added to § 205.602 as a prohibited nonsynthetic substance.

AMS also received comments supporting the addition of blood meal made with sodium citrate to the National List. However, supporting comments noted concerns with potential impacts of the proposed action beyond blood meal and one suggested revising guidance as an alternative to rulemaking. One comment supported the listing with the caveat that there was public support for such action and acknowledged the potential broader implications of that action and regulatory uncertainty about reviewing substances used in the processing of inputs.

Comments Received on the Proposed Addition to § 205.602

Many of the public comments addressed the proposal to list natamycin as a prohibited substance in organic crop production. Many comments opposed natamycin's listing in § 205.602 as a prohibited nonsynthetic substance. These comments argued that the NOSB's determination that natamycin use could increase fungal resistance is flawed and is not supported by research. Several comments also included citations to specific research findings which conclude that natamycin use does not contribute to fungal resistance. Comments also stated that natamycin has been used for many years with no documented evidence of increased fungal resistance.

In addition to disputing fungal resistance, comments cited other concerns with prohibiting the use of natamycin, including reduced product shelf-life, economic loss, and fewer options for controlling diseases where options are already very limited. The comments also stated that natamycin is generally not used for treatment of human fungal infections.

AMS received several comments claiming that the proposed listing to

[6] NOP 5033 and NOP 5034–1 are available in the NOP Program Handbook: *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

prohibit natamycin, and the deliberations on the natamycin petition, did not meet requirements for prohibiting nonsynthetic substances stipulated in OFPA (7 U.S.C. 6517). To prohibit a nonsynthetic substance in organic crop or livestock production, OFPA requires that the USDA, in consultation with the U.S. Department of Health and Human Services and the U.S. Environmental Protection Agency, determine that the substance is harmful to human health or the environment, or is inconsistent with organic farming. Comments stated that natamycin is not harmful to and has negligible impact on human health. In addition, comments argued that the NOSB did not conclude that the use of natamycin was inconsistent with organic farming. Some comments stated that the NOSB's recommendation to prohibit natamycin because it is "non-essential for organic production" is not valid because essentiality is not an evaluation criterion included in 7 U.S.C. 6517(c)(2) for prohibiting nonsynthetic substances.

AMS did receive some comments in support of adding natamycin to § 205.602 as a prohibited nonsynthetic substance. These comments agreed with the NOSB's recommendation to list natamycin as a prohibited nonsynthetic because of hazards to human health and the environment, and issues with essentiality for and compatibility with organic agriculture. Some comments argued that natamycin should be categorized as a synthetic substance because of the potential for synthetic substrates to be used in the fermentation process to produce natamycin. One comment requested guidance on determining whether the use of synthetic fermentation substrates in natamycin production would result in a nonsynthetic product. Another comment supporting the listing speculated on the possible impact natamycin use could have on soil fungi.

Comments Received on the Proposed Addition to § 205.606

AMS received five comments opposed to the addition of nonorganic tamarind seed gum to § 205.606 for use in organic handling. Comments argued that nonorganic ingredients should never be allowed in the processing and handling of organic products. Other comments indicated that tamarind seed gum is not essential for organic handling. Some comments argued for a focus on improved traceability of tamarind seed supply chains (as cited by the tamarind seed gum petitioner), noting that organic tamarind seed is available, but poor traceability makes confirmation of the organic status of tamarind seed gum difficult. Other comments argued that the tamarind seed gum petition review process did not adequately determine whether tamarind seed gum is commercially available in organic form. One comment more broadly noted that the petition process for listing materials on § 205.606 should include a review of all barriers to the organic production and commercial availability of a substance, and that a substance should be listed only if those barriers are clearly shown to be insurmountable. This comment also challenged the NOSB review of tamarind seed gum, stating that the petition review was not robust enough.

AMS Response to Comments on Blood Meal Made With Sodium Citrate and Comments on Natamycin

Sodium citrate was the petitioned substance for use as a processing aid (anticoagulant) in spray-dried blood products, such as blood meal. The NOSB recommended adding sodium citrate to the National List as an allowed synthetic substance for that use and requested that AMS review sodium citrate to determine whether sodium citrate used to process blood meal must be on the National List in order for the resulting blood meal to be allowed in organic crop production. As such, AMS proposed adding blood meal made with sodium citrate as a synthetic substance to the National List for use in organic crop production.

Natamycin was petitioned to be classified as an allowed nonsynthetic substance for use as a post-harvest treatment to control fungal diseases on certain commodities. The NOSB determined that natamycin is nonsynthetic and that it should be prohibited in organic crop production because it is not essential, is inconsistent with sustainable agriculture, and has the potential to contribute to fungal resistance and the associated negative effects on human health. Therefore, AMS proposed listing natamycin as a nonsynthetic substance that is prohibited in organic crop production.

AMS is not adopting two amendments in the proposed rule. These amendments would have listed (1) blood meal made with sodium citrate as an allowed synthetic substance in organic crop production and (2) natamycin as a prohibited nonsynthetic in organic crop production. Commenters raised significant concerns about each of these proposals.

Specifically, many comments opposed AMS's classification of blood meal made with sodium citrate as a synthetic substance and explained that there may be potential impacts of that action which had not been considered in the proposed rule. AMS does not agree that information presented in these comments conclusively shows that blood meal made with sodium citrate is a nonsynthetic substance. However, AMS does agree that classifying blood meal made with sodium citrate as synthetic may have negative implications for some other materials used in organic production and that such impacts were not anticipated or considered in the proposed rule.

Further, AMS is not finalizing the proposed amendment based in part on the fact that the NOSB did not specifically recommend adding blood meal made with sodium citrate as a synthetic to the National List. The NOSB recommended adding sodium citrate for use as an anticoagulant in the processing of blood meal, but did not determine that blood meal made with sodium citrate is a synthetic substance. Based on new information received in public comments about sodium citrate's action in blood meal, AMS determined that further discussion and deliberation by the NOSB are needed to determine whether or not the use of sodium citrate makes blood meal a synthetic substance. Therefore, in the absence of an NOSB recommendation that blood meal made with sodium citrate should be added to the National List as a synthetic substance and because information submitted in public comment raised new questions about the proposed classification of blood meal made with sodium citrate as a synthetic substance, AMS is not adopting the proposed listing.

In regards to natamycin, several public comments also presented research findings to challenge the conclusions that natamycin use in organic crop production would increase fungal resistance to antimicrobials, have negative environmental or human health impacts, and that a prohibition meets the OFPA criteria for prohibiting natural substances. AMS agrees that these research findings should be considered as part of the totality of the information considered on natamycin, and that the merits of those findings should be discussed as part of any regulatory action. AMS has not assessed the validity of the research findings presented in public comment, and AMS believes that the availability of this information warrants consideration before finalizing a prohibition on natamycin in organic production. As a result, AMS is not finalizing the proposed amendment to add natamycin as a nonsynthetic substance prohibited for use in organic crop production.

AMS is not finalizing the proposed amendments for blood meal with sodium citrate and natamycin for reasons discussed above. The information presented in public comments opposing the proposed actions should be assessed before any new proposal for regulatory action. AMS may invite additional input from the NOSB on these topics; the NOSB's work may include conducting further study of the information and potential impacts and risks presented in public comments. AMS will not continue rulemaking on these two substances unless the NOSB forwards a new recommendation(s) on these topics to AMS.

AMS Response to Comments on Tamarind Seed Gum

This rule will add tamarind seed gum to the National List. AMS received few comments on tamarind seed gum. These comments expressed concern about the traceability of organic tamarind seed gum, and one comment argued that the NOSB did not conduct a robust review of the tamarind seed gum petition when determining organic tamarind seed gum availability. AMS disagrees with these comments. The NOSB comprehensively reviewed information on the potential sources of tamarind seed gum to determine if there were adequate sources of organic tamarind seed gum available to organic handlers in form, quantity, and quality. Based on the Organic INTEGRITY Database, which identifies no organic producers or handlers of tamarind seed gum, the NOSB determined there were insufficient sources of organic tamarind seed gum and recommended that tamarind seed gum be added to the National List in § 205.606. AMS agrees that the absence of organic tamarind seed gum handlers in the Organic INTEGRITY Database demonstrates that this ingredient is not currently commercially available in organic form. The USDA organic regulations require organic handlers to use organic agricultural ingredients when available before using any nonorganic agricultural ingredients that are included under § 205.606. Tamarind seed gum that is sold, labeled or represented as organic must be verified as organically produced and handled.

G. General Notice of Public Rulemaking

This final rule reflects recommendations submitted by the NOSB to the Secretary to add one substance to the National List.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for part 205 is revised to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Amend § 205.606 by redesignating paragraphs (t) through (w) as paragraphs (u) through (x) and adding new paragraph (t) to read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic."

* * * * *

(t) Tamarind seed gum.

* * * * *

Bruce Summers,

Administrator,Agricultural Marketing Service.

[FR Doc. 2020–22784 Filed 11–4–20; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC–2020–0033]

RIN 3150–AK46

Non-Substantive Amendments to Adjudicatory Proceeding Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to revise and clarify the agency's rules of practice and procedure to reflect current Atomic Safety and Licensing Board Panel practice, Commission case law, and a decision of the Supreme Court of the United States and to enhance consistency within the NRC's regulations.

DATES: This final rule is effective January 19, 2021, unless significant adverse comments are received by December 7, 2020. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0033. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ian Irvin, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–287–9193; email: *2020_Part_2_Rulemaking@usnrc.onmicrosoft.com.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0033 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0033.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's PDR reference staff at 1–800–397–4209, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *Attention:* The Public Document Room (PDR), where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0033 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is using the ''direct final rule procedure'' for this rule. This amendment to the rule will become effective on January 19, 2021. However, if the NRC receives significant adverse comments on this direct final rule by December 7, 2020, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the **ADDRESSES** section of this document.

III. Background

The NRC's regulations governing the conduct of adjudicatory proceedings before the agency are contained in part 2 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Agency Rules of Practice and Procedure.'' Periodically, the NRC has amended these rules, including adopting changes in 2004 to enhance efficiency; in 2012 to promote fairness, efficiency, and openness; and in 2016 to reflect technological advances and current agency practice. Since the last update to the agency's rules of practice and procedure, the NRC has identified additional provisions that should be updated to reflect technological advances and current agency practice. This direct final rule makes those updates and clarifies that any administrative law judge designated to preside over an NRC adjudication must be appointed by the Commission consistent with the Supreme Court decision in *Lucia* v. *Securities and Exchange Commission* (138 S. Ct. 2044 (2018)).

IV. Discussion

Appointment of Administrative Law Judges

This direct final rule revises § 2.313(a) to clarify that any Administrative Law Judge (ALJ) designated to preside in a 10 CFR part 2 proceeding must be appointed by the Commission, consistent with the Supreme Court's decision in *Lucia* v. *Securities and Exchange Commission.* Part 2 permits the use of an ALJ as presiding officer in an NRC adjudication, although the agency does not currently employ any ALJs (members of the Atomic Safety and Licensing Board Panel are not ALJs but are administrative judges whose appointments are already approved by the Commission). In addition, this direct final rule updates the definition of ''administrative law judge'' in § 2.4, which cites an outdated section of the Administrative Procedure Act, by citing to the correct statutory authority for the appointment of ALJs.

Timely Renewal

This direct final rule revises § 2.109 by adding new paragraph (e), which provides that if an Independent Spent Fuel Storage Installation licensee submits a renewal application at least 2 years before the license expires, the existing license will continue in effect until a final decision is reached on the application. New paragraph (e) provides consistency between §§ 2.109 and 72.42(c) of the NRC's regulations. Conforming changes are made to § 2.109(a) to reflect the addition of new paragraph (e).

Orders

This direct final rule revises § 2.202 by redesignating paragraph (a)(3) as paragraph (a)(3)(i) and adding a new paragraph (a)(3)(ii), which clarifies that a person other than the recipient of an order under that section who may be adversely affected by the order must meet the requirements of § 2.309 when requesting a hearing. Section 2.202(a)(3)(i) is revised to clarify that the recipient of an order has the right to demand a hearing on all or part of the order within 20 days of the date of the order.

Motions

This direct final rule revises § 2.323 to clarify that the deadlines for general motions do not apply to motions for summary disposition.

Evidentiary Exhibit Submission Requirements

This direct final rule updates the evidentiary exhibit submission requirements to reflect the current practices of using the E-Filing system to submit exhibits unless the Commission or presiding officer grants an exemption permitting an alternative filing method or unless the filing falls within the scope of § 2.302(g)(1). This direct final rule revises §§ 2.337(d) and 2.711(h) to require that information referenced through hyperlinks must be submitted in its entirety, either in the exhibit or in a separate exhibit, if a party wants that information included in the evidentiary record.

Separation of Functions

This direct final rule revises the separation of functions provision to include employees in the Office of Commission Appellate Adjudication in § 2.348(b)(2). The rule generally prohibits communications between NRC officers or employees engaged in investigative or litigating functions in the proceeding or in a factually related proceeding with respect to a disputed issue in that proceeding. The rule also sets forth various types of communications that are permissible. The direct final rule adds employees in the Office of Commission Appellate Adjudication to the list of Commission adjudicatory employees covered by the exception in paragraph (b)(2) to the general prohibition set forth in paragraph (a).

Deposition Transcripts in Subpart G Proceedings

This direct final rule revises § 2.706(a)(5) for forwarding deposition transcripts to the Commission consistent with the agency's E-filing rules. This revision requires the party that took the deposition to promptly transmit an electronic copy of the deposition to the Secretary of the Commission for entry into the electronic docket.

Part 2 Subpart L Model Milestones

This direct final rule makes a conforming change to the Subpart L Model Milestones in appendix B to 10 CFR part 2 to replace ''late-filed contentions'' with ''new or amended contentions filed after the deadline.'' The NRC issued a final rule in 2012, titled ''Amendments to Adjudicatory Process Rules and Related Requirements'' (77 FR 46562), to discontinue using the terms ''late-filed'' or ''nontimely'' with regard to such contentions and instead use ''new or amended contentions filed after the deadline.'' The current Subpart L Model Milestones refer to ''late-filed contentions'' in three places. This direct final rule updates this language to ''new or amended contentions filed after the deadline'' consistent with the 2012 final rule.

This direct final rule also revises the Subpart L Model Milestones in appendix B to 10 CFR part 2 to separate the model milestone for filing proposed new or amended contentions filed after the deadline and the model milestone for filing motions for summary disposition on previously admitted contentions. This change is made for clarity. New or amended contentions filed after the deadline would continue to be due within 30 days after issuance. Motions for summary disposition on previously admitted contentions would continue to be due within 30 days of the issuance of the SER and any necessary NEPA document.

V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VI. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

VII. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

VIII. Congressional Review Act

This direct final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

■ 2. In § 2.4, revise the definition of ''*Administrative Law Judge*'' to read as follows:

§ 2.4 Definitions.

* * * * *

Administrative Law Judge means an individual appointed by the Commission pursuant to 5 U.S.C. 3105 to conduct proceedings subject to this part.

* * * * *

■ 3. In § 2.109, revise paragraph (a) and add paragraph (e) to read as follows:

§ 2.109 Effect of timely renewal application.

(a) Except for the renewal of licenses identified in paragraphs (b) through (e) of this section, if at least 30 days before the expiration of an existing license authorizing any activity of a continuing nature, the licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.

* * * * *

(e) If the licensee of an Independent Spent Fuel Storage Installation (ISFSI) licensed under subpart C of part 72 of this chapter files a sufficient application for renewal under § 72.42 of this chapter at least 2 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

■ 4. In § 2.202, redesignate paragraph (a)(3) as paragraph (a)(3)(i) and revise the newly redesignated paragraph, and add paragraph (a)(3)(ii) to read as follows:

§ 2.202 Orders.

(a) * * *

(3)(i) Inform the licensee or any other person to whom the order was issued of their right, within twenty (20) days of the date of the order, or within such other time as may be specified in the order, to demand a hearing on all or part of the order, except in a case where the licensee or other person to whom the order was issued has consented in writing to the order;

(3)(ii) State that a request for a hearing by any other person who may be adversely affected by the order must be made within twenty (20) days of the date of the order, or within such other time as may be specified in the order, and must meet the requirements of § 2.309;

* * * * *

■ 5. In § 2.313, revise paragraph (a)(1) to read as follows:

§ 2.313 Designation of presiding officer, disqualification, unavailability, and substitution.

(a) * * *

(1) An Atomic Safety and Licensing Board appointed under Section 191 of the Atomic Energy Act of 1954, as amended, or an administrative law judge appointed by the Commission pursuant to 5 U.S.C. 3105, for a hearing conducted under subparts G, J, K, L, or N of this part; or

* * * * *

■ 6. In § 2.323, revise paragraphs (a)(2) and (c) to read as follows:

§ 2.323 Motions.

(a) * * *

(2) *Presentation and disposition.* All motions must be addressed to the Commission or other designated presiding officer. All motions, other than motions for summary disposition, must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises. All written motions must be filed with the Secretary and served on all parties to the proceeding.

* * * * *

(c) *Answers to motions.* For all written motions, other than motions for summary disposition, within ten (10) days after service of the motion, or other period as determined by the Secretary, the Assistant Secretary, or the presiding officer, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

* * * * *

■ 7. In § 2.337, revise paragraph (d) to read as follows:

§ 2.337 Evidence at a hearing.

* * * * *

(d) *Exhibits.* Exhibits must be filed through the agency's E-Filing system, unless the presiding officer grants an exemption permitting an alternative filing method under § 2.302(g)(2) or (g)(3) or unless the filing falls within the scope of § 2.302(g)(1) as not being subject to electronic transmission. When an exhibit is not filed through the E-Filing system, the presiding officer may permit a party to replace with a true copy an original document admitted into evidence. Information that a party references through hyperlinks in an exhibit must be submitted by that party, in its entirety, either as part of the exhibit or as a separate exhibit, for that information to be included in the evidentiary record.

* * * * *

■ 8. In § 2.348, revise paragraph (b)(2) introductory text to read as follows:

§ 2.348 Separation of functions.

* * * * *

(b) * * *

(2) Communications to or from Commissioners, members of their personal staffs, employees of the Office of Commission Appellate Adjudication, Commission adjudicatory employees in the Office of the General Counsel, and the Secretary and employees of the Office of the Secretary, regarding—

* * * * *

■ 9. In § 2.706, revise paragraph (a)(5) to read as follows:

§ 2.706 Depositions upon oral examination and written interrogatories; interrogatories to parties.

(a) * * *

(5) When the testimony is fully transcribed, the deposition must be submitted to the deponent for examination and signature unless he or she is ill, cannot be found, or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign. The deposing party shall promptly transmit an electronic copy of the deposition to the Secretary of the Commission for entry into the electronic docket.

* * * * *

■ 10. In § 2.711, revise paragraph (h) to read as follows:

§ 2.711 Evidence.

* * * * *

(h) *Exhibits.* Exhibits must be filed through the agency's E-Filing system, unless the presiding officer grants an exemption permitting an alternative filing method under § 2.302(g)(2) or (g)(3) or unless the filing falls within the scope of § 2.302(g)(1) as not being subject to electronic submission. When an exhibit is not filed through the E-Filing system, the presiding officer may permit a party to replace with a true copy an original document admitted into evidence. Information that a party references through hyperlinks in an exhibit must be submitted by that party, in its entirety, either as part of the exhibit or as a separate exhibit, for that information to be included in the evidentiary record.

* * * * *

■ 11. In appendix B to part 2, under section II, revise the table ''Model Milestones [10 CFR Part 2, Subpart L]'' to read as follows:

Appendix B to 10 CFR Part 2—Model Milestones To Be Used by a Presiding Officer as a Guideline in Developing a Hearing Schedule for the Conduct of an Adjudicatory Proceeding in Accordance With 10 CFR 2.332.

* * * * *

II. * * *

MODEL MILESTONES

[10 CFR part 2, subpart L]

• Within 140 days of publication of notice in FEDERAL REGISTER	Presiding officer decision on intervention petitions and admission of contentions.
• Within 55 days of presiding officer decision granting intervention and admitting contentions.	Presiding officer to set initial schedule for proceeding, based on staff schedule for issuing draft and final SERs and any necessary NEPA document.
• Within 30 days of issuance of SER and any necessary NEPA document.	Proposed new or amended contentions filed after the deadline on SER and necessary NEPA documents due.
• Within 30 days of issuance of SER and any necessary NEPA document.	Motions for summary disposition on previously admitted contentions due.
• Within 85 days of issuance of SER and NEPA document	Presiding officer decision on admission of proposed new or amended contentions filed after the deadline and motions for summary disposition; presiding officer sets schedule for remainder of proceeding.
• Within 14 days after presiding officer decision on new or amended contentions filed after the deadline.	All parties complete updates of mandatory disclosures.
• Within 115 days of issuance of SER and NEPA document	Motions for summary disposition due.
• Within 155 days of issuance of SER and NEPA document	Written direct testimony filed.
• Within 175 days of issuance of SER and NEPA document	Evidentiary hearing begins.
• Within 90 days of end of evidentiary hearing and closing of record	Presiding officer issues initial decision.

* * * * *

Dated October 21, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–24155 Filed 11–4–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0590; Product Identifier 2020–NM–055–AD; Amendment 39–21312; AD 2020–22–16]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–25–04, which applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The FAA is also superseding AD 2019–03–17, which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes; and Model A321 series airplanes. AD 2019–03–17 required revising the existing maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. This AD retains the requirements of AD 2019–03–17 and also requires new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 10, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 10, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 3, 2019 (84 FR 6315, February 27, 2019).

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For the Airbus material identified in this AD that continues to be IBR, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; internet *https://www.airbus.com.* 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–2020–0590.

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–2020–0590; 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; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0067, dated March 23, 2020 (''EASA AD 2020–0067'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115,

–131, –132, –133, –151N, and –153N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017) (''AD 2017–25–04''). AD 2017–25–04 applied to certain Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

The NPRM also proposed to supersede AD 2019–03–17, Amendment 39–19569 (84 FR 6315, February 27, 2019) (''AD 2019–03–17''). AD 2019–03–17 applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

The NPRM published in the **Federal Register** on June 17, 2020 (85 FR 36519). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD.

The FAA is issuing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. See the MCAI for additional background information.

Comments

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

Request To Confirm Intent To Allow Use of Later ALS Revisions

Delta Air Lines (DAL) requested confirmation that the FAA intended to allow the use of later ALS revisions to comply with the proposed AD. The commenter noted that previous ADs required an alternative method of compliance (AMOC) to use a later ALS revision.

The FAA confirms that it intends to allow the use of applicable later ALS revisions to comply with the requirements of this AD. This AD refers to EASA AD 2020–0067 as the appropriate source of service information for accomplishing the required actions. EASA AD 2020–0067 includes the Ref. Publications section, which accepts the use of later approved variations or revisions of the referenced ALS document for compliance. Therefore, later approved ALS revisions are acceptable as specified in paragraph (k) of this final rule. The FAA has also updated the language in paragraph (k) to be consistent with other rules using this format but the substance of this requirement has not changed.

Request To Allow AMOC Approved Alternative Actions and Intervals

Delta Air Lines requested revising paragraph (k) of the proposed AD to allow for alternative actions and intervals that are approved in accordance with the procedures specified in paragraph (l)(1) of the proposed AD. The FAA infers a desire to maintain consistency with other ADs.

The FAA acknowledges the commenter's request and provides clarification that, if applicable, requesting an AMOC is always an option; therefore, it is not necessary to revise paragraph (k) of this AD. This AD has not been changed regarding this request.

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0067 describes airworthiness limitations for certification maintenance requirements.

This AD also requires Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018, which the Director of the Federal Register approved for incorporation by reference as of April 3, 2019 (84 FR 6315, February 27, 2019).

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

Costs of Compliance

The FAA estimates that this AD affects 1,553 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–03–17 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017); and AD 2019–03–17, Amendment 39–19569 (84 FR 6315, February 27, 2019); and

■ b. Adding the following new AD:

2020–22–16 Airbus SAS: Amendment 39–21312; Docket No. FAA–2020–0590; Product Identifier 2020–NM–055–AD.

(a) Effective Date

This AD is effective December 10, 2020.

(b) Affected ADs

This AD replaces AD 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017) ("AD 2017–25–04"); and AD 2019–03–17, Amendment 39–19569 (84 FR 6315, February 27, 2019) ("AD 2019–03–17").

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 17, 2020.

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

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

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

(4) 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 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–03–17, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 13, 2018: Within 90 days after April 3, 2019 (the effective date of AD 2019–03–17), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018. The initial compliance time for accomplishing the tasks specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018, is at the applicable time specified in Airbus A318/A319/A320/A321 ALS Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018, or within 90 days after April 3, 2019, whichever occurs later. Accomplishing the maintenance or inspection program revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained Restrictions on Alternative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2019–03–17, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0067, dated March 23, 2020 ("EASA AD 2020–0067"). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2020–0067

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0067 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0067 specifies revising "the AMP" within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the "tasks and associated thresholds and intervals" specified in paragraph (3) of EASA AD 2020–0067 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0067 is at the applicable "associated thresholds" specified in paragraph (3) of EASA AD 2020–0067, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0067 do not apply to this AD.

(5) The "Remarks" section of EASA AD 2020–0067 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2020–0067.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously as specified in paragraph (j)(1)(ii) of AD 2019–03–17 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0067 that contains RC procedures and tests: Except as required by paragraph (l)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) 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; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

(n) 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 December 10, 2020.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0067, dated March 23, 2020.

(ii) [Reserved]

(4) The following service information was approved for IBR on April 3, 2019 (84 FR 6315, February 27, 2019).

(i) Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018.

(ii) [Reserved]

(5) For EASA AD 2020–0067, 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.*

(6) 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–2020–0590.

(7) 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. 2020–24527 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0664; Project Identifier 2018–NE–03–AD; Amendment 39–21310; AD 2020–22–14]

RIN 2120–AA64

Airworthiness Directives; Austro Engine GmbH Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–07–16 for all Austro Engine GmbH model E4 and E4P diesel piston engines. AD 2018–07–16 required initial and repetitive replacement of the waste gate controller and the control rod circlip. This AD retains the requirements of AD 2018–07–16 and requires engine modification by installing a waste gate control-rod fail-safe bridge and new spring-loaded circlip that terminates the initial and repetitive replacement requirements of AD 2018–07–16. This AD was prompted by the development of a modification of the waste gate control rod by adding a fail-safe bridge and spring-loaded circlip. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 10, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 10, 2020.

ADDRESSES: For service information identified in this final rule, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria; phone: +43 2622 23000; fax: +43 2622 23000–2711; internet: *www.austroengine.at.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0664.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0664; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), 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: Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–07–16, Amendment 39–19247 (83 FR 15733, April 12, 2018), (''AD 2018–07–16''). AD 2018–07–16 applied to all Austro Engine GmbH model E4 and E4P diesel piston engines. The NPRM published in the **Federal Register** on October 23, 2019 (84 FR 56707). The NPRM was prompted by the development of a modification of the waste gate control-rod by adding a fail-safe bridge and spring-loaded circlip. The NPRM proposed to retain all of the requirements of AD–2018–07–16. The NPRM also proposed engine modification by installing the waste gate control rod fail-safe bridge and new spring-loaded circlip as terminating action for the initial and repetitive replacement of the waste gate controller and the control rod circlip. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical

Agent for the Member States of the European Community, has issued EASA AD 2018–0125, dated June 6, 2018 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Occurrences were reported where, on some engines, turbocharger waste gate control rods were found broken and/or disconnected. Investigation results indicate that these failures were due to insufficient fatigue life or improper handling of the waste gate control rod and improper installation of the non-spring-loaded circlip.
>
> These conditions, if not corrected, could lead to improper operation of the waste gate with consequent engine power loss, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Austro Engine designed a new spring loaded circlip and published MSB–E4–022 (later revised), introducing a life limit for the affected waste gate controllers and circlips. Consequently, EASA issued AD 2017–0250, requiring implementation of those life limits, and prohibiting reinstallation of non-spring-loaded circlips.
>
> Since that [EASA] AD was issued, Austro Engine developed a modification, which allows replacing the waste gate controller and the circlip on condition, and issued the MSB accordingly. For the reason stated above, this [EASA] AD retains the requirements of EASA AD 2017–0250, which is superseded, and requires an engine modification by installing a waste-gate control-rod fail-safe bridge and a new circlip, which cancels the life limitations.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0664.

Update to the Service Information

The FAA determined the need to incorporate the latest service information in this AD. The FAA revised the references to Austro Engine Mandatory Service Bulletin (MSB) No. MSB–E4–022 (the MSB), in paragraphs (g) and (h) of this AD from Rev. No. 3, dated April 16, 2018, to Rev. No. 5, dated December 12, 2018. Rev. No. 5 of the MSB retains the same instructions for initial and repetitive replacement of the waste gate controller and the control rod circlip as Rev. No. 3. Rev No. 5 of the MSB also includes the same instructions as Rev. No. 3 for modification of an engine by installing a waste gate control rod fail-safe bridge and a new spring-loaded circlip. The FAA is, therefore, revising the references in paragraph (g) and (h) of this AD from Rev. No. 3 to Rev. No. 5 of the MSB so that operators may avoid unnecessary submission of alternative methods of compliance requests.

Update to Credit for Previous Actions

The FAA revised paragraph (j)(2) of this AD to allow credit for the performance of the terminating action in paragraph (h) of this AD, if that terminating action was completed before the effective date of this AD using Rev. No. 4, dated September 12, 2018, or Rev. No. 3, dated April 16, 2018, of the MSB to perform the terminating action.

Comments

The FAA gave the public the opportunity to participate in developing this AD. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Austro Engine MSB No. MSB–E4–022/5, Rev. No. 5, dated December 12, 2018. The MSB describes procedures for initial and repetitive replacement of the waste gate controller and the control rod circlip. The MSB also describes procedures for the installation of the waste gate control-rod fail-safe bridge and new spring-loaded circlip as terminating action for the initial and repetitive replacement procedures of the MSB. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 211 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace waste gate controller and control rod circlip.	0.5 work-hours × $85 per hour = $42.50	$235	$277.50	$58,552.50
Install waste gate control rod fail-safe bridge and new spring-loaded circlip.	0.5 work-hours × $85 per hour = $42.50	227	269.50	56,864.50

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2018–07–16, Amendment 39–19247 (83 FR 15733, April 12, 2018), and adding the following new AD:

2020–22–14 Austro Engine GmbH: Amendment 39–21310; Docket No. FAA–2019–0664; Project Identifier 2018–NE–03–AD.

(a) Effective Date

This AD is effective December 10, 2020.

(b) Affected ADs

This AD replaces AD 2018–07–16, Amendment 39–19247 (83 FR 15733, April 12, 2018).

(c) Applicability

This AD applies to all Austro Engine GmbH model E4 and E4P diesel piston engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 8560, Reciprocating Engine Supercharger.

(e) Unsafe Condition

This AD was prompted by reports of broken or disconnected turbocharger waste gate control rods on some engines. The FAA is issuing this AD to prevent failure of the turbocharger waste gate control rod. The unsafe condition, if not addressed, could result in loss of engine thrust control and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within the compliance times identified in Table 1 to paragraph (g)(1) of this AD, and thereafter at intervals not to exceed 250 flight hours (FHs), replace the waste gate controller and control rod circlip in accordance with the Accomplishment/Instructions, Paragraph 2.1, Initial Action or Repetitive Action, of Austro Engine Mandatory Service Bulletin (MSB) No. MSB–E4–022/5, Rev. No. 5, dated December 12, 2018.

Table 1 to Paragraph (g)(1) – Initial Replacement Compliance Time

Group	**Compliance Time** (A, B, or C, whichever occurs later)	
1	A	Within 50 FHs after April 27, 2018 (the effective date of AD 2018-07-16)
	B	Within 250 FHs since the first installation on an engine
	C	Before further flight
2	A	Within 100 FHs after April 27, 2018 (the effective date of AD 2018-07-16)
	B	Within 250 FHs since the first installation on an engine
	C	Before further flight

(2) Within 200 FH or six months, whichever occurs first after the effective date of this AD, modify the engine by installing a waste gate control rod fail-safe bridge and a new spring-loaded circlip in accordance with the Accomplishment/Instructions, Paragraph 2.1, Terminating Action, of Austro Engine GmbH MSB No. MSB–E4–022/5, Rev. No. 5, dated December 12, 2018.

(h) Terminating Action

Modification of an engine by installing a waste gate control rod fail-safe bridge and a new spring-loaded circlip, in accordance with the Accomplishment/Instructions, Paragraph 2.1, Terminating Action, of Austro Engine MSB No. MSB–E4–022/5, Rev. No. 5, dated December 12, 2018, is terminating action for the initial and repetitive replacement requirements of paragraph (g)(1) of this AD for that engine.

(i) Definitions

For the purpose of this AD, a Group 1 engine is an Austro Engine GmbH model E4–A engine, or an Austro Engine GmbH model E4–B or E4–C engine installed on a DA 42 M–NG airplane with external containers. A Group 2 engine is any other Austro Engine GmbH model E4 and E4P engine.

(j) Credit for Previous Actions

(1) You may take credit for initial and repetitive replacements of the waste gate controller and control rod circlip required by paragraph (g)(1) of this AD if you performed this action before the effective date of this AD using Austro Engine MSB No. MSB–E4–022/3, Rev. No. 3, dated April 16, 2018, or earlier versions.

(2) You may take credit for the terminating action in paragraph (h) of this AD if you performed the terminating action before the effective date of this AD using Austro Engine MSB No. MSB–E4–022/4, Rev. No. 4, dated September 12, 2018, or Rev. No. 3, dated April 16, 2018.

(k) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager

of the local flight standards district office/certificate holding district office.

(l) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018–0125, dated June 6, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–0664.

(m) Material Incorporated by Reference

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

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

(i) Austro Engine GmbH Mandatory Service Bulletin No. MSB–E4–022/5, Rev. No. 5, dated December 12, 2018.

(ii) [Reserved]

(3) For Austro Engine GmbH service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria; phone: +43 2622 23000; fax: +43 2622 23000–2711; internet: *www.austroengine.at.*

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

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

Issued on October 20, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–24539 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA–2019–0007]

RIN 1205–AB89

Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department or DOL) is amending its regulations governing the certification of agricultural labor or services to be performed by temporary foreign workers in H–2A nonimmigrant status (H–2A workers). Specifically, the Department is amending its regulations to revise the methodology by which it determines the hourly Adverse Effect Wage Rates (AEWRs) for non-range agricultural occupations using wage data reported by the U.S. Department of Agriculture's (USDA) Farm Labor Survey (FLS) and the Department's Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) survey. This final rule improves the consistency and accuracy of the AEWRs based on the actual work being performed by H–2A workers, and establishes better stability and predictability for employers to comply with their wage obligations. These regulations are consistent with the Secretary of Labor's (Secretary) statutory responsibility to certify that the employment of H–2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed. While the Department intends to address all of the remaining proposals from the July 26, 2019 proposed rule in a subsequent, second final rule governing other aspects of the certification of agricultural labor or services to be performed by H–2A workers and enforcement of the contractual obligations applicable to employers of such nonimmigrant workers, the Department focused this final rule on the immediate need for regulatory action to revise the methodology by which it determines the hourly AEWRs for non-range agricultural occupations before the end of the calendar year.

DATES: This final rule is effective December 21, 2020.

FOR FURTHER INFORMATION CONTACT: For further information regarding 20 CFR part 655, contact Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose for the Regulatory Action

The Department has determined that this rulemaking is necessary to ensure that employers can access legal agricultural labor, without undue cost or administrative burden, while maintaining the program's strong protections for the U.S. workforce. This rulemaking also promotes and advances the goals of Executive Order (E.O.) 13788, Buy American and Hire American.[1] The ''Hire American'' directive of the E.O. articulates that it is a policy of the Executive Branch to rigorously enforce and administer the laws governing entry of nonimmigrant workers into the United States in order to create higher wages and employment rates for U.S. workers and to protect their economic interests.[2] It directs Federal agencies, including the Department, to propose new rules and issue new guidance to prevent fraud and abuse in nonimmigrant visa programs, thereby protecting U.S. workers.[3]

Consistent with the E.O.'s principles and the goal of modernizing the H–2A program, this final rule amends the methodology by which the Department determines the hourly AEWRs for non-range agricultural occupations using wage data reported by the USDA FLS and the BLS OES survey. It also makes minor revisions related to the regulatory definition of the AEWR to conform to the methodology changes adopted in this final rule and to more clearly distinguish the hourly AEWRs applicable to non-range occupations from the monthly AEWR applicable to range occupations under 20 CFR 655.200 through 655.235.

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[1] *See* E.O. 13788 (Apr. 18, 2017), 82 FR 18837 (Apr. 21, 2017).

[2] *Id.* at sec. 2(b); *see also* DOL, *U.S. Secretary of Labor Protects Americans, Directs Agencies to Aggressively Confront Visa Program Fraud and Abuse* (June 6, 2017), *https://www.dol.gov/newsroom/releases/opa/opa20170606.*

[3] E.O. 13788, sec. 5.

As discussed in more detail below, the FLS has been the only comprehensive survey of wages paid by farmers and ranchers and has enabled the Department to establish minimum hourly rates of pay for H–2A job opportunities. However, the Department acknowledges the concerns expressed by many commenters about the unpredictability and volatility of the FLS wage data from year-to-year, which the Department believes is a sufficient reason to reconsider its sole reliance on annually produced wage data from the FLS as a means to establish the AEWRs, even were FLS wage data currently available or made available in the future. On the other hand, given the comprehensiveness and relevance of the FLS data, the Department has determined it is appropriate to use the 2020 AEWRs,[4] which were based on the results of the FLS published in November 2019, as the starting point to establish AEWRs for most H–2A job opportunities during calendar years 2021 and 2022 and, subject to annual adjustments, in subsequent years. Accordingly, the Department will use this FLS data as baseline wage rates for field and livestock worker occupations and adjust the wages annually beginning in 2023 based on the change in the Employment Cost Index (ECI) for wages and salaries computed by the BLS. This two-year transition period during which the current wage rates will remain in effect provides employers with greater certainty and a reasonable amount of time to plan their labor needs and agricultural operations under the new wage baseline before new adjustments to the existing wage rates take effect. For all other occupations, the Department, as explained in Section II.B.5.b., will annually adjust and set the hourly AEWRs based on the statewide annual average hourly wage for the occupational classification, as reported by the OES survey. If the OES survey does not report a statewide annual average hourly wage for the occupation, the AEWR shall be the national annual average hourly wage reported by the OES survey.[5]

In light of USDA's recent announcement regarding the FLS, the continued lack of any statutory or regulatory requirement that USDA conduct the FLS, and ongoing litigation over the announcement, the Department has also determined that the new hourly AEWR methodology is also appropriate in order to promote greater certainty in the setting of AEWRs in future years. On September 30, 2020, USDA publicly announced its intent to cancel the planned October data collection for the Agricultural Labor Survey and resulting Farm Labor reports (better known as the FLS).[6] Consequently, NASS may not release its November 2020 report containing the annual gross hourly wage rates for field and livestock workers (combined) for each state or region based on quarterly wage data collected from employers during calendar year 2020. Under the Department's current AEWR methodology, this annual report is used to establish and publish the hourly AEWRs for the next calendar year period on or before December 31, 2020. USDA is not legally required to produce the annual Farm Labor reports. The Department has previously recognized that ''USDA could terminate the survey at any time'' [7] and it has suspended collection on at least two prior occasions.[8] USDA's decision to cancel the October data collection and the release of the report planned for November 2020 cycle is the subject of ongoing litigation.[9] That litigation challenges whether USDA provided adequate reasons for its decision to suspend data collection and whether it considered important aspects of its decision, and the district court recently ordered USDA to proceed with the collection of FLS data for 2020. The litigation does not challenge, however, USDA's discretion—if adequately explained—to terminate the FLS at any time. Therefore, regardless of whether USDA ultimately is successful in the ongoing litigation, it will remain the case that no statute or regulation requires that USDA perform the FLS. The Department has determined that this uncertainty regarding the near-term and long-term future of the FLS also weighs in favor of the Department establishing now a revised methodology for determining the AEWR, given its

[4] Notice, *Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2020 Adverse Effect Wage Rates for Non-Range Occupations,* 84 FR 69774 (Dec. 19, 2019).

[5] *See* BLS OES, *Frequently Asked Questions* (Explaining the OES may not report a wage for an occupation in a specific area ''for a number of reasons, including failure to meet BLS quality standards or the need to protect the confidentiality of our survey respondents.''), *https://www.bls.gov/oes/oes_ques.htm.*

[6] *Notice of Revision to the Agricultural Labor Survey and Farm Labor Reports by Suspending Data Collection for October 2020,* 85 FR 61719 (Sept. 30, 2020); USDA NASS, *Guide to NASS Surveys: Farm Labor Survey, https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Farm_Labor/* (last modified Sept. 28, 2020); *see also* USDA, *USDA NASS to Suspend the October Agricultural Labor Survey* (Sept. 30, 2020), *https://www.nass.usda.gov/Newsroom/Notices/2020/09-30-2020.php.*

In the public announcement suspending data collection and publication of the Farm Labor report in November, NASS noted that the public can access other sources for the data collected in the FLS. Specifically, NASS referred to the Agricultural Resources Management Survey (ARMS), Census of Agriculture (COA), American Community Survey (ACS), Quarterly Census of Employment and Wages (QCEW), National Economic Accounts (NEA), and the National Agricultural Workers Survey (NAWS) as examples of available data sources. While these are valuable resources for certain purposes, the Department did not propose using any of these surveys as a basis to set AEWRs in the NPRM. Similarly, the Department did not receive public comments in response to the NPRM suggesting the Department use these sources to determine the AEWRs. While these data sources may provide useful statistical data concerning the agricultural sector and farm labor, the Department does not consider these sources appropriate for setting the AEWRs. The Department acknowledges that the ARMS provides broad data on farm expenditures, but it does not include the type of specific, detailed occupational and geographical wage data that has been or is supplied under the FLS or OES. *See* USDA NASS, *Farm Production Expenditures Methodology and Quality Measures* (July 31, 2020), *available at https://www.nass.usda.gov/Publications/Methodology_and_Data_Quality/Farm_Production_Expenditures/07_2020/fpxq0720.pdf.* Similarly, the COA, which is conducted once every five years, also provides information on farm income and expenditures only broadly and does not include the detailed occupation-specific wage data necessary to develop AEWRs that protect against adverse effect on wages of workers in the United States similarly employed. USDA, *Census of Agriculture, https://www.nass.usda.gov/AgCensus/* (last modified May 19, 2020). Relatedly, and as explained in the Department's 2010 H–2A Final Rule, ACS data would entail an unacceptable time lag of over a year for each published AEWR and the data does not readily allow for calculation of hourly earnings. Final Rule, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 75 FR 6883, 6899 (Feb. 12, 2010) (2010 Final Rule). The QCEW is limited to approximately 52 percent of the workers in agricultural industries and does not publish data for specific occupations;[6] and, while the NEA provides an estimate of total wages and salaries in an area, those estimates are generally derived from the QCEW and, accordingly, suffer from the same limitations as the QCEW data itself. U.S. Dept. of Commerce, Bureau of Economic Analysis, *Local Area Personal Income Methods* at II–1 (Nov. 2019), *available at https://www.bea.gov/system/files/methodologies/LAPI2018.pdf; see also* BLS, *QCEW Handbook of Methods* at 29 (May 7, 2020), *available at https://www.bls.gov/opub/hom/cew/pdf/cew.pdf.* These limitations make these two data sources less useful than the FLS data in establishing AEWRs—even with the admitted limitations to the FLS data, which this Rule aims to address. Lastly, the Department notes that the NAWS is an inappropriate data source because it is neither conducted on a regular schedule, nor at the state level, and also surveys small numbers of workers. DOL Employment and Training Administration (ETA), *National Agricultural Workers Survey, https://www.dol.gov/agencies/eta/national-agricultural-workers-survey* (last visited Oct. 3, 2020). In contrast to the OES survey, the Department also cannot rely on these data sources to establish valid statewide average hourly rates of pay for the specific occupations outside of the field and livestock worker category, as is necessary to prevent adverse effect. Accordingly, the Department has determined that FLS data is the appropriate starting point for establishing the AEWRs for most occupations using the H–2A program.

[7] 73 FR 77110, 77173 (Dec. 18, 2008).

[8] 76 FR 28730 (May 18, 2011); 72 FR 5675 (Feb. 7, 2007).

[9] *See United Farm Workers* v. *Perdue,* No. 1:20-cv-01432-DAD-JLT (E.D. Cal. filed Oct. 13, 2020).

importance to the Department's administration of the temporary agricultural labor certification requirement.

The Department intends to address all of the remaining proposals from the July 26, 2019 proposed rule in a subsequent, second final rule governing other aspects of the certification of agricultural labor or services to be performed by H–2A workers and enforcement of the contractual obligations applicable to employers of such nonimmigrant workers.[10] The Department has focused in this final rule on the immediate need for regulatory action to revise the methodology by which it determines the hourly AEWRs for non-range agricultural occupations before the end of the calendar year, so as to ensure AEWRs for each state are published this calendar year as required by 20 CFR 655.120.

This final rule is a deregulatory action under E.O. 13771 because the Department expects the unquantified cost savings of this final rule will outweigh the total annualized costs associated with rule familiarization. The costs of the final rule are attributed to the need for employers to familiarize themselves with the new regulations; consequently, this will impose a one-time cost in the first year. The Department estimates that the final rule will have an annualized cost of $0.07 million and a total 10-year quantifiable cost of $0.46 million at a discount rate of 7 percent. In addition, the final rule is expected to have annualized transfer payments of $170.68 million and total 10-year transfer payments of $1.68 billion at a discount rate of 7 percent. The Department also identified possible unquantifiable transfers associated with the final rule. The Department expects the final rule will provide qualitative benefits including better protection against adverse wage effects on an occupation basis. The Department believes that the final rule will have a significant economic impact on a substantial number of small entities. The Department used a total cost estimate of 3 percent of revenue as the threshold for significant impact to individual firms and a total of 15 percent of small entities incurring a significant impact as the threshold for a substantial impact on small entities. The Department estimates that small entities (not classified as H–2A labor contractors) will incur a one-time cost of $53.57 to familiarize themselves with the rule.

[10] 84 FR 36168.

B. Legal Authority

The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), establishes an ''H–2A'' nonimmigrant visa classification for a worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services . . . of a temporary or seasonal nature.'' 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see also* 8 U.S.C. 1184(c)(1), 1188.[11] Among other things, a prospective H–2A employer must first apply to the Secretary for a certification that:

- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and
- the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. 1188(a)(1). The INA prohibits the Secretary from issuing this certification—known as a ''temporary labor certification''—unless both of the above-referenced conditions are met and none of the conditions in 8 U.S.C. 1188(b) apply concerning strikes or lock-outs, labor certification program debarments, workers' compensation assurances, and positive recruitment.

The Secretary has delegated the authority to issue temporary agricultural labor certifications to the Assistant Secretary, Employment and Training Administration (ETA), who in turn has delegated that authority to ETA's Office of Foreign Labor Certification (OFLC).[12] In addition, the Secretary has delegated to the Wage and Hour Division (WHD) the responsibility under section 218(g)(2) of the INA, 8 U.S.C. 1188(g)(2), to assure employer compliance with the terms and conditions of employment under the H–2A program.[13]

C. Current Regulatory Requirements

Since 1987, the Department has operated the H–2A temporary labor certification program under regulations promulgated pursuant to the INA. The Department's current regulations governing the H–2A program were published in 2010.[14] The standards and procedures applicable to the certification and employment of workers under the H–2A program are found in 20 CFR part 655, subpart B, and 29 CFR part 501.

An employer seeking H–2A workers generally initiates the temporary labor certification process by filing an *H–2A Agricultural Clearance Order,* Form ETA–790/790A (job order), with the State Workforce Agency (SWA) in the area where it seeks to employ H–2A workers.[15] In preparing the job order and to comply with its wage obligations under 20 CFR 655.122(l), the employer is required to offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing wage, the agreed-upon collective bargaining wage, the Federal minimum wage, or the state minimum wage.[16] Currently, the AEWR is set by the Department and published annually as a single gross hourly rate for field and livestock workers (combined) from the FLS conducted by the USDA's NASS for each state or region and all occupational classifications. At the time of submitting the job order, the employer must agree to pay at least the AEWR, the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or state minimum wage rate, in effect at the time work is performed, whichever is highest and pay that rate to workers for every hour or portion thereof worked during a pay period.[17]

D. Background and Public Comments Received on the NPRM

On July 26, 2019, the Department published an NPRM requesting public comments on proposals to modernize and streamline the process by which OFLC reviews employers' job orders and the applications for temporary agricultural labor certifications.[18] The Department currently sets the AEWR for all agricultural workers in non-range occupations at the gross hourly rate for field and livestock workers (combined) from the FLS for each state or region. As part of this regulatory action, the Department proposed to establish hourly AEWRs for non-range occupations [19] at the annual hourly gross rate for each agricultural occupation in the State or region, as reported by the FLS and the OES survey, so that each AEWR would be based on data more specific to the

[11] For ease of reference, sections of the INA are referred to by their corresponding section in the United States Code.

[12] *See* Secretary's Order 06–2010 (Oct. 20, 2010), 75 FR 66268 (Oct. 27, 2019); 20 CFR 655.101.

[13] *See* Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

[14] Final Rule, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 75 FR 6883 (Feb. 12, 2010) (2010 Final Rule).

[15] 20 CFR 655.121.

[16] 20 CFR 655.120(a).

[17] 20 CFR 655.122(l).

[18] 84 FR 36168.

[19] Range occupations are subject to a monthly AEWR as set forth in 20 CFR 655.211(c).

agricultural services or labor being performed under the Standard Occupational Classification (SOC) system and, as a result, would better protect against adverse effect on the wages of workers in the United States similarly employed.[20]

The NPRM invited written comments from the public on all aspects of the proposed amendments to the AEWR methodology regulations, including on the use of the FLS and OES survey to establish the AEWR, and any alternate methods or sources the Department might use to establish the AEWRs in the H–2A program.[21] With respect to the use of the FLS to set AEWRs, the Department specifically sought comment on circumstances where the FLS did not produce wages for all occupations or geographic areas, including, but not limited to (1) whether the Department should use the separate field worker and livestock worker classifications from the FLS to set AEWRs for workers in occupations included in those classifications if a wage based on the SOC from the FLS is not available; (2) whether the Department should index past wage rates for a given SOC using the Consumer Price Index (CPI) or ECI if a wage cannot be reported for an SOC in a state or region in a given year based on the FLS but a wage was available in a previous year; (3) whether the Department should use the FLS national wage rate to set the AEWR for an SOC if the FLS cannot produce a wage at the state or regional level; and (4) whether the Department should consider any other methodology that would promote consistency and reliability in wage rates from year to year.[22]

The NPRM also explained the Department does not have direct control over the FLS and further recognized that USDA could elect to discontinue the survey at some point, and, in fact, USDA had done so in the past due to budget constraints.[23] Accordingly, the Department proposed and sought comment on the use of the OES survey in limited circumstances where the FLS does not produce data for a specific occupation or geographic area. Such proposals reflected the Department's concern that the current AEWR methodology may have an adverse effect on the wages of workers in higher-paid non-range agricultural occupations, such as supervisors of farmworkers and construction laborers on farms, whose wages may be inappropriately lowered by an AEWR based on the wages of field and livestock workers (combined).[24] A 60-day comment period allowed for the public to review the proposed rule and provide comments through September 24, 2019.

The Department also received requests for an extension of the comment period for the NPRM. While the Department appreciates the issues raised concerning the public's opportunity to review the rule and comment, the Department decided not to extend the comment period because it determined that a 60-day comment period was sufficient to allow the public to review the proposed rule and provide comments. This conclusion is supported by both the volume of comments received, and the wide variety of stakeholders that submitted comments within the 60-day comment period.

The Department received a total of 83,532 public comments in docket number ETA–2019–007 in response to the NPRM.[25] Thousands of these comments specifically related to the proposed changes to the methodology for setting the AEWRs. The commenters represented a wide range of stakeholders interested in the H–2A program, including farmworkers, farm owners, agricultural and trade associations, Federal elected officials, state officials, SWAs, recruiting companies, law firms, immigration and worker advocacy groups, labor unions, academic institutions, public policy organizations, and other industry associations interested in immigration related issues. The Department received comments both in support of and in opposition to the proposed amendments to the AEWR methodology, which are discussed in greater detail below. These comments raised a variety of concerns, some general and some pertaining to specific provisions identified in the NPRM.

The Department recognizes and appreciates the value of the comments, ideas, and suggestions from all commenters, and this final rule was developed only after review and careful consideration of all public comments timely received in response to the NPRM. The public may review all comments the Department received in the Federal Docket Management System (FDMS) at *http://www.regulations.gov,* docket number ETA–2019–007.

E. Implementation of this Final Rule

The methodology implemented under this final rule will apply only to the review of job orders filed with the SWA serving the area of intended employment, as set forth in 20 CFR 655.121, on or after the effective date of the regulation, including job orders filed concurrently with an *Application for Temporary Employment Certification* to the OFLC National Processing Center (NPC) for emergency situations under 20 CFR 655.134. In order for employers to understand their wage obligations upon the effective date of this final rule, the Department has posted the AEWRs applicable to each occupational classification and geographic area contemporaneously with the publication of this final rule on the OFLC website at *https://www.dol.gov/agencies/eta/foreign-labor/.*

When the OFLC Administrator publishes updates to the AEWRs in future calendar years, as required by 20 CFR 655.120(b)(2), and the AEWR is adjusted during a work contract period and is higher than the highest of the previous AEWR, the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the state minimum wage rate, the employer must pay that adjusted AEWR upon the effective date of the new rate, as provided in the future **Federal Register** Notice. *See* 20 CFR 655.122(l).

II. Summary of Proposed Changes to the AEWR Methodology and the Changes Adopted in This Final Rule

A. Revisions to 20 CFR 655.103(b), Definition of Adverse Effect Wage Rate

The current regulation provides that the hourly AEWR is set at the annual weighted average hourly wage for field and livestock workers (combined) based on the annual USDA's FLS. To be consistent with the Department's decision to adjust the current hourly AEWR methodology discussed in detail below, the Department is making non-substantive conforming changes to the definition of AEWR in 20 CFR 655.103(b). In addition, the Department is making a minor technical revision to the definition of AEWR to clarify that the term AEWR applies to both the hourly rate for non-range occupations, as set forth in § 655.120(b), and the monthly rate for range occupations, as set forth in § 655.211(c).

One commenter opposed ''the change in the definition to include the term 'gross' after the term hourly,'' stating that the change was designed to ensure the Department did not utilize new data being collected by the USDA through

[20] *See* 84 FR 36168, 36171.

[21] *Id.* at 36184.

[22] *Id.* at 36182.

[23] *Id.* at 36183.

[24] *Id.* at 36180–36185.

[25] In addition, the Department received 128 comments in response to document WHD_FRDOC_0001–0070 prior to the comment submission deadline. These comments were incorporated into docket number ETA–2019–007, and each comment received a note on regulations.gov indicating that it was timely received.

revisions to the FLS. While the Department did not specifically propose to add the term ''gross'' to the definition of AEWR, it proposed to add the term ''gross'' after the term ''hourly'' in describing the wage rate from the FLS in 20 CFR 655.120(b), specifically because USDA was considering making changes to the FLS to report a ''base'' wage that would exclude certain types of incentive pay. As discussed in the NPRM, the Department stated that if it elected to use the new base wage as a source for the AEWR, it would first engage in new notice-and-comment rulemaking to adopt such a change. However, the USDA has announced it is canceling the planned October 2020 collection of wage data and will not publish the annual Farm Labor report in November 2020. Accordingly, any new data the USDA had planned to collect for that period is not available and the Department will not rely on this ''base'' wage data for purposes of the new AEWR methodology. Additionally, both the OES and the ECI collect and report data using straight-time, gross pay that include, for example, commission payments, production bonuses, cost-of-living adjustments, piece rates, and other incentive-based pay.

B. Revisions to 20 CFR 655.120, Hourly AEWR Determinations

Section 218(a)(1) of the INA, 8 U.S.C. 1188(a)(1), provides that an H–2A worker is admissible only if the Secretary determines that ''there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.'' In the 2010 Final Rule, the Department explained that it met this statutory requirement, in part, by requiring an employer to offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing wage, the agreed-upon collective bargaining wage, the Federal minimum wage, or the state minimum wage. In the NPRM, the Department proposed to modify the methodology by which the Department establishes the hourly AEWRs.

Specifically, the Department proposed to establish hourly AEWRs for each agricultural occupation not subject to the monthly AEWR applicable to range occupations set forth pursuant to 20 CFR 655.211(c), as identified by the FLS and the OES survey, so that each AEWR was based on data more specific to the agricultural occupation of workers in the United States similarly employed and, as a result, would better protect against adverse effect on the wages of workers in the United States similarly employed. Accordingly, the Department proposed to revise its methodology so that the AEWR for a particular agricultural occupation would be based on the annual average hourly gross wage for that agricultural occupation in the state or region reported by the FLS when the FLS is able to report such a wage. If the FLS did not report a wage for an agricultural occupation in a state or region, the Department proposed to set the AEWR at the statewide annual average hourly wage for the SOC code from the OES survey conducted by BLS. If both the FLS could not produce an annual average hourly gross wage for that agricultural occupation in the state or region and the OES could not produce a statewide annual average hourly wage for the SOC, then the Department proposed to set the AEWR based on the national wage for the occupational classification from these sources.

As part of its proposal to change to an occupation-specific hourly AEWR, the Department proposed that if the job duties on the H–2A application (including job order) did not fall within a single occupational classification, the Certifying Officer (CO) would determine the applicable AEWR at the highest AEWR for the applicable occupational classifications. The intent of this proposal was to reduce the potential for employers to misclassify workers and impose a lower recordkeeping burden than if the Department permitted employers to pay different AEWRs for job duties falling within different occupational classifications on a single H–2A application. This approach is also consistent with how the Department assigns prevailing wage rates for jobs that cover multiple occupational classifications in the H–2B program.

The Department also proposed to continue to require the OFLC Administrator to publish, at least once in each calendar year, on a date to be determined by the OFLC Administrator, an update to each AEWR as a notice in the **Federal Register**. The Department proposed to make the updated AEWRs effective through two announcements in the **Federal Register**, one for the AEWRs based on the FLS (*i.e.,* effective on or about January 1), and a second for the AEWRs based on the OES survey (*i.e.,* effective on or about July 1), due to the different time periods for release of these two wage surveys.

The Department received comments on all aspects of the proposed revisions to the AEWR methodology. After consideration of all comments concerning the proposed revisions to the AEWR methodology, and in light of continuing uncertainty regarding the ongoing immediate availability of FLS data, the Department retains the AEWR concept in this final rule with additional changes to the methodology, as discussed below.

1. The Need for an AEWR in the H–2A Program

As explained above, and in prior rulemaking, requiring employers to pay the AEWR when it is the highest applicable wage is the primary way the Department meets its statutory obligation under section 218(a)(1) of the INA, 8 U.S.C. 1188(a)(1), to certify no adverse effect on workers in the United States similarly employed.

Many commenters representing employers and trade associations expressed the view that the Department has failed to explain why an AEWR is required to avoid wage depression, and supported removing the concept of the AEWR from the H–2A regulations entirely. For example, four farm bureau organizations asserted that because ''American unemployment [is] below 4%, and the agriculture industry [is] continuing to experience extreme labor shortages . . . the concept of an adverse effect wage rate is not applicable to the H–2A program, and other wage setting methods should be implemented.'' Another commenter asserted that the ''AEWR is an artificial machination of the current H–2A regulations . . . and a mandate without any tether to reality.''

The Department understands the comments but declines to eliminate the AEWR. The Department is required by statute to ensure that the employment of H–2A foreign workers does not adversely affect the wages and working conditions of workers in the United States similarly employed. The AEWR is intended to guard against the potential for the entry of H–2A foreign workers to adversely affect the wages and working conditions of workers in the United States similarly employed. As the Department noted shortly after the creation of the modern H–2A program, a ''basic Congressional premise for temporary foreign worker programs . . . is that the unregulated use of [nonimmigrant foreign workers] in agriculture would have an adverse impact on the wages of U.S. workers, absent protection.'' [26] The potential for

[26] Interim Final Rule, *Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,* 52 FR 20496, 20505 (June 1, 1987).

the employment of foreign workers to adversely affect the wages of U.S. workers is heightened in the H–2A program because the H–2A program is not subject to a statutory cap on the number of foreign workers who may be admitted to work in agricultural jobs. Consequently, concerns about wage depression from the importation of foreign workers are particularly acute because access to an unlimited number of foreign workers in a particular labor market and crop activity or agricultural activity could cause the prevailing wage of workers in the United States similarly employed to stagnate or decrease. The Department continues to believe that the use of an AEWR is necessary in order to effectuate its statutory mandate of protecting workers in the United States similarly employed from the possibility of adverse effects on their wages and working conditions. The AEWR is the rate that the Department has determined is necessary to ensure the employment of H–2A foreign workers will not have an adverse effect on the wages of workers in the United States similarly employed.

Addressing the potential adverse effect that employment of temporary foreign workers may have on the wages of workers in the United States similarly employed is particularly important because U.S. agricultural workers are, in many cases, especially susceptible to adverse effects caused by the employment of temporary foreign workers. The Department still holds the view that ''U.S. agricultural workers need protection from the potential adverse effects of the use of foreign temporary workers, because they generally comprise an especially vulnerable population whose low educational attainment, low skills, low rates of unionization and high rates of unemployment leave them with few alternatives in the non-farm labor market.'' [27] As a result, ''their ability to negotiate wages and working conditions with farm operators or agriculture service employers is quite limited.'' [28] The AEWR provides a floor below which wages of U.S. and foreign workers cannot be negotiated, thereby strengthening the ability of this particularly vulnerable labor force to negotiate over wages with growers, who are in a stronger economic and financial position in contractual negotiations for employment.'' [29]

The use of an AEWR, separate from a prevailing wage for a particular crop activity or agricultural activity, ''is most relevant in cases in which the local prevailing wage is lower than the wage considered over a larger geographic area (within which the movement of domestic labor is feasible) or over a broader occupation/crop/activity definition (within which reasonably ready transfer of skills is feasible).'' [30] The AEWR acts as ''a prevailing wage concept defined over a broader geographic or occupational field.'' [31] Because the AEWR is generally based on data collected in a multi-state agricultural region and an occupation broader than a particular crop activity or agricultural activity, while the prevailing wage is commonly determined based on a particular crop activity or agricultural activity at the state or sub-state level, the AEWR protects against localized wage depression that might occur in prevailing wage rates. The AEWR is complemented by the prevailing wage determination process, which serves a related, but distinct purpose. The prevailing wage, as determined under current Departmental guidance, provides an additional safeguard against wage depression in local areas and agricultural activities.

However, Congress did not ''define adverse effect and left it in the Department's discretion how to ensure that the importation of farmworkers met the statutory requirements,'' [32] and the Department has discretion to determine the methodological approach that it believes best allows it to meet its statutory mandate.[33] The INA ''requires that the Department serve the interests of both farmworkers and growers—which are often in tension. That is why Congress left it to DOL's judgment and expertise to strike the balance.'' [34] There is no statutory requirement that the Department set the AEWR at the highest conceivable point, nor at the lowest, so long as it serves its purpose. The Department may also consider issues of uniformity, predictability, and other factors relating to the sound administration of the H–2A program in deciding how to set the AEWR. For the reasons discussed below, the Department has adopted an approach that it believes is reasonable and strikes an appropriate balance under the INA.

2. Evidence of Current Wage Depression Is Not Needed

Several comments submitted by employers and associations asserted that the Department should not or is not authorized by statute to require payment of an AEWR if it has not first determined that the employment of H–2A workers has adversely effected the wages of workers in the United States similarly employed in the area of employment. Some commenters believed that the shortage of U.S. workers is adequate evidence that no adverse effect exists. One commenter asserted that ''if there is a lack of a sufficient domestic workforce to complete the farm work required, the presence of foreign guest labor cannot, by definition, 'adversely affect' the inadequate supply of domestic labor.'' Some of these commenters urged the Department to include language in this final rule that would commit the Department to conducting adverse effect determinations annually.

In response to these comments and irrespective of evidence regarding the existence of adverse effect, the Department believes that the statutory responsibility to workers in the United States ''will be discharged best by the adoption of an AEWR in order to protect against the possibility that the anticipated expansion of the H–2A program will itself create wage depression or stagnation.'' [35] In addressing similar comments in prior rulemaking, the Department explained that the AEWR is not predicated on the existence of wage depression in the agricultural sector and has noted that it is not statutorily required to identify existing wage suppression prior to establishing and requiring employers to pay an AEWR.[36] In 1989, the Department retained the AEWR despite finding that evidence regarding generalized wage depression in agricultural was inconclusive.[37] In reaffirming its commitment to the AEWR in the 2010 rule, the Department explained that ''regardless of any past adverse effect that the use of low-skilled

[27] Proposed Rule, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 74 FR 45905, 45911 (Sept. 4, 2009).

[28] *Id.*

[29] *Id.*

[30] 75 FR 6883, 6892–6893.

[31] *Id.* at 6892.

[32] *AFL–CIO* v. *Dole,* 923 F.2d 182, 184 (DC Cir. 1991).

[33] *United Farm Workers* v. *Solis,* 697 F. Supp. 2d 5, 8–11 (D.D.C. 2010).

[34] *Dole,* 923 F.2d at 187.

[35] 75 FR 6883, 6,895; *see also* Final Rule, *Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Adverse Effect Wage Rate Methodology,* 54 FR 28037 (July 5, 1989).

[36] *See* 54 FR 28037, 28046–47 (explaining that the INA ''only requires that the AEWR prevent future adverse effect from the use of foreign workers, not compensate for past effect''); *see* also *Dole,* 923 F.2d at 187 (noting that there is no ''statutory requirement to adjust for past wage depression'' and that where ''the data [on adverse effect] is inconclusive,'' the Department need only ''identify the considerations it found persuasive in making its decision'' to revise the AEWR methodology).

[37] *See* 54 FR 28037.

foreign labor may or may not have had on the wages'' of workers in the United States similarly employed, ''the Department considers the forward-looking need to protect U.S. workers whose low skills make them particularly vulnerable to even relatively mild—and thus very difficult to capture empirically—wage stagnation or deflation.'' [38] In addition, a lack of empirical evidence concerning adverse effect would not itself support the conclusion that an AEWR is unnecessary, but instead ''may be evidence that the imposition of the AEWR heretofore has been successful in shielding domestic farm workers from the potentially wage depressing effects of overly large numbers of temporary foreign workers.'' [39]

Moreover, the Department could not commit to annual adverse effect determinations because the Department is not aware of any reliable method available to make such a determination and no commenter suggested a method the Department could use to determine the existence of adverse effect. Such a method would need to demonstrate not only that the employment of foreign workers adversely affected the wages of workers in the United States in each particular locality and each particular occupation or agricultural activity, but also that the employment of H–2A workers was the cause of this adverse effect, as opposed to the employment of unauthorized workers, for example.

3. The Department Proposed To Determine the AEWRs Based on Occupation-Specific Data That Better Reflects the Wage of Workers in the United States Similarly Employed

The FLS, conducted by USDA's NASS, has aggregated and reported data in the major FLS occupational categories of field workers, livestock workers, field and livestock workers (combined), and all hired workers. The Department currently sets the AEWR at the gross hourly rate for field and livestock workers (combined) from the FLS for each state or region. This has produced a single AEWR for all agricultural workers in a given state or region, such that supervisors, agricultural inspectors, graders and sorters of animal products, agricultural equipment operators, construction laborers, and crop laborers were assigned the same AEWR. In the NPRM, the Department proposed a revised hourly AEWR methodology that would produce more tailored, occupation-based AEWRs designed to better protect against adverse effect on workers in the United States similarly employed. Under the proposed methodology, the AEWR for a particular agricultural occupation would have been based on the annual average hourly gross wage for that agricultural occupation in the state or region reported by the FLS; the statewide annual average hourly wage for the SOC from the OES survey conducted by BLS, if the FLS did not report a statewide or regional average wage for the occupation; or the FLS or OES national annual average wage for the occupation, if both the FLS and OES did not produce an average wage for the occupation in the state or region.

As expressed in the NPRM, the primary impetus for the proposed change was the Department's concern that the current AEWR methodology may have an adverse effect on the wages of workers in higher-paid agricultural occupations, such as construction laborers and supervisors of farmworkers on farms or ranches. Although the FLS collected data on the wages of supervisors, the wages of supervisors have been reported only in the all hired workers category and have not been included in the field and livestock workers (combined) category that the Department currently uses to establish the AEWR. Similarly, wages for ''other workers'' are reported only in the all hired workers category and are not included in the wages reported in the field and livestock workers (combined) category. Thus, the wages for these workers may be inappropriately lowered by an AEWR established from the wages of field and livestock workers (combined). In short, the Department expressed concern that using FLS wage data for field and livestock workers (combined) to establish the AEWR for all agricultural occupations could produce a wage rate that is not sufficiently tailored to the wage necessary to protect against adverse effect on workers in the United States similarly employed.

The Department invited comments on all aspects of the proposed AEWR methodology. In particular, the Department solicited comments on the use of the FLS and OES survey; the conditions under which each survey should be used to establish the AEWR, including the proposal to calculate the AEWRs without FLS data in circumstances where such data was unavailable; and the proposal to depart from relying on the field and livestock workers (combined) wage from the FLS to instead establish AEWRs based on occupational classifications. The Department also invited comments on any alternative methodologies or wage sources the Department might use to establish the AEWRs in the H–2A program. More specifically, the Department requested comments on whether there are alternate methods or sources that it should use to set the AEWR, such as indexing past wage rates using the CPI or ECI and any other methodology that would promote consistency and reliability in wage rates from year to year.

4. General Comments Related to the Department's Proposed AEWR Methodology

The Department received many comments from employers, agents, agricultural associations, farm bureaus, worker advocacy organizations, labor unions, individuals, state agencies, state and Federal elected officials, business advocacy organizations, and academic and public policy institutions. Many employers, associations, farm bureaus, and agents opposed the AEWR methodology in the 2010 Final Rule and agreed that a new AEWR methodology is necessary, most often due to concerns that the 2010 Final Rule methodology produced unsustainable wage increases for various reasons discussed below. An association stated that the current methodology makes planning and budgeting difficult because employers do not know what the AEWRs will be until they are published in the **Federal Register** late in the year. Another association expressed concern that regional AEWRs under the 2010 Final Rule ''fluctuate wildly,'' and stated that ''[t]he total wage expenditure'' for a ''farm in the Cornbelt I region increased 8% from 2016 to 2017 and then decreased by 1% from 2017 to 2018.'' Many of these commenters also asserted that the current AEWR methodology has resulted in significant wage inflation and unsustainable annual increases in the AEWR.

Some commenters, including an association and an SWA, unequivocally supported the Department's proposed AEWR methodology as a way to retain the FLS, while ensuring accurate wages for all occupations through the use of the occupation-specific FLS data and supplementation of the FLS with the OES. Broadly, however, the overwhelming majority of commenters opposed the proposed methodology for a variety of reasons, including that it would be complex and difficult to administer, impose significant employee monitoring and recordkeeping burdens, produce unsustainably high AEWRs for some occupations and reduce AEWRs for others, and result in unpredictable AEWRs that vary from year to year and state to state, increased misclassification

[38] 75 FR 6883, 6893.

[39] *Id.*

of job opportunities, and payment of inaccurate wages.

Many employers, associations, and farm bureaus expressed concerns that the proposed AEWR methodology would result in wage increases that would be unsustainable for employers in industries where labor costs constitute the most significant outlay—industries in which one association asserted employers increasingly ''revert to hiring undocumented workers'' because they are unable to afford H–2A wages under the 2010 Final Rule. Citing an analysis published in the UC Davis Rural Migration Blog, a business advocacy organization expressed concern that the proposed occupation-specific methodology would cause the AEWR to increase by greater than 50 percent in some cases, including an increase of up to 68 percent for Front-Line Supervisors in California, based on a comparison of the 2018 AEWR determined by the FLS field and livestock worker data and the proposed AEWR based on OES data for First-Line Supervisors.[40]

In contrast, most worker advocacy organizations, as well as several labor unions, SWAs, elected officials, and an international recruiting company, expressed concern the proposal would lower wages for many or most workers, while increasing uncertainty regarding farmworker wages. Many commenters, including immigration and worker advocacy organizations, expressed concern that the proposal would ''perpetuate a basic problem in the H–2A program where guestworkers, who generally lack bargaining power to negotiate for higher wages due to their temporary status, become concentrated in a sector because the system allows employers to reject as 'unavailable' for work those U.S. workers who seek jobs but are unwilling to accept the H–2A wage rate.'' The commenters asserted that the Department's proposal would cause wages to stagnate and become depressed in real economic terms.

Some SWAs acknowledged that disaggregation of wages would result in a higher wage for less common occupations like supervisors and agricultural equipment operators, but also expressed concern that disaggregation would reduce the wages of both H–2A workers and workers in the United States similarly employed in lower skilled farm laborer jobs that constitute the majority of H–2A job opportunities. One worker advocacy organization that opposed the Department's proposal generally supported a narrow use of the proposed occupation-specific AEWRs for particular occupations, noting that H–2A employers have increasingly utilized the program for occupations that should be paid a higher wage. This commenter also noted that job orders increasingly include several different types of jobs for which U.S. workers are paid different wage rates and thought that SOC-based AEWRs and use of the highest rate among applicable SOCs were necessary to ensure accurate wages.

Several worker advocacy organizations noted that occupation-specific AEWRs would be lower than the current FLS-based AEWR established using the combined field and livestock worker wage data and many asserted this would be inconsistent with the Department's statutory obligation to ensure employment of H–2A workers will not adversely affect the wages of workers in the United States similarly employed. For example, a worker advocacy organization comment included a chart that indicated the proposed occupation-specific FLS and OES AEWRs would result in wage reductions in many states for workers in SOCs 45–2041 and 45–2092 ranging from $.03 to $2.50 per hour. A forestry worker advocacy organization expressed concern that a ''change from using the mean of wages of workers 'similarly employed' to hourly wages of SOCs will result in more volatility in wages from year to year as well as reductions in AEWRs'' and would result in ''downward pressure on wages of U.S. workers and foreign temporary workers in the reforestation and pine straw industries.''

5. The Department Will Base AEWRs on Data Using 2019 FLS Wages for the Most Common SOCs and Occupation-Specific OES Wages for All Other SOCs

After careful consideration of the comments received, and the Department's own judgment as to what will best contribute to the sound administration of the H–2A program, the Department has decided to revise the hourly AEWR determination methodology in a way that will be more predictable, less volatile, and easier to understand, while also ensuring protection of U.S. workers' wages and accurate AEWRs for job opportunities in higher-skilled occupations. This approach is also appropriate in light of uncertainty about the immediate availability of FLS wage data.

First, the Department will use the 2020 AEWRs, which were based on results from the FLS wage survey conducted by USDA's NASS and published in November 2019, as the baseline AEWR for the overwhelming majority of H–2A job opportunities going forward. As explained further below, adjustments to AEWRs for these workers will be made annually, starting at the beginning of calendar year 2023, based on the BLS ECI, Wages and Salaries—the same index the Department currently uses to adjust the monthly AEWRs for job opportunities in herding or the production of livestock on the range. Second, for all other occupations, the Department will determine the AEWRs as the annual statewide average hourly gross wage for the occupation in the state or region based on the OES survey or, where a statewide average hourly gross wage is not reported, the national average hourly gross wage for the occupation based on the OES survey. As discussed below, use of the OES survey will allow the Department to consistently establish occupation-specific AEWRs for these higher-skilled job opportunities to better protect against adverse effect on workers in the United States similarly employed.

The Department has determined that this revised methodology best addresses commenters' concerns regarding the unpredictability and volatility of the AEWRs in recent years. The AEWRs have increased significantly compared to the rate of inflation or the rate at which compensation has increased for workers more generally in the U.S. economy. Large and unpredictable wage fluctuations can cause financial hardship to more labor-intensive agricultural operations, make it more difficult for them to plan, and ultimately discourage domestic agricultural production, which may result in fewer U.S. farmworker jobs. Furthermore, unlike other employment-based immigration programs, changes to the AEWRs—no matter how large—have a far greater impact on H–2A employers who have a regulatory obligation to pay the updated AEWR, if it remains the highest applicable wage, to all H–2A workers and workers in the United States similarly employed during any current work contract as well as future work contracts.

For related reasons, the Department has decided to begin ECI-based adjustments to the AEWR in 2023. This provides for a period during which employers can rely on the current, 2020 AEWRs as they familiarize themselves with the new wage methodology, understand its likely impact on wages in future years, and plan accordingly. Providing for more immediate adjustments to current wages based on a wholly new methodology would, in

[40] Rural Migration News, *The H–2A Program and AEWRs: FLS and OES* (Sep. 9, 2019), *https://migration.ucdavis.edu/rmn/blog/post/?id=2337.*

the Department's judgment, potentially exacerbate the very concerns it seeks to address about wage predictability and long term business planning that it seeks to address through the adoption of ECI-based wage adjustments. Similarly, even if more recent, 2020 FLS wage data were available, relying on it to set 2021 AEWRS would only serve to perpetuate the very wage volatility that the Department seeks to ameliorate through this rule. The 2020 AEWRs therefore provide appropriate wage rates for the immediate future, and a reasonable starting point from which future, ECI-based adjustments will be made.

The Department also believes this methodology addresses other commenter concerns about unnecessary complexity and potential for significant wage reductions under the proposed occupation-specific OES-based AEWRs, and strikes a reasonable balance between the statute's competing goals of providing employers with an adequate legal supply of agricultural labor while protecting the wages and working conditions of workers in the United States similarly employed. The Department understands that unpredictable changes in the AEWR can result in harm to U.S. workers by encouraging some employers to reduce employment opportunities and work hours and still others to hire undocumented foreign workers willing to accept employment at much lower wages and without the additional legal protections and benefits, including transportation, meals, and housing, that employers must provided to H–2A workers.

The methodology focuses on determining AEWRs using 2019 FLS data for job opportunities predominantly used by employers in the H–2A program—occupational classifications for field workers and livestock workers—while shifting AEWR determinations to the OES survey for all other occupations for which the FLS did not report wage data at a state or regional level (*e.g.,* truck drivers, farm supervisors and managers, construction workers, and many occupations in contract employment). Moreover, use of occupation-specific OES wages for job opportunities not covered by the FLS addresses the Department's concern that the current AEWR methodology may have an adverse effect on the wages of workers in higher-paid agricultural occupations, such as construction laborers and supervisors of farmworkers on farms or ranches. The wages for these workers may be inappropriately lowered by an AEWR established using FLS wage data derived from the wages of field and livestock workers (combined) because data from this FLS category does not include wages paid to construction laborers or supervisors of farmworkers, among other occupations.

The Department recognizes that the revised methodology may result in some AEWR increases in those occupations for which the Department will use the OES survey, depending upon geographic location and agricultural occupation. While wages may change, the Department believes these changes are the result of the Department's use of more accurate occupational data that better reflect the actual wage paid, and thus the wage needed to protect against adverse effect.

In addition, to further address concerns about predictability and clarity, the Department revised paragraph (b)(1) of § 655.120 to add a transition provision. Although the new AEWR methodology in this final rule will be implemented on the effective date of this rule, the SWA and CO will review job orders and *Applications for Temporary Employment Certification* under 20 CFR 655.121 and 655.140 using the AEWR methodology in effect at the time the job order or *Application for Temporary Employment Certification* was filed. As a result, employers who have already received a temporary agricultural labor certification, or who have submitted a job order or *Application for Temporary Employment Certification* before the effective date of this final rule, will not be subject to wage obligations under the new AEWR methodology until the OFLC Administrator publishes the next AEWR adjustment applicable to the employer's job opportunity. In contrast, employers who submit a job order on or after the effective date of this final rule are subject to the new AEWR methodology for the job order and the related *Application for Temporary Employment Certification.* The Department has posted the AEWRs applicable to each occupational classification and geographic area contemporaneously with the publication of this final rule on the OFLC website at *https://www.dol.gov/agencies/eta/foreign-labor/.*

As provided in paragraph (b)(2) of § 655.120, the Department will publish notice of AEWR adjustments in the **Federal Register**. As the majority of H–2A applications under the revised methodology will involve AEWRs subject only to the FLS-based AEWR, commenters' concerns about the publication schedule for AEWR notices have been resolved as these job opportunities will be subject only to one annual ECI-based adjustment and the ECI generally increases at a stable and predictable rate. The Department will publish the ECI adjustments for field and livestock worker AEWRs annually with an effective date on or about January 1, based on the ECI publication cycle. Similarly, occupations other than those included in the FLS field workers and livestock workers (combined) category and all occupations in Alaska [41] will be subject only to the OES-based AEWR and only that AEWR's adjustment cycle. The Department will publish OES-based AEWR adjustments annually with an effective date on or about July 1, based on the OES publication cycle. As explained below, only in the rare circumstance in which a job opportunity constitutes a combination of an FLS-based AEWR occupation and an OES-based AEWR occupation and the employer's certification period includes an FLS-based AEWR adjustment or an OES-based AEWR adjustment, and that adjustment changes which of the applicable AEWRs is higher, would an employer see a change in the AEWR applicable to a particular certification.

The Department acknowledges the concerns of some commenters that fluctuating wages can be harmful to workers, and their concerns that changes to the methodology could result in stagnating or decreasing wages for farmworkers. The Department also recognizes the possibility that the revised methodology in this final rule may result in the AEWRs for field workers and livestock workers being set at slightly lower levels in future years than would be the case under the current methodology. However, as noted, the benefits of relying on the ECI to provide more stable and predictable wage increases are substantial, and, in the Department's judgment, ultimately benefit both employers and workers. Further, by setting the 2020 AEWR as the starting point from which future ECI adjustments will occur, the Department is ensuring that workers' wages will not be lower than their 2020 wages and will then adjust according to the ECI. The Department believes that this approach effectively balances concerns about wage volatility and adverse effects on workers. It also has the related virtue of ease of use.

Further, the data for the current methodology may no longer be available to the Department.. Even if the data were available, or were to become available in subsequent years, the

[41] There is no 2020 FLS-based AEWR for Alaska because the FLS does not collect data covering Alaska.

Department sees tremendous benefit in moving to a new source of data that is unlikely to be discontinued and therefore does not suffer from the attendant uncertainty. The Department also believes that its new methodology meets the statutory requirement to protect workers in the United States similarly employed to H–2A workers from adverse wage effects. After a two-year transition period where the AEWRs are held constant, the methodology is likely to result in steady, predictable wage increases for farmworkers. While other methods could result in higher or lower AEWRs in any given year, the Department believes the methodology in this final rule will ensure the employment of H–2A workers does not adversely affect the wages of workers in the United States similarly employed by providing annual changes in wages consistent with the changes in wages and salaries in the broader economy, as explained further below.. This is especially so given that the Department is using a different methodology to more accurately calculate than before the wages of certain more highly skilled farmworkers, for which the Department has reason to believe the AEWRs have artificially depressed wages.

a. Use of ECI-Adjusted FLS Wage Data for Field and Livestock Workers

The most common concern the Department received from employers, agents, associations, and business advocacy organizations was that the proposed methodology would be too complex and that the number of wage sources and potential wage rates would significantly increase wage volatility and uncertainty for employers. For example, one association stated it could not evaluate the potential impact of the proposal because, according to its estimates, the proposed methodology would result in at least 400,000 potential wage rates, based on a combination of 13 occupational categories and five potential wage sources (state/national FLS or OES and the prevailing wage).

Citing the Rural Migration Blog noted earlier, some associations and a business advocacy organization stated that under the proposed rule, wages may fluctuate significantly between years for some states and occupations, such as a 15 percent change in the AEWR for Graders and Sorters in Florida between 2017 and 2018. Similarly, a dairy association expressed concern regarding the year-to-year wage fluctuation for farmworkers tending to animals, asserting that in New York there would have been a 26 percent decrease from the 2016 AEWR based on the OES state data for SOC 45–2093 to the 2017 AEWR based on the regional FLS data. A farm bureau expressed concern that AEWRs would change at different times of the year based on the data source used and asserted this would further increase unpredictability and the potential for wage fluctuations in the same year, considering the employer will remain obligated to pay a higher wage if one is published during the contract period.

A commenter from academia supported the Department's decision to rely primarily on the FLS and further recommended that, instead of using the OES survey when FLS data was unavailable, the Department should use the more general FLS field and livestock worker (combined) data because the FLS-based AEWR would be based on ''more accurate data inputs'' and would ''maintain a consistent data source from year to year, potentially alleviating some of the wage volatility the Department cites as a concern.'' The commenter also recommended the Department ''use the Employment Cost Index to calculate the appropriate AEWR based on prior years'' if the FLS is suspended and FLS data is unavailable, in order to ''promote accuracy and consistency between seasons.'' Finally, as discussed further in section II.B.6 below, several commenters suggested alternative methods to determine the AEWR, most of which did not involve reliance on OES or FLS data.

Many commenters, including employers, associations, state farm bureaus, and a business advocacy organization, also asserted that the proposed occupational disaggregation would be unworkable because agricultural job opportunities often or by their nature require the performance of a variety of tasks that can fit into a number of occupational classifications. Many of these commenters expressed concern that occupational classifications would be unpredictable due to the number of potential wage sources and this would be unsustainable because employers would be unable to plan for labor input costs, which constitutes the highest expense for many employers. Some commenters asserted that the variety of tasks associated with agricultural jobs, combined with the variety of occupations and wage rates that could be assigned under the proposed rule, would result in unpredictable wage rates from year to year and ensure acceleration of wage rates.

Several commenters asserted the proposal would require employers to ''become human resources experts.'' Two Federal elected officials, as well as some employers and associations, believed the proposal would impose significant monitoring and recordkeeping burdens on employers, requiring them to monitor and maintain records of all duties performed at all times to ensure compliance with wage obligations. The elected officials asserted the proposal would ''make classification of work into a highly contentious issue,'' leading to litigation and disputes over occupation and wage assignments, and would require employers to develop familiarity with all potentially applicable occupational classifications.

After consideration of comments, the Department has determined that use of the 2019 FLS wage data for field and livestock workers, adjusted annually by the percent change in the ECI, most reasonably addresses commenters' concerns regarding the complexity in the Department's proposal, as well as the volatility and unpredictability in the AEWRs, both recently and over the past several years, for the majority of H–2A occupations. The methodology is also consistent with the Department's broad statutory mandate to balance the competing goals of the statute to provide an adequate labor supply and to protect the wages and working conditions of workers in the United States similarly employed.[42]

The FLS field workers and livestock workers (combined) category includes workers who ''plant, tend, pack, and harvest field crops, fruits, vegetables, nursery and greenhouse crops, or other crops'' or ''tend livestock, milk cows, or care for poultry,'' including those who ''operate farm machinery while engaged in these activities.''[43] The current SOC codes and titles associated with these workers, and which will be subject to this wage setting approach, are: 45–2041—Graders and Sorters, Agricultural Products; 45–2091—Agricultural Equipment Operators; 45–2092—Farmworkers and Laborers, Crop, Nursery, and Greenhouse; 45–2093—Farmworkers, Farm, Ranch, and Aquacultural Animals; 53–7064—Packers and Packagers, Hand; and 45–

[42] *See Rogers* v. *Larson,* 563 F.2d 617, 626 (3d Cir. 1977); *see also AFL–CIO* v. *Dole,* 923 F.2d 182, 187 (D.C. Cir. 1991); *United Farmworkers of Am.* v. *Chao,* 227 F. Supp. 2d 102, 108 (D.D.C. 2002) (''In adopting an AEWR policy, DOL must balance the competing goals of the statute—providing an adequate labor supply to growers and protecting the jobs of domestic farmworkers.'').

[43] USDA NASS, *Crosswalk from the National Agricultural Statistics Services (NASS) Farm Labor Survey Occupations to the 2018 Standard Occupational Classification System, available at https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Farm_Labor/farm-labor-soc-crosswalk.*

2099—Agricultural Workers, All Other. Accordingly, through calendar year 2022, *H–2A Applications for Temporary Employment Certification* seeking workers to perform duties encompassed by one or more of these SOCs will continue to be subject to the 2020 AEWRs, which were based on the average annual gross hourly wage rate for field and livestock workers (combined) as reported for the state or region by the USDA FLS in November 2019, provided that the FLS reported a wage rate for the geographic area where the work will be performed. In areas where the November 2019 USDA FLS data did not report a wage rate, the AEWR will be the statewide annual average hourly gross wage for the occupation, if one is reported by the OES survey; or, the OES national annual average hourly gross wage, if the OES survey does not report a statewide wage.[44] Beginning calendar year 2023, and annually thereafter, these FLS-based AEWRs will be adjusted by the percentage change in the BLS ECI, Wages and Salaries for private sector workers, for the preceding 12 month period.

i. Using the ECI to Annually Adjust the FLS Wage Data for Field and Livestock Workers, Beginning in 2023 After a Two-Year Transition Period, is Reasonable and More Appropriate Than Shifting to the OES Survey for These Particular Occupations

In light of the substantial number of commenters concerned about the complexity of the proposed methodology, the unpredictable and often significant annual increases of FLS-based AEWRs, and the need to protect workers against adverse wage effects while also taking into account the need for a stable supply of legal labor, the Department has determined that the most reasonable AEWR determination methodology for field and livestock workers, particularly given uncertainty about the future of the FLS, is to use the recent combined FLS wage data as a starting point and use of the ECI to index for future years. This approach is consistent with an alternative suggested in the NPRM and recommended by a commenter from academia (as well as the current means by which the monthly AEWR is adjusted for range occupations).

The ECI is a ''measure of the change in the price of labor, defined as compensation per employee hour worked'' based on data collected on ''hourly straight-time wage rate[s]'' defined as ''total earnings before payroll deductions,'' [45] that provides an accurate measure of annual increases in wages across the private sector and ''is particularly well suited as a vehicle to adjust wage rates to keep pace with what is paid by other employers.'' [46] ECI-based adjustments to the AEWRs for these occupations will ensure field and livestock worker wages continue to rise apace with wages in the broader U.S. economy in a consistent and predicable manner.[47] While the Department also suggested the CPI as an alternative data source, the Department has chosen the ECI rather than the CPI to adjust the FLS-based AEWRs because the Department views the CPI as less relevant to wage adjustments than the ECI, which measures changes in wages, rather than consumer prices. The Department believes indexing the AEWRs to the ECI will produce steadily increasing AEWRs for field and livestock workers that fulfill the statutory requirement to prevent adverse effect on the wages of workers in the United States similarly employed, while providing consistency and predictability to the agricultural economy.

The Department understands the common concern of a large number of employers, associations, and agents that OES-based AEWRs would, in some cases, result in dramatic wage increases, wage variability from year to year, or both, and further acknowledges the concerns of many commenters that the current FLS-based AEWRs have fluctuated widely from year to year and that employers have been subject to annual increases as high as 22 percent in some states.[48] In setting the AEWR, the Department must balance the interests of workers and employers. Setting AEWRs that are ''too high in any given area . . . will harm U.S. workers indirectly by providing an incentive for employers to hire undocumented workers.'' [49] The Department remains cognizant of the fact that the ''clear congressional intent was to make the H–2A program usable, not to make U.S. producers non-competitive'' and that ''[u]nreasonably high AEWRs could endanger the total U.S. domestic agribusiness, because the international competitive position of U.S. agriculture is quite fragile.'' [50]

The methodology in this final rule addresses these concerns by tethering the AEWRs to broad economic data on labor costs using the ECI, which the Department currently uses to make AEWR determinations for H–2A herding and livestock jobs on the range, and adjusting the AEWRs annually beginning in calendar year 2023.[51] Based on private sector ECI data, the average annual adjustment over the last decade would have been 2.78 percent, in contrast to the much higher annual AEWR adjustments cited by many association commenters.[52] Recent AEWR data shows significant fluctuation in the AEWR in many states, both upward and downward. Data shows that annual AEWR adjustments of 3 percent, 4 percent, and 5 percent have not been uncommon, nor is it uncommon to see the AEWR increase one year, decrease the following, and then increase again in the third year.[53] For example, in Arizona, wages

[44] For example, there is no 20120 FLS-based AEWR for Alaska because the FLS does not collect data covering Alaska.

[45] *See, e.g.,* John W. Ruser, *The Employment Cost Index: What Is It?,* Monthly Labor Review (Sept. 2001), *available at https://www.bls.gov/opub/mlr/2001/09/art1full.pdf.*

[46] *How to Use the Employment Cost Index for Escalation,* BLS, *available at https://www.bls.gov/ect/escalator.htm*

[47] This approach is consistent with the approach used to establish the AEWR for range occupations. *See* 20 CFR 655.211(c); 80 FR 62958, 62995 (Oct. 16, 2015) (''In order to prevent wage stagnation from again occurring, we have determined that the new base wage rate should be subject to an adjustment methodology. We agree with those commenters who recommended that we use the ECI for wages and salaries to address the potential for future wage stagnation. Our primary concern in setting the adjustment methodology for these occupations is to confirm that the wages for these occupations will continue to rise apace with wages across the U.S. economy. Although the Department has previously used the Consumer Price Index for All Urban Consumers (CPI–U) in other circumstances where adjustment for inflation is warranted, we conclude that it is reasonable to use the ECI for these occupations, given that housing and food must be provided by the employer under this Final Rule, making the cost of consumer goods less relevant than under circumstances in which workers are paying these costs themselves'').

[48] *See* DOL, *Historical State AEWRs, Adverse Effect Wage Rates by State from 2014 to Present, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/2c.%20AEWR%20TRends%20in%20PDF_12.16.19.pdf.*

[49] 73 FR 8538, 8550 (Feb. 13, 2008); *See also* 73 FR 77110, 77171 (Dec. 18, 2008) (noting that wages above the market rate may ''encourage employers to hire undocumented workers instead'' of U.S. or H–2A workers because ''many agricultural employers may be priced out of participating in the H–2A program'' and ''[w]hen employers cannot find U.S. workers'' and ''cannot afford H–2A workers because they are required to pay them above-market wage rates, some will inevitably end up hiring undocumented workers instead.'').

[50] 54 FR 28037, 28046 (Jul. 5, 1989).

[51] Since implementation of the 2015 H–2A Herder Rule, DOL has adjusted the AEWR applied to H–2A sheep and goat herding jobs using the ECI for wages and salaries published by the BLS for the preceding 12-month period (October-to-October).

[52] *See* BLS, *Employment Cost Index, Historical Listing—Volume III* at 8, National Compensation Survey (July 2020), *available at https://www.bls.gov/web/eci/echistrynaics.pdf.*

[53] *See* DOL, *Historical State AEWRs, Adverse Effect Wage Rates by State from 2014 to Present, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/2c.%20AEWR%20TRends%20in%20PDF_12.16.19.pdf.*

increased in 2016 by 6.3 percent, decreased in 2017 by 2.2 percent, decreased again in 2018 by 4.5 percent, and then increased a jarring 14.7 percent in 2019.[54] Further, the average difference between the highest and lowest change across all AEWRs in the state and regions was 11 percent from 2014 to 2018. In 2019 and 2020, it was 23.4 percent and 8.5 percent, respectively, further evidence of the year-to-year unpredictability in wage obligations employers face under current regulations. [55]

The Department also understands the concerns raised by commenters regarding planning and budgeting difficulties when wage rates fluctuate widely, particularly in the context of the considerations a law firm noted about agricultural sector employers' obligations to fulfill multi-year contractual obligations, as well as a trade association's concerns surrounding longer-term workforce planning.[56] The FLS-based, ECI-adjusted AEWR methodology in this final rule is, in the Department's judgment, the most effective available methodology that addresses the oft-cited concern among many commenters that under the proposed approach, AEWRs would be too unpredictable and based on a methodology that would be too complex. ECI-based adjustments are straightforward to calculate and, based on the substantial historical data available, predictable. Because the AEWR for these core occupations will be tied to the ECI and adjusted annually, the Department believes that the new methodology will reduce the significant fluctuations in AEWRs and address the concerns raised by commenters about the need for certainty. During the past decade, the fluctuation in the ECI from one year to the next has not exceeded more than half of one percent and the total range of increases over that period was 2.1 to 3.9 percent,[57] in contrast to AEWRs that have fluctuated up or down within a much larger and less consistent or predictable range, as noted above.

The Department believes it is reasonable to make annual adjustments based on the ECI to reduce wage volatility from year to year, provide employers with greater stability and certainty regarding their wage obligations to workers, and address the concerns expressed by many commenters about the unpredictable increases in wages reported by the FLS in recent years. As noted above, the Department has determined it is best to utilize the current AEWRs for the next two years and adjust annually thereafter based on changes in the ECI for the most recent preceding 12 months to provide stability and predictability for future wages, and as an acknowledgement that immediate implementation may cause additional disruption of the kind this approach seeks to avoid. The Department believes this approach will serve the AEWR's intended purpose to guard against the potential for the entry of H–2A foreign workers to adversely affect the wages and working conditions of workers in the United States similarly employed while addressing concerns raised by the commenters.

Beginning the ECI adjustments for the FLS-based AEWRs in 2023 addresses commenters' concerns that recent accelerations in the wage rates are, in their view, attributable to flawed survey results and have caused artificially surging wage increases, as well as the need to have time to engage in long range planning. For example, commenters note AEWR increases have averaged as much as 9.5 percent annually in recent years. While the Department disagrees with the commenters' suggestions that the FLS survey results were flawed, this transition period, during which employers may prepare for the new indexed wage rates that will apply to the majority of H–2A job opportunities, adequately balances commenters' concerns related to significant wage fluctuations with the Department's obligation to protect against adverse effects. Giving employers advance notice of the new approach before it begins to result in more predictable wage adjustments ensures that the new rule does not cause, through more immediate implementation of the new adjustment methodology, precisely the kind of unexpected wage changes that commenters expressed concerns about.

This approach also addresses concerns from farmworker advocates about wage cuts, by using the ECI to ensure steady wage growth over time to guard against the potential for the entry of H–2A foreign workers to adversely affect the wages and working conditions of workers in the United States similarly employed. It also guards against the kind of immediate wage cuts that may have occurred in some cases under alternative methodologies by using the current, 2020 AEWR as the starting point from which future adjustments will be made.

In addition, this approach addresses the concerns of many worker advocates, SWAs, and some Federal elected officials that the use of occupation-specific OES data proposed in the NPRM would have immediately, and in some cases significantly, reduced wages for many workers in the most common H–2A occupations (*i.e.,* SOCs 45–2092, 45–2093, and 45–2041). Although AEWRs for field and livestock workers will not increase or decrease annually under this final rule in the same manner as they had under AEWRs determined using previously available FLS data—in fact, the Department projects a slight reduction in wage growth relative to the previous methodology—the approach in this final rule will ensure consistent wage increases for field and livestock workers and ensure these workers' wages keep pace with wage changes among U.S. workers more broadly. And this approach may result in higher AEWRs than would be the case using OES data. The Department has considered that the use of occupation-specific OES AEWRs could potentially reduce the wages of significant numbers of agricultural workers in states with high H–2A usage, such as California and Washington, including single year reductions of 10.3 and 6.4 percent, respectively, for crop workers, and 12.6 and 15.4 percent, respectively, for graders and sorters.[58] In contrast, AEWRs determined using the FLS wage data as a baseline and adjusted annually using the BLS ECI compensation data for all private sector workers, which has increased annually from 2.1 to 3.9 percent over the past 10 years, will serve to protect against the wage depression suggested by these commenters, thus protecting against the possibility of the presence of H–2A workers adversely affecting the wages

[54] *Id.*

[55] *Id.*

[56] USDA ERS, Economic Information Bulletin No. 203, *America's Diverse Family Farms* at 7–9 (Dec. 2018), *available at https://www.ers.usda.gov/webdocs/publications/90985/eib-203.pdf?v=2059.2* (noting agricultural employers commonly use marketing contracts and their use of production contracts have ''ranged from 31 percent to 41 percent over the past two decades—with no discernible trend—and averaged 37 percent''); USDA ERS, Agricultural Economic Report No. 837, *Contracts, Markets, and Prices: Organizing the Production and Use of Agricultural Commodities* at 5 (Nov. 2004), *available at https://www.ers.usda.gov/webdocs/publications/41702/14700_aer837_1_.pdf?v=41061* (''Many crop-production contracts hold for a growing season. Livestock contracts can range from one flock (less than 2 months) to 10 years, and some livestock contracts are automatically renewed unless cancelled.'').

[57] *See* BLS, *Employment Cost Index, Historical Listing—Volume III* at 8, National Compensation Survey (July 2020), *available at https://www.bls.gov/web/eci/echistrynaics.pdf.*

[58] This is based on a comparison of the 2020 AEWRs with the most recent OES data for SOCs 45–2092 and 45–2041 in these states, available at *https://www.bls.gov/oes/current/oessrcst.htm.*

and working conditions of workers in the United States similarly employed.[59] It also may protect against absolute decreases in AEWRs, which have been seen in some years in some states under the FLS methodology, even during a robust economic expansion, in contrast to the ECI which is a less volatile data source that has registered increases during economic contractions and expansions.[60] Additionally, in cases where the prevailing wage is higher than the AEWR adjusted based on the ECI, the employer will be required to pay the prevailing wage rate, and the Department proposed a revised prevailing wage determination methodology in the July 2019 NPRM, which, if adopted in the subsequent, second final rule, would likely affect the wages required to be paid to H–2A workers and may provide additional wage protection.

ii. Using 2019 FLS Data Is a Reasonable Choice for Establishing an AEWR Baseline for the Most Common SOCs in the H–2A Program

The Department has chosen to use as a baseline the 2020 AEWRs determined using the combined field and livestock worker FLS wage data after consideration of comments on potential data sources, and for reasons explained below and in prior rulemaking. The Department received many comments on the efficacy of the FLS and OES survey as data sources for AEWR determinations. Some commenters—primarily employers and associations—opposed the use of the FLS to determine the AEWR. Some associations and an agent supported a move away from the FLS because the survey was not limited to U.S. workers and aggregated the wages of workers in many different occupations. Similarly, a business advocacy organization opposed use of the combined FLS wage under the 2010 Final Rule because it averaged the wages of lower-skilled farm workers with higher-skilled workers in, for example, supervisory and heavy machinery operator occupations, which the commenter asserted inflated wages and made it difficult to challenge AEWR determinations. Two associations and an employer opposed use of occupation-specific FLS data due to small sample sizes and opposed use of the FLS generally because it collected data on gross wages.

In contrast, many commenters expressed general or conditional support for the use of the FLS as a primary or sole data source, including many worker advocacy organizations, as well as some associations and academic commenters. Several associations supported use of a modified and expanded FLS, while some employers and associations expressed a preference for retaining the 2010 Final Rule's methodology based on the combined FLS data, but only if the sole alternative was the proposed methodology. One association urged the Department to rely on the FLS as the primary source where a wage is available at any geographic level and to use the OES only in cases where no state or national FLS wage is available. Another commenter believed the Department should rely solely on USDA or states' departments of agriculture to determine the AEWR because these agencies have the best understanding of agricultural employment and the wage setting process for agricultural job opportunities. A Federal elected official urged the Department to rely on the FLS, rather than the OES survey, because the OES survey ''reflects earnings from farm labor contractor employees, who are among the nation's lowest paid farmworkers.'' Similarly, two Federal elected officials opposed use of the OES system because it ''less accurately capture[s] actual wages paid to farm employees, who comprise the bulk of the H–2A guest worker workforce, because the OES data do not actually capture farm employer data and instead only reflect information concerning 'establishments that support farm production.' ''

As noted in the NPRM and prior rulemaking, and as discussed below, the Department continues to believe the FLS is a useful source of wage data for establishing the AEWRs for the vast majority of H–2A job opportunities, and that alternative wage sources are, for most occupations, generally not superior to the FLS for the Department's purposes in administering the H–2A program. With the exception of a brief period under the 2008 Final Rule, the Department has established an AEWR using FLS data for each state in the multi-state or single-state crop region to which the State belongs since 1987. One advantage of using a wage derived from the FLS as the baseline for these occupations is that the FLS surveyed farm and ranch employers and collected data on wages paid for field and livestock worker job opportunities common in the H–2A program.

Another advantage of the FLS has been its broad geographic scope, which ''provide[s] protection against wage depression that is most likely to occur in particular local areas where there is a significant influx of foreign workers,'' [61] and ''reflects the view that farm labor is mobile across relatively wide areas.'' [62]

Finally, using the combined FLS data as the baseline to set the AEWR for field and livestock workers is consistent with the Department's conclusion in the 2010 Final Rule that the skills of many farm laborers are ''adaptable across a relatively wide range of crop or livestock activities and occupations'' because these activities and occupations ''involve skills that are readily learned in a very short time on the job, skills peak quickly, rather than increasing with long-term experience, and skills related to one crop or activity are readily transferred to other crops or activities.'' [63]

However, as noted above, recent FLS data has introduced a substantial amount of variability in wages in the H–2A program, which has led the Department to consider alternatives that still meet its statutory obligations and the need for sound program administration. The reasons why this variability is problematic are discussed throughout this preamble, and include economic hardship to farmers, which may induce them to reduce production and thus the hiring of U.S. farmworkers—or to resort to using illegal aliens; the difficulties of long-term planning, with attendant costs that may be felt by both employers and farmworker employees; and the current methodology's artificial depression of wages for certain higher-skilled U.S. agricultural workers. The Department is also concerned about using a data source beyond its control and which is subject to an uncertain future, demonstrated by the recent suspension of data collection. The Department thus has decided to use ECI adjustments to these AEWRs moving forward.

This does not mean that the Department has concluded that the wages established by the FLS data, including the 2020 AEWRs, were flawed. Rather, the Department has simply determined that greater certainty going forward is necessary, and the ECI provides a reasonable data source for measuring wage growth consistent with the Department's statutory mandate. Specifically, the Department has concluded, consistent with a commenter

[59] *See BLS, Employment Cost Index, Historical Listing—Volume III at 8, National Compensation Survey (July 2020), available at https://www.bls.gov/web/eci/echistrynaics.pdf.*

[60] *See* DOL, *Historical State AEWRs, Adverse Effect Wage Rates by State from 2014 to Present, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/2c.%20AEWR%20TRends%20in%20PDF_12.16.19.pdf.*

[61] 84 FR 36168, 36182.

[62] *Id.*

[63] 75 FR 6883, 6899–6900.

from academia, that use of an FLS-based AEWR as the starting point rate to adjust annually based on the percentage change in the ECI is a reasonable approach for AEWR determinations. Using the 2019 data from the FLS as the starting point and adjusting the wages using the ECI will provide greater wage continuity and avoid the further volatility that might occur if future FLS data were relied on to make year-to-year wage adjustments, which is beneficial for both farmworkers and employers, making it the preferred approach, even if FLS publication were resumed.

The Department has chosen not to use the OES survey to determine AEWRs for field and livestock worker job opportunities for several reasons. Most importantly, the OES survey does not include farm establishments that are directly engaged in the business of crop production and employ the majority of field and livestock workers. While establishments that support farm production participate in the H–2A program and are included in the OES survey, they constitute a minority of establishments in the country employing workers engaged in agricultural labor or services, and so data reported by these establishments is generally not as useful for purposes of calculating the AEWR for field and livestock workers. In addition, the OES currently cannot produce a statewide or regional wage for both the field worker and livestock worker categories in every year, so a methodology using the OES for these job opportunities would require use of different wage sources from year to year. Thus, use of the OES would be contrary to the Department's goal of establishing greater consistency, reliability, and predictability in wages year to year.

The decision to use the 2019 FLS wage data for field and livestock workers (combined) as the baseline to index future AEWRs for these occupations also addresses commenters' concerns regarding the complexity of the proposals related to disaggregated, occupation-specific AEWRs. It addresses the common concern among employers that the disaggregation of the field and livestock workers classification into various occupations would impose significant recordkeeping burdens and create artificial boundaries for the labor force beyond what is functionally appropriate to support farming operations, especially smaller operations. Use of the combined FLS wage for field and livestock workers will reduce recordkeeping burdens, especially in cases where workers are needed to perform a variety of field and livestock duties, as employers will be required to pay such workers the same wage rate for all of those duties. Similarly, because the overwhelming majority of job opportunities will not be subject to a SOC-based OES AEWR, the new methodology also largely addresses SWA concerns that the Department's proposal would have required SWAs and OFLC to conduct more in-depth review of applications, focusing on the identified occupation and wage assigned, to ensure the employer is using the correct wage. For the same reason, it also serves to alleviate some of the concerns of worker advocates regarding CO and SWA authority to determine appropriate SOCs and issue notices of deficiency to ensure correct classification of job opportunities.

b. Use of OES Wage Data for All Other Occupations

In the NPRM, the Department proposed to use the FLS to set the hourly AEWR except in limited circumstances where the FLS did not report a wage for an occupation or state or region. Under those circumstances, the Department proposed to use the statewide average hourly wage for the occupation using data from the OES survey, and noted that under the proposal, the OES statewide average hourly wage would be used to establish the AEWR if USDA ceased to conduct the FLS for budgetary or other reasons. After careful consideration of all comments received, and for the reasons explained below, the final rule requires that for all occupations other than field and livestock workers (combined), the hourly AEWRs will be annually adjusted and set by the statewide annual average hourly wage for the occupational classification, as reported by the OES survey. If the OES survey does not report a statewide annual average hourly wage for the SOC, the AEWR shall be the national annual average hourly wage reported by the OES survey.

While some commenters supported the use of occupation-specific FLS and OES data to set AEWRs and believed the proposed methodology would produce more accurate wages, many commenters worried that the proposal was too complex and difficult to administer and that the number of wage sources and potential wage rates would result in unpredictable and volatile wages. The Department acknowledges that to the extent the FLS did not consistently report data in each SOC for a state or region, under the proposal, the wage source used to establish the AEWR would have varied from year to year, which could have resulted in a much higher degree of year-to-year variability in the AEWR than exists under the current methodology. As discussed above, the Department does not control the production of new wage data from the FLS in future years, and the Department will now use only one wage source—the OES survey—to determine the AEWRs for occupations other than field and livestock workers (combined) and for geographic areas for which FLS did not report a state or regional wage for field and livestock workers (combined) in its November 2019 report. By using this wage source to set the AEWR for these occupations and geographic areas, employers will have certainty regarding the wage source that will be used to set the AEWRs and the Department will meet its statutory mandate to protect against adverse effect.

Several commenters, including employers, associations, and worker advocacy organizations, were concerned about the Department's proposal to rely on OES data where the FLS did not report a statewide or regional average wage for the occupation. Some commenters expressed concern that the OES surveys nonfarm establishments that support farm production, and urged the Department to rely on the FLS. The Department acknowledges commenters' concerns; however, the Department does not control the production of new wage data from the FLS and recognizes the continued uncertainty about ongoing availability of FLS data. Furthermore, the Department declines to use the FLS as a baseline with annual ECI adjustments to set the AEWR for occupations other than field and livestock workers (combined). While the FLS-based approach is more accurate than the OES for field and livestock workers (combined), as noted above, the OES is more accurate than the FLS for other agricultural occupations, such as supervisors, that the FLS did not adequately survey, and occupations that are more often for contracted-for services than farmer-employed (*e.g.,* construction, equipment operators supporting farm production), therefore its use will better protect against adverse effect for those occupations for which the FLS did not provide valid wage data at a state or regional level. An AEWR based solely on the field and livestock worker (combined) wage may have the effect of depressing wages in higher-paid occupations. This aspect of the methodology under the 2010 Final Rule appears to cause an adverse effect on the wages of workers in the United States similarly employed, contrary to the Department's statutory mandate.[64] And, as explained above, the Department recognizes the continued uncertainty about ongoing availability of FLS data, including to set the 2021 AEWRs.

Furthermore, the OES is a reliable wage survey that consistently produces annual average wages for nearly all SOCs and is widely used in the Department's other foreign labor certification programs. Additionally, because ''each set of OES estimates is calculated from six panels of survey data collected over three years,'' the commenters' concerns regarding the volatility of the AEWRs and significant spikes in the FLS wages in recent years, leading the Department to implement annual ECI adjustments for those wages, are also greatly diminished for the SOCs that will shift to the OES-based methodology.

Accordingly, the Department will use the statewide OES average hourly wage for occupations other than field and livestock workers (combined) or, if one is not available, the national OES average hourly wage reported for the SOC. One commenter was concerned that by factoring in wages in both non-metropolitan areas and metropolitan areas (where wages are higher because of a higher cost of living), the use of a statewide OES wage would mean that employers in non-metropolitan areas would be required to pay inflated wages. Another commenter expressed a similar concern with respect to statewide or national AEWRs generally. In the H–2B program, the Department generally establishes prevailing wages based on the OES survey for the SOC in a metropolitan or non-metropolitan area. However, as explained in prior rulemakings, the concern about localized wage depression is more pronounced in the H–2A program than in the H–2B program due to both the economic position of agricultural workers and the fact that the H–2A program is not subject to a statutory cap, which allows an unlimited number of nonimmigrant workers to enter a given local area.[65] Thus, a statewide wage is more likely to protect against wage depression from a large influx of nonimmigrant workers that is most likely to occur at the local level.[66] The use of a statewide wage also more closely aligns with the geographic areas from the FLS. For these reasons, the Department believes it is important to use the statewide OES wage where one exists for the particular occupation. In the limited circumstances in which there is no statewide wage, use of the national annual average hourly wage reported for the particular SOC will ensure an AEWR determination can be made each year without the need for any adjustment method.

c. Job Opportunities Covering Multiple SOCs Will Be Assigned the Highest AEWR for All Applicable SOCs

The Department also received many comments that expressed concerns about the proposal to require employers to pay the highest applicable wage if the job opportunity can be classified within more than one occupation. Several farm bureaus, associations, and agents asserted the policy would disproportionately impact small employers that may have no human resources personnel and must employ agricultural workers to perform a variety of similar, but distinct tasks on the farm to remain competitive. One small employer stated that use of separate occupational classifications would require the employer to hire more workers to perform distinct job duties and offer fewer hours to all workers. Another small employer noted that its U.S. workers perform duties ranging from driving tractors and operating forklifts to cleaning bathrooms. Some commenters asserted more generally that agricultural workers cannot be placed in ''silos'' because they are required to perform job duties outside of their job descriptions on occasion, not on a full-time basis, due to the nature of agricultural work or the need to respond to emergency situations and unforeseen circumstances. Some of these commenters expressed concern that the Department would classify jobs into the highest paid occupation in the particular state, leading to different occupational determinations in different states. An association commented that the states currently provide inconsistent occupation and wage determinations for similar job opportunities and expressed concern that occupation-based AEWRs would lead to inconsistent AEWRs from state-to-state for similar job opportunities.

Two Federal elected officials stated that assignment of the highest wage among multiple applicable occupations would contradict the purpose of the proposal to provide more accurate wages. A worker advocacy organization expressed concern that the proposal to assign the wage of the highest paid occupation would result in employers misclassifying job opportunities into lower-paid occupations to avoid wage obligations. A second worker advocacy organization asserted the proposal would not prevent misclassification of workers because the rule does not require submission of a separate application for work performed in multiple distinct occupations or provide any limitation on the kinds of duties workers may be expected to perform. The commenter suggested the Department should require employers to post at the worksite the AEWR for each occupational classification so that workers will know when they are misclassified. An SWA expressed similar concern that occupation-based AEWRs may encourage employers to misclassify workers into lower-paid job opportunities. Another commenter believed the difficulty of classifying job opportunities into occupational classifications would result in confusion among workers regarding the wage they would be paid at additional worksites.

Several commenters, including employers, associations, SWAs, and a worker advocacy organization, expressed concern or confusion regarding the method the Department would use to classify job opportunities into occupations within the SOC system. Noting that filing multiple applications under the current regulations has been burdensome and costly, three associations asked the Department to clarify whether employers will be required to file multiple applications for different job codes and urged the Department to permit an employer to list several SOC codes in one job order if they are all related to the same job opportunity. Many association commenters also sought clarification of the number of occupational categories the Department would use, including an association that noted the NPRM cited a different number of occupational categories for different states and did not mention some potential occupations, such as Pesticide Handlers and Sprayers (SOC 37–3012). Several commenters urged the Department to reduce the number of occupational categories it would consider, suggesting numbers ranging from four to six. Some associations and a State farm bureau specified five specific occupations: (1) Farmworkers and Laborers, Crop, Nursery, and

[64] 84 FR 36168, 36178; *see also id.* at 36182 (discussing the need to disaggregate ''wages of agricultural occupations that are dissimilar and that this may have the effect of inappropriately raising wages for lower-paid agricultural jobs while depressing wages in higher-paid occupations'').

[65] *See, e.g.,* 75 FR 6883, 6895.

[66] *Id.* at 6899 (The Department ''consistently has set statewide AEWRs rather than substate [] AEWRs because of the absence of data from which to measure wage depression at the local level'' and use of surveys reporting data at a broader geographic level ''immunizes the survey from the effects of any localized wage depression that might exist.'')

Greenhouse; (2) Farm Workers and Laborers, Farm, Ranch and Aquacultural Animals; (3) Agricultural Equipment Operators; (4) Graders and Sorters; and (5) Supervisors. Two associations specified the first four of the above categories and suggested supervisors could be a ''higher tier'' category derived from the others, such as ''packing-supervisor'' or ''livestock-manager.''

Most of these commenters urged the Department to ignore ''de minimis'' performance of duties or otherwise adopt some form of a primary or majority duties test, with some commenters suggesting the occupational classification should be based on work performed 51 or 75 percent of the time or should apply only if workers perform ''substantially the same'' duties as in the occupational description. An SWA asked if the proposal would separate workers into distinct agricultural occupations, such as agricultural carpentry as an occupation distinct from the general carpentry occupation and was concerned such a proposal would lower wages and disincentivize U.S. workers from applying for H–2A job opportunities. The SWA also expressed concern that OES wages for specific localities within a state would produce lower wages, disincentivize U.S. job seekers, and disadvantage workers who will have to commute longer distances for higher paid job opportunities in other parts of the state. A second SWA expressed concern that the occupation-specific wage proposal would require more in-depth review of H–2A applications by the SWAs and CO to determine that the appropriate occupation and wage are assigned.

A worker advocacy organization expressed concern that the proposed rule would shift occupational classification responsibilities from the SWAs to the Certifying Officers (COs) and, functionally, primarily to employers themselves, with only minimal review by COs. The commenter believed this would result in manipulation of duties and misclassification by employers and urged the Department to rely on SWAs to determine the proper occupational classification and issue Notices of Deficiency (NODs) for misclassification because SWAs are most knowledgeable about agricultural job opportunities and industries in local areas. The commenter urged the Department to provide SWAs authority to issue NODs for misclassification under 20 CFR 655.120(b)(5) and (d)(1) as proposed. The commenter also suggested revisions to the regulatory language proposed at 20 CFR 655.120(d)(1).

A law firm and a public policy organization objected specifically to application of the construction laborer SOC and corresponding OES wage to H–2A job opportunities because the nature of the work is very different. The law firm acknowledged that agricultural construction workers may perform some of the same tasks as non-agricultural workers, but asserted agricultural construction work generally requires less-skilled workers than non-agricultural construction work and the OES wage would not be representative of wages paid to agricultural construction workers. This commenter also asserted that immediate implementation of the OES wage rate would have ''catastrophic consequences'' for construction contractors because these employers typically operate under multiple year contracts. In contrast, a worker advocacy organization noted that contractors often employ nonagricultural workers in the H–2A program to construct, for example, livestock buildings for farmers at or near the AEWR. The commenter supported the proposal to provide an occupation-specific wage for agricultural construction job opportunities.[67]

The Department has considered all of these comments and has decided to adopt the language of the NPRM as proposed. Under this final rule, if the job duties on the *Application for Temporary Employment Certification* do not fall within a single occupational classification, the CO will determine the applicable AEWR based on the highest AEWR for all applicable occupational classifications. In the event an employer's job opportunity requires the performance of duties encompassed by two or more distinct occupational classifications (*e.g.,* an SOC occupation subject to the FLS-based AEWR and an SOC occupation subject to the OES AEWR, or two SOC occupations subject to different OES AEWRs), the Department will assign the highest AEWR among all applicable occupational classifications.

For example, a job opportunity involving driving duties may be properly classified under SOC 45–2091 (Agricultural Equipment Operators), SOC 53–3032 (Heavy and Tractor-Trailer Truck Drivers), or a combination of the two, depending on the duties described in the employer's job order. A job opportunity for workers to drive tractors and other mechanized, electrically-powered or motor-driven equipment on farms to plant, cultivate, and harvest a crop (including driving tractors in and out of fields carrying bins and driving forklifts to transfer and stack bins of full product onto trailers), which requires 12 months of experience operating such equipment, would be properly classified under SOC 45–2091 and subject to the FLS-based AEWR. In contrast, a job opportunity for workers to drive semi tractor-trailer trucks to and from specified destinations within area of intended employment (including maneuvering trucks into and out of loading and unloading positions as well as driving in both on-road (paved) and off-road conditions), which requires 12 months of experience operating such equipment and a valid Class A CDL or equivalent, would be properly classified under SOC 53–3032 and subject to the OES-based AEWR. In the event an employer seeks workers to both drive tractors and other mechanized, electrically-powered or motor-driven equipment on farms and semi tractor-trailer units, as described above, the employer's job opportunity constitutes a combination of SOC 45–2091 and SOC 53–3032, subject to either the FLS-based AEWR for SOC 45–2091 or the OES-based AEWR for SOC 53–3032, whichever is a higher rate per hour.

As explained in the NPRM, determining the appropriate occupational classification is an important component of the Department's decision to move to occupation-specific wages. Use of the highest applicable wage in these cases reduces the potential for employers to misclassify workers and imposes a lower recordkeeping burden than if the Department permitted employers to pay different AEWRs for job duties falling within different occupational classifications on a single *Application for Temporary Employment Certification.* This policy is consistent with the way the Department determines prevailing wage rates for jobs that cover multiple SOCs in the H–2B program. Under the final rule, employers who currently file a single *Application for Temporary Employment Certification* covering multiple workers and a wide variety of duties might choose to file separate *Applications for Temporary Employment Certification* and limit the duties of the job opportunities in each *Application for Temporary Employment Certification* to a single occupational classification. The employer would then pay a separate wage rate based on the duties of each job opportunity included in the separate

[67] The commenter also asserted that the Department has provided no justification for inclusion of these job opportunities in the H–2A program when the employer is not a farm operator. That point is outside the scope of this aspect of the proposed rule being finalized.

Applications for Temporary Employment Certification.

Many of the commenters' concerns regarding administrative burdens, impracticality, and complexity of the wage proposal have been addressed as a result of the changes to the proposed AEWR methodology discussed above, including assigning one AEWR for all of the SOC codes covered by the field and livestock workers (combined) category. The overwhelming majority of H–2A job opportunities will fall within the FLS field and livestock workers (combined) category, as reported in the USDA FLS data published in November 2019. Use of the combined FLS with ECI adjustments for field and livestock workers (combined) largely addresses commenters' concerns regarding the number of SOC occupations. However, the Department is not limiting the SOC codes applicable to job opportunities that fall outside of the field and livestock worker (combined) category to those suggested by commenters because the H–2A program is not limited to job opportunities classifiable within those occupations. Based on the statutory and regulatory framework governing the definition of what constitutes agricultural labor or services, the Department's experience is that a wide range of jobs within the U.S. agricultural economy, depending on the nature and location of work performed, could be eligible under the H–2A visa classification. Though the majority of job opportunities will be classifiable within a relatively small number of SOC codes, the Department has issued H–2A certifications to employers covering jobs classified in dozens of SOC codes, including more than three dozen in fiscal year 2019 alone.

The Department declines to permit employers to pay an AEWR based on the SOC in which work is ''primarily'' performed (*i.e.,* more than 50 percent), where multiple SOCs are covered by the job opportunity. Doing so could encourage employers to intersperse higher-skilled, higher-paying work among many workers so that the higher-paying work is never a duty ''primarily'' performed by any one employee. This would permit the employer to gain the benefit of that work without having to hire a U.S. worker at a higher wage to provide that work. The Department is also concerned with how this would work in practice. Such an approach would undermine the Department's goal of preventing the misclassification of workers and encourage employers to combine work from various SOCs. Ultimately, this approach runs an intolerable risk of adversely affecting the wages of workers in the United States similarly employed. Further, the Department believes commenters' concerns are overstated, because each SOC code encompasses a broad spectrum of job titles and covers a broad range of job duties.

With respect to the worker advocates' concerns about the SWA's role in review of SOC assignment, this final rule does not alter the authority or role of the SWA. SWAs will continue to review job orders—and SOCs therein—in the first instance following the ''SWA Review'' procedures in 20 CFR 655.121. Those procedures include an SWA-level NOD process, which the SWA may use to address wage offer, occupational classification, and other deficiencies the SWA identifies. The Department has not adopted the commenter's suggested regulatory revision, as the Department is not incorporating the language of proposed paragraph (d) into § 655.120 in this final rule.

6. Alternative Methodologies Proposed

The Department received many comments suggesting alternative methods of setting the AEWR that it chose not to adopt for the reasons explained below.

Comments from employers, associations, agents, state farm bureaus, and business advocacy organizations urged the Department to adopt a simplified AEWR methodology, including suggestions to use the state or Federal minimum wage, the minimum wage plus a fixed percentage, an AEWR based on changes in indices like the CPI, or an AEWR calculated based on the price of the agricultural commodity involved. Several commenters urged the Department to eliminate the AEWR and instead require employers to pay the State or Federal minimum wage or some form of enhanced minimum wage, which the commenters believed would provide employers a simpler and more uniform, consistent, and predictable wage determination. Other commenters suggested setting the AEWR at some fixed percentage or dollar amount above the applicable minimum wage, with suggestions ranging from 3 to 15 percent or one to two dollars above the minimum wage. One of those commenters suggested the enhancement should be lower if the applicable rate is the state minimum wage because these wages often exceed the Federal minimum wage. A few commenters suggested using a minimum wage as a baseline and updating the wage annually based on changes in the CPI, which they believed would provide certainty about wages and eliminate administrative costs related to conducting multiple surveys to determine AEWRs. Many of these commenters also suggested a cap on annual wage increases to avoid the annually compounded wage inflation they believed resulted from use of the FLS.

The Department declines to adopt these proposals. The Department establishes wages based on data related to actual wages paid to workers. For purposes of the AEWR, the Federal minimum wage does not sufficiently relate to the actual wages paid to similarly employed workers. The AEWR is meant to approximate the wage paid to workers in the United States similarly employed. Establishing a single national AEWR, either based on Federal minimum wage or applicable state minimum wage, that covers all occupations would not meet that purpose, as further demonstrated by how it would immediately and dramatically reduce the wages of both H–2A and similarly employed workers, particularly those performing work in dozens of states currently being paid a wage above the FY 2020 national AEWR based on the FLS. For similar reasons, the Department will not base the AEWR on a standard (*e.g.,* Federal or state minimum wage) below which many U.S. farmworkers would be expected to accept employment, and, in many instances, possibly disconnected from wages actually paid in the area of employment. As the Department noted in prior rulemaking, ''a single national AEWR applicable to all agricultural jobs in all geographic locations would prove to be below market rates in some areas and above market rates in other areas, resulting in all of the associated adverse effects that have been previously discussed.'' [68]

Further, a primary reason the Department has decided to use occupation-specific wage data for occupations like construction and farm labor supervisor is due to concern that the FLS combined field and livestock worker wage does not accurately reflect wages paid to higher-paid occupations in agriculture. An AEWR methodology based on the Federal or state minimum wage, even one incorporating annual increases based on a broad index, is likely to create or perpetuate the potential wage disparities this final rule aims to avoid when applied to more highly paid occupations.

For similar reasons, the Department declines to impose a cap on wage increases unrelated to actual wage data.

[68] Proposed Rule, *Temporary Agricultural Employment of H–2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement,* 73 FR 8537, 8550 (Feb. 13, 2008) (2008 NPRM).

Wage increases under both the ECI and OES survey are based on data of actual wages paid or wages projected to be paid to workers and therefore protect against adverse effect on the wages of workers in the United States similarly employed by tracking the increase or decrease in wages. Commenters did not provide a sufficient economic rationale to impose a cap that is unrelated to employer costs. Such a cap would also produce wage stagnation, most significantly in years when the wages of U.S. workers are rising faster due to strong economic and labor market circumstances.

a. Use Two-Tier System That Permits Paying H–2A Workers Lower Wages

An association suggested the Department should adopt a two-tiered wage system in which the Department would require employers to pay U.S. workers at least the AEWR, but would permit employers to pay H–2A workers a rate 25 percent below the AEWR. Similarly, a public policy organization suggested the Department should allow employers to pay foreign workers less than the currently required AEWR or prevailing wage if the employer agrees to pay U.S. workers 5 percent more than the required rate. The commenter believed that this would benefit U.S. workers because some employers would be willing to pay a higher wage to U.S. workers if the Department permitted them to pay less to H–2A foreign workers. A law firm suggested the Department should permit employers to pay the OES-determined rate to U.S. workers and pay the current FLS-based AEWR to foreign workers and increase penalties for failure to hire U.S. workers to ensure employers are not incentivized to prefer hiring H–2A workers.

The Department declines to adopt a two-tiered system by which U.S. workers must be offered a higher wage rate than that offered to foreign workers. To do so would provide a disincentive to the hiring of U.S. workers by allowing employers to hire foreign workers at lower wages.

b. Use Four-Tiered, Skill-Based Wage Structure

The public policy organization cited above also asserted that the statute, at 8 U.S.C. 1182(p)(4), ''foresees the possibility'' of a four-tiered wage structure and ''instructs'' the Department to establish wages at four wage levels based on experience, education, and the level of supervision. The commenter believed the Department should adopt this tiered wage structure even if not required by statute because this would more accurately reflect real-world wages, which are strongly correlated with a worker's level of skill.

The commenter refers to the H–1B Visa Reform Act of 2004,[69] which amended section 212(p) of the INA to provide that where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision.[70] That provision further notes that where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3 the difference between the two levels offered, adding the quotient thus obtained to the first level, and subtracting that quotient from the second level.[71]

The Department explained its reasons for not extending the tiered wage structure to the H–2A program in the 2010 Final Rule and has provided similar explanations in the H–2B rulemaking, most recently in the 2015 H–2B Wage Final Rule.[72] In the 2010 H–2A rule, the Department determined that ''the notion of meaningful skill differences among agricultural workers is unfounded'' and that the most common H–2A agricultural occupations ''involve skills that are readily learned in a very short time on the job, skills peak quickly, rather than increasing with long-term experience, and skills related to one crop or activity are readily transferred to other crops or activities.'' [73] The Department eliminated the tiered wage structure in the H–2B program for the same reasons and noted that wage differentials among workers in an occupation can be the result of many factors other than skill differentials.[74]

Importantly, the Department's practical experience has demonstrated that use of a four-tiered wage structure in the H–2A program leads to the overwhelming majority of H–2A job opportunities being classified at a level I wage, well below the median wage for the occupation.[75] The Department's experience using a tiered wage structure in the H–2B program led to a similar result and the Department ultimately determined that use of the tiered wage structure produced ''artificially lower [wages] to a point that [they] no longer represent[ed] a market-based wage.'' [76] The commenter above provided no evidence demonstrating the existence of meaningful skill differentials among workers within any particular H–2A occupation, much less a nexus between those differentials and wages paid to workers in the occupation that would necessitate the same four-tiered, skill-based wage structure in the H–2A program that the Department eliminated in prior rulemaking. Therefore, the Department declines to implement a tiered wage structure in this final rule.

c. Accounting for Perquisites, Removing Incentive Pay, and Other Suggestions To Reduce the AEWR

Many commenters, including trade associations, an employer, a law firm, and agents, recommended that the Department take into account additional costs that employers cover for H–2A workers, such as housing, meals, transportation, and other benefits, when determining the AEWR. Commenters noted that U.S. workers cover these expenses out of their net pay, making the H–2A rate artificially inflated. Several commenters reasoned that if the purpose of the AEWR is to set a wage rate that measures and protects against adverse effect (*e.g.,* by ensuring that employing H–2A workers is not less expensive than employing U.S. workers), considering the full cost of employing H–2A workers provides a more accurate picture of the expenses paid for H–2A workers than wages alone. One commenter objected, in particular, to the Department comparing H–2A AEWRs to H–2B prevailing wage rates for agricultural construction occupations, noting that the H–2B rates anticipate workers providing their own housing and transportation, while the H–2A program does not.

Some commenters suggested how the Department could account for these

[69] *Consolidated Appropriations Act, 2005,* Public Law 108–447, div. J, tit. IV, section 423; 118 Stat. 2809 (Dec. 8, 2004).

[70] 8 U.S.C. 1182(p)(4).

[71] 8 U.S.C. 1182(p)(4).

[72] Final Rule, *Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program,* 80 FR 24146 (Apr. 29, 2015).

[73] 75 FR 6883, 6900.

[74] 80 FR 24146, 24159 (citing factors including, but not limited to, ''[s]ize of employer; seniority; rate of worker turnover; union status; gender, race, ethnicity, or nationality; work hour schedule; age; availability of benefits in the form of training opportunity, health insurance, paid time off, and other benefits; sub-location within the same area of intended employment; and pay structure (performance-based pay vs. fixed pay per hour)'') (citation omitted).

[75] *See* 75 FR 6883, 6898 (noting that ''73 percent of applicants for H–2A workers specified the lowest available skill level—corresponding to the wage earned by the lowest paid 16 percent of observations in the OES data'' while ''[o]nly 8 percent of applicants specified a skill level that translated in a wage above the OES median'').

[76] Final Rule, *Wage Methodology for the Temporary Non-agricultural Employment H–2B Program,* 76 FR 3452, 3463 (Jan. 19, 2011); *see also* 80 FR 24146, 24155.

additional costs in relation to the AEWR. A trade association recommended the Department consider a ''wage credit'' to address the employer's housing costs, such as 10 percent of the worker's weekly earnings capped at not more than $75.00 per week with an annual adjustment using the same index as the Department uses to adjust the subsistence reimbursement minimum. An individual commenter suggested that housing provided to workers is worth about $2 per hour, without providing a basis for that figure, while an employer calculated its additional costs to employ H–2A workers at $5.61 per hour. An agent asked the Department to consider allowing the ''fair-market value of rent'' to count towards the required minimum wage in the H–2A program. An agent suggested the Department should allow a wage credit for the provision of food. An employer stated that the H–2A program needs an update because the wage rate they are assigned is 25 percent above the state minimum, and their expenses also include housing and transportation.

Some commenters more generally expressed concern that use of data sources that include incentive pay, such as piece rates or bonuses, and overtime in AEWR determinations created unfairly inflated AEWRs. Some of these commenters expressed that including incentive pay and overtime in AEWR determinations resulted in ''double counting,'' and, because such payments are a reflection of individual worker productivity and performance, inclusion of these forms of compensation results in inaccurate AEWR determinations. A public policy organization urged the Department to require payment of the AEWR to workers in corresponding employment only if the worker was hired after the H–2A worker because payment of the AEWR to existing workers is not necessary to protect those workers' wages.

The Department declines to adopt these suggestions because of its longstanding determination that such approaches would lead to an adverse effect on the wages of workers in the United States similarly employed in violation of the Department's statutory mandate. Requiring employers to guarantee an hourly AEWR based on a wage survey without adjustments for housing and other benefits costs has been the Department's interpretation of H–2A statutory requirements since the 1980s. In addition, the statute contemplates a wage rate that accounts for the lower wages that the introduction of foreign workers causes, as well as no-cost housing and transportation for workers outside the local commuting area, which is intended to make agricultural jobs more attractive to U.S. workers.[77] This suggestion by commenters fails to account for the fact that H–2A workers, and those U.S. workers who live outside of the normal commuting distance, do not permanently live in the area and presumably also have housing costs in their home community. Additionally, the presence of significant differences in the price/cost of housing, meals, transportation, and other benefits across the country would make establishing any ''wage credit'' impracticable. Finally, reducing the guaranteed hourly AEWR for all workers to account for the costs of housing and other benefits would unfairly penalize the wages of similarly employed workers in the United States who do not receive housing benefits.

The Department also declines to remove piece rates, bonuses, and other incentive-based pay from wage data used to determine the AEWR. As some agricultural jobs guarantee only the state or Federal minimum wage and otherwise pay based on a piece rate, advertising an hourly wage that does not include ''incentive pay'' is not a reasonable ''base rate'' for H–2A employers to advertise to U.S. workers. In addition, the approaches suggested would be inconsistent with the wage sources and approach the Department has adopted in the final rule. The OES survey collects wage data for straight-time, gross pay, exclusive of premium pay. Both the OES and the ECI measure of wages and salaries include, for example, commissions, production bonuses, piece rates, and other incentive-based pay.[78]

d. Application of Collective Bargaining Agreement Wages

An association recommended the Department permit employers to use a wage established in a bona fide collective bargaining agreement (CBA), even where the AEWR or prevailing wage rate is higher. The Department declines to permit employers to pay a wage below the AEWR based on a CBA. As explained above, the AEWR is the minimum rate the Department has determined is necessary to ensure the employment of H–2A workers does not adversely affect the wages of agricultural workers in the United States. As the Department noted in the 2010 Final Rule, due to relatively ''[l]ow educational attainment, low skills, . . . and high rates of unemployment, agricultural workers have limited ability to negotiate wages and working conditions with farm operators or agricultural services employers.''[79] While collective bargaining may improve these workers' positions, it may not do so enough to prevent downward pressure on workers in the United States similarly employed. The Department continues to share the concern of worker advocacy organization commenters recognizing the limited bargaining power of agricultural workers even when unionized. The AEWR provides a floor below which wages cannot be negotiated, providing necessary protections for this particularly vulnerable labor force.[80]

e. Use Median, Not Mean

A few commenters objected to the Department's use of the mean wage rate to calculate the AEWR. A trade association and an employer suggested that the Department calculate the AEWR using the median wage rate, instead of the mean wage rate, which they explained would prevent ''outliers'' on both the low and high end from unduly influencing the AEWR, and therefore produce a more representative wage rate. As noted in prior rulemaking, the Department believes use of the OES mean best meets the Department's obligation to protect against adverse effect and is the most appropriate wage to avoid immigration-induced labor market distortions.[81] The Department has a long-standing practice of using the average or mean wage, within the FLS and OES wage distributions, to determine the AEWR in the H–2A program and prevailing wages for other employment-based visa programs.

The Department declines to use the median because it does not represent the most predominant wage across a distribution, but instead represents only a midpoint. The mean is the best measure of central tendency for a normally distributed sample and provides equal weight to the wage rate received by each worker in the occupation across the wage spectrum. In low-skilled occupations, the mean represents the average wage paid to

[77] *See, e.g.,* 8 U.S.C. 1188(c)(4) (requiring H–2A employers to ''furnish housing in accordance with regulations'').

[78] *See* BLS, *Handbook of Methods: National Compensation Measures* (Dec. 15, 2017), *available at https://www.bls.gov/opub/hom/ncs/pdf/ncs.pdf;* BLS, *Occupational Employment Statistics Frequently Asked Questions, https://www.bls.gov/oes/oes_ques.htm* (last modified Apr. 15, 2020).

[79] 75 FR 6883, 6894.

[80] 74 FR 45906, 45911.

[81] *See* 80 FR 24146, 24159–24160; *see also* Interim Final Rule, *Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program, Part 2,* 78 FR 24047, 24058 (Apr. 24, 2013).

unskilled workers to perform jobs in the occupation. Setting the AEWR below the mean in the relatively low-skill agricultural occupations that predominate in the H–2A program would have a depressive effect on wages of workers in the United States similarly employed.

f. Establish the AEWRs Using Highest Among All Available Wage Sources

One worker advocacy organization urged the Department to require the highest of the FLS, OES, or other ''valid source'' wage rate for the area of intended employment, asserting that use of the FLS wage where a higher wage from the OES or another valid source is available would be indefensible. Similarly, a second worker advocacy organization suggested the Department require employers to pay the highest wage rate from among all available sources of wage data at all levels of geographic detail (*e.g.,* SWA prevailing wage survey data; state, regional, and national FLS data; and local, state, and national OES data). The commenter noted that the local wage is what U.S. workers expect to earn in a ''healthy market'' and asserted that sole reliance on state or regional FLS data would not take into consideration local wage differences that result from ''market or crop specialty factors.'' The commenter asserted that use of a lower wage rate based on broader surveys when a higher local OES rate is available would permit H–2A employers to undercut wages and would force other employers to lower wages to compete. The commenter suggested the Department revise § 655.120(b) to require the AEWR to be set at the annual average hourly gross wage for the occupational classification in the state or region as reported by the USDA's FLS, ''unless the statewide annual average hourly wage, or applicable regional annual mean hourly wage for the [SOC] reported in the OES survey is a higher average hourly rate, in which case the OES State or OES Metropolitan and Nonmetropolitan Area data rate, whichever is higher, will be the AEWR.''

This commenter also suggested the Department ensure that AEWRs will not be reduced in the future based on the proposed methodology and recommended revising § 655.120(b)(1)(ii) to provide that if an annual average hourly gross wage for the occupational classification in the state or region is not reported by the FLS, the AEWR for the occupational classification and state shall be the statewide annual average hourly wage for the SOC if one is reported by the OES survey with respect to any H–2A applications filed within following the effective date of this regulation, the AEWR shall be no lower than the applicable AEWR established for that region or state in 2019.

The Department declines to implement the commenter's proposal to retain the current AEWR methodology, while simultaneously instituting a new AEWR methodology and requiring employers to pay the highest of all wage sources across the current and proposed methodologies, as this would result in an exceedingly complex and confusing set of minimum wage guarantees. The Department must set the AEWR in a way that reasonably balances the needs and interests of workers in the United States similarly employed and employers and results in a wage that is a reasonable approximation of wages paid to workers in the United States similarly employed. Requiring payment of the highest wage rate among all available sources at all levels of geographic specificity, regardless of the occupation and area of intended employment, would in many cases require an employer to pay an enhanced wage untethered to actual wages paid to similarly employed workers in the area. This would not only unreasonably increase the labor costs of H–2A employers in those cases, but could reduce agricultural job opportunities and place upward pressure on wages in order for employers to attract a sufficient number of available workers. This result would be inconsistent with the twin purposes of the H–2A program to ''assure [employers] an adequate labor force on the one hand and to protect the jobs of citizens on the other.'' [82]

The Department also declines to require employers to pay the local OES wage rate for the occupation if this rate is higher than rate determined by the applicable source under this final rule. For the reasons stated in the NPRM and above, the FLS should be used as the baseline to set the AEWR for field and livestock worker (combined) job opportunities—such as those requiring crop, nursery, and greenhouse workers (SOC 45–2092) and workers attending to farm or ranch animals (SOC 45–2093)—which constitute the overwhelming majority of employer requests for H–2A workers. The FLS is the preferred wage source for establishing the AEWR in these occupational classifications for the reasons discussed above. All other AEWRs will be established by using the OES survey, including in the unique circumstance that a wage rate for these occupations is not available from the FLS.

Regarding the use of local OES data, the Department is retaining use of geographically broader data sets for reasons explain above. The Department is using a statewide, or in some cases national, OES-based AEWR both to more closely align with the geographic areas from the FLS and to protect against the potential for wage depression from a large influx of nonimmigrant workers that is most likely to occur at the local level. The Department ''consistently has set statewide AEWRs rather than substate [ ] AEWRs because of the absence of data from which to measure wage depression at the local level'' and use of surveys reporting data at a broader geographic level ''immunizes the survey from the effects of any localized wage depression that might exist.'' [83] As explained above and in prior rulemaking, use of a broader geographic scope to determine the AEWR is consistent with the statute and addresses the unique nature of the agricultural labor force and the migratory pattern of employment and AEWRs. Data from a broader geographic span ''may serve to mobilize domestic farm labor in neighboring counties and States to enter the subject labor market over the longer term and obviate the need to rely on importation of foreign labor on an ongoing basis.'' [84]

Further, the use of local OES wages would introduce significant complexities in establishing the offered wage. For example, agricultural associations filing master applications that cover members and worksites across two states or other occupations engaged in itinerant work across multiple states would have to keep pace with literally dozens of different minimum wage rates and the potential adjustments to each of those during the course of a work contract period. The wage payment, recordkeeping, and compliance burden associated with that kind of AEWR methodology would be substantial and unjustifiable. Finally, as noted above, the Department also proposed a revised prevailing wage determination methodology in the NPRM, which, if adopted in a separate final rule, would likely impact the number of prevailing wages that are established for H–2A job opportunities. Employers are currently required to pay the prevailing wage if higher than the AEWR and this wage rate is specifically tailored to crop or agricultural activities and geographic areas, as it may be based on a sub-state area when appropriate.

[82] 54 FR 28037, 28044 (citations omitted).

[83] *See* 75 FR 6883, 6899.

[84] *Id.*

7. Comments Beyond the Scope of This Rulemaking

The Department also received several comments that were beyond the scope of this rulemaking. Some comments were specifically related to reforestation employers, and were not addressed because the definition of *agricultural labor or services* at 20 CFR 655.103(c), and the Department's proposal to incorporate reforestation and pinestraw activities into the H–2A program, is not included in this final rule. Some commenters expressed concerns about housing obligations. Several comments related to AEWRs for job opportunities in the herding and production of livestock and suggested the Department revisit the wage rate methodology at 20 CFR 655.211(c). For example, one commenter suggested that the monthly AEWR should account for commodity pricing. Another commenter objected to the Department's annual adjustment of the monthly AEWR for range occupations governed by the procedures in §§ 655.200 through 655.235 using the ECI, noting that employers of such workers are required to provide all food, housing, tools and equipment without cost to the worker. The commenter requested the Department permit a ''wage credit'' for the provision of food both to mitigate the combined impact of the ECI and the ''consumer price index'' on such employers' costs and for consistency with the requirements placed on H–2A employers outside of range herding occupations. However, these comments are outside the scope of this rulemaking.

A state agency expressed concern that the use of the AEWR for a particular occupation at an annual average hourly gross wage was not inclusive of service agricultural positions, and suggested that BLS work closely with the sheep-shearing industry before completing the OES, with careful consideration of how an hourly gross wage would negatively impact industries paying workers piece rates. Two commenters recommended the Department expand the wage data used to calculate AEWRs to include H–2A workers' wages in areas where more than 10 percent of the agricultural workforce is composed of H–2A workers and workers in corresponding employment. These commenters stated that H–2A wage requirements, whether due to the AEWR or prevailing wage rate, drive up non-H–2A wages and skew survey results in areas where H–2A workers represent a substantial percentage of the agricultural workforce. Further, these commenters requested the FLS continue to include the wages of U.S. workers in corresponding employment in states that meet the 10 percent threshold they recommended the Department employ for the AEWR.

These comments are beyond the scope of this rulemaking and the Department's authority, as they recommend changes to the methodology of the surveys the Department proposed to use to determine hourly AEWRs. As the Department noted in the NPRM with respect to potential changes to the FLS, the Department would engage in notice-and-comment rulemaking before implementing significant changes to AEWR data collection and reporting methods.[85]

III. Administrative Information

A. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563 and Improving Regulation and Regulatory Review; Executive Order 13771; and the Congressional Review Act

Under E.O. 12866, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB.[86] Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.[87] This final rule is an economically significant regulatory action under this section and was reviewed by OIRA. This final rule is a deregulatory action under E.O. 13771 because the Department expects the unquantified cost savings of this final rule will outweigh the total annualized costs associated with rule familiarization.

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), OIRA has designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2). Under the Congressional Review Act (CRA), a major rule ordinarily takes effect 60 days after the date it is published.[88] An exception to the delay in a rule's effective date exists, however, in cases where ''an agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[89] Because the full 60-day waiting period from the date this rule is published to the date it becomes effective is unnecessary and would result in the very kind of disruption to the conduct of regulated entities that the rule is meant, in some degree, to ameliorate, the Department has determined that there exists good cause under the CRA to have this rule take effect less than 60 days from the date of publication. In the Department's judgment 45 days is sufficient time, given the nature of this rule, to allow Congress and the regulated community an opportunity to review and assess the rule before it becomes operative, and is the appropriate delayed effective period in light of the significant potential for confusion and disruption among affected parties if the rule were to have a later effective date.

The Department has determined that a 60-day waiting period between publication and the effective date of this rule would result in serious disruption and uncertainty for regulated parties. The Department's regulations require that it ''publish, at least once in each calendar year, on a date to be determined by the OFLC Administrator, the AEWRs for each State as a notice in the **Federal Register**.'' 20 CFR 655.120. The Department has not yet published notice of new AEWRs for calendar year 2021, and therefore must do so before January 1st to avoid violating its own regulations. If this rule were not in effect in time to allow the Department to publish AEWRs calculated under the new methodology, the Department would have to publish AEWRs determined according to the methodology in the 2010 Final Rule.

Even assuming data from the FLS were available to calculate AEWRs under the prior methodology, doing so would likely lead to significant confusion for affected parties given that, shortly after this calendar year's notice is published, a new methodology resulting from this rule would be in effect, and the Department would again adjust the AEWRs to ensure they align with what the Department has determined is the appropriate wage rate

[85] *See* 84 FR 36168, 36179, n.30 (Jul. 26, 2019).

[86] E.O. 12866 of Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993).

[87] *Id.* at 51738.

[88] 5 U.S.C. 801(a)(3).

[89] 5 U.S.C. 808.

for the H–2A program. These kinds of disruptive and nearly contemporaneous changes in the obligations the Department imposes on regulated entities engenders the precise kind of instability and unpredictability in the wages employers must pay to workers that the Department seeks to reduce through this rulemaking. Avoiding such disruption is sufficient grounds for shortening the delay between publication and when the rule becomes effective.[90]

Moreover, the purpose of delaying the effective date of a regulation is, generally speaking, ''to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' [91] Relatedly, the CRA ''provides for a 60-day waiting period before the agency may enforce the major rule so that Congress has the opportunity to review the regulation.'' [92] By delaying the effective date for a specified period after the contents of the rule have been made public, the CRA gives both Congress and the public an opportunity to assess and understand the rule before its operation requires changes in the behavior of regulated entities.

Here, the effective date of the rule will not precipitate an immediate impact on the interests or obligations of affected parties. A 60-day delay in the rule's effectiveness is therefore unnecessary. As explained above, for the overwhelming majority of job opportunities covered by the new AEWR methodology, the rule maintains, for the next two years, the existing wage rates currently in effect. This preserves the status quo for an extended period to give regulated entities sufficient opportunity to prepare for the new manner in which wage rates will be adjusted.

Similarly, if new wage rates were calculated and published under the prior methodology before the end of this calendar year, they would not become applicable until after a 14-day delay under the Department's customary practices.[93] That means that, even if the effective date of this rule were delayed by the full 60 days, wage rates calculated under the prior methodology likely would not alter the wages to which U.S. and foreign workers are entitled before the new methodology would become effective early next year, at which point the Department could adjust the wage rates accordingly. There would be no practical effect on the wages paid, even while, as noted above, the issuance of two separate sets of AEWRs, published only weeks apart, would sow the type of confusion and uncertainty that this rule is meant to prevent.

Thus, the rule taking effect does not meaningfully alter, in the short term, the status quo, meaning the full 60-day delay between publication and when the rule becomes operative is not necessary to satisfy the purposes of the CRA.[94] Because the rule gives parties time to assess and understand the rule even after it takes effect, shortening the period between the rule's publication and its effective date is consistent with the delayed effectiveness required by the CRA.[95]

For these reasons, the Department has determined it has good cause to shorten the lapse under the CRA by 15 days between when the rule is published and when it takes effect. The Department has typically published AEWR notices in mid-to-late December, and, in the Department's experience, there can be as much as a week's delay between when the Department finalizes such notices and when they are actually published. In light of these considerations, and given that the new methodology must be effective this calendar year to avoid the disruption described above, the Department has determined that shortening the CRA waiting period by 15 days is necessary to the effective administration of the H–2A program. Because this rule is being published in early November, a waiting period of 45 days is, in the Department's judgment, appropriate as it leaves adequate time for the Department to establish AEWRs under the new methodology before the end of the calendar year, while not shortening the CRA waiting period beyond what is necessary to avoid the kinds of disruption that the full 60-day waiting period would entail.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits.[96] E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.[97]

Outline of the Analysis

Section III.A.1 describes the need for the final rule, and section III.A.2 describes the process used to estimate the costs of the rule and the general inputs used, such as wages and number of affected entities. Section III.A.3 explains how the provisions of the final rule will result in quantifiable costs and transfer payments and presents the calculations the Department used to estimate them. In addition, section III.A.3 describes the unquantified transfer payments of the final rule. Section III.A.4 summarizes the estimated first-year and 10-year total and annualized costs and transfer payments of the final rule. Finally, section III.A.5 describes the regulatory alternatives that were considered during the development of the final rule.

Summary of the Analysis

The Department estimates that the final rule will result in costs and transfer payments. As shown in Exhibit 1, the final rule is expected to have an annualized cost of $70 thousand and a total 10-year quantifiable cost of $460 thousand at a discount rate of 7 percent.[98] The final rule is estimated to result in annual transfer payments from H–2A employees to H–2A employers of $170.68 million and total 10-year transfer payments of $1.68 billion at a discount rate of 7 percent.[99]

[90] *See Buckeye Cablevision, Inc.* v. *F.C.C.,* 387 F.2d 220, 228 n.34 (D.C. Cir. 1967).

[91] *Omnipoint Corp.* v. *F.C.C.,* 78 F.3d 620, 630 (D.C. Cir. 1996); *See also Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992) (''Unlike the notice and comment requirements, which are designed to ensure public participation in rulemaking, the 30-day waiting period is intended to give affected parties time to adjust their behavior before the final rule takes effect.'').

[92] *Liesegang* v. *Sec'y of Veterans Affairs,* 312 F.3d 1368, 1375 (Fed. Cir. 2002); *See also* Office of Mgmt. & Budget, Exec. Office of the President, Guidance on Compliance with the Congressional Review Act 2 (2019).

[93] *See, e.g., Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2020 Adverse Effect Wage Rates for Non-Range Occupations,* 84 FR 69774 (Dec. 19, 2019).

[94] *See Nat. Res. Def. Council* v. *Abraham,* 355 F.3d 179, 202 (2d Cir. 2004).

[95] *Cf. Black* v. *Pritzker,* 121 F. Supp. 3d 63, 81 (D.D.C. 2015).

[96] E.O. 13563 (Jan. 18, 2011), 76 FR 3821 (Jan. 21, 2011).

[97] *Id.*

[98] The final rule will have an annualized cost of $0.05 million and a total 10-year cost of $0.46 million at a discount rate of 3 percent in 2020 dollars.

[99] The final rule will have annualized transfer payments from H–2A employees to H–2A employers of $169.10 million and a total 10-year transfer payments of $1.44 billion at a discount rate of 3 percent in 2020 dollars.

EXHIBIT 1—ESTIMATED MONETIZED COSTS, COST SAVINGS, NET COSTS, AND TRANSFER PAYMENTS OF THE FINAL RULE

[2020 $millions]

	Costs	Transfer payments
Undiscounted 10-Year Total	$0.46	$1,677.61
10-Year Total with a Discount Rate of 3%	0.46	1,442.50
10-Year Total with a Discount Rate of 7%	0.46	1,198.77
10-Year Average	0.05	167.76
Annualized at a Discount Rate of 3%	0.05	169.10
Annualized with at a Discount Rate of 7%	0.07	170.68
Perpetuated Net Costs * with a Discount Rate of 7% (2016$ Millions)		

* Net Cost Savings = [Total Cost Savings] − [Total Costs].

The total cost of the final rule is associated with rule familiarization. Transfer payments are the results of changes to the methodology for determining the AEWRs. See the costs and transfer payments subsections of section III.A.3 (Subject-by-Subject Analysis) below for a detailed explanation.

The Department was unable to quantify some transfer payments of the final rule. The Department describes them qualitatively in section III.A.3 (Subject-by-Subject Analysis).

1. Need for Regulation

The Department has determined that this rulemaking is necessary to ensure that employers can access legal agricultural labor, without undue cost or administrative burden, while maintaining the program's strong protections for the U.S. workforce. Consistent with the goal of modernizing the H–2A program, this final rule amends the methodology by which the Department determines the hourly AEWRs for non-range agricultural occupations using wage data reported by the USDA FLS and the BLS OES survey. It also makes minor revisions related to the regulatory definition of the AEWR to conform to the methodology changes adopted in this final rule and to more clearly distinguish the hourly AEWRs applicable to non-range occupations from the monthly AEWR applicable to range occupations under 20 CFR 655.200 through 655.235.

As discussed above, the FLS has been the only comprehensive survey of wages paid by farmers and ranchers and has enabled the Department to establish minimum hourly rates of pay for H–2A job opportunities. However, the Department acknowledges the concerns expressed by many commenters about the unpredictability and volatility of the wage data from year-to-year, which the Department believes is a sufficient reason to reconsider its sole reliance on annually produced wage data from the FLS as a means to establish the AEWRs, even were FLS data currently available or made available in the future. On the other hand, given the comprehensiveness and relevance of the FLS data, the Department has determined it is appropriate to use the 2020 AEWRs,[100] which were based on the results of the FLS published in November 2019, to establish AEWRs for most H–2A job opportunities during calendar years 2021 and 2022 and, as the starting point, subject to annual adjustments, to establish most AEWRs in subsequent years. Accordingly, the Department will freeze wage rates for field and livestock worker occupations at based on November 2019 FLS data and adjust these wages annually beginning in 2023 based on the change in the ECI for wages and salaries computed by the BLS. This two-year transition period provides employers with a reasonable amount of time to plan their labor needs and agricultural operations under the new wage requirements. Using the current, 2020 AEWRs as the starting point also ensures that employers will not be subject to further volatility in wage adjustments when this rule takes effect because the Department will be relying on the wage rates that employers are already paying. For all other occupations, the Department, as explained in Section II.B.5.b., will annually adjust and set the hourly AEWRs based on the statewide annual average hourly wage for the occupational classification, as reported by the OES survey. If the OES survey does not report a statewide annual average hourly wage for the occupation, the AEWR shall be the national annual average hourly wage reported by the OES survey.

On September 30, 2020, USDA publicly announced its intent to cancel the October 2020 data collection and resulting publication of the Farm Labor report.[101] Consequently, NASS may not release its November 2020 report containing the annual gross hourly rates for field and livestock workers (combined) for each State or region based on quarterly wage data collected from employers during calendar year 2020. Under the Department's current AEWR methodology, this annual report is used to establish and publish the hourly AEWRs for the next calendar year period on or before December 31, 2020. NASS is not legally required to produce the annual Farm Labor reports has suspended collection on at least two prior occasions.[102] USDA's decision to suspend data collection and the release of the report planned for November 2020 has been challenged in litigation.[103] That litigation challenges whether USDA provided adequate reasons for its decision to suspend data collection and whether it considered important aspects of its decision, and USDA was recently ordered to proceed with the collection of FLS data for 2020. The litigation does not challenge, however, USDA's discretion—if adequately explained—to terminate the FLS at any time. Therefore, regardless of whether USDA is ultimately successful in the ongoing litigation, it will remain the case that no statute or regulation requires that USDA perform the FLS. The Department has determined that this uncertainty regarding the near- and long-term future of the FLS also weighs in favor of the Department establishing now a revised methodology for

[100] Notice, *Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2020 Adverse Effect Wage Rates for Non-Range Occupations,* 84 FR 69774 (Dec. 19, 2019).

[101] 85 FR 61719; *see also* USDA, *USDA NASS to Suspend the October Agricultural Labor Survey* (Sept. 30, 2020), *https://www.nass.usda.gov/Newsroom/Notices/2020/09-30-2020.php.*

[102] 76 FR 28730 (May 18, 2011); 72 FR 5675 (Feb. 7, 2007).

[103] *See United Farm Workers* v. *Perdue,* No. 1:20–cv–01432–DAD–JLT (E.D. Cal. filed Oct. 13, 2020).

determining the AEWR, given its importance to the Department's administration of the labor certification requirement. Accordingly, the Department has determined it is necessary to issue this final rule to establish the new hourly AEWR methodology, and to do so before the end of the calendar year in order to ensure there is no disruption in setting the AEWRs for calendar year 2021.

As discussed in this final rule, the Department believes that the FLS data is the most appropriate wage source for establishing AEWRs for the majority of H–2A job opportunities. For example, the FLS has been the only comprehensive survey of wages paid by farmers and ranchers that has enabled the Department to establish hourly rates of pay for H–2A opportunities. Because doing so will be more predictable, less volatile, and easier to understand, while also ensuring protection of U.S. workers' wages and accurate AEWRs for job opportunities in higher-skilled occupations not adequately represented or reported by USDA in the current FLS data, and given that it may no longer be possible for the Department to rely on new wage data from the FLS, and that, even if such data were available, relying on it to make new adjustments to the AEWRs would likely cause, in some cases, the kinds of volatile and unpredictable wage fluctuations the Department seeks to avoid going forward, the Department has determined it is appropriate to use the 2020 AEWRs, which were based on the results from the FLS published in November 2019, as the foundation to establish AEWR for most H–2A job opportunities. Accordingly, the Department will use this FLS data for the specified SOCs and adjust the wages based on the ECI computed by the BLS.

2. Analysis Considerations

The Department estimated the costs and transfer payments of the final rule relative to what would happen in the absence of the rule (*i.e.,* the current practices for complying, at a minimum, with the H–2A program as currently codified at 20 CFR part 655, subpart B). Ordinarily, there are some uncertainties in predicting the future, but this is particularly problemmatic because the regulatory provision that is being replaced required use of the USDA's FLS, which has been suspended for October 2020. Therefore, what would have happened in the absense of this rule is speculative. Here, we have assumed that in the absense of this rule the AEWRs would continue to increase at the same rate that it would have in previous years. However, other outcomes could also have occurred. For example, employers might have concluded that in the absense of an updated FLS they would be subject to the previously existing AEWRs. This would be quite similar to the policy adopted for 2021 and 2022 in the final rule and so under this approach the final rule would be estimated to have substantially smaller transfers than we have estimated here.

In accordance with the regulatory analysis guidance articulated in OMB's Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the final rule (*i.e.,* costs and transfer payments that accrue to entities affected). The analysis covers 10 years (from 2021 through 2030) to ensure it captures costs and transfer payments that accrue over time. The Department expresses all quantifiable impacts in 2020 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A–4.

Exhibit 2 presents the number of entities that are expected to be affected by the final rule. The number of affected entities is calculated using OFLC certification data from 2016 through 2019. The Department provides this estimate and uses it to estimate the costs of the final rule.

EXHIBIT 2—NUMBER OF AFFECTED ENTITIES BY TYPE

[FY 2016–2019 average]

Entity type	Number
Unique H–2A Applicants	8,050

Growth Rate

The Department estimated growth rates for applications processed and certified H–2A workers based on FY 2012–2019 H–2A program data, presented in Exhibit 3.

EXHIBIT 3—HISTORICAL H–2A PROGRAM DATA

Fiscal year	Applications certified	Workers certified
2012	5,278	85,248
2013	5,706	98,814
2014	6,476	116,689
2015	7,194	139,725
2016	8,297	165,741
2017	9,797	199,924
2018	11,319	242,853
2019	12,626	258,446

The geometric growth rate for certified H–2A workers using the program data in Exhibit 3 is calculated as 17.2 percent. This growth rate, applied to the analysis time-frame of 2021 to 2030, would result in more H–2A certified workers than projected Bureau of Labor Statistics (BLS) workers in the relevant H–2A SOC codes.[104] Therefore, to estimate realistic growth rates for the analysis, the Department applied an autoregressive integrated moving average (ARIMA) model to the FY 2012–2019 H–2A program data to

[104] Extrapolating BLS 2029 projections for combined agricultural workers and comparing with a 17.2 percent growth rate of H–2A workers, yields estimated H–2A workers that are about 115 percent larger than extrapolated BLS 2029 projections to 2030. The projection of workers for the agricultural sector was obtained from BLS's Occupational Projections and Worker Characteristics, which may be accessed at *https://www.bls.gov/emp/tables/occupational-projections-and-characteristics.htm.*

forecast workers and applications, and estimate geometric growth rates based on the forecasted data.

The Department ran multiple ARIMA models on each set of data and used common goodness-of-fit measures to determine how well each ARIMA model fit the data.[105] Multiple models yielded indistinctive measures of goodness of fit. Therefore, each model was used to project workers and applications through 2030. Then, a geometric growth rate was calculated using the forecasted data from each model and an average was taken across each model. This resulted in an estimated growth rate of 6.2 percent for both H–2A applications and H–2A certified workers. The estimated growth rates for applications (6.2 percent) and workers (6.2 percent) were applied to the estimated costs and transfer payments of the final rule to forecast employer participation in the H–2A program.

Estimated Number of Workers and Change in Hours

The Department presents the estimated average number of applicants and the change in burden hours required for rule familiarization in section III.A.3 (Subject-by-Subject Analysis).

Compensation Rates

In section III.A.3 (Subject-by-Subject Analysis), the Department presents the costs, including labor, associated with the implementation of the provisions of the final rule. Exhibit 4 presents the hourly compensation rates for the occupational categories expected to experience a change in the number of hours necessary to comply with the final rule. The Department used the mean hourly wage rate for private sector human resources specialists.[106] Wage rates are adjusted to reflect total compensation, which includes nonwage factors such as overhead and fringe benefits (*e.g.,* health and retirement benefits). We use an overhead rate of 17 percent[107] and a fringe benefits rate based on the ratio of average total compensation to average wages and salaries in 2019. For the private sector employees, we use a fringe benefits rate of 43 percent.[108] We then multiply the loaded wage factor by the wage rate to calculate an hourly compensation rate. The Department used the hourly compensation rates presented in Exhibit 4 throughout this analysis to estimate the labor costs for each provision.

EXHIBIT 4—COMPENSATION RATES

[2020 dollars]

Position	Grade level	Base hourly wage rate (a)	Loaded wage factor (b)	Overhead costs (c)	Hourly compensation rate d = a + b + c
Private Sector Employees					
HR Specialist	N/A	$33.52	$14.35 ($33.52 × 0.43)	$5.70 ($33.52 × 0.17)	$53.57

3. Subject-by-Subject Analysis

The Department's analysis below covers the estimated costs and transfer payments of the final rule. In accordance with Circular A–4, the Department considers transfer payments as payments from one group to another that do not affect total resources available to society. This final rule maintains the methodologies for estimating the cost of rule familiarization and the transfer payments associated with the AEWR wage structure from the NPRM. However, the AEWR wage structure proposed in the NPRM has been replaced with a wage structure for the final rule that is substantively different and is discussed in more detail in the estimation of transfer payments.

Costs

The following section describes the costs of the final rule.

Quantifiable Costs

a. Rule Familiarization

When the final rule takes effect, H–2A employers will need to familiarize themselves with the new regulations. Consequently, this will impose a one-time cost in the first year.

To estimate the first-year cost of rule familiarization, the Department applied the growth rate of H–2A applications (6.2 percent) to the number of unique H–2A applicants (8,050) to determine the number of unique H–2A applicants impacted in the first year. The number of unique H–2A applicants in the first year (8,551) was multiplied by the estimated amount of time required to review the rule (one hour).[109] This number was then multiplied by the hourly compensation rate of Human Resources Specialists ($53.57 per hour). This calculation results in a one-time undiscounted cost of $458,099 in the first year after the final rule takes effect. This one-time cost yields a total average annual undiscounted cost of $45,810. The annualized cost over the 10-year period is $53,703 and $65,223 at discount rates of 3 and 7 percent, respectively.

Transfer Payments

The following section describes the transfer payments of the final rule.

Quantifiable Transfer Payments

This section discusses the quantifiable transfer payments related to revisions to the wage structure.

a. Revisions to the AEWR Methodology

Section 218(a)(1) of the INA, 8 U.S.C. 1188(a)(1), provides that an H–2A

[105] The Department estimated models with different lags for autoregressive and moving averages, and orders of integration: ARIMA(0,2,0); (0,2,1); (0,2,2); (1,2,1); (1,2,2); (2,2,2). For each model we used the Akaike Information Criteria (AIC) goodness of fit measure.

[106] BLS, *Occupational Employment and Wages, May 2019: 13–1071 Human Resources Specialist, https://www.bls.gov/oes/current/oes131071.htm* (last modified July 6, 2020). Because the OES wage rate is in 2019 dollars, the Department inflated to 2020 dollars using the ECI to be consistent with the rest of the analysis which is in 2020 dollars.

[107] Cody Rice, U.S. Environmental Protection Agency, *Wage Rates for Economic Analyses of the Toxics Release Inventory Program* (June 10, 2002), *available at https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[108] BLS, *Employer Costs for Employee Compensation, https://www.bls.gov/news.release/ecec.toc.htm* (last modified Sept. 17, 2020) (ratio of total compensation to wages and salaries for all private industry workers).

[109] This estimate reflects the nature of the final rule. As a rulemaking to amend to parts of an existing regulation, rather than to create a new rule, the one-hour estimate assumes a high number of readers familiar with the existing regulation.

worker is admissible only if the Secretary of Labor determines that there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In 20 CFR 655.120(a), the Department meets this statutory requirement by requiring the employer to offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing wage, the agreed-upon collective bargaining wage, the Federal minimum wage, or the state minimum wage. As discussed in detail earlier in this preamble, the Department has carefully considered public comments related to the proposed changes to the methodology by which it establishes the AEWRs, and has made substantive revisions in this final rule.

Public Comment: The Department received one comment on the NPRM transfer payments from the proposed wage option. One commenter said the Department had underestimated the transfer of debt burden to workers because of a discrepancy in the number of certified H–2A workers for 2018 used in the Department's calculations in the NPRM, citing OFLC data and the Department of State's data on the number of non-immigrant visas issue in fiscal year (FY) 2018.

As explained in the NPRM, the total number of certified workers is based on the average number of H–2A workers in FY 2016 and FY 2017. Based on the Department's NPRM estimate for H–2A workers' certified growth rate of 0.19, the estimated number of certified workers for FY 2018 is 223,411, which is closer to the figure provided by OFLC. Transfer payments computed under this final rule are reflective of the changes adopted to the AEWR methodology and are substantively different from transfer payments presented in the NPRM.

This final rule revises the AEWR methodology so that it is based on data more specific to the agricultural occupation of workers in the United States similarly employed. The Department currently sets the AEWR at the annual average hourly gross wage for field and livestock workers (combined) for the state or region from the FLS conducted by the USDA's NASS, which results in a single AEWR for all agricultural workers in a state or region. As discussed in depth in the preamble, the Department is concerned that this AEWR methodology may have an adverse effect on the wages of workers in higher paid agricultural occupations, such as construction laborers on farms, whose wages may be inappropriately lowered by an AEWR established from the wages of field and livestock workers (combined), an occupational category from the FLS that does not include those supervisory workers.

The Department will set the AEWR under this final rule based on the USDA 2019 FLS for the following SOC codes:

- 45–2041—Graders and Sorters, Agricultural Products
- 45–2091—Agricultural Equipment Operators
- 45–2092—Farmworkers and Laborers, Crop, Nursery and Greenhouse
- 45–2093—Farmworkers, Farm, Ranch, and Aquacultural Animals
- 53–7064—Packers and Packagers, Hand
- 45–2099—Agricultural Workers, All Other

Beginning on the effective date of the final rule through calendar year 2022, the wages for Field Workers and Livestock Workers (combined), as reported for the state or region by the USDA 2019 FLS, shall continue to be the AEWRs where the agricultural services or labor is classified under the above SOC codes. Beginning calendar year 2023 and annually thereafter, the AEWRs based on FLS will be adjusted by the percent change in the BLS ECI for the preceding 12 months.

For all other SOC codes, the Department will annually set the AEWRs based on the statewide annual average gross hourly wage reported by the BLS OES survey. If the OES survey does not report a statewide annual average gross hourly wage for the SOC, the AEWR shall be the national annual average gross hourly wage reported by the OES survey.

To estimate wage impacts, the Department uses FY2016 through FY2020 OFLC labor certification data. To include the most recent H–2A certification data (FY2020) the Department simulated Q3 and Q4 data based on FY2016–FY2019 data, to produce a full year of certification data.[110] For the most common SOC codes (45–2091, 45–2092, and 45–2093), the Department calculated the average certification growth rate from FY2016 to FY2019 by SOC and state, and then determined the average annual growth rate. In some cases, due to small numbers of certifications in certain states for a specific SOC in each year, the growth rates were unreasonably high or low (greater than 80 percent or less than 80 percent growth). In such cases, the Department applied the national growth rate for the applicable SOC. Next, the Department calculated the number of certifications that had work in each quarter of 2019 by state, and SOC, and applied the applicable growth rate to quarters three and four to estimate FY2020 quarters three and four certifications. For all other SOC codes, the Department took the average of the number of certifications for each SOC and state from FY2016 to FY2019. The Department also needed to estimate the period of need, number of workers per certification, and number of hours per certifications.

For the three most common SOC codes used in the H–2A program, the Department calculated, by state and SOC code, the number of certifications that had work in one or two calendar years, and the average number of days that occurred in each year. For all other SOC codes, the Department used the national average from FY2016 to FY2019 of the percentage of certifications with work in one or two calendar years, and the number of days in each year. For number of workers per certification and number of hours, the average number of workers for each SOC code and state from FY2016 to FY2019 was applied. Total wages were then calculated using the simulated Q3 and Q4 certifications and these estimated FY2020 Q3 to Q4 wage impacts were summed with the FY2020 Q1 to Q2 wage impacts to create an estimate of total wages for the entirety of FY2020.

The Department calculated the impact on wages that would occur from the implementation of the revised AEWR methodology. For each H–2A certification in FY2016 through FY2020, the Department calculated total wages under the previously existing AEWR baseline methodology and total wages under the revised AEWR methodology. We assume that in the absense of this rule the AEWRs would continue to increase at the same rate that it would have in previous years. Then, the Department averaged total wages by SOC code across FY2016 through FY2020 to produce an annual average wage under the baseline and final rule. Total wages were projected for SOC codes that are updated annually beginning in 2023 with the most recent 12-month ECI by calculating the nominal wage in each year from 2021 through 2030 using an average of annual September to September ECI growth rates since 2016 (2.89 percent).[111]

[110] FY2020 certification data consists of only two quarters of data as of the date of analysis for this final rule.

[111] September to September growth rates are used to reflect the month vintage of ECI data that will

Nominal wages were then converted to real wages by deflating each year by the same ECI growth rate.[112]

The Department provides two illustrative examples illustrating the above methodology. Exhibits 5 and 6 illustrate how total wages are calculated for the final rule and baseline. The Department multiplied the number of certified workers by the number of hours worked each week, the number of weeks in a given year that the employees worked, and the annual average hourly gross state AEWR wage for SOC codes set by the AEWR. For SOC codes set by OES the annual average hourly gross wage from the state-level OES by SOC code for the work performed, or national OES if the state-level wage is not available. Exhibit 5 includes an example for each case set by the AEWR and OES.

EXHIBIT 5—AEWR WAGE UNDER THE FINAL RULE

[Example case]

SOC code	Final rule wage source	Number of certified workers (a)	Basic number of hours (b)	Number of days worked in 2016 (c)	Number of days worked in 2017 (d)	Wage 2016 (e)	Wage 2017 (f)	Total AEWR wages 2016 (a*b*(c/7)*e)	Total AEWR wages 2017 (a*b*(d/7)*f)
45–2091	FLS AEWR	14	35	306	10	$11.74	$12.02	$251,470.80	$8,414.00
53–7062	OES	10	40	280	50	12.76	13.08	204,160.00	37,371.43

After the total wages for the final rule was determined, the wage calculation under the baseline AEWR was calculated. The methodology is similar to that used to estimate the projected AEWR under the final rule: The number of workers certified is multiplied by the number of hours worked each week, the number of weeks in a given year that the employees worked, and the AEWR baseline for the year(s) in which the work occurred (Exhibit 6 provides an example of the calculation of the AEWR baseline for the same case as in Exhibit 5).

EXHIBIT 6—AEWR WAGE UNDER THE BASELINE

[Example case]

SOC Code	Baseline wage source	Number of certified workers (a)	Basic number of hours (b)	Number of days worked in 2016 (c)	Number of days worked in 2017 (d)	Wage 2016 (e)	Wage 2017 (f)	Total AEWR wages 2016 (a*b*(c/7)*e)	Total AEWR wages 2017 (a*b*(d/7)*f)
45–2091	FLS AEWR	14	35	306	10	$11.74	$12.02	$251,470.80	$8,414.00
53–7062	FLS AEWR	10	40	280	50	11.74	12.02	187,840.00	34,342.86

The total wages for every certification from FY2016 through FY2020 were calculated using the method in Exhibit 5 and Exhibit 6. Wages for each year were converted to 2020 dollars using the ECI, summed by SOC code, then averaged to produce the average annual total wages by SOC code. To simulate the final rule wage methodology of annually updating the AEWR for SOC codes set by FLS, beginning in 2023, the Department provides an illustrative example in Exhibit 7 for the 45–2091 SOC code.

EXHIBIT 7—EXAMPLE PROJECTED TOTAL WAGES FOR 45–2091

	FLS AEWR growth rate [113]	Total wages (nominal dollars)	Deflator (ECI)	Total wages (2020 dollars)
2020 [114]	N/A	$235	1	$235
2021	0(%)	235	0.972	228
2022	0	235	0.945	222
2023	2.89	242	0.918	222
2024	2.89	249	0.892	222
2025	2.89	256	0.867	222
2026	2.89	263	0.843	222
2027	2.89	271	0.819	222
2028	2.89	279	0.796	222
2029	2.89	287	0.774	222
2030	2.89	295	0.752	222

be used to update the AEWR. For the Department to process and release the bi-annual ECI updated AEWR wages in January, the latest ECI value that will be available is the released September value. The ECI is available and released at *https://www.bls.gov/news.release/eci.toc.htm.*

[112] Each year's estimated wages were deflated using the formula: Wage/(1 + 0.289) − (Year − Base year).

[113] The growth rate for each year represents the final rule AEWR for SOC codes 45–2091, 45–2092, 45–2093, 45–2041, 45–2099, and 53–7064. They have a 0 percent growth rate from the prior year in years which wages are held constant (*e.g.,* 2021 and 2022). Beginning in 2023 they are updated annually based on the most recent 12-month ECI, which for the purposes of this analysis is 2.89 percent.

[114] 2020 nominal wage is the average of total wages for 45–2091 from FY2016–FY2020 data.

Once the total wages for the AEWR baseline and final rule were obtained for each SOC code, the Department estimated the wage impact of the revised AEWR by subtracting the baseline AEWR total wages from the final rule total wages in each year from 2021 through 2030 to determine the final rule wage impact. The resulting difference between final rule wages and baseline wages are presented in Exhibit 8.

EXHIBIT 8—DIFFERENCE BETWEEN FINAL RULE WAGES AND BASELINE WAGES BY SOC CODE [2020 $MILLIONS]

Year	45–2091	45–2092	45–2093	45–2041	45–2099	53–7064	All other	Total
2021	−$7	−$61	−$4	$0	−$1	$0	$18	−$54
2022	−13	−120	−8	0	−1	0	18	−124
2023	−13	−120	−8	0	−1	0	18	−124
2024	−13	−120	−8	0	−1	0	18	−124
2025	−13	−120	−8	0	−1	0	18	−124
2026	−13	−120	−8	0	−1	0	18	−124
2027	−13	−120	−8	0	−1	0	18	−124
2028	−13	−120	−8	0	−1	0	18	−124
2029	−13	−120	−8	0	−1	0	18	−124
2030	−13	−120	−8	0	−1	0	18	−124

The changes in wages constitute a transfer payment from H–2A employees to H–2A employers for SOC codes set by the FLS AEWR and annually updated. For all other SOC codes set by OES, and updated annually, the change in wages constitutes a transfer from H–2A employers to H–2A employees. In total, there is a transfer from employees to employers. To account for the growth rate in H–2A workers the total transfers in each year from Exhibit 8 are increased annually by the estimated growth rate of H–2A workers (6.2 percent).[115] The results are average annual undiscounted transfers of $167.76 million. The total transfer over the 10-year period is estimated at $1.68 billion undiscounted, or $1.44 billion and $1.20 billion at discount rates of 3 and 7 percent, respectively. The annualized transfer over the 10-year period is $169.10 million and $170.68 million at discount rates of 3 and 7 percent, respectively.

Unquantifiable Transfer Payments

a. Revisions to Wage Structure

The decrease (or increase) in the wage rates for H–2A workers represents an important transfer from non-H–2A workers in corresponding employment to agricultural employers, not just H–2A workers to agricultural employers. The lower (or higher) wages for H–2A workers associated with the final rule's methodology for determining the monthly AEWR will also result in wage changes to workers in corresponding employment. However, the Department does not have sufficient information about the number of workers in corresponding employment affected and their wage structure to reasonably measure the wage transfer to or from these workers.

The program has experienced a substantial increase in the number of certified H–2A applications and worker positions in the last 10 years that generally reflects the improving economy and lack of a sufficient number of domestic agricultural workers during the period (see Exhibit 3). The new AEWR methodology may further encourage U.S. employers to use more H–2A workers for field and livestock work in the absence of available U.S. workers; however, we cannot measure the potential increase in the number of H–2A workers attributable to the new AEWR methodology due to data limitations.

4. Summary of the Analysis

Exhibit 9 summarizes the estimated total costs and transfer payments of the final rule over the 10-year analysis period.

The Department estimates the annualized costs of the final rule at $0.07 million and the annualized transfer payments (from workers to H–2A employers) at $170.68 million, at a discount rate of 7 percent.

EXHIBIT 9—ESTIMATED MONETIZED COSTS, COST SAVINGS, NET COSTS, AND TRANSFER PAYMENTS OF THE FINAL RULE
[2020 $millions]

Year	Costs	Transfer payments
2021	$0.46	$57.09
2022	0.00	139.71
2023	0.00	148.41
2024	0.00	157.65
2025	0.00	167.46
2026	0.00	177.89
2027	0.00	188.96
2028	0.00	200.72
2029	0.00	213.22
2030	0.00	226.49
Undiscounted 10-Year Total	0.46	1,677.61
10-Year Total with a Discount Rate of 3%	0.46	1,442.50
10-Year Total with a Discount Rate of 7%	0.46	1,198.77
10-Year Average	0.05	167.76
Annualized with a Discount Rate of 3%	0.05	169.10

[115] Total transfers in each year are increased with the following formula to account for an annual increase in the underlying population of H–2A workers: Transfer*(1.062^(Current year − Base year)).

EXHIBIT 9—ESTIMATED MONETIZED COSTS, COST SAVINGS, NET COSTS, AND TRANSFER PAYMENTS OF THE FINAL RULE—Continued

[2020 $millions]

Year	Costs	Transfer payments
Annualized with a Discount Rate of 7%	0.07	170.68

5. Regulatory Alternatives

The Department considered two alternatives to the chosen approach of establishing the AEWR at the annual average hourly gross wage for the state or region and SOC from the FLS where USDA reports such a wage. First, the Department considered using the current FLS occupational classifications of field and livestock workers for each state or region to set a separate AEWR for field workers and another AEWR for livestock workers at the annual average hourly gross wage from the FLS for workers covered by those classifications. Under this alternative, the Department would use the OES average hourly wage for the SOC and state if either (1) the occupation covered by the job order is not included in the current FLS occupational classifications of field or livestock workers;[116] or (2) workers within the occupations classifications of field or livestock workers but in a region or state where USDA cannot produce a wage for that classification, which is expected to occur only in Alaska. Finally, under this alternative where both OES state data is not available, and the work performed is not covered by the field or livestock worker categories of the FLS, the Department would use the OES national average hourly wage for the SOC.

The total impact of the first regulatory alternative was calculated in the same manner as the revised wage using FY2016 to FY2020 certification data. The Department estimated average annual undiscounted transfers of $18.48 million. The total transfer over the 10-year period was estimated at $184.76 million undiscounted, or $159.97 million and $132.37 million at discount rates of 3 and 7 percent, respectively. The annualized transfer over the 10-year period was $18.75 million and $19.12 million at discount rates of 3 and 7 percent, respectively.

Under the second regulatory alternative considered by the Department, the Department would set the AEWR using the OES average hourly wage for the SOC and State. When OES state data is not available, the Department would set the AEWR at the OES national average hourly wage for the SOC under this alternative. The Department again used the same method to calculate the total impact of the regulatory alternative. The Department estimated average annual undiscounted transfers of $66.36 million. The total transfer over the 10-year period was estimated at $663.56 million undiscounted, or $574.51 million and $482.21 million at discount rates of 3 and 7 percent, respectively. The annualized transfer over the 10-year period was $67.35 million and $68.66 million at discount rates of 3 and 7 percent, respectively.

Exhibit 10 summarizes the estimated transfer payments associated with the three considered revised wage structures over the 10-year analysis period. Transfer payments under the final rule are transfers from H–2A employees to H–2A employers and transfers under both alternatives are transfers from H–2A employers to H–2A employees. The Department prefers the current approach because it allows specific OES wages for workers in higher-paid agricultural occupations, such as supervisors of farmworkers and construction laborers on farms, while simplifying the AEWR for SOC codes set by the FLS AEWR and tying it to the ECI index. The Department prefers the chosen approach to the second regulatory alternative: The Department finds benefits to maintaining the FLS AEWR for some SOC codes, which is a superior wage source to the OES for those occupations. The FLS directly surveys farmers and ranchers and the FLS is recognized by the BLS as the authoritative source for data on agricultural wages. The chosen approach maintains the second regulatory alternative advantage of using OES for SOC codes where wages may be underestimated by the FLS AEWR.

EXHIBIT 10—ESTIMATED MONETIZED WAGE STRUCTURE TRANSFER PAYMENTS AND COSTS OF THE FINAL RULE, UNDISCOUNTED

[2020 $millions]

	Final rule	Regulatory alternative 1	Regulatory alternative 2
Total 10-Year Transfer	$1,678	$185	$664
Total with 3% Discount	1,442	160	575
Total with 7% Discount	1,199	134	482
Annualized Undiscounted Transfer	168	18	66
Annualized Transfer with 3% Discount	169	19	67
Annualized Transfer with 7% Discount	171	19	69

[116] Among the workers excluded from the field and livestock worker categories of the FLS are workers in the following SOCs: Farmers, Ranchers and Other Agricultural Managers (SOC 11–9013) and First Line Supervisors of Farm Workers (SOC 45–1011), Forest and Conservation Workers (SOC 45–4011), Logging Workers (SOC 45–4020), and Construction Laborers (SOC 47–2061).

B. Regulatory Flexibility Analysis and Small Business Regulatory Enforcement Fairness Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, hereafter jointly referred to as the RFA, requires a final regulatory flexibility analysis (FRFA) when issuing regulations that will have a significant economic impact on a substantial number of small entities. The agency is also required to respond to public comment on the NPRM.[117] The Chief Counsel for Advocacy of the Small Business Administration did not submit public comments on the NPRM.

The Department believes that this final rule will have a significant economic impact on a substantial number of small entities and therefore the Department publishes this FRFA. The Department invited interested persons to submit comments on the following estimates, including the number of small entities affected by the proposed rule, the compliance cost estimates, and whether alternatives exist that will reduce the burden on small entities while still remaining consistent with the objectives of the proposed rule.

1. Objectives of and Legal Basis for the Final Rule

The Department is amending current regulations related to the H–2A program in a manner that modernizes and eliminates inefficiencies in the process by which employers obtain a temporary agricultural labor certification for use in petitioning DHS to employ a nonimmigrant worker in H–2A status. Sections 101(a)(15)(H)(ii)(a) and 218(a)(1) of the INA, 8 U.S.C. 1101(a)(15)(H)(ii)(a) and 1188(a)(1), establish the H–2A nonimmigrant worker visa program which enables U.S. agricultural employers to employ foreign workers to perform temporary or seasonal agricultural labor or services where the Secretary of DOL certifies (1) there are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. The standard and procedures for the certification and employment of workers under the H–2A program are found in 20 CFR part 655 and 29 CFR part 501.

The Secretary has delegated the authority to issue temporary agricultural labor certifications to the Assistant Secretary, ETA, who in turn has delegated that authority to ETA's OFLC. Secretary's Order 06–2010 (Oct. 20, 2010). In addition, the Secretary has delegated to WHD the responsibility under section 218(g)(2) of the INA, 8 U.S.C. 1188(g)(2), to assure employer compliance with the terms and conditions of employment under the H–2A program. Secretary's Order 01–2014 (Dec. 19, 2014).

2. The Agency's Response to Public Comments

The Department received one comment on the IRFA. One commenter stated that, in their view, the proposed rule would fail to protect farmworkers and would disproportionately favor larger farming operations at the expense of smaller operations.

The Department does not believe that the final rule will have a disproportionally detrimental impact on small farms as the wage impacts on small entities are primarily a cost decrease. In fact, the Department estimates that more than 99 percent of small entities will receive a reduction in wage obligations. Additionally, the Department believes that the proposed changes to the wage rates reasonably implement the statute's requirement that the wages of workers in the United States similarly employed not be adversely affected by the employment of H–2A foreign workers.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

The Department did not receive comments from the Chief Counsel for Advocacy of the Small Business Administration.

4. Description of the Number of Small Entities To Which the Final Rule Will Apply

a. Definition of Small Entity

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used the entity size standards defined by SBA, in effect as of August 19, 2019, to classify entities as small.[118] SBA establishes separate standards for individual 6-digit NAICS industry codes, and standard cutoffs are typically based on either the average number of employees, or the average annual receipts. For example, small businesses are generally defined as having fewer than 500, 1,000, or 1,250 employees in manufacturing industries and less than $7.5 million in average annual receipts for nonmanufacturing industries. However, some exceptions do exist, the most notable being that depository institutions (including credit unions, commercial banks, and non-commercial banks) are classified by total assets (''small'' is defined as less than $550 million in assets). Small governmental jurisdictions are another noteworthy exception. They are defined as the governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000 people.[119]

b. Number of Small Entities

The Department collected employment and annual revenue data from the business information provider Data Axle and merged those data into the H–2A disclosure data for FYs 2015, 2016, 2017, 2018, and 2019. Disclosure data for 2015 was included for cases that have certified workers in both 2015 and 2016. This process allowed the Department to identify the number and type of small entities in the H–2A disclosure data as well as their annual revenues. The Department identified 23,045 unique cases. Of those 23,045 cases, the Department was able to obtain data matches of revenue and employees for 6,135 H–2A cases with work in any year between 2016 and 2019. Because a single entity can apply for temporary H–2A workers multiple times, unique entities had to be identified. Additionally, duplicate cases that appeared multiple times within the dataset were removed (*i.e.,* the same employer applying for the same number of workers in the same occupation, in the same state, during the same work period). Based on employer name, city, and state, the Department identified 2,627 unique entities with work in a year between 2016 and 2019, and of those determined that 1,990 (75.8 percent) were small.[120] These individual small entities had an average

[117] *See* 5 U.S.C. 604.

[118] Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Aug. 2019), *available at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

[119] See *http://www.sba.gov/advocacy/regulatory flexibility-act* for details.

[120] Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Aug. 2019), *available at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

of 11 employees and average annual revenue of approximately $3.31 million. Of these entities, 1,946 of them had revenue data available from Data Axle. The Department's analysis of the impact of this final rule on small entities is based on the number of small individual entities (1,946 with revenue data).

To provide clarity on the agricultural industries impacted by this regulation, Exhibit 11 shows the number of individual H–2A small entities employers with certifications in any year between 2016 and 2019 within each NAICS code at the 6-digit and 4-digit level.

EXHIBIT 11—NUMBER OF H–2A SMALL ENTITIES BY NAICS CODE

6-Digit NAICS	Description	Number of employers	Percent
111998	All Other Miscellaneous Crop Farming	625	31
444220	Nursery, Garden Center, and Farm Supply Stores	144	7
445230	Fruit and Vegetable Markets	124	6
561730	Landscaping Services	125	6
111339	Other Noncitrus Fruit Farming	92	5
424480	Fresh Fruit and Vegetable Merchant Wholesalers	78	4
112990	All Other Animal Production	76	4
115210	Support Activities for Animal Production	43	2
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	37	2
312130	Wineries	35	2
Other NAICS		611	31
4-Digit NAICS	**Description**	**Number of employers**	**Percent**
1119	Other Crop Farming	632	32
4442	Lawn and Garden Equipment and Supplies Stores	147	7
4452	Specialty Food Stores	133	7
5617	Services to Buildings and Dwellings	125	6
1113	Fruit and Tree Nut Farming	109	5
4244	Grocery and Related Product Merchant Wholesalers	97	5
1129	Other Animal Production	84	4
4249	Miscellaneous Nondurable Goods Merchant Wholesalers	73	4
1151	Support Activities for Crop Production	49	2
1152	Support Activities for Animal Production	43	2
Other NAICS		498	25

c. Projected Impacts to Affected Small Entities

The Department has estimated the incremental costs for small entities from the baseline (*i.e.,* the 2010 Final Rule: *Temporary Agricultural Employment of H–2A Aliens in the United States;* TEGL 17–06, Change 1; TEGL 33–10, and TEGL 16–06, Change 1) to this final rule. We estimated the costs of (a) time to read and review the final rule and (b) wage cost savings (or costs). The estimates included in this analysis are consistent with those presented in the E.O. 12866 section.

The Department estimates that small entities not classified as H–2A labor contractors, 1,946 unique small entities,[121] would incur a one-time cost of $53.57 to familiarize themselves with the rule.[122]

In addition to the cost of rule familiarization above, each small entity will have a decrease (or increase) in the wage costs (or cost-savings) due to the revisions to the wage structure. To estimate the wage impact for each small entity we followed the methodology presented in the E.O. 12866 section. For each certification of a small entity, we calculated total wage impacts by projecting total wages for 10 years under the baseline and 10 years under the final rule. If a small entity had a certification in multiple years in the historical data (*e.g.,* both 2016 and 2017) then we took an average of the projected 10-year wage impacts for each certification to avoid double-counting.

The Department determined the proportion of each small entities' total revenue that would be impacted by the cost savings (or costs) of the final rule to determine if the final rule would have a significant and substantial impact on small entities. The cost impacts included estimated first year costs and the wage impact introduced by the final rule. The Department used a total cost estimate of 3 percent of revenue as the threshold for a significant individual impact and set a total of 15 percent of small entities incurring a significant impact as the threshold for a substantial impact on small entities.

A threshold of 3 percent of revenues is consistent with the threshold in the NPRM and has been used in prior rulemakings for the definition of significant economic impact.[123] This threshold is also consistent with that sometimes used by other agencies.[124] The Department used a threshold of 15 percent of small entities in the NPRM and has used 15 percent in prior rulemakings for the definition of substantial number of small entities.[125]

Exhibit 12 provides a breakdown of small entities by the proportion of revenue affected by the costs of the final rule. Of the 1,946 unique small entities with work occurring in any year from 2016 to 2019 and revenue data, 8.2 percent of employers had more than 3 percent of their total revenue impacted in the first year. In the 10th year, 42.3 percent are estimated to have more than

[121] The 1,946 unique small entities excludes all labor contractors.

[122] $53.57 = 1hr × $53.57, where $53.57 = $33.52 + ($33.52 × 43%) + ($33.52 × 17%).

[123] *See, e.g.,* Final Rule, *Establishing a Minimum Wage for Contractors,* 79 FR 60634 (October 7, 2014); Final Rule, *Discrimination on the Basis of Sex,* 81 FR 39108 (June 15, 2016).

[124] *See, e.g.,* Final Rule, *Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; Part II,* 79 FR 27106 (May 12, 2014) (Department of Health and Human Services rule stating that under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than 3 percent annually are not economically significant).

[125] *See, e.g.,* 79 FR 60634.

3 percent of their total revenue impacted in the first year. Although a substantial number of small entities have a significant economic impact in the 10th year, more than 99 percent of small entities have an economic impact that is a cost savings due to declines in wages associated with the annual ECI update for the SOC codes set by FLS AEWR.

EXHIBIT 12—COST IMPACTS AS A PROPORTION OF TOTAL REVENUE FOR SMALL ENTITIES

Proportion of revenue impacted	1st Year	1st Year—%	10th Year	10th Year—%
<1%	1,462	75.1	620	31.9
1%–2%	239	12.3	273	14.0
2%–3%	85	4.4	229	11.8
3%–4%	45	2.3	153	7.9
4%–5%	28	1.4	126	6.5
>5%	87	4.5	545	28.0
Total >3%	160	8.2	824	42.3

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

The final rule does not have any reporting, recordkeeping, or other compliance requirements impacting small entities.

6. Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities

The final rule will result in net cost savings to most (more than 99 percent of) small entities because the wage cost savings outweigh the trivial rule familiarization cost. Therefore, the Department did not consider alternatives to reduce the burden on small entities because there is no net cost imposed on small entities by this final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections and their practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. This final rule does not require a collection of information subject to approval by OMB under the PRA, or affect any existing collections of information.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on state, local, and tribal governments. UMRA requires Federal agencies to assess a regulation's effects on state, local, and tribal governments, as well as on the private sector, except to the extent the regulation incorporates requirements specifically set forth in law. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any regulation that includes any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon state, local, or tribal governments, or upon the private sector, except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

This final rule does not result in unfunded mandates for the public or private sector because private employers' participation in the program is voluntary, and State governments are reimbursed for performing activities required under the program. The requirements of Title II of the UMRA, therefore, do not apply, and the Department has not prepared a statement under the UMRA.

E. Executive Order 13132, Federalism

This final rule would not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this final rule in accordance with E.O. 13175 and has determined that it does not have tribal implications. This final rule does not have substantial direct effects 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. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

For the reasons stated in the preamble, the Department of Labor amends 20 CFR part 655 as follows:

TITLE 20—EMPLOYEES' BENEFITS

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), (p), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), (p), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 2. Amend § 655.103(b) by revising the definition of *Adverse effect wage rate* to read as follows:

§ 655.103 Overview of this subpart and definition of terms.

* * * * *

(b) * * *

Adverse effect wage rate (AEWR). The wage rate published by the OFLC Administrator in the **Federal Register** for non-range occupations as set forth in § 655.120(b) and range occupations as set forth in § 655.211(c).

* * * * *

■ 3. Amend § 655.120 by removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 655.120 Offered wage rate.

* * * * *

(b)(1) Except for occupations governed by the procedures in §§ 655.200 through 655.235, the OFLC Administrator will determine the AEWRs as follows:

(i) If the occupation and geographic area were included in the Department of Agriculture's (USDA) Farm Labor Survey (FLS) for wages paid to field and livestock workers (combined) as reported for November 2019:

(A) For the period from December 21, 2020 through calendar year 2022, the AEWR shall be the annual average hourly gross wage for field and livestock workers (combined) in effect on January 2, 2020; and

(B) Beginning calendar year 2023, and annually thereafter, the AEWR shall be adjusted based on the Employment Cost Index (ECI) for wages and salaries published by the Bureau of Labor Statistics (BLS) for the most recent preceding 12 months.

(ii) If the occupation or geographic area was not included in the USDA FLS for wages paid to field and livestock workers (combined) as reported for November 2019:

(A) The AEWR shall be the statewide annual average hourly gross wage for the occupation if one is reported by the Occupational Employment Statistics (OES) survey; or

(B) If no statewide wage for the occupation and geographic area is reported by the OES survey, the AEWR shall be the national average hourly gross wage for the occupation reported by the OES survey.

(iii) The AEWR methodologies described in paragraphs (b)(1)(i) and (ii) of this section shall apply to all job orders submitted, as set forth in § 655.121, on or after December 21, 2020, including job orders filed concurrently with an *Application for Temporary Employment Certification* to the NPC for emergency situations under § 655.134.

(2) The OFLC Administrator will publish a notice in the **Federal Register**, at least once in each calendar year, on a date to be determined by the OFLC Administrator, establishing each AEWR.

(3)–(4) [Reserved]

(5) If the job duties on the *Application for Temporary Employment Certification* do not fall within a single occupational classification, the applicable AEWR shall be the highest AEWR for all applicable occupational classifications.

* * * * *

John Pallasch,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2020–24544 Filed 11–3–20; 4:15 pm]

BILLING CODE 4510–FP–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3040

[Docket No. RM2020–8]

Update to Product Lists

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is announcing an update to the market dominant and competitive product lists. This action reflects a publication policy adopted by Commission rules. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The market dominant and competitive product lists, which are re-published in their entirety, includes these updates.

DATES: This rule is effective December 21, 2020, without further action, unless adverse comment is received by December 7, 2020. If adverse comment is received, the Commission will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: For additional information, this document can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6800.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 39 U.S.C. 3642(d)(2) and 39 CFR 3040.103, the Commission provides a Notice of Update to Product Lists by listing all modifications to both the market dominant and competitive product lists between July 1, 2020 and September 30, 2020.

II. Commission Process

Pursuant to 39 CFR part 3040, the Commission maintains a Mail Classification Schedule (MCS) that includes rates, fees, and product descriptions for each market dominant and competitive product, as well as product lists that categorize Postal Service products as either market dominant or competitive. *See generally* 39 CFR part 3040. The product lists are published in the Code of Federal Regulations as 39 CFR Appendix A to Subpart A of Part 3040—Market Dominant Product List and Appendix B to Subpart A of Part 3040—Competitive Product List pursuant to 39 U.S.C. 3642(d)(2). *See* 39 U.S.C. 3642(d)(2). Both the MCS and its product lists are updated by the Commission on its website on a quarterly basis.[1] In addition, these quarterly updates to the product lists are also published in the **Federal Register** pursuant to 39 CFR 3040.103. *See* 39 CFR 3040.103.

III. Authorization

Pursuant to 39 CFR 3040.103(d)(1), this Notice of Update to Product Lists identifies any modifications made to the market dominant or competitive product list, including product additions, removals, and transfers.[2]

[1] *See https://www.prc.gov/mail-classification-schedule* in the Current MCS section.

[2] 39 CFR 3040.103(d)(1). More detailed information (*e.g.,* Docket Nos., Order Nos., effective dates, and extensions) for each market dominant and competitive product can be found in the MCS, including the "Revision History" section. *See, e.g.,*

Continued

Pursuant to 39 CFR 3040.103(d)(2), the modifications identified in this document result from the Commission's most recent MCS update posted on the Commission's website on September 30, 2020, and supersede all previous product lists.[3]

IV. Modifications

The following list of products is being added to 39 CFR Appendix A to Subpart A of Part 3040—Market Dominant Product List:

1. Extended Mail Forwarding

The following list of products is being added to 39 CFR Appendix B to Subpart A of Part 3040—Competitive Product List:

1. First-Class Package Service Contract 111
2. First-Class Package Service Contract 112
3. Parcel Select & Parcel Return Service Contract 11
4. Parcel Select & Parcel Return Service Contract 12
5. Priority Mail Contract 628
6. Priority Mail Contract 629
7. Priority Mail Contract 630
8. Priority Mail Contract 631
9. Priority Mail Contract 632
10. Priority Mail Contract 633
11. Priority Mail Contract 634
12. Priority Mail Contract 635
13. Priority Mail Contract 636
14. Priority Mail Contract 637
15. Priority Mail Contract 638
16. Priority Mail Contract 639
17. Priority Mail Contract 640
18. Priority Mail Contract 641
19. Priority Mail Contract 642
20. Priority Mail Contract 643
21. Priority Mail Contract 644
22. Priority Mail Contract 645
23. Priority Mail Contract 646
24. Priority Mail Contract 647
25. Priority Mail Contract 648
26. Priority Mail Contract 649
27. Priority Mail Contract 650
28. Priority Mail Contract 651
29. Priority Mail Contract 652
30. Priority Mail Contract 653
31. Priority Mail Contract 654
32. Priority Mail Contract 655
33. Priority Mail Contract 656
34. Priority Mail Contract 657
35. Priority Mail Contract 658
36. Priority Mail Contract 659
37. Priority Mail Contract 660
38. Priority Mail Contract 661
39. Priority Mail Contract 662
40. Priority Mail Contract 663
41. Priority Mail & Parcel Select Contract 3
42. Priority Mail & Parcel Select Contract 4
43. Priority Mail & First-Class Package Service Contract 150
44. Priority Mail & First-Class Package Service Contract 151
45. Priority Mail & First-Class Package Service Contract 152
46. Priority Mail & First-Class Package Service Contract 153
47. Priority Mail & First-Class Package Service Contract 154
48. Priority Mail & First-Class Package Service Contract 155
49. Priority Mail & First-Class Package Service Contract 156
50. Priority Mail & First-Class Package Service Contract 157
51. Priority Mail & First-Class Package Service Contract 158
52. Priority Mail & First-Class Package Service Contract 159
53. Priority Mail & First-Class Package Service Contract 160
54. Priority Mail & First-Class Package Service Contract 161
55. Priority Mail & First-Class Package Service Contract 162
56. Priority Mail & First-Class Package Service Contract 163
57. Priority Mail & First-Class Package Service Contract 164
58. Priority Mail & First-Class Package Service Contract 165
59. Priority Mail & First-Class Package Service Contract 166
60. Priority Mail & First-Class Package Service Contract 167
61. Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 7
62. Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 8
63. Priority Mail Express Contract 81
64. Priority Mail Express Contract 82
65. Priority Mail Express & Priority Mail Contract 115
66. Priority Mail Express & Priority Mail Contract 116
67. Priority Mail Express & Priority Mail Contract 117
68. Priority Mail Express, Priority Mail & First-Class Package Service Contract 70
69. Priority Mail Express, Priority Mail & First-Class Package Service Contract 71
70. Priority Mail Express, Priority Mail & First-Class Package Service Contract 72
71. Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 7
72. Priority Mail, First-Class Package Service & Parcel Select Contract 1

The following list of products is being removed from 39 CFR Appendix B to Subpart A of Part 3040—Competitive Product List:

1. First-Class Package Service Contract 79
2. Parcel Return Service Contract 13
3. Parcel Select Contract 9
4. Priority Mail & First-Class Package Service 105
5. Priority Mail & First-Class Package Service 134
6. Priority Mail & First-Class Package Service 48
7. Priority Mail & First-Class Package Service 53
8. Priority Mail & First-Class Package Service 55
9. Priority Mail & First-Class Package Service 56
10. Priority Mail & First-Class Package Service 57
11. Priority Mail & First-Class Package Service 86
12. Priority Mail & First-Class Package Service 87
13. Priority Mail Contract 234
14. Priority Mail Contract 237
15. Priority Mail Contract 271
16. Priority Mail Contract 288
17. Priority Mail Contract 295
18. Priority Mail Contract 319
19. Priority Mail Contract 327
20. Priority Mail Contract 335
21. Priority Mail Contract 336
22. Priority Mail Contract 339
23. Priority Mail Contract 341
24. Priority Mail Contract 342
25. Priority Mail Contract 343
26. Priority Mail Contract 344
27. Priority Mail Contract 345
28. Priority Mail Contract 347
29. Priority Mail Contract 348
30. Priority Mail Contract 351
31. Priority Mail Contract 353
32. Priority Mail Contract 355
33. Priority Mail Contract 356
34. Priority Mail Contract 376
35. Priority Mail Contract 455
36. Priority Mail Contract 480
37. Priority Mail Contract 483
38. Priority Mail Contract 536
39. Priority Mail Contract 540
40. Priority Mail Contract 541
41. Priority Mail Contract 549
42. Priority Mail Contract 552
43. Priority Mail Contract 554
44. Priority Mail Contract 561
45. Priority Mail Contract 562
46. Priority Mail Contract 565
47. Priority Mail Contract 579
48. Priority Mail Contract 580
49. Priority Mail Contract 584
50. Priority Mail Contract 587
51. Priority Mail Contract 588
52. Priority Mail Contract 610

file ''MCSRedline03312020.docx,'' available at: *https://www.prc.gov/mail-classification-schedule.*

[3] Previous versions of the MCS and its product lists can be found on the Commission's website, available at: *https://www.prc.gov/mail-classification-schedule* in the MCS Archives section.

53. Priority Mail Express & Priority Mail Contract 104
54. Priority Mail Express & Priority Mail Contract 109
55. Priority Mail Express & Priority Mail Contract 110
56. Priority Mail Express & Priority Mail Contract 51
57. Priority Mail Express & Priority Mail Contract 64
58. Priority Mail Express & Priority Mail Contract 66
59. Priority Mail Express & Priority Mail Contract 77
60. Priority Mail Express Contract 78
61. Priority Mail Express Contract 79
62. Priority Mail Express Contract 80
63. Priority Mail Express, Priority Mail & First-Class Package Service Contract 15
64. Priority Mail Express, Priority Mail & First-Class Package Service Contract 17
65. Priority Mail Express, Priority Mail & First-Class Package Service Contract 61
66. Priority Mail Express, Priority Mail & First-Class Package Service Contract 27

The above-referenced changes to the market dominant product list and the competitive product list are incorporated into 39 CFR Appendix A and B to Subpart A of Part 3040—Competitive Product List.

V. Ordering Paragraphs

It is ordered:

1. Part 3040 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Notice, effective 45 days after the date of publication of the Notice in the **Federal Register** without further action, unless adverse comments are received.

2. The Secretary shall arrange for publication of the Notice in the **Federal Register**.

3. Interested persons may submit adverse comments no later than 30 days from the date of the publication of this Notice in the **Federal Register**.

4. If adverse comments are received, the Secretary will publish a timely withdrawal of the Notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

List of Subjects in 39 CFR Part 3040

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3040—PRODUCT LISTS

■ 1. The authority citation for part 3040 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3040 to read as follows:

Appendix A to Subpart A of Part 3040—Market Dominant Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

FIRST–CLASS MAIL *
Single-Piece Letters/Postcards
Presorted Letters/Postcards
Flats
Outbound Single-Piece First-Class Mail International
Inbound Letter Post
USPS MARKETING MAIL (COMMERCIAL AND NONPROFIT)*
High Density and Saturation Letters
High Density and Saturation Flats/Parcels
Carrier Route
Letters
Flats
Parcels
Every Door Direct Mail—Retail
PERIODICALS *
In-County Periodicals
Outside County Periodicals
PACKAGE SERVICES *
Alaska Bypass Service
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail
SPECIAL SERVICES *
Ancillary Services
International Ancillary Services
Address Management Services
Caller Service
Credit Card Authentication
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Customized Postage
Stamp Fulfillment Services
NEGOTIATED SERVICE AGREEMENTS *
Domestic*
International*
Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators
NONPOSTAL SERVICES *
Alliances with the Private Sector to Defray Cost of Key Postal Functions
Philatelic Sales
MARKET TESTS *
Plus One
Commercial P.O. Box Redirect Service
Extended Mail Forwarding

■ 3. Revise Appendix B to Subpart A of Part 3040 to read as follows:

Appendix B to Subpart A of Part 3040—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

DOMESTIC PRODUCTS *
Priority Mail Express
Priority Mail
Parcel Select
Parcel Return Service
First-Class Package Service
USPS Retail Ground
INTERNATIONAL PRODUCTS *
Outbound International Expedited Services
Inbound Parcel Post (at UPU rates)
Outbound Priority Mail International
International Priority Airmail (IPA)
International Surface Air Lift (ISAL)
International Direct Sacks—M-Bags
Outbound Single-Piece First-Class Package International Service
Inbound Letter Post Small Packets and Bulky Letters
NEGOTIATED SERVICE AGREEMENTS *
Domestic*
Priority Mail Express Contract 53
Priority Mail Express Contract 54
Priority Mail Express Contract 55
Priority Mail Express Contract 56
Priority Mail Express Contract 57
Priority Mail Express Contract 60
Priority Mail Express Contract 61
Priority Mail Express Contract 62
Priority Mail Express Contract 64
Priority Mail Express Contract 65
Priority Mail Express Contract 74
Priority Mail Express Contract 75
Priority Mail Express Contract 77
Priority Mail Express Contract 81
Priority Mail Express Contract 82
Parcel Return Service Contract 11
Parcel Return Service Contract 14
Parcel Return Service Contract 15
Parcel Return Service Contract 16
Parcel Return Service Contract 17
Parcel Return Service Contract 18
Priority Mail Contract 80
Priority Mail Contract 125
Priority Mail Contract 153
Priority Mail Contract 203
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Priority Mail Express & Priority Mail Contract 116
Priority Mail Express & Priority Mail Contract 117
Parcel Select & Parcel Return Service Contract 3
Parcel Select & Parcel Return Service Contract 7
Parcel Select & Parcel Return Service Contract 8
Parcel Select & Parcel Return Service Contract 9
Parcel Select & Parcel Return Service Contract 10
Parcel Select & Parcel Return Service Contract 11
Parcel Select & Parcel Return Service Contract 12
Parcel Select Contract 20
Parcel Select Contract 25
Parcel Select Contract 27
Parcel Select Contract 29
Parcel Select Contract 34
Parcel Select Contract 35
Parcel Select Contract 36
Parcel Select Contract 37
Priority Mail—Non-Published Rates 1
Priority Mail—Non-Published Rates 2
First-Class Package Service Contract 75
First-Class Package Service Contract 78
First-Class Package Service Contract 82
First-Class Package Service Contract 85
First-Class Package Service Contract 87
First-Class Package Service Contract 89
First-Class Package Service Contract 91
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0173; FRL–10014–85–Region 9]

Limited Approval, Limited Disapproval of Arizona Air Plan Revisions, Hayden Area; Sulfur Dioxide Control Measures—Copper Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the Arizona State Implementation Plan (SIP). This revision concerns sulfur dioxide (SO_2) emissions from the primary copper smelter in Hayden, Arizona. Specifically, we are taking action on a local rule submitted by the Arizona Department of Environmental Quality (ADEQ) that regulates these emissions under the Clean Air Act (CAA or the Act).

DATES: This rule is effective December 7, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket No.

EPA–R09–OAR–2020–0173. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at *gong.kevin@epa.gov.*

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

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I. Proposed Action

On May 22, 2020 (85 FR 31113), the EPA proposed a limited approval and limited disapproval of the Arizona Administrative Code section described in Table 1 that was submitted by the ADEQ for incorporation into the Arizona SIP.

TABLE 1—SUBMITTED RULE

Rule #	Rule title	Effective date	Submitted
R18–2–B1302	Limits on SO_2 Emissions from the Hayden Smelter	July 1, 2018	April 6, 2017.

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with the requirements of section 110 and 172(c)(6) of the Act:

1. The rule does not contain any numeric emission limit(s) or ongoing monitoring requirements corresponding to the levels of fugitive emissions that were modeled in the attainment plan for the Hayden 2010 SO_2 nonattainment area (''Hayden SO_2 Plan''). Therefore, the rule does not fully satisfy CAA section 172(c)(6).

2. Rule subsection (E)(4) provides an option for alternative sampling points that could undermine the enforceability of the stack emission limit by providing undue flexibility to change sampling points without undergoing a SIP revision.

3. Rule subsection (E)(6) allows for just under 10% of total facility SO_2 emissions annually to be exempt from continuous emission monitoring system (CEMS) requirements, which could compromise the enforceability of the main stack emission limit.

4. The rule lacks a method for measuring or calculating emissions from the shutdown ventilation flue, which could compromise the enforceability of the main stack emission limit.

5. The rule lacks a method for calculating hourly SO_2 emissions, so it is unclear what constitutes a ''valid hour'' for purposes of allowing data substitution.

Our proposed action and the associated Technical Support Document (TSD) [1] contain more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received comments from Freeport-McMoRan Incorporated (FMI), ASARCO LLC (''Asarco''), and ADEQ.[2 3 4] All comments received on the proposal, including the comments from ADEQ, are included in the docket for this action. The comments from FMI pertain to Rule B1302 and are addressed below. The comments from Asarco and ADEQ pertain primarily to our proposed partial approval and partial disapproval of the Hayden SO_2 Plan,[5] and we are addressing them in our final action on the Hayden SO_2 Plan. Copies of these responses are also included in the docket for this action.[6]

Comment: FMI commented on transitional provisions in R18–2–715(I), R18–2–715.01(V), and R18–2–715.02(F). The commenter stated that these provisions are intended to clarify the applicability of current SIP-approved rules for the 1971 SO_2 NAAQS in both the Hayden and Miami SO_2 nonattainment areas, until the effective date of the rules for the 2010 SO_2 NAAQS.

The commenter also noted that, when the EPA approved Arizona's attainment plan and new rules for the Miami SO_2 nonattainment area,[7] it did not act on all of the transitional provisions. Accordingly, the commenter explained that there is an inconsistency between the EPA's SIP-approved rules and ADEQ's rules (*i.e.,* a ''SIP gap''). Therefore, the Miami copper smelter must comply with both the old SIP rules

[1] EPA, ''Technical Support Document for the EPA's Rulemaking for the Arizona State Implementation Plan; Arizona Administrative Code, Title 18, Chapter 2, Article 13, Part B—Hayden, Arizona, Planning Area, R18–2–B1302—Limits on SO_2 Emissions from the Hayden Smelter,'' April 2020 (''Rule B1302 TSD'').

[2] Letter dated June 22, 2020, from Todd Weaver, Senior Counsel, Freeport-McMoRan to Rulemaking Docket EPA–R09–2020–0109, Subject: ''Re: Comments on Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Arizona Nonattainment Plan for the Hayden SO_2 Nonattainment Area (EPA–R09–OAR–2020–0109) and Limited Approval, Limited Disapproval of Arizona Plan Revisions, Hayden Area; Sulfur Dioxide Control Measures—Copper Smelters (EPA–R09–OAR–2020–0173).''

[3] Letter dated June 22, 2020, from Amy Veek, Environmental Manager, Asarco Hayden Operations, ASARCO LLC, to Ashley Graham, Air Planning Office, Air Division, EPA Region IX, Subject: ''Re: Comments of ASARCO LLC on (1) ''Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Arizona; Nonattainment Plan for the Hayden SO_2 Nonattainment Area, 85 FR 31118 (May 22, 2020), Docket No. EPA–R09–OAR–2020–0109. (2) ''Limited Approval, Limited Disapproval of Arizona Air Plan Revisions, Hayden Area; Sulfur Dioxide Control Measures—Copper Smelters, 85 FR 31113 (May 22, 2020), Docket No. EPA–R09–OAR–2020–0173.''

[4] Letter dated June 18, 2020, from Daniel Czecholinski, Air Quality Division Director, ADEQ, to Rulemaking Docket EPA–HQ–OAR–2020–0109, Subject: ''Partial Approval Partial Disapproval of Air Quality Implementation Plans; Arizona; Nonattainment Plan for the Hayden SO_2 Nonattainment Area, Docket ID Number: EPA–HQ–OAR–2020–0109.''

[5] 85 FR 31118 (May 22, 2020).

[6] Response to Comments Document for the EPA's Final Actions on the ''Arizona State Implementation Plan Revision: Hayden Sulfur Dioxide Nonattainment Area for the 2010 SO_2 NAAQS'' and Rule R18–2–B1302, ''Limits on SO_2 Emissions from the Hayden Smelter'' (September 2020) (''Response to Comments'').

[7] 83 FR 56736 (November 14, 2018); 84 FR 8813 (March 12, 2019).

for attaining the 1971 SO_2 NAAQS and the new SIP-approved rules for attaining the revised 2010 SO_2 NAAQS. The commenter asserted that ''[t]his unintended consequence therefore subjects the copper smelter to an array of duplicative regulatory requirements that no longer serve any purpose.'' The commenter also noted that ADEQ has sought to remedy the SIP gap issue by submitting a request to withdraw A.A.C. R18–2–715(F)(2) and R18–2–715(H), which apply only to the copper smelter in the Miami SO_2 nonattainment area, from the Arizona SIP.

FMI therefore requested that the EPA either amend its proposed action on Rule B1302 to include a proposed approval of Arizona's revisions to A.A.C. R18–2–715 and R18–2–715.01, or to propose such approval in a separate, but concurrent action. The commenter stated that, by doing so, the EPA could ''avoid having any period with a SIP gap by taking simultaneous final action on A.A.C R18–2–B1302 and R18–2–715 and R18–2–715.01'' and ''allow the existing SIP rules for attaining the 1971 SO_2 NAAQS to be properly subsumed by the newly approved SIP rules for attaining the revised 2010 SO_2 NAAQS.'' The commenter asserted that such an approach would be consistent with the EPA's efforts to implement Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.''

Response: The commenter is correct that the EPA has not yet proposed to act on the transitional provisions in A.A.C. R18–2–715(I) and R18–2–715.01(V). As we noted in the TSD for our proposed action on Rule B1302 for the Hayden area, in order to act on the revisions to 715 and 715.01, ''we need to evaluate the effect of sunsetting the existing SIP-approved requirements of those rules in conjunction with the new requirements for the Hayden smelter established in Rule B1302.'' [8] In conducting this evaluation, we explained that:

> . . . Rule B1302 does not include a numeric fugitive emission limit, whereas Rule 715 subsection (G) includes an annual average fugitive limit of 295 lb/hr.
>
> In order to ensure that the existing fugitive limit of 295 lb/hr remains in the SIP, we are not acting on the revisions to Rule 715 at this time. Similarly, we are not acting on Rule 715.01, which includes requirements for SO_2 compliance determination and monitoring that support the enforceability of the emission limits and requirements in Rule 715.[9]

In other words, approval of R18–2–715(I) and R18–2–715.01(V) at this time would result in the removal of the existing SIP-approved fugitive emission limit and associated compliance requirements for the Hayden Smelter without a new fugitive emissions limit to replace it. For the reasons described in our proposed action on Rule B1302, as well as our proposed and final actions on the Hayden SO_2 Plan and the associated responses to comments, in the absence of a fugitive emissions limit, the Plan does not provide for the attainment of the 2010 SO_2 NAAQS.[10] Therefore, an action to approve R18–2–715(I) and R18–2–715.01(V)—and thereby remove the existing fugitive emissions limit from the SIP without replacement—would interfere with attainment of the 1971 and 2010 SO_2 NAAQS.[11] Such an action would be impermissible under CAA section 110(l), which prohibits the EPA from approving any SIP revision that would interfere with applicable requirements concerning attainment and reasonable further progress or any other applicable CAA requirement. Therefore, we have not proposed to approve the transitional provisions in R18–2–715(I) and R18–2–715.01(V).[12]

We acknowledge that our inability to approve these provisions has resulted in a SIP gap and that that the requirements in Rule 715 that apply to the Miami smelter are now duplicative of the requirements in SIP-approved rule A.A.C. R18–2–C1302. However, because the transitional provisions that apply to Hayden and Miami are inseverable from one another (*i.e.,* both are contained within a single paragraph within R18–2–715(I) and R18–2–715.01(V)), we cannot separately approve the transitional provisions for Miami without also approving the provisions for Hayden, which is prohibited by CAA section 110(l).

On March 10, 2020, the EPA received a submittal from ADEQ seeking to withdraw A.A.C. R18–2–715(F)(2) and R18–2–715(H), which apply only to the Miami SO_2 nonattainment area, from the Arizona SIP. As noted by the commenter, approval of this SIP revision would remedy the SIP gap issue for the Miami area. We intend to act on this submittal in a separate rulemaking, as it is outside of the scope of this action, which concerns only Rule B1302.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the Arizona SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of the rule.

As a result, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Arizona Administrative Code section described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[13]

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[8] EPA, ''Technical Support Document for the EPA's Rulemaking for the Arizona State Implementation Plan; Arizona Administrative Code, Title 18, Chapter 2, Article 13, Part B—Hayden, Arizona, Planning Area, R18–2–B1302—Limits on SO_2 Emissions from the Hayden Smelter,'' April 2020 (''Rule B1302 TSD''), 10.

[9] Id.

[10] 85 FR 31113, 31114; Rule B1302 TSD, 7–8; 85 FR 31118, 31120; Response to Comments.

[11] We note that the existing SIP-approved fugitive emissions limit of 295 lb/hr, was intended to provide for attainment of the 1971 SO_2 NAAQS and is significantly higher than the fugitive emissions levels of 10.6 lb/hr (converter aisle), 40.1 lb/hr (anode aisle), and 28.7 lb/hr (flash furnace), which were assumed in the attainment demonstration in the Hayden SO_2 Plan. Therefore, the existing limit is not itself sufficient to constrain fugitive emissions to the level necessary to provide for attainment of the 2010 SO_2 NAAQS. Nonetheless, given that this limit is the only directly enforceable constraint on fugitive SO_2 emissions from the facility, we find that its removal would interfere with attainment of the 2010 SO_2 NAAQS.

[12] We note that, while we could *disapprove* these provisions for failure to comply with CAA section 110(l), we believe today's final limited disapproval of Rule B1302 and the related partial disapproval of the Hayden SO_2 plan provide sufficient clarity regarding the changes, if made by ADEQ and submitted in a SIP revision, that would be needed to result in proposed full approval of Rule B1302, as well as R18–2–715(I) and R18–2–715.01(V), without having to disapprove the latter provisions at this time.

[13] 62 FR 27968 (May 22, 1997).

The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

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

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

This action is not an Executive Order 13771 regulatory action because SIP approvals, including limited approvals, are exempted under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

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

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

M. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: October 10, 2020.

John Busterud,

Regional Administrator, Region IX.

For the reasons stated in the preamble the EPA amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. In § 52.120 amend Table 2 in paragraph (c), by adding an entry for ''R18–2–B1302'' after the entry for ''R18–2–B1301.01'' under the heading ''Article 13 (State Implementation Plan Rules For Specific Locations)''.

§ 52.120 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA-APPROVED ARIZONA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * * * *				
Article 13 (State Implementation Plan Rules For Specific Locations)				
* * * * * * *				
R18–2–B1302	Limits on SO_2 from the Hayden Smelter.	July 1, 2018.	[Insert ***Federal Register*** Citation], November 5, 2020.	Submitted on April 6, 2017. EPA issued a limited approval and limited disapproval of Rule R18–2–B1302.
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[FR Doc. 2020–23031 Filed 11–4–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2014–0741; FRL–10015–72–OAR]

RIN 2060–AU53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills; Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semichemical Pulp Mills, and the New Source Performance Standards (NSPS) for Kraft Pulp Mills constructed, reconstructed, or modified after May 23, 2013. The final rule clarifies how to set operating limits for smelt dissolving tank (SDT) scrubbers used at these mills and corrects cross-reference errors in both rules.

DATES: This final rule is effective on November 5, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0741. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov/.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Dr. Kelley Spence, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3158; fax number: (919) 541–0516; and email address: *spence.kelley@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ADI Applicability Determination Index
CAA Clean Air Act
CFR Code of Federal Regulations
CRA Congressional Review Act
EPA U.S. Environnemental Protection Agency
ESP electrostatic precipitator
HAP hazardous air pollutant(s)
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PFLA percent full load amperage
PM particulate matter
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RPM revolutions per minute
SDT smelt dissolving tank
UMRA Unfunded Mandates Reform Act

Background information. On October 31, 2019, the EPA proposed revisions to the NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR part 63, subpart MM) and the NSPS for Kraft Pulp Mills Constructed, Reconstructed, or Modified After May 23, 2013 (40 CFR part 60, subpart BBa) clarifying how to set operating limits for SDT scrubbers used at these mills and correcting cross-reference errors in both rules. The rules have similar requirements for setting operating limits for SDT scrubbers, therefore, similar revisions were proposed for both rules. See 84 FR 58356. In this action, the EPA is finalizing the proposed revisions with minor edits. The preamble includes a summary of the comments the EPA received and our responses resulting in improvements to the proposed rule. A summary of all public comments on the proposal and the EPA's specific responses to those comments is provided in the memorandum, ''*Response to Comments to Proposed Rule Amending 40 CFR part 63 Subpart MM and 40 CFR part 60 Subpart BBa,*'' included in the docket for this action. Redline versions of the regulatory language for 40 CFR part 63, subpart MM, and 40 CFR part 60, subpart BBa showing the final amendments resulting from this action and are also available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP, NSPS, and associated regulated industrial source categories that are the subject of this final rule. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this final action is likely to affect. The final amendments, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities will not be affected by this action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030, July 1992), the Pulp and Paper Production source category is any facility engaged in the production of pulp and/or paper. This category includes, but is not limited to, integrated mills (where pulp alone or pulp and paper or paperboard are manufactured on-site), non-integrated mills (where paper or paperboard are manufactured, but no pulp is manufactured on-site), and secondary fiber mills (where waste paper is used as the primary raw material). Examples of pulping methods include kraft, soda, sulfite, semi-chemical, and mechanical. The pulp and paper production process units include operations such as pulping, bleaching, and chemical recovery. A kraft pulp mill is defined as a facility engaged in kraft pulping and includes digester systems, brown stock washer systems, multiple-effect evaporator systems, condensate stripper systems, recovery furnaces, SDTs, and lime kilns.

TABLE 1—REGULATIONS AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category	Name of action	NAICS [1] code
Pulp and Paper Production.	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR part 63, subpart MM).	32211, 32212, 32213
Kraft Pulp Mills	Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (40 CFR part 60, subpart BBa).	322110

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of the action at *https://www.epa.gov/stationary-sources-air-pollution/kraft-soda-sulfite-and-stand-alone-semichemical-pulp-mills-mact-ii* and *https://www.epa.gov/stationary-sources-air-pollution/kraft-pulp-mills-new-source-performance-standards-nsps-40-cfr-60.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule at this same website.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the court) by January 4, 2021. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. Environmental Protection Agency, Room 3000, WJC South Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Final Amendments

With this action, the EPA is finalizing amendments to the NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (referred to hereafter as ''the NESHAP'') and the NSPS for Kraft Pulp Mills constructed, reconstructed, or modified after May 23, 2013 (referred to hereafter as ''the NSPS''). The amendments (referred to hereafter as the ''2019 proposed amendments'') were proposed on October 31, 2019 (84 FR 58356) to clarify how to set operating limits for SDT scrubbers used at these mills and correct cross-reference errors in both rules. As explained in this section, clarification was needed to address parameter monitoring issues that arose during implementation of the 2017 amendments to the NESHAP (referred to hereafter as the ''2017 NESHAP amendments'') as a result of the Agency's residual risk and technology review. See 82 FR 47328, October 11, 2017.

A. What are the final amendments to the NESHAP?

1. Alternative To Monitoring Pressure Drop for Certain SDT Scrubbers

The 2017 NESHAP amendments added fan amperage [1] to 40 CFR 63.864(e)(10)(iii) as an alternative to monitoring pressure drop for SDT dynamic scrubbers that operate at ambient pressure and low-energy entrainment scrubbers where the fan speed does not vary. Fan amperage was added as an alternative monitoring parameter based on the EPA's review of alternative monitoring requests for these types of SDT scrubbers available in the EPA's Applicability Determination Index (ADI) (81 FR 97074, December 30, 2016). In these previously approved alternative monitoring requests, the EPA acknowledged that pressure drop is not the best indicator of particulate matter (PM)/hazardous air pollutant (HAP) control device performance when the SDT scrubber is a low-energy entrainment scrubber or a dynamic scrubber that operates near atmospheric pressure. Low-energy entrainment scrubbers use the rotation of the fan blade to shatter the scrubbing liquid into fine droplets, while at the same time accelerating the particles into the airstream. The PM removal efficiency of these scrubbers is a function of the number of liquid droplets produced (to create a large contacting surface area) and the velocity of the PM imparted by the fan blade, which in turn, are functions of the amount of scrubbing liquid introduced and the tip speed of the fan blade. Therefore, the most important parameters to continuously monitor are the scrubbing liquid flow rate and the fan rotational speed (as indicated by the amperage of the fan motor or revolutions per minute (RPM)).

In addition to adding fan amperage as a monitoring parameter, the 2017 NESHAP amendments also specified a method in 40 CFR 63.864(j)(5)(i)(A) for setting the fan motor amperage operating limit, requiring that the minimum fan amperage operating limit be set as the lowest of the 1-hour average fan amperage values associated with each run demonstrating compliance with the applicable emission limit. The intent of establishing the operating limit as the lowest 1-hour average fan amperage was to demonstrate that the scrubber was operating as intended and removing HAP accordingly, because fan amperage values can be correlated with fan speed. This seemed reasonable during the development of the 2017 NESHAP amendments because the fans on these units are constant speed fans and changes in the load to the fan motor (*e.g.,* changes in gas density/pressure or fan belt issues) result in changes in the amperage needed to maintain the constant speed. For example, a scrubber operating without any scrubbing liquid or exhaust gas would pull a certain amount of amperage on the fan motor to maintain a constant speed. When the exhaust gas and scrubbing liquid are added, the fan motor amperage will increase to maintain that speed. Based on this concept, the basis for the fan motor amperage operating limit in the 2017 NESHAP amendments was that a drop in fan motor amperage below a certain point showed that the motor would no longer turn the fan properly (because, for example, the belt that connects the motor to the fan was slipping or broken), which in turn would mean the scrubber was not operating as well as it was during the emissions performance test.

As facilities began to plan their repeat performance test required by the 2017 NESHAP amendments and determine the appropriate operating parameters, they discovered that the method dictated to set the fan motor amperage did not accurately represent proper scrubber performance and submitted alternative monitoring requests. The alternative monitoring requests that EPA received explained that setting the fan amperage operating limit as outlined in the 2017 NESHAP amendments at 40 CFR 63.864(j)(5)(i)(A) could result in a minimum limit that does not correlate with scrubber emissions-reduction performance and cannot be achieved at all times, leading to deviations of the amperage operating parameter even when the fan is turning as designed and the scrubber is operating properly to achieve the required HAP reduction. More details on these alternative monitoring requests were provided in the memorandum titled, *Smelt Dissolving Tank Scrubber Operating Parameter Review,* in the docket for the 2019 proposed amendments (EPA Docket Item No. EPA–HQ–OAR–2014–0741–0277).

As explained in the preamble to the 2019 proposed amendments, after reviewing how the SDT scrubbers in question operate, the EPA agrees that use of the average fan motor amperage measured during the performance test to establish the fan amperage limit as dictated in 40 CFR 63.864(j)(5)(i)(A) of the 2017 NESHAP amendments can be problematic because it does not necessarily correlate with proper operation of the scrubber. The EPA's intent with adding the fan motor amperage alternative as part of the 2017 NESHAP amendments was to add regulatory flexibility while ensuring proper scrubber operation, not to arbitrarily set an operating limit that may not be met, even while the SDT scrubber is operating properly. The requirement for determining the fan motor amperage during the performance test to set the minimum limit was included in the 2017 NESHAP amendments (40 CFR part 63, subpart MM) which apply to new and existing sources *(*see 82 FR 47328, October 11, 2017) and in the NSPS promulgated in 2014 (40 CFR part 60, subpart BBa) which applies to new sources only (*see* 79 FR 18952, April 4, 2014). The issue was not identified in public comments on either rule but was discovered as existing sources began to implement the 2017 NESHAP amendments.

Upon further review of the EPA's responses to historical alternative monitoring requests included in the ADI, recent requests for alternative monitoring, and other available information, we recognize that the requirement to monitor fan amperage directly and establish a minimum fan amperage limit based on the average amperage measured during the performance test may result in deviations even when the scrubber is properly operating. Some facilities were approved by the EPA to use indicators of fan operation closely related to fan amperage (*e.g.,* RPM) and engineering design considerations when setting the site-specific fan amperage limit indicative of proper scrubber operation. For more details, see the memorandum titled *Smelt Dissolving Tank Scrubber Operating Parameter Review,* in the docket for the 2019 proposed amendments (EPA Docket Item No. EPA–HQ–OAR–2014–0741–0277).

To continue with our original intent to measure scrubber performance with an alternative method in these rules, the EPA proposed this rule to modify the language at 40 CFR 63.864(e)(10)(iii) and (j)(5)(i) to clarify how wet scrubber parameter limits are to be established and that fan amperage or RPM can be used to demonstrate compliance for the

[1] Fan amperage refers to the amperage delivered to the fan motor.

SDT scrubbers in question. Specifically, the EPA proposed to replace 40 CFR 63.864(j)(5)(i)(A) with a requirement to set the minimum scrubbing liquid flow rate operating limit as the lowest of the 1-hour average scrubbing liquid flow rate values associated with each test run demonstrating compliance with the applicable emission limit. This requirement was inadvertently left out of the 2017 NESHAP amendments but was required by other sections of the rule. Additionally, we proposed to add a new subsection, 40 CFR 63.864(j)(5)(i)(B), to clarify how wet scrubber fan amperage operating limits should be established.

The proposed text in 40 CFR 63.864(j)(5)(i)(B) included the same requirement that was previously in the 40 CFR 63.864(j)(5)(i) introductory paragraph, which stated that the scrubber pressure drop operating limit must be set as the lowest of the 1-hour average pressure drop values associated with each test run demonstrating compliance with the applicable emission limit, but also added that for dynamic or low-energy entrainment scrubbers, operating limits could be set using one of three methods specified in paragraphs 40 CFR 63.864(j)(5)(i)(B)(*1*) through (*3*).

- In 40 CFR 63.864(j)(5)(i)(B)(*1*), the EPA proposed to clarify that, for SDT dynamic wet scrubbers operating at ambient pressure or for low-energy entrainment scrubbers where fan speed does not vary, the minimum fan amperage operating limit must be set as the midpoint between the lowest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit and the no-load amperage value. Additionally, the proposed regulatory text specified that the no-load amperage value must be determined using manufacturers specifications or by performing a no-load test of the fan motor, and that it must be verified that the scrubber fan is operating within 5 percent of the design RPM during the emissions performance test. A definition of ''no-load fan amperage'' was proposed in 40 CFR 63.861.
- In 40 CFR 63.864(j)(5)(i)(B)(*2*), the EPA proposed to allow use of percent full load amperage (PFLA) to demonstrate compliance and require that the minimum PFLA to the fan motor be set as the percent of full load amperage under no-load, plus 10 percent. Because the no-load value represents the amperage pulled by the motor without a fan belt (*i.e.,* the fan is not engaged), the additional 10 percent was proposed to ensure that the belt has not broken, and the fan is engaged during operation. This new subsection also proposed requiring verification that the scrubber fan is operating within 5 percent of the design RPM during the emissions performance test.
- In 40 CFR 63.864(j)(5)(i)(B)(*3*), the EPA proposed to allow use of RPM to demonstrate compliance and a requirement that the minimum RPM be set at 95 percent of the design RPM. The EPA also proposed a conforming amendment in 40 CFR 63.867(c)(3)(iii)(C)(*1*) to incorporate this language.

Commenters on the 2019 proposed amendments supported the proposed methods for setting minimum operating limits in 40 CFR 63.864(j)(5)(i)(B)(*1*) and (*2*), except for the requirement to verify that the scrubber fan is operating within 5 percent of the design RPM during the emissions performance test. Commenters strongly opposed the requirement to verify the design RPM for reasons detailed in the response-to-comments memorandum, *Response to Comments to Proposed Rule Amending 40 CFR part 63 Subpart MM and 40 CFR part 60 Subpart BBa,* in the docket for this action. In brief, the commenters explained that facilities monitoring fan amperage may not have instrumentation in place to monitor fan RPM and may not have the design RPM value available; that there are safety issues associated with attempting to obtain a one-time measurement of RPM; and that operating within 5 percent of the design RPM during the emissions performance test is irrelevant if the performance test shows compliance with the PM emission limit and fan amperage (which is proportional to RPM) is monitored. In response to these comments, the requirement to verify that the scrubber fan is operating within 5 percent of the design RPM during the emissions performance test was removed from the final rule. All other requirements in 40 CFR 63.864(j)(5)(i)(B)(*1*) and (*2*) were finalized as proposed.

One commenter requested that the EPA modify the proposed definition of ''no load fan amperage'' by adding the following language to the end of the definition, ''or the coupling to a direct drive fan was disconnected.'' The phrase was added as requested for the final rule.

Regarding the proposed 40 CFR 63.864(j)(5)(i)(B)(*2*), a commenter requested clarification on how the minimum PFLA operating limit should be calculated for an SDT scrubber fan and suggested that the EPA present an example PLFA calculation in the preamble to the final rule. In response to this request, we clarified in the final rule that the PFLA is calculated by dividing the no-load amperage value by the highest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in 40 CFR 63.862 multiplied by 100 *and then adding 10 percent* (emphasis added). We are including the following example of how to calculate the minimum PFLA. However, we are not including this equation in the final rule to avoid the need to renumber several subsequent rule equations.

Minimum PFLA = (No-load fan amperage/highest 1-hour average of fan amperages) $\times$ 100% + 10%

Where:

- The no-load fan amperage represents the amperage pulled by the fan motor when the fan is operating under no-load determined using manufacturers specifications or by performing a no-load test of the fan motor.
- The highest 1-hour average of fan amperages is the highest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in 40 CFR 63.862.

For example, assume Facility ''A'' performs a no-load test of their SDT scrubber's fan motor by running the motor without the fan belt attached. The measured fan amperage during the no-load test is 70 amperage. During a performance test of the SDT scrubber, the highest 1-hour average of the fan amperage values associated with each of the three test runs demonstrating compliance with the applicable emission limit is 179 amperage. Using these two amperage values, Facility A would calculate the PFLA alternative operating parameter limit for their SDT scrubber fan as follows:

Minimum PFLA = (70/179) $\times$ 100% + 10% = 49%

One commenter addressed the proposed 40 CFR 63.864(j)(5)(i)(B)(*3*), which would require the minimum fan RPM limit to be set as 5 percent lower than the design RPM. The commenter stated that the EPA should revise this requirement to be 5 percent lower than the lowest 1-hour average RPM measured during each test run demonstrating compliance with the applicable emission limit. The commenter explained that a facility could have modified the fan motor such that it is no longer operating at the design RPM, or it could have no documentation of the design RPM, but it is the performance of the scrubber during the stack test that matters. In response to this comment, 40 CFR

63.864(j)(5)(i)(B)(*3*) was finalized by revising it to require that the minimum RPM be set as 5 percent lower than the lowest 1-hour average RPM associated with each test run demonstrating compliance with the applicable emission limit, as requested. The EPA agrees that an operating limit based on the lowest 1-hour average RPM measured during each test run (for facilities that measure RPM) is adequate to demonstrate ongoing operation of the SDT scrubber. The 5-percent margin suggested by the commenter will allow for variability. The conforming revisions to 40 CFR 63.867(c)(3)(iii)(C)(1) that acknowledge RPM as an operating parameter for SDT dynamic or low-energy scrubbers were also finalized as proposed.

2. Other NESHAP Amendments

In addition to clarifying how to set SDT fan amperage operating limits, the EPA also proposed to correct the following cross-reference errors in the promulgated 40 CFR part 63, subpart MM NESHAP:

- An incorrect paragraph reference in the definition of ''modification'' in 40 CFR 63.861;
- An incorrect paragraph reference in 40 CFR 63.864(e)(10)(iii), referring to 40 CFR 63.864(e)(3)(i) instead of 40 CFR 63.864(e)(10)(i) as intended;
- Omission of reference to wet scrubber liquid flow rate in 40 CFR 63.864(j)(5) which specifies how to establish operating limits; and
- Incorrect paragraph references in 40 CFR 63.864(j)(1), (3), and (5) which cross-referenced requirements that were proposed (81 FR 97046, December 30, 2016) but not finalized for establishing site-specific electrostatic precipitator (ESP) operating limits for secondary voltage and secondary current (or total secondary power) for each ESP collection field. Instead of finalizing site-specific ESP operating limits, the EPA finalized a requirement to maintain proper operation of the ESP's automatic voltage control (82 FR 47328, October 11, 2017), but inadvertently kept the cross-references to the proposed ESP operating limits in the final rule.

The EPA did not receive any comments on the first three corrections noted above and is finalizing these amendments as proposed.

A comment was received regarding the EPA's proposal to eliminate the reference to 40 CFR 63.864(e)(1) in 40 CFR 63.864(j)(1), (3), and (5) which pertain to determination of operating limits. The commenter stated that the EPA should also eliminate reference to 40 CFR 63.864(e)(2) in these sections because 40 CFR 63.864(e)(2) references 40 CFR 63.864(e)(1). The EPA agrees with the commenter's suggestion and eliminated the cross-reference to 40 CFR 63.864(e)(2) in 40 CFR 63.864(j)(1), (3), and (5) for the final amendments. 40 CFR 63.864(e)(2) specifies parameter monitoring requirements for kraft or soda recovery furnaces or lime kilns using an ESP followed by a wet scrubber. 40 CFR 63.864(e)(2) refers to 40 CFR 63.864(e)(1) to require facilities to maintain proper ESP automatic voltage control and refers to 40 CFR 63.864(e)(10) to require facilities to monitor wet scrubber parameters. While 40 CFR 63.864(j)(1), (3), and (5) no longer reference 40 CFR 63.864(e)(1) and (2), these sections retain the reference to 40 CFR 63.864(e)(10) with respect to wet scrubber operating limits.

B. What are the final amendments to the NSPS?

1. Alternative To Monitoring Pressure Drop for Certain SDT Scrubbers

The EPA proposed similar amendments to the fan amperage requirements in the NSPS as discussed in section II.A of this preamble for consistency between the NESHAP and NSPS that apply to the same scrubbers. Specifically, NSPS amendments were proposed for 40 CFR 60.284a(b)(2)(iii), (c)(3)(i), (c)(4), and (d)(4)(ii) and 40 CFR 60.287a(b)(4)(i) to add RPM language. As proposed, 40 CFR 60.284a(c)(4) referred to the procedures for establishing the SDT fan amperage operating limit in the NESHAP (40 CFR 63.864(j)(5)(i)(B)). A commenter requested that 40 CFR 60.284a(c)(4) specify how scrubber fan amperage operating limits should be set rather than referencing 40 CFR 63.864(j)(5)(i)(B) of the NESHAP (as proposed). The commenter noted that incorporation of the NESHAP reference is inappropriate because it requires the operating parameter limit to be set based on a performance test that demonstrates compliance with the applicable emission limit in 40 CFR 63.862, not 40 CFR 60.282a. In response to this comment, the EPA removed the reference to 40 CFR 63.864(j)(5)(i)(B) in 40 CFR 60.284a(c)(4) and replaced it with specific language describing how to set scrubber fan amperage operating parameter limits. The procedures added to the NSPS in 40 CFR 60.284a(c)(4) are consistent with the procedures specified in the NESHAP. The EPA also added the definition of ''no-load fan amperage'' to 40 CFR 60.281a because the definition is referenced in the language added in 40 CFR 63.864(j)(5)(i)(B).

2. Other NSPS Amendments

The EPA proposed to correct a cross-reference error in the promulgated Kraft Pulp Mills NSPS (40 CFR part 60, subpart BBa). Specifically, the EPA proposed to amend incorrect paragraph references in 40 CFR 60.285a(b)(1) and 60.285a(d)(1) intended to cross-reference the rule's oxygen correction equation. No comments were received on these changes so the EPA is finalizing these amendments as proposed.

III. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The sources affected by this action are chemical pulp mills that use SDTs equipped with low-energy entrainment scrubbers or dynamic scrubbers that operate near atmospheric pressure. We estimate that there are 54 facilities that utilize these types of scrubbers.

B. What are the air quality impacts?

There are no air quality impacts associated with the final amendments.

C. What are the cost impacts?

No cost impacts are estimated to be associated with this action because the action serves only to provide regulatory clarity. This action reduces the likelihood that facilities will choose to submit site-specific alternative monitoring requests but does not change the scope of any regulatory requirements.

D. What are the economic impacts?

There are no economic impacts associated with the final amendments.

E. What are the benefits?

Because these final amendments are not considered economically significant, as defined by Executive Order 12866, and because we did not estimate any emission reductions associated with the action, we did not estimate any benefits from reducing emissions.

IV. Statutory and Executive Order Reviews

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

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

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

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

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

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulation (40 CFR part 63, subpart MM) and has assigned OMB control number 2060–0377. This action does not change the information collection requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not create any new requirements or burdens, and no costs are associated with this final action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. The EPA does not know of any pulp mills owned or operated by Indian tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying 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 does not concern an environmental health risk or safety risk.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not affect the level of protection provided to human health or the environment.

L. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Monitoring requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Andrew Wheeler,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR parts 60 and 63 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart BBa—Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013

■ 2. In § 60.281a, add in alphabetical order the definition for ''No-load fan amperage'' to read as follows:

§ 60.281a Definitions.

* * * * *

No-load fan amperage means, for the purposes of this subpart, the amperage pulled by the fan motor when the fan is operating under no-load, specifically the amperage value the motor would use if the fan belt was removed or the coupling to a direct drive fan was disconnected.

* * * * *

■ 3. In § 60.284a, revise paragraphs (b)(2)(iii), (c)(3)(i), (c)(4), and (d)(4)(ii) to read as follows:

§ 60.284a Monitoring of emissions and operations.

* * * * *

(b) * * *

(2) * * *

(iii) As an alternative to pressure drop measurement under paragraph (b)(2)(i) of this section, a monitoring device for measurement of fan amperage or revolutions per minute (RPM) may be used for smelt dissolving tank dynamic scrubbers that operate at ambient pressure or for low-energy entrainment scrubbers where the fan speed does not vary.

* * * * *

(c) * * *

(3) * * *

(i) Calculate 12-hour block averages from the recorded measurements of wet scrubber pressure drop (or smelt dissolving tank scrubber fan amperage or RPM) and liquid flow rate (or liquid supply pressure), as applicable.

* * * * *

(4) During the initial performance test required in § 60.285a, the owner or operator must establish site-specific operating limits for the monitoring parameters in paragraphs (b)(2) through (4) of this section by continuously monitoring the parameters and determining the arithmetic average value of each parameter during the performance test. The arithmetic

average of the measured values for the three test runs establishes your minimum site-specific operating limit for each wet scrubber or ESP parameter (except for smelt dissolving tank scrubber fan amperage or RPM). For smelt dissolving tank scrubber fan amperage, set the minimum operating limit using one of the methods in paragraphs (c)(4)(i) or (ii) of this section. For smelt dissolving tank scrubber RPM, the minimum RPM must be set as specified in paragraph (c)(4)(iii) of this section. Multiple performance tests may be conducted to establish a range of parameter values. The owner or operator may establish replacement operating limits for the monitoring parameters during subsequent performance tests using the test methods in § 60.285a.

(i) The minimum fan amperage operating limit must be set as the midpoint between the lowest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in § 60.282a and the no-load amperage value. The no-load amperage value must be determined using manufacturers specifications, or by performing a no-load test of the fan motor for each smelt dissolving tank scrubber; or

(ii) The minimum percent full load amperage (PFLA) to the fan motor must be set as the percent of full load amperage under no-load, plus 10 percent. The PFLA is calculated by dividing the no-load amperage value by the highest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in § 60.282a multiplied by 100 and then adding 10 percent. The no-load amperage value must be determined using manufacturers specifications, or by performing a no-load test of the fan motor for each smelt dissolving tank scrubber.

(iii) The minimum RPM must be set as 5 percent lower than the lowest 1-hour average RPM associated with each test run demonstrating compliance with the applicable emission limit.

* * * * *

(d) * * *

(4) * * *

(ii) All 12-hour block average scrubber pressure drop (or fan amperage or RPM, if used as an alternative under paragraph (b)(2)(iii) of this section) measurements below the minimum site-specific limit established during performance testing during times when BLS or lime mud is fired (as applicable), except during startup and shutdown.

* * * * *

■ 4. In § 60.285a, revise paragraphs (b)(1) and (d)(1) to read as follows:

§ 60.285a Test methods and procedures.

* * * * *

(b) * * *

(1) Method 5 of appendix A–3 of this part must be used to determine the filterable particulate matter concentration. The sampling time and sample volume for each run must be at least 60 minutes and 0.90 dscm (31.8 dscf). Water must be used as the cleanup solvent instead of acetone in the sample recovery procedure. The particulate concentration must be corrected to the appropriate oxygen concentration according to § 60.284a(c)(1)(iii).

* * * * *

(d) * * *

(1) Method 16 of appendix A–6 of this part must be used to determine the TRS concentration. The TRS concentration must be corrected to the appropriate oxygen concentration using the procedure in § 60.284a(c)(1)(iii). The sampling time must be at least 3 hours, but no longer than 6 hours.

* * * * *

■ 5. In § 60.287a, revise paragraph (b)(4)(i) to read as follows:

§ 60.287a Recordkeeping.

* * * * *

(b) * * *

(4) * * *

(i) Records of the pressure drop of the gas stream through the control equipment (or smelt dissolving tank scrubber fan amperage or RPM), and

* * * * *

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

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

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

Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

■ 7. In § 63.861, revise the definition for ''Modification'' and add in alphabetical order the definition for ''No-load fan amperage'' to read as follows:

§ 63.861 Definitions.

* * * * *

Modification means, for the purposes of § 63.862(a)(1)(ii)(D)(*1*), any physical change (excluding any routine part replacement or maintenance) or operational change that is made to the air pollution control device that could result in an increase in PM emissions.

* * * * *

No-load fan amperage means, for purposes of this subpart, the amperage pulled by the fan motor when the fan is operating under no-load, specifically the amperage value the motor would use if the fan belt was removed or the coupling to a direct drive fan was disconnected.

* * * * *

■ 8. In § 63.864, revise paragraphs (e)(10)(iii), (j)(1), (3), and (5) to read as follows:

§ 63.864 Monitoring requirements.

* * * * *

(e) * * *

(10) * * *

(iii) As an alternative to pressure drop measurement under paragraph (e)(10)(i) of this section, a monitoring device for measurement of fan amperage or fan revolutions per minute (RPM) may be used for smelt dissolving tank dynamic scrubbers that operate at ambient pressure or for low-energy entrainment scrubbers where the fan speed does not vary.

* * * * *

(j) * * *

(1) During the initial or periodic performance test required in § 63.865, the owner or operator of any affected source or process unit must establish operating limits for the monitoring parameters in paragraphs (e)(10) through (14) of this section, as appropriate; or

* * * * *

(3) The owner or operator of an affected source or process unit may establish expanded or replacement operating limits for the monitoring parameters listed in paragraphs (e)(10) through (14) of this section and established in paragraph (j)(1) or (2) of this section during subsequent performance tests using the test methods in § 63.865.

* * * * *

(5) New, expanded, or replacement operating limits for the monitoring parameter values listed in paragraphs (e)(10) through (14) of this section should be determined as described in paragraphs (j)(5)(i) and (ii) of this section.

(i) The owner or operator of an affected source or process unit that uses a wet scrubber must set minimum operating limits as described in paragraph (j)(5)(i)(A) and (B) of this section.

(A) Set the minimum scrubbing liquid flow rate operating limit as the lowest of the 1-hour average scrubbing liquid flow rate values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862.

(B) Set the minimum scrubber pressure drop operating limit as the lowest of the 1-hour average pressure drop values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862; or for a smelt dissolving tank dynamic wet scrubber operating at ambient pressure or for low-energy entrainment scrubbers where fan speed does not vary, set the minimum operating limit using one of the methods in paragraph (j)(5)(i)(B)(*1*) through (*3*) of this section.

(*1*) The minimum fan amperage operating limit must be set as the midpoint between the lowest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862 and the no-load amperage value. The no-load amperage value must be determined using manufacturers specifications, or by performing a no-load test of the fan motor for each smelt dissolving tank scrubber; or

(*2*) The minimum percent full load amperage (PFLA) to the fan motor must be set as the percent of full load amperage under no-load, plus 10 percent. The PFLA is calculated by dividing the no-load amperage value by the highest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862 multiplied by 100 and then adding 10 percent. The no-load amperage value must be determined using manufacturers specifications, or by performing a no-load test of the fan motor for each smelt dissolving tank scrubber; or

(*3*) The minimum RPM must be set as 5 percent lower than the lowest 1-hour average RPM associated with each test run demonstrating compliance with the applicable emission limit.

(ii) [Reserved]

* * * * *

■ 9. In § 63.867, revise paragraph (c)(3)(iii)(C)(*1*) to read as follows:

§ 63.867 Reporting requirements.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(C) * * *

(1) The operating limits established during the performance test for scrubbing liquid flow rate and pressure drop across the scrubber (or alternatively, fan amperage or RPM if used for smelt dissolving tank scrubbers).

* * * * *

[FR Doc. 2020–22938 Filed 11–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0112; FRL–10015–69]

Thiamine Mononitrate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of thiamine mononitrate (CAS Reg. No. 532–43–4) when used as an inert ingredient (enzyme cofactor) in pesticide products applied to/on all growing crops pre-harvest, limited to 0.1% (by weight) in pesticide formulations. SciReg, Inc on behalf of Valagro, S.p.A submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of thiamine mononitrate when used in accordance with this exemption. Vitamin B1 is also known as thiamine mononitrate. Throughout this document and for purposes of issuing the tolerance, EPA is using the name ''thiamine mononitrate'' to be consistent with standard agency nomenclature for the identification of this substance.

DATES: This regulation is effective November 5, 2020. Objections and requests for hearings must be received on or before January 4, 2021 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0112, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr50/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0112 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 4, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0112, by one of the following methods:

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

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

II. Petition for Exemption

In the **Federal Register** of May 8, 2020 (85 FR 27346) (FRL–10008–38), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (IN–11370) by SciReg, Inc (12733 Director's Loop, Woodbridge, VA 22192) on behalf of Valagro S.p.A. (Zona Industriale, Via Cagliari, 1, 66041 Atessa (CH), Italy). The petition requested that 40 CFR be amended by establishing an exemption from the requirement of a tolerance for residues of vitamin B1 (thiamine mononitrate, CAS Reg. No. 532–43–4) when used as an inert ingredient (enzyme cofactor) in pesticide products applied to/on all growing crops pre-harvest under 40 CFR 180.920, limited to 0.1% (by weight) in pesticide formulations. That document referenced a summary of the petition prepared by SciReg, Inc on behalf of Valagro, S.p.A, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

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

IV. Aggregate Risk Assessment and Determination of Safety

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

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by thiamine mononitrate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document Thiamine Mononitrate, Vitamin B1—Human Health Risk and Ecological Effects Assessment of Request to Amend an Existing Exemption from the Requirements of a Pesticide Tolerance Under 40 CFR 180.920 for Food Use Inert Ingredient in docket ID number EPA–HQ–OPP–2020–0112.

The acute oral toxicity is low in mice treated with thiamine mononitrate. It is mildly to irritating to the rabbit eye and not irritating to rabbit skin. Thiamine mononitrate is a sensitizer.

No toxicity is observed in repeated dose studies conducted with thiamine mononitrate administered via diet and gavage to rats and mice. Fetal susceptibility is not observed in the reproduction and developmental toxicity studies in rats. No adverse effects are observed in parents, offspring or reproduction in rats treated with thiamine mononitrate at doses up to 100 mg/kg/day. There is no concern for reproduction or developmental toxicity since metabolism studies indicate that thiamine mononitrate absorption declines for an intake higher than 5 mg/day and absorbed thiamine mononitrate is actively excreted in the urine.

Mutagenicity is not expected with thiamine mononitrate based on available mutagenicity studies. Thiamine mononitrate is not expected to be carcinogenic based on studies in mice.

Neurotoxicity and immunotoxicity studies are not available for review. However, no evidence of neurotoxicity or immunotoxicity is observed in any of the available studies on thiamine mononitrate.

B. Toxicological Points of Departure/Levels of Concern

The available toxicity studies indicate that thiamine mononitrate has very low oral toxicity. An acute oral toxicity study shows the lethal dose $(LD)_{50}$ above 5,000 mg/kg in mice. Repeated dose studies show no toxicity at doses up to 1,500 mg/kg/day. Since no toxicity is observed, an endpoint of concern for risk assessment purposes was not identified. EPA assessed dietary and other non-occupational exposures qualitatively.

C. Exposure Assessment

1. *Dietary exposure from drinking water, food and feed uses.* In evaluating dietary exposure to thiamine mononitrate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from thiamine mononitrate in food as follows:

Dietary exposure (food and drinking water) to thiamine mononitrate may occur following ingestion of foods with residues from their use in accordance with this exemption. Dietary exposure may also occur from its presence naturally in food, its use as a dietary supplement, and as a direct food additive. However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

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

Thiamine mononitrate may be used in pesticide products and non-pesticide products that may be used in and around the home. Thiamine mononitrate may also be found in cosmetics and personal care products. Based on the discussion above regarding the toxicity of the thiamine mononitrate, a quantitative residential exposure assessment for thiamine mononitrate was not conducted.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the available data, thiamine mononitrate does not have a toxic mechanism; therefore, section 408(b)(2)(D)(v) does not apply.

D. Safety Factor for Infants and Children

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

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to thiamine mononitrate residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of thiamine mononitrate in or on any food commodities. EPA is establishing limitations on the amount of thiamine mononitrate that may be used in pesticide formulations applied pre-harvest. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 0.1% by weight of thiamine mononitrate in the final pesticide formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of thiamine mononitrate (CAS Reg. No. 532–43–4) when used as inert ingredients (enzyme cofactor) in pesticide products applied to/on all growing crops pre-harvest under 40 CFR 180.920, limited to 0.1% (by weight) in pesticide formulations.

VII. Statutory and Executive Order Reviews

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 9, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, the EPA amends 40 CFR chapter I as follows:

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

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

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

■ 2. In § 180.920, amend the table by adding ''thiamine mononitrate'' in alphabetical order to read as follows:

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

* * * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Thiamine Mononitrate (CAS Reg. No. 532–43–4)	0.1% by weight in pesticide formulations	Enzyme cofactor.
* * *	* *	* *

[FR Doc. 2020–23041 Filed 11–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0117; FRL–10015–71]

Calcium Pantothenate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of calcium pantothenate (CAS Reg. No. 137–08–6) when used as an inert ingredient (enzyme cofactor) in pesticide products applied to/on all growing crops pre-harvest, limited to 0.1% (by weight) in pesticide formulations. SciReg, Inc on behalf of Valagro, S.p.A submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of certain calcium pantothenate when used in accordance with this exemption.

DATES: This regulation is effective November 5, 2020. Objections and requests for hearings must be received on or before January 4, 2021, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0117, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

• Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0117 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 4, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0117, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Petition for Exemption

In the **Federal Register** of May 8, 2020 (85 FR 27346) (FRL–10008–38), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (IN–11371) by SciReg, Inc (12733 Director's Loop, Woodbridge, VA 22192) on behalf of Valagro S.p.A. (Zona Industriale, Via Cagliari, 1, 66041 Atessa (CH), Italy). The petition requested that 40 CFR be amended by establishing an exemption from the requirement of a tolerance for residues of vitamin B5 (CAS Reg. No. 137–08–6) when used as an inert ingredient (enzyme cofactor) in pesticide products applied to/on all growing crops pre-harvest under 40 CFR 180.920, limited to 0.1% (by weight) in pesticide formulations. That document referenced a summary of the petition prepared by SciReg, Inc on behalf of Valagro, S.p.A, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

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

IV. Aggregate Risk Assessment and Determination of Safety

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

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by calcium pantothenate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document, *Calcium Pantothenate, Vitamin B5—Human Health Risk and Ecological Effects Assessment of Request to Amend an Existing Exemption from the Requirements of a Pesticide Tolerance Under 40 CFR 180.920 for Food Use Inert Ingredient,* in docket ID number EPA–HQ–OPP–2020–0117.

Vitamin B5 is also known as calcium pantothenate. EPA is using the term ''calcium pantothenate'' in this document and the tolerance exemption to refer to vitamin B5 to be consistent with standard agency nomenclature for the identification of this substance.

The acute oral and inhalation toxicities are low in rats and mice treated with calcium pantothenate. It is not irritating to the rabbit eye or skin.

No toxicity is observed in repeated dose studies conducted with calcium pantothenate administered to rats. Fetal susceptibility is not observed in the reproduction and developmental toxicity studies in rats. No adverse effects are observed in parents, offspring or reproduction in rats treated with calcium pantothenate at doses up to 2,000 mg/kg/day.

Mutagenicity is not expected with calcium pantothenate based on available mutagenicity studies. Calcium pantothenate is not expected to be carcinogenic based the lack of toxicity.

Neurotoxicity and immunotoxicity studies are not available for review. However, no evidence of neurotoxicity or immunotoxicity is observed in any of the available studies on calcium pantothenate.

B. Toxicological Points of Departure/Levels of Concern

The available toxicity studies indicate that calcium pantothenate is not acutely toxic. The acute oral lethal dose $(LD)_{50}$ for mice and rats is > 10,000 milligrams/kilograms (mg/kg). No effects are observed in repeated dose studies at doses up to 2,000 mg/kg/day of calcium pantothenate in rats. Since no signs of toxicity are observed, an endpoint of concern for risk assessment purposes was not identified. EPA assessed dietary and other non-occupational exposures qualitatively.

C. Exposure Assessment

1. *Dietary exposure from drinking water, food and feed uses.* In evaluating dietary exposure to calcium pantothenate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from calcium pantothenate in food as follows:

Dietary exposure (food and drinking water) to calcium pantothenate may occur following ingestion of foods with residues from their use in accordance with this exemption. Dietary exposure may also occur from its use as a dietary supplement and as a direct food additive under the Food and Drug Administration Code of Federal Regulations Title 21. However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

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

Calcium pantothenate may be used in pesticide products and non-pesticide products that may be used in and around the home. Calcium pantothenate may also be found in cosmetics and personal care products. Based on the discussion above regarding the toxicity of the calcium pantothenate, a quantitative residential exposure assessment for calcium pantothenate was not conducted.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the available data, calcium pantothenate does not have a toxic mechanism; therefore, section 408(b)(2)(D)(v) does not apply.

D. Safety Factor for Infants and Children

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

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to calcium pantothenate residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of calcium pantothenate in or on any food commodities. EPA is establishing limitations on the amount of calcium pantothenate that may be used in pesticide formulations applied pre-harvest. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 0.1% by weight of calcium pantothenate in the final pesticide formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of calcium pantothenate (CAS Reg. No. 137–08–6) when used as inert ingredients (enzyme cofactor) in pesticide products applied to/on all growing crops pre-harvest under 40 CFR 180.920, limited to 0.1% (by weight) in pesticide formulations.

VII. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February

3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 14, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, the EPA amends 40 CFR chapter I as follows:

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

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

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

■ 2. In § 180.920, amend the table by adding ''calcium pantothenate'' in alphabetical order to read as follows:

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

* * * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Calcium Pantothenate (CAS Reg. No. 137–08–6)	0.1% by weight in pesticide formulations	Enzyme cofactor.
* * *	* *	* *

[FR Doc. 2020–23109 Filed 11–4–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket No. 07–114; FRS 17212]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (Commission) is correcting the dates announced in a document that appeared in the **Federal Register** on August 28, 2020. That document announced that compliance with specific sections of the Commission rules will not be required until the Commission publishes a document in the **Federal Register** announcing the compliance date. This document corrects the list of rule provisions subject to this compliance date. In addition, this document revises a section of the Commission's rules to advise that compliance is not required until after OMB approval of the information collection and recordkeeping requirements.

DATES: November 5, 2020.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Evanoff, *john.evanoff@fcc.gov,* of the Public Safety and Homeland Security Bureau, Policy and Licensing Division, (202) 418–0848.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2020–18795 appearing on page 53234 in the **Federal Register** on Friday, August 28, 2020, the following corrections are made:

1. On page 53234, in the first column, the Compliance date is corrected to read:

Compliance date: Compliance will not be required for § 9.10(i)(2)(ii)(J)(*4*), (i)(4)(iv) and (v), (j)(4), and (k) until the Commission publishes a document in the **Federal Register** announcing the compliance date.

2. On page 53245, in the first column, paragraph 74 is corrected to read:

74. *Paperwork Reduction Act Analysis.* The requirements in sections 9.10(i)(2)(ii)(J)(*4*), 9.10(i)(4)(iv), 9.10(i)(4)(v), 9.10(j)(4) and 9.10(k), constitute modified information collections. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA). OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements

contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that the new or modified information collection requirements in sections 9.10(i)(2)(ii)(J)(*4*), 9.10(i)(4)(iv), 9.10(i)(4)(v), 9.10(j)(4) and 9.10(k), will be unduly burdensome on small businesses. Applying these new or modified information collections will promote 911 service and emergency response to the benefit of all sizes of governmental jurisdictions, businesses, equipment manufacturers, and business associations by providing greater confidence in 911 location accuracy and greater consistency between the Commission's horizontal and vertical location rules. We describe impacts that might affect small businesses, a category that includes most businesses with fewer than 25 employees, in the FRFA in Appendix B of the *Sixth Report and Order and Order on Reconsideration.*

3. On page 53245, in the second column, paragraph 77 is corrected to read:

77. *It is further ordered* that the amendments of the Commission's rules as set forth in Appendix A *are adopted,* effective thirty days from the date of publication in the **Federal Register**. Sections 9.10(i)(2)(ii)(J)(*4*), 9.10(i)(4)(iv), 9.10(i)(4)(v), 9.10(j)(4) and 9.10(k) contain new or modified information collection requirements that require OMB review under the PRA. The Commission directs the Public Safety and Homeland Security Bureau (Bureau) to announce the effective date of those information collections in a document published in the **Federal Register** after the Commission receives OMB approval, and directs the Bureau to cause section 9.10(s) to be revised accordingly.

List of Subjects in 47 CFR Part 9

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 9 as follows:

PART 9—911 REQUIREMENTS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

■ 2. Amend § 9.10 by revising paragraph (s) to read as follows:

§ 9.10 911 Service.

* * * * *

(s) *Compliance date(s).* Paragraphs (i)(2)(ii)(C) and (D), (i)(2)(ii)(J)(*4*), (i)(4)(iv) and (v), (j)(4), (k), and (q)(10)(v) of this section contain information-collection and recordkeeping requirements. Compliance with paragraphs (i)(2)(ii)(C) and (D), (i)(2)(ii)(J)(*4*), (i)(4)(iv) and (v), (j)(4), (k) and (q)(10)(v) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing compliance dates with those paragraphs and revising this paragraph (s) accordingly.

[FR Doc. 2020–24511 Filed 11–3–20; 11:15 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 85, No. 215
Thursday, November 5, 2020

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AO07

Civil Service Retirement System and Federal Employees Retirement System; Correcting Miscalculations in Veterans' Pension Act

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing this proposed rule to implement the provisions of the ''Correcting Miscalculations in Veterans' Pensions Act.'' This Act provides authority for agencies and OPM to pay, at their discretion, interest on certain deposits (post-1956 military service deposits and service credit deposits for voluntary service with the Peace Corps and Volunteers in Service to America (VISTA)) when additional interest is assessed due to administrative error. Agencies need to establish their own guidelines for waiver, subject to funding limitations that may prevent reimbursement by the agency. These regulations also pertain to payments made by OPM with regard to service credit deposits for volunteer service.

DATES: We must receive your comments by January 4, 2021.

ADDRESSES: You may submit comments identified by docket number and/or Regulatory Information Number (RIN) and title, by either of the following methods:

- *Electronic:* Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

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

FOR FURTHER INFORMATION CONTACT: Jane Bancroft, (202) 606–0299, Email: *Comboxinternet@opm.gov.* Include Docket No. or RIN in the subject line of the email.

SUPPLEMENTARY INFORMATION:

Background

Public Law 115–352, 132 Stat. 5067 (2018) (codified at 5 U.S.C. 101), also known as the ''Correcting Miscalculations in Veterans' Pensions Act,'' was enacted on December 21, 2018. Under this law, if an employing agency makes an administrative error in processing certain annuity deposits for post-1956 military service or certain volunteer service with the Peace Corps or Volunteers in Service to America (VISTA), the employing agency, or OPM in certain situations, may, at its discretion, pay on behalf of the employee any additional interest assessed due to its administrative error.

Agencies are responsible for establishing their own guidelines for what constitutes administrative error and whether a payment is made. OPM has no role or authority in the agency's decision. Also, OPM is responsible for establishing its own guidelines for what constitutes administrative error and whether a payment is made.

Employees covered under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) with post-1956 military service may pay a deposit plus interest to their employing agency for post-1956 military service. Payment of the deposit guarantees that the employee and survivors will continue to receive retirement credit for the post-1956 military service, regardless of entitlement to Social Security benefits at age 62. Interest on deposits for post-1956 military service accrues and compounds annually after a 2-year interest-free grace period after the individual first becomes an employee or Member.

Deposits for post-1956 military service are paid to the employing agency. The employing agency is responsible for counseling the employee regarding paying the deposit and the consequences of not paying the deposit, processing the application, calculating the deposit amount, billing the employee, and collecting the payment. Administrative error by the agency may result in an increase in the amount of interest due. If the administrative error results in an increase in interest due, then the employing agency may, at its discretion, pay on behalf of the employee any additional interest assessed due to its administrative error.

After a CSRS or FERS employee's retirement, OPM has a responsibility to ensure that retirement documents are not in conflict regarding payment of the deposit for post-1956 military service. If there is conflict, then it is OPM's responsibility to resolve the deposit status with the agency. If the retiring employee's statements on the application are in conflict with the agency's certification of service or any other documents submitted by the agency regarding payment of the deposit for post-1956 military service, then it is OPM's responsibility to resolve the deposit status with the retiring employee. Administrative error by OPM may result in an increase in the amount of interest due. If additional interest was assessed due to administrative error on OPM's part, then OPM may pay on behalf of the employee any additional interest assessed due to its administrative error.

Full-time volunteer service as a volunteer or volunteer leader with the Peace Corps or VISTA that was performed at any time before separation from federal civilian service is generally creditable under CSRS or FERS with payment of a service credit deposit. Though considered civilian service, the treatment of Peace Corps and VISTA volunteer service is similar to that of military service (see 5 CFR 831, 842.307 and 842.308) in that the credit is tied to eligibility for Social Security benefits. Payment of the deposit guarantees that the employee and survivors will continue to receive retirement credit for the volunteer service, regardless of entitlement to Social Security benefits. Like the calculation of interest for military deposits, the interest on deposits for volunteer service accrues and compounds annually after a 2-year interest-free grace period. For both current and former employees, interest begins to accrue on deposits for volunteer service on October 1, 1995, or 2 years after the date on which the individual first becomes an employee or Member, whichever is later.

Deposits for Peace Corps and VISTA volunteer service are paid directly to OPM. The employing agency is responsible for counseling the employee regarding the deposit, and for verifying the earnings. OPM is responsible for processing the service credit deposit application, calculating the deposit, billing the employee, and collecting the payment.

The decision to pay or not pay interest due to its administrative error on a deposit for post-1956 military service is made by the employing agency or OPM, depending on who is making the administrative error determination. The decision to pay or not pay interest due to its administrative error for a service credit deposit for Peace Corps/VISTA volunteer service is up to the employing agency or OPM, whichever agency is making the decision regarding administrative error. OPM has no role or authority in another agency's decision.

Currently, employees interested in making service credit deposits for Peace Corps or VISTA volunteer service submit the service credit application to the employing agency for development and review. The agency then forwards the application to OPM for processing and billing. The employee pays the service credit deposit amount directly to OPM. This process will not change due to the implementation of Public Law 115–352. Since both the agency and OPM have a role in processing service credit deposits for Peace Corps or VISTA volunteer service, either the employing agency or OPM could make an administrative error. If an administrative error results in an increase in interest due, then the employing agency or OPM, may, at its discretion, pay on behalf of the employee any additional interest assessed due to its administrative error.

Public Law 115–352 specifies that if an employing agency makes an administrative error in processing deposits for post-1956 military service or full-time volunteer service as a volunteer or volunteer leader with the Peace Corps or VISTA that increases the amount of interest owed on the deposit, the employing agency or OPM (as described above) may pay on behalf of the employee any additional interest assessed due to the administrative error. Agencies are responsible for establishing their own guidelines for what constitutes administrative error and whether a payment is made. OPM has no role or authority in the decision.

Public Law 115–352 also provides that, for volunteer service deposits, if the administrative error is committed by OPM, then OPM may pay on behalf of the employee any additional interest assessed due to the administrative error. Any payment of additional interest OPM may make on behalf of the employee is paid from the Civil Service Retirement and Disability Fund.

This proposed rule is necessary to implement the authority so the employing agency or OPM, on behalf of an employee, may make interest payments on interest accrued due to administrative error. Until this legislation, there was no authority to permit payment by an agency or OPM of interest that accrued due to its administrative error. The burden to pay the additional interest was on the employee. This legislation should be an incentive for agencies and OPM to perform better and, therefore, result in fewer findings of administrative error.

Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity. This proposed rule is not a ''significant regulatory action,'' under Executive Order 12866.

Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not an Executive Order 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this proposed rule in accordance with Executive Order 13132, Federalism, and have determined that this proposed rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this proposed rule before its effective date, as required by 5 U.S.C. 801. This rule is not a major rule as defined by the Congressional Review Act (CRA) (5 U.S.C. 804).

Paperwork Reduction Act

This proposed rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects

5 CFR Part 831

Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR parts 831 and 842 as follows:

PART 831—RETIREMENT

■ 1. Revise the authority citation for part 831 to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Pub. L.

105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.202 also issued under Sec. 111 of Pub. L. 99–500, 100 Stat. 1783, and Sec. 111 of Pub. L. 99–591, 100 Stat. 3341–348, and also Sec. 1 of Pub. L. 110–279, 122 Stat. 2602, as amended by Sec. 1(a) of Pub. L. 116–21, 133 Stat. 903; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart Q also issued under 5 U.S.C. 8336a; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328; Pub. L. 115–352, 132 Stat. 5067.

Subpart A—Administration and General Provisions

■ 2. Amend § 831.105 by adding paragraph (k) to read as follows:

§ 831.105 Computation of interest.

* * * * *

(k) If OPM determines that additional interest was assessed on a deposit for full-time volunteer service as a volunteer or a volunteer leader with the Peace Corps or VISTA due to its own administrative error, OPM may pay, on behalf of the employee, Member, or annuitant, any additional interest assessed due to the administrative error.

Subpart U—Deposits for Military Service

■ 3. Amend § 831.2107 by adding paragraph (c) to read as follows:

§ 831.2107 Payments on deposits.

* * * * *

(c) *Administrative error.* (1) When an administrative error occurs by the employing agency in calculating or processing a military service deposit, interest assessed as a result of the administrative error may be paid by the agency, the Clerk of the House of Representatives, or the Secretary of the Senate on behalf of the employee. The agency, Clerk of the House of Representatives, or the Secretary of the Senate will determine if administrative error occurred.

(2) When an administrative error occurs by OPM in calculating or processing a military service deposit, interest assessed as a result of the administrative error may be paid by OPM on behalf of the employee. OPM will determine if administrative error occurred. Any payment of additional interest of behalf of the employee is paid from the Civil Service Retirement and Disability Fund.

■ 4. Add Subpart X to part 831 to read as follows:

Subpart X—Peace Corps

§ 831.2401 Purpose.

This subpart contains regulations of the Office of Personnel Management (OPM) to supplement chapter 34 of title 22, United States Code, concerning CSRS retirement service credit eligibility for satisfactory Peace Corps volunteer and volunteer leader service.

§ 831.2402 Allowable service.

(a) Service credit deposits are not allowed for training periods prior to actual enrollment.

(b) Service credit deposits can only be made for satisfactory volunteer and volunteer leader service.

(c) Annuitants enrolling as a volunteer or volunteer leader are not deemed reemployed annuitants. Service as a volunteer or volunteer leader performed after retiring under a CSRS or FERS retirement is not creditable service for retirement purposes.

§ 831.2403 Deposits for service.

(a) An employee or Member subject to CSRS may make a deposit for volunteer and volunteer leader service by filing an application in a form prescribed by OPM.

(b) The deposit is based upon the amount of the stipend that was received. If an educational award was elected in lieu of the stipend, then the deposit is based on the amount of the stipend that would have been received.

(c) An application to make a deposit is filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

(d) Upon receipt and review of the application from the employee, the agency, Clerk of the House of Representatives, or Secretary of the Senate will submit the application to OPM for processing.

(e) Interest begins to accrue on deposits for volunteer service on October 1,1995, or 2 years after the date on which the individual first becomes an employee or Member, whichever is later.

(f) After becoming federally employed, there is a 2-year interest-free grace period on Peace Corps volunteer and volunteer leader service deposits. After the 2-year period, interest is accrued and compounded annually at the variable rate beginning on the date of the expiration of the 2-year period.

§ 831.2404 Additional interest due to administrative error.

(a) The employing agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, may pay any additional interest due on the deposit for volunteer or volunteer leader service as a result of its administrative error. OPM may pay any additional interest due on the deposit for Peace Corps service as a result of its administrative error.

(b) The employing agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, shall set their own procedures for employees or Members to claim there was administrative error. OPM shall set its own procedures for claims of administrative error on its part.

(c) The employing agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, shall determine if administrative error on its part caused an increase in interest due on the deposit amount. OPM shall determine if administrative error on its part caused an increase in interest due on the deposit amount.

(d) OPM's final determination regarding a claim of administrative error on its part is not subject to the due process procedures described in 5 U.S.C. 8461(e).

■ 5. Add subpart Y to part 831 to read as follows:

Subpart Y—Volunteers in Service to America (VISTA)

§ 831.2501 Purpose.

This subpart contains regulations of the Office of Personnel Management (OPM) to supplement chapter 66, title

42, United States Code, concerning CSRS retirement service credit eligibility for Volunteers in Serviced to America (VISTA) volunteers.

§ 831.2502 Allowable service.

(a) Service credit deposits are not allowed for training periods prior to actual enrollment.

(b) Service credit deposits can only be made for satisfactory volunteer service.

(c) Annuitants enrolling as VISTA volunteers are not deemed reemployed annuitants. Service as a volunteer or volunteer leader performed after retiring under a CSRS or FERS retirement is not creditable serviced for retirement purposes.

(d) Retirement credit is not allowable for training period(s) prior to actual enrollment.

§ 831.2503 Deposits for service.

(a) An employee or Member subject to CSRS may make a deposit for volunteer service by filing an application in a form prescribed by OPM.

(b) The deposit is based upon the amount of the stipend that was received. If an educational award was elected in lieu of the stipend, then the deposit is based on the amount of the stipend that would have been received.

(c) An application to make a deposit is filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

(d) Upon receipt and review of the application, the agency, Clerk of the House of Representatives, or Secretary of the Senate will submit the application to OPM for processing.

(e) Interest begins to accrue on deposits for volunteer service on October 1,1995, or 2 years after the date on which the individual first becomes an employee or Member, whichever is later.

(f) After becoming federally employed, there is a 2-year interest-free grace period on VISTA volunteer service deposits. After the 2-year period, interest is accrued and compounded annually at the variable rate beginning on the date of the expiration of the 2-year period.

(g) A deposit is required in order to obtain service credit for VISTA volunteer service for which the volunteer chose to receive an educational award in lieu of a stipend. The deposit is based upon the amount of the stipend that would have been received if he/she had elected to receive the stipend rather than an educational award.

§ 831.2504 Additional interest due to administrative error.

(a) The employing agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, may pay any additional interest due on the deposit for volunteer or volunteer leader service as a result of its administrative error. OPM may pay any additional interest due on the deposit for VISTA service as a result of its administrative error.

(b) The employing agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, shall set their own procedures for employees or Members to claim there was administrative error. OPM shall set its own procedures for claims of administrative error on its part.

(c) The employing agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, shall determine if administrative error on its part caused an increase in interest due on the deposit amount for their employees. OPM shall determine if administrative error on its part caused an increase in interest due on the deposit amount.

(d) OPM's final determination regarding a claim of administrative error on its part is not subject to the due process procedures described in 5 U.S.C. 8461(e).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 1. Revise the authority citation for part 842 to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 842.110 also issued under Sec. 111 of Pub. L. 99–500, 100 Stat. 1783, and Sec. 111 of Pub. L. 99–591, 100 Stat. 3341–348, and also Sec. 1 of Pub. L. 110–279, 122 Stat. 2602, as amended by Sec. 1(a) of Pub. L. 116–21, 133 Stat. 903; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Pub. Law 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Pub. L. 115–352, 132 Stat. 5067.

Subpart C—Credit

■ 2. Amend § 842.305 by adding paragraph (k) to read as follows:

§ 842.305 Deposits for civilian service.

* * * * *

(k) *Administrative error.* If OPM determines that additional interest was assessed on a deposit for full-time volunteer service as a volunteer or a volunteer leader with the Peace Corps or VISTA due to its own administrative error, OPM may pay, on behalf of the employee, Member, or annuitant, any additional interest assessed due to the administrative error.

■ 3. Amend § 842.307 by adding paragraph (e) to read as follows:

§ 842.307 Deposits for military service.

* * * * *

(e) *Administrative error.* (1) When an administrative error occurs by the employing Agency in calculating or processing a military service deposit, interest assessed as a result of the administrative error may be paid by the agency, the Clerk of the House of Representatives, or the Secretary of the Senate on behalf of the employee. The agency, Clerk of the House of Representatives, or the Secretary of the Senate will determine if administrative error occurred.

(2) When an administrative error occurs by OPM in calculating or processing a military service deposit, interest assessed as a result of the administrative error may be paid by OPM on behalf of the employee. OPM will determine if administrative error occurred. Any payment of additional interest of behalf of the employee is paid from the Civil Service Retirement and Disability Fund.

■ 4. Add subpart K to part 842 to read as follows:

Subpart K—Peace Corps

Sec.
842.1101 Purpose.

§ 842.1101 Purpose.

This subpart contains regulations of the Office of Personnel Management (OPM) to supplement chapter 34 of title 22, United States Code, concerning FERS retirement service credit eligibility for satisfactory Peace Corps volunteer and volunteer leader service.

§ 842.1102 Allowable service.

(a) Service credit deposits are not allowed for training periods prior to actual enrollment.

(b) Service credit deposits can only be made for satisfactory volunteer and volunteer leader service.

(c) Annuitants enrolling as a volunteer or volunteer leader are not to be deemed reemployed annuitants. Service as a volunteer or volunteer leader performed after retiring under a CSRS or FERS retirement is not creditable serviced for retirement purposes.

§ 842.1103 Deposits for service.

(a) An employee or Member subject to FERS may make a deposit for volunteer and volunteer leader service by filing an application in a form prescribed by OPM.

(b) The deposit is based upon the amount of the stipend that was received. If an educational award was elected in lieu of the stipend, then the deposit is based on the amount of the stipend that would have been received.

(c) An application to make a deposit is filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

(d) Upon receipt and review of the application, the agency, Clerk of the House of Representatives, or Secretary of the Senate will submit the application to OPM for processing.

(e) Interest begins to accrue on deposits for volunteer service on October 1,1995, or 2 years after the date on which the individual first becomes an employee or Member, whichever is later.

(f) After becoming federally employed, there is a 2-year interest-free grace period on Peace Corps volunteer and volunteer leader service deposits. After the 2-year period, interest is accrued and compounded annually at the variable rate beginning on the date of the expiration of the 2-year period.

§ 842.1104 Additional interest due to administrative error.

(a) The agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, may pay any additional interest due on the deposit for volunteer or volunteer leader service as a result of its administrative error. OPM may pay any additional interest due on the deposit for Peace Corps service as a result of its administrative error.

(b) The agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, shall set their own procedures for employees or Members to claim there was administrative error. OPM shall set its own procedures for claims of administrative error on its part.

(c) The agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, shall determine if administrative error on its part caused an increase in interest due on the deposit amount. OPM shall determine if administrative error on its part caused an increase in interest due on the deposit amount.

(d) OPM's final determination regarding a claim of administrative error on its part is not subject to the due process procedures described in 5 U.S.C. 8461(e).

■ 5. Add subpart L to part 842 to read as follows:

Subpart L—Volunteers in Service to America (VISTA)

Sec.

§ 842.1201 Purpose.

This subpart contains regulations of the Office of Personnel Management (OPM) to supplement chapter 66, title 42, United States Code, concerning CSRS retirement service credit eligibility for Volunteers in Serviced to America (VISTA) volunteers.

§ 842.1202 Allowable service.

(a) Service credit deposits are not allowed for training periods prior to actual enrollment.

(b) Service credit deposits can only be made for satisfactory volunteer service.

(c) Annuitants enrolling as VISTA volunteers are not deemed reemployed annuitants. Service as a volunteer or volunteer leader performed after retiring under a CSRS or FERS retirement is not creditable serviced for retirement purposes.

(d) Retirement credit is not allowable for training period(s) prior to actual enrollment.

§ 842.1203 Deposits for service.

(a) An employee or Member subject to CSRS may make a deposit for volunteer service by filing an application in a form prescribed by OPM.

(b) The deposit is based upon the amount of the stipend that was received. If an educational award was elected in lieu of the stipend, then the deposit is based on the amount of the stipend that would have been received.

(c) An application to make a deposit is filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

(d) Upon receipt and review of the application, the agency, Clerk of the House of Representatives, or Secretary of the Senate will submit the application to OPM for processing.

(e) Interest begins to accrue on deposits for volunteer service on October 1,1995, or 2 years after the date on which the individual first becomes an employee or Member, whichever is later.

(f) After becoming federally employed, there is a 2-year interest-free grace period on VISTA volunteer service deposits. After the 2-year period, interest is accrued and compounded annually at the variable rate beginning on the date of the expiration of the 2-year period.

(g) A deposit is required in order to obtain service credit for VISTA volunteer service for which the volunteer chose to receive an educational award in lieu of a stipend. The deposit is based upon the amount of the stipend that would have been received if he/she had elected to receive the stipend rather than an educational award.

§ 842.1204 Additional interest due to administrative error.

(a) The agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, may pay any additional interest due on the deposit for volunteer or volunteer leader service as a result of its administrative error. OPM may pay any additional interest due on the deposit for VISTA service as a result of its administrative error.

(b) The agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, shall set their own procedures for employees or Members to claim there was administrative error. OPM shall set its own procedures for claims of administrative error on its part.

(c) The agency, Clerk of the House of Representatives, or Secretary of the Senate, as appropriate, shall determine if administrative error on its part caused an increase in interest due on the deposit amount. OPM shall determine if administrative error on its part caused an increase in interest due on the deposit amount.

(d) OPM's final determination regarding a claim of administrative error on its part is not subject to the due process procedures described in 5 U.S.C. 8461(e).

[FR Doc. 2020–24034 Filed 11–4–20; 8:45 am]

BILLING CODE 6325–38–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC–2020–0033]

RIN 3150–AK46

Non-Substantive Amendments to Adjudicatory Proceeding Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to revise and clarify the agency's rules of practice and procedure to reflect current Atomic Safety and Licensing Board Panel practice, Commission case law, and a decision of the Supreme Court of the United States and to enhance consistency within the NRC's regulations.

DATES: Submit comments by December 7, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0033. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

• *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemaking and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ian Irvin, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9193; email: *2020_Part_2_Rulemaking@usnrc.onmicrosoft.com.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0033 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0033.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0033 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on January 19, 2021. However, if the NRC receives any significant adverse comments by December 7, 2020, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

The NRC's regulations governing the conduct of adjudicatory proceedings before the agency are contained in part 2 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Agency Rules of Practice and Procedure.'' Periodically, the NRC has amended these rules, including adopting changes in 2004 to enhance efficiency; in 2012 to promote fairness, efficiency, and openness; and in 2016 to reflect technological advances and current agency practice. Since the last update to the agency's rules of practice and procedure, the NRC has identified various provisions that should be updated to reflect technological advances and current agency practice. This proposed rule would make those updates and also clarify that any administrative law judge designated to preside over an NRC adjudication must be appointed by the Commission consistent with the Supreme Court decision in *Lucia* v. *Securities and Exchange Commission* (138 S. Ct. 2044 (2018)).

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Paperwork Reduction Act

This proposed rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

Dated October 21, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–24152 Filed 11–4–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–TP–0029]

RIN 1904–AF03

Energy Conservation Program: Test Procedures for Consumer Products; Early Assessment Review: Portable Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is undertaking an early assessment review to determine whether to proceed with a rulemaking to amend the test procedure for portable air conditioners (''AC''). Specifically, through this request for information (''RFI''), DOE seeks data and information that could enable the agency to determine whether DOE should propose not to amend the existing DOE test procedure because an amended test procedure would not more accurately or fully comply with the statutory requirement that the test procedure produces results that measure energy use during a representative average use cycle or period of use for the product, and not be unduly burdensome to conduct. DOE also seeks comment on the availability of consensus-based test procedures for measuring the energy use of portable ACs that more accurately or fully comply with this statutory requirement.

DATES: Written comments and information are requested and will be accepted on or before January 19, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–TP–0029 and/or RIN 1904–AF03, by any of the following methods:

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

2. *Email:* to *PortableAC2020TP0029@ee.doe.gov.* Include docket number EERE–2020–BT–TP–0029 and/or RIN 1904–AF03 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document (Submission of Comments).

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *http://www.regulations.gov/docket?D=EERE-2020-BT-TP-0029.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III of this document for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE established an early assessment review process to conduct a more focused analysis of a specific set of facts or circumstances that would allow DOE to determine, based on statutory criteria, whether an amended test procedure is warranted. The purpose of this review is to limit the resources, from both DOE and stakeholders, committed to rulemakings that will not satisfy the requirements in the Energy Policy and Conservation Act, as amended (''EPCA''),[1] that an amended test procedure more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle or period of use for the product, and not be unduly burdensome to conduct. *See* 85 FR 8626, 8653–8654 (Feb. 14, 2020).

As part of the early assessment, DOE publishes an RFI in the **Federal Register***,* announcing that DOE is initiating a rulemaking proceeding and soliciting comments, data, and information on whether an amended test procedure would more accurately measure energy use during a representative average use cycle or reduce testing burden. Based on the information received in response to the RFI and DOE's own analysis, DOE will determine whether to proceed with a rulemaking for an amended test procedure.

If DOE makes an initial determination based upon available evidence that an amended test procedure would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking before issuing a final determination that an amended test procedure is not warranted. If DOE reaches such a determination, the rulemaking would be concluded, which would satisfy the Department's 7-year-lookback test procedure review requirement under the statute (as discussed in section I.A of this document).

Conversely, if DOE makes an initial determination that an amended test procedure would satisfy the applicable statutory criteria, including that adoption of a consensus-based test procedure as the DOE test procedure, without modification, would more accurately or fully comply with statutory requirements, or DOE's analysis is inconclusive, DOE would undertake the preliminary stages of a rulemaking to issue an amended test procedure. Beginning such a rulemaking, however, would not preclude DOE from later making a determination that an amended test procedure would not satisfy the requirements in EPCA, based upon the full suite of DOE's analyses. 85 FR 8654.

A. Authority

EPCA, as amended, among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. In addition to specifying a list of covered products, EPCA enables the Secretary of Energy to classify additional types of consumer products as covered products under EPCA. (42 U.S.C. 6292(a)(20)) In a final determination of coverage published in the **Federal Register** on April 18, 2016, DOE classified portable ACs as covered products under EPCA. 81 FR 22514.

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including portable ACs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6293(b)(1)(A)) DOE is publishing this RFI to collect data and information to inform its decision to satisfy the 7-year-lookback review requirement.

B. Rulemaking History

DOE last amended the test procedure for portable ACs on June 1, 2016 (''June 2016 Final Rule''), to ensure it is representative of typical use and to improve accuracy and repeatability while minimizing burden. 81 FR 35241. The June 2016 Final Rule established provisions for measuring the energy consumption of single-duct and dual-duct portable ACs in active, standby, and off modes. The June 2016 Final Rule also established provisions for certification, compliance, and enforcement for portable ACs in Title 10 of the Code of Federal Regulations (''CFR'') part 429. DOE's test procedure for portable ACs is prescribed at 10 CFR part 430, subpart B, appendix CC (''appendix CC'').

II. Request for Information

DOE is publishing this RFI to collect data and information during the early assessment review to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an amended test procedure rulemaking. Accordingly, in the following sections, DOE has identified specific issues on which it seeks input to aid in its analysis of whether an amended test procedure for portable ACs would more accurately or fully comply with the requirement that the test procedure

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

produces results that measure energy use during a representative average use cycle or period of use for the product, and not be unduly burdensome to conduct. In particular, DOE is interested in: (1) Any information indicating that there has not been sufficient technological or other changes since DOE last conducted a test procedure rulemaking analysis for portable ACs to suggest an amended test procedure could satisfy these criteria; or (2) whether adopting a consensus-based test procedure, without modification, as the DOE test procedure would more accurately or fully comply with the statutory requirement. DOE also welcomes comments on other issues relevant to its early assessment that may not specifically be identified in this document.

A. Energy Use Measurements

The current DOE test procedure for portable ACs measures energy use by means of two performance metrics: seasonally adjusted cooling capacity (''SACC''), measured in British thermal units per hour (''Btu/h''); and combined energy efficiency ratio (''CEER''), measured in Btu per watt-hours (''Btu/Wh''). The test procedure provides a measure of portable AC performance under various operating modes (cooling mode, off-cycle mode, standby mode, inactive mode, and off mode) and duct configurations (single-duct and dual duct). DOE seeks comment on whether existing test procedure requirements (*e.g.,* instrumentation, testing configurations/specifications, calculation methodologies) accurately measure energy use without adding undue burden to the test procedure.

B. Representative Average Period of Use

The current DOE test procedure for portable ACs measures energy use during a representative average period of use. The measured energy performance includes energy use during cooling mode, off-cycle mode, inactive mode, and off mode energy use.

In cooling mode, a portable AC activates the main cooling function determined by the thermostat or temperature sensor signal, including activating the refrigeration system, or activates the fan or blower without the use of the refrigeration system. Section 2.4 of appendix CC.

In off-cycle mode, a portable AC: (1) Has cycled off its main cooling or heating function via thermostat or temperature sensor signal; (2) may or may not operate its blower or fan; and (3) will reactivate the main function according to the thermostat or temperature sensor signal. Section 2.7 of appendix CC.

Inactive mode is a standby mode that facilitates the activation of an active mode or off-cycle mode via remote switch (including remote control), internal sensor, or timer, or that provides continuous status display. Section 2.6 of appendix CC.

In off mode, the portable AC is connected to a mains power source and is not providing any active, off-cycle, or standby mode function, and where the mode may persist for an indefinite time. Section 2.8 of appendix CC. An indicator that only shows the user that the portable AC is in the off position is included within the classification of an off mode. *Id.*

To determine the energy use during a representative period of use, the test procedure assigns the following hours of operation for each mode: 750 hours for cooling mode, 880 hours for off-cycle mode, and 1,355 hours for inactive or off mode. Section 5.3 of appendix CC.

In addition to addressing different operating modes, the portable AC test procedure in appendix CC addresses two configurations of portable ACs: Dual-duct and single-duct. Dual-duct portable ACs draw some or all of their condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket (and may draw additional condenser inlet air from the conditioned space) and discharge the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket. 10 CFR 430.2. Dual-duct units use two parallel airflow paths: With the first airflow path, air from the conditioned space (*i.e.,* indoors) is drawn into the unit, passes over a cold heat exchanger (*i.e.,* the evaporator), and is discharged back into the room. With the second airflow path, air from outdoors (possibly with additional air from indoors) is drawn into the unit, passes over a hot heat exchanger (*i.e.,* the condenser), and is discharged back outdoors. In this type of system, the heat that is removed from the indoor airflow path is essentially transferred to the outdoor airflow path and discharged outdoors. The temperature of the air flowing across the condenser significantly affects a portable AC's cooling capacity. Because the air passing across the condenser is drawn from outdoors, and outdoor air temperatures vary during portable AC use, the cooling capacity of a dual-duct unit is significantly affected by changes in outdoor air temperatures. Therefore, to produce representative test results, appendix CC requires dual-duct units to be tested at two different ''test conditions'' in the test chamber that supplies the condenser inlet air, representing two different outdoor temperatures: 95 degrees Fahrenheit (°F) and 83 °F. Section 4.1 of appendix CC. Under both test conditions, the test chamber in which the unit is installed is maintained at a temperature of 80 °F, which is a representative indoor temperature, and the unit is operated at full load. *Id.*

Single-duct portable ACs draw all of their condenser inlet air from the conditioned space without the means of a duct, and discharge the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket. 10 CFR 430.2. Single-duct units also use two parallel airflow paths; however, in contrast to dual-duct units, the condenser airflow path draws air only from inside the conditioned space rather than from outside. This air is drawn into the unit through air grates in the unit's chassis, passes over the condenser, and is discharged to the outdoors through the single duct. Because the inlet air is drawn from indoors (as opposed to outdoors, as with dual-duct units), and because the indoor air temperature remains steady during operation, a single test condition is sufficient to produce representative test results for single-duct portable ACs. Appendix CC specifies a temperature of 80 °F in the test chamber in which the unit is installed (corresponding to the specified indoor air temperature). Section 4.1 of appendix CC. As with the dual-duct unit tests, the single-duct unit is operated at full load throughout the duration of the test.

DOE seeks comment on what constitutes a representative average period of use for portable ACs.

C. Test Burden Reductions

In the June 2016 Final Rule, DOE concluded that the test procedure established would represent little to no additional burden beyond what was already being incurred by manufacturers to conduct industry testing. 81 FR 35241, 35259, 35261. As discussed in a notice of proposed rulemaking published on February 25, 2015, DOE's determination was based on the similarities between testing that would be conducted according to the newly established Federal test procedure and testing that was being conducted for portable ACs in accordance with an industry test procedure, American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') Standard 128–2011 ''Method of Rating Unitary Spot

Air Conditioners.'' 80 FR 10211, 10238 – 10239. DOE seeks comment on whether any modifications to the test procedure could reduce these costs while still allowing for accurate determinations of energy use during a representative average use cycle.

D. Consensus-Based Test Procedures

The current DOE test procedure for portable ACs incorporates by reference the following industry standards: ANSI/ Association of Home Appliance Manufacturers (''AHAM'') PAC–1–2015 ''Portable Air Conditioners,'' ANSI/ ASHRAE Standard 37–2009 ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' and International Electrotechnical Commission (''IEC'') Standard 62301 ''Household electrical appliances—Measurement of standby power'' (Edition 2.0 2011–01). 10 CFR 430.3(i)(5), 10 CFR 430.3(g)(3), and 10 CFR 430.3(o)(6). In addition to referencing the industry standards, appendix CC provides procedures to account for air infiltration and duct heat transfer effects in its measurement of portable AC performance. Section 3.1.1 of appendix CC. DOE seeks comment on the availability of consensus-based test procedures for measuring the energy use of portable ACs that could be adopted without modification and more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome to conduct.

III. Submission of Comments

DOE invites all interested parties to submit in writing by January 19, 2021, comments and information on matters addressed in this notice and on other matters relevant to DOE's early assessment of whether an amended test procedure for portable ACs more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome to conduct.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email to *PortableAC2020TP0029@ee.doe.gov* or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on October 22, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, 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 23, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–23817 Filed 11–4–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. OCC–2020–0005]

RIN 1557–AE80

FEDERAL RESERVE SYSTEM

12 CFR Part 262

[Docket No. R–1725]

RIN 7100–AF96

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 302

RIN 3064–AF32

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

[Docket No. NCUA–2020–0098]

RIN 3133–AF28

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1074

[Docket No. CFPB–2020–0033]

RIN 3710–AB02

Role of Supervisory Guidance

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, NCUA, and Bureau (collectively, the agencies) are inviting comment on a proposed rule that would codify the Interagency Statement Clarifying the Role of Supervisory Guidance issued by the agencies on September 11, 2018 (2018 Statement). By codifying the 2018 Statement, the proposed rule is intended to confirm that the agencies will continue to follow and respect the limits of administrative law in carrying out their supervisory responsibilities. The 2018 Statement reiterated well-established law by stating that, unlike a law or regulation, supervisory guidance does not have the force and effect of law. As such, supervisory guidance does not create binding legal obligations for the public. The proposal would also clarify that the 2018 Statement, as amended, is binding on the agencies.

DATES: Comments must be received by January 4, 2021.

ADDRESSES:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Role of Supervisory Guidance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal— ''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2020–0005'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0005'' in your comment.

In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by the following method:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC 2020–0005'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen.

• Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1725 and RIN No. 7100–AF96, 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 the docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann 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, your 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.

FDIC: You may submit comments on the notice of proposed rulemaking using any of the following methods:

• *Agency Website: https://www.fdic.gov/regulations/laws/federal.* Follow the instructions for submitting comments on the agency website.

• *Email: comments@fdic.gov.* Include RIN 3064–AF32 on the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

• *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal.*

NCUA: You may submit comments to the NCUA by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Role of Supervisory Guidance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID NCUA–[2020–0098]'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.

• Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

• *Mail:* Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA. 22314.

• *Fax:* (703) 518–6319. Include ''[Your name]—Comments on Proposed Rule: Role of Supervisory Guidance'' with the transmittal.

• *Hand Delivery/Courier:* Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314. You must include ''NCUA'' as the agency name and ''Docket ID NCUA–[2020–0098]'' in your comment.

In general, the NCUA will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID NCUA–[2020–0098]'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen.

• Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

• Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

Bureau: You may submit comments, identified by Docket No. CFPB–2020–0033 or RIN 3170–AB02, by any of the following methods:

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

• *Email: 2020-NPRM-SupervisoryGuidance@cfpb.gov.* Include Docket No. CFPB–2020–0033 or RIN 3170–AB02 in the subject line of the email.

• *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

OCC: Mitchell Plave, Special Counsel, (202) 649–5490; or Henry Barkhausen, Counsel, Chief Counsel's Office (202) 649–5490; or Steven Key, Associate Deputy Comptroller for Bank Supervision Policy, (202) 649–6770, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649–5597.

Board: Laurie Schaffer, Deputy General Counsel, (202) 452–2272, Benjamin McDonough, Associate General Counsel, (202) 452–2036, Steve Bowne, Senior Counsel, (202) 452–3900, Christopher Callanan, Senior Counsel, (202) 452–3594, or Kelley O'Mara, Counsel, (202) 973–7497, Legal Division; Anna Lee Hewko, Associate Director, (202) 530–6260; David Palmer, Lead Financial Institution and Policy Analyst, (202) 452–2904, or Jinai Holmes, Lead Financial Institution and Policy Analyst, (202) 452–2834, Division of Supervision and Regulation; Suzanne Killian, Senior Associate Director, (202) 452–2090, Jeremy Hochberg, Managing Counsel, (202) 452–6496, or Dana Miller, Senior Counsel, (202) 452–2751, Division of Consumer and Community Affairs; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD), (202) 263–4869.

FDIC: William Piervincenzi, Supervisory Counsel, (202) 898–6957, Kathryn Marks, Counsel, (202) 898–3896, Jennifer M. Jones, Counsel, (202) 898–6768, *jennjones@fdic.gov,* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

NCUA: Ian Marenna, Associate General Counsel, or Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540. National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

Bureau: Bradley Lipton or Christopher Shelton, Senior Counsels, Legal Division, (202) 435–7700. Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The OCC, Board, FDIC, NCUA, and Bureau (collectively, the agencies) recognize the important distinction between issuances that serve to implement acts of Congress (known as ''regulations'' or legislative rules'') and non-binding supervisory guidance documents.[1] Regulations create binding legal obligations. Supervisory guidance is issued by an agency to ''advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power'' and does not create binding legal obligations.[2]

The agencies issued the Interagency Statement Clarifying the Role of Supervisory Guidance on September 11, 2018 (2018 Statement) to explain the role of supervisory guidance and describe the agencies' approach to supervisory guidance.[3] As noted in the 2018 Statement, the agencies issue various types of supervisory guidance to their respective supervised institutions, including, but not limited to, interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions.[4] Supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that mitigate risks, or that the agencies generally consider to be consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers.[5] The agencies noted in the 2018 Statement that supervised institutions at times request supervisory guidance and that guidance is important to provide clarity to these institutions, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.[6]

The 2018 Statement restates existing law and reaffirms the agencies' understanding that supervisory guidance does not create binding, enforceable legal obligations. The 2018 Statement reaffirms that the agencies do not issue supervisory criticisms for ''violations'' of supervisory guidance

[1] Regulations are commonly referred to as legislative rules because regulations have the ''force and effect of law.'' *Perez* v. *Mortgage Bankers Ass'n,* 575 U.S. 92, 96 (2015) (citations omitted).

[2] *See Chrysler* v. *Brown,* 441 U.S. 281, 302 (1979) (quoting the Attorney General's Manual on the Administrative Procedure Act at 30 n.3 (1947) (Attorney General's Manual) and discussing the distinctions between regulations and general statements of policy, of which supervisory guidance is one form).

[3] *See https://www.federalreserve.gov/supervisionreg/srletters/sr1805a1.pdf; https://www.occ.gov/news-issuances/news-releases/2018/nr-ia-2018-97a.pdf.*

[4] These types of materials are not always supervisory guidance. They may, for example, be interpretive rules addressing regulatory requirements. The 2018 Statement does not address interpretive rules, and interpretive rules are outside the scope of this rulemaking, because interpretive rules are distinct from general statements of policy (*i.e.* guidance) under the APA and its jurisprudence. Interpretive rules are ''issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.'' *Mortgage Bankers Ass'n,* 575 U.S. at 97 (*citing Shalala* v. *Guernsey Memorial Hospital,* 514 U.S. 87, 99 (1995)). While the APA does not define the term ''interpretive rule,'' the APA refers to general statements of policy and interpretive rules separately in addressing notice and comment requirements. *See* 5 U.S.C. 553(b)(A) (providing that notice and comment requirements do not apply to ''interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice'').

The Attorney General's Manual also defines policy statements and interpretive rules separately. The Manual defines interpretive rules as rules or statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers, whereas, as outlined earlier, general statements of policy are defined as advising the public of how an agency may exercise its discretionary powers. *See* Manual at 30 n.3; *see also, e.g., American Mining Congress* v. *Mine Safety & Health Administration,* 995 F.2d 1106, 1112 (DC Cir. 1993) (outlining tests in the D.C. Circuit for assessing whether an agency issuance is an interpretive rule).

Questions concerning the status of interpretive rules are case-specific and have engendered debate among courts and administrative law commentators. *See, e.g.,* R. Levin, *Rulemaking and the Guidance Exemption,* 70 Admin. L. Rev. 263 (2018) (discussing the doctrinal differences concerning the status of interpretive rules under the APA); *see also* ACUS, Recommendation 2019–1, *Agency Guidance Through Interpretive Rules* (Adopted June 13, 2019), *available at https://www.acus.gov/recommendation/agency-guidance-through-interpretive-rules* (discussing the range of opinions concerning the ''binding'' nature of interpretive rules). For these reasons, the 2018 Statement and this proposed rule do not address interpretive rules.

[5] While policy statements offer guidance to the public on the agencies' approach to supervision under statutes and regulations and safe and sound practices, the issuance of guidance is discretionary and is not a prerequisite to an agency's exercise of its statutory and regulatory authorities. This point reflects the fact that statutes and legislative rules, not statements of policy, set legal requirements.

[6] The Administrative Conference of the United States (ACUS) has recognized the important role of guidance documents and has stated that guidance can ''make agency decision-making more predictable and uniform and shield regulated parties from unequal treatment, unnecessary costs, and unnecessary risk, while promoting compliance with the law.'' ACUS, Recommendation 2017–5, *Agency Guidance Through Policy Statements* at 2 (adopted December 14, 2017), *available at https://www.acus.gov/recommendation/agency-guidance-through-policy-statements.* ACUS also suggests that ''policy statements are generally better [than legislative rules] for dealing with conditions of uncertainty and often for making agency policy accessible.'' *Id.* ACUS was chartered by Congress and charged with convening expert representatives from the public and private sectors to recommend improvements to administrative process and procedure. *See https://www.acus.gov/acus.*

and describes the appropriate use of supervisory guidance by the agencies. In the 2018 Statement, the agencies also expressed their intention to (1) limit the use of numerical thresholds in guidance; (2) reduce the issuance of multiple supervisory guidance on the same topic; (3) continue efforts to make the role of supervisory guidance clear in communications to examiners and supervised institutions; and (4) encourage supervised institutions to discuss their concerns about supervisory guidance with their appropriate agency contact.

On November 5, 2018, the OCC, Board, FDIC, and Bureau each received a petition for a rulemaking (Petition), as permitted under the Administrative Procedure Act (APA),[7] requesting that the agencies codify the 2018 Statement.[8] The Petition argues that a rule on guidance is necessary to bind future agency leadership and staff to the 2018 Statement's terms. The Petition also suggests there are ambiguities in the 2018 Statement concerning how supervisory guidance is used in connection with matters requiring attention, matters requiring immediate attention (collectively, MRAs), and other supervisory actions that should be clarified through a rulemaking. Finally, the Petition calls for the rulemaking to implement changes in the agencies' standards for issuing MRAs. Specifically, the Petition requests that the agencies limit the role of MRAs to addressing circumstances in which there is a violation of a statute, regulation, or order, or demonstrably unsafe or unsound practices.

II. The Proposed Rule

The 2018 Statement's description of the appropriate parameters concerning the use of supervisory guidance continues to reflect accurately the agencies' policies concerning the use of supervisory guidance. The proposed rule, therefore, would codify the 2018 Statement, with clarifying changes, as an appendix to the proposed rule text (proposed Statement), and would supersede the 2018 Statement. The rule text would provide that the proposed Statement is binding on each respective agency.

Clarification of the 2018 Statement

The Petition expressed support for the 2018 Statement and acknowledged that it addresses many issues of concern for the Petitioners relating to the use of supervisory guidance. The Petition expressed concern, however, that the 2018 Statement's reference to not basing ''criticisms'' on violations of supervisory guidance has led to confusion about whether MRAs are covered by the 2018 Statement. Accordingly, the agencies are clarifying in the proposed Statement that the term ''criticize'' includes the issuance of MRAs and other supervisory criticisms, including those communicated through matters requiring board attention, documents of resolution, and supervisory recommendations (collectively, supervisory criticisms).[9] As such, the agencies reiterate that examiners will not base supervisory criticisms on a ''violation'' of or ''non-compliance with'' supervisory guidance.[10] The agencies note that, in some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations. The agencies also reiterate that they will not issue an enforcement action on the basis of a ''violation'' of or ''non-compliance'' with supervisory guidance. The proposed Statement reflects these clarifications.[11]

The Petition requests further that these supervisory criticisms should not include ''generic'' or ''conclusory'' references to safety and soundness. The agencies agree that supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions. Accordingly, the agencies have included language reflecting this practice in the proposed Statement.

The Petition also suggests that MRAs, as well as memoranda of understanding, examination downgrades, and any other formal examination mandate or sanction, should be based only on a violation of a statute, regulations, or order, including a ''demonstrably unsafe or unsound practice.'' [12] The agencies' examiners all take steps to identify deficient practices before they rise to violations of law or regulation or before they constitute unsafe or unsound banking practices. The agencies continue to believe that early identification of deficient practices serves the interest of the public and of supervised institutions. Doing so protects the safety and soundness of banks, promotes consumer protection, and reduces the costs and risk of deterioration of financial condition from deficient practices resulting in violations of laws or regulations, unsafe or unsound conditions, or unsafe or unsound banking practices. Additionally, the agencies have different supervisory processes, including for issuing supervisory criticisms. For these reasons, the agencies are not proposing, as part of this rulemaking, revisions to their

[7] 5 U.S.C. 553(e).

[8] *See* Petition for Rulemaking on the Role of Supervisory Guidance, *available at https://bpi.com/wp-content/uploads/2018/11/BPI_PFR_on_Role_of_Supervisory_Guidance_Federal_Reserve.pdf.* The Petitioners did not submit a petition to the NCUA, which has no supervisory authority over the financial institutions that are represented by Petitioners. The NCUA has chosen to join this rulemaking on its own initiative. References in the preamble to ''agencies'' therefore include the NCUA.

[9] The agencies use different terms to refer to supervisory actions that are similar to MRAs and Matters Requiring Immediate Attention (MRIAs), including matters requiring board attention, documents of resolution, and supervisory recommendations.

[10] For the sake of clarification, one source of law among many that can serve as a basis for a supervisory criticism is the *Interagency Guidelines Establishing Standards for Safety and Soundness, see* 12 CFR part 30, appendix A, and 12 CFR part 208, appendix D–1. These Interagency Guidelines were issued using notice and comment and pursuant to express statutory authority in 12 U.S.C. 1831p–1(d)(1) to adopt safety and soundness standards either by ''regulation or guideline.''

[11] The 2018 Statement contains the following sentence:

Examiners will not criticize a supervised financial institution for a ''violation'' of supervisory guidance.

2018 Statement at 2. As revised in the proposed Statement, this sentence reads as follows:

Examiners will not criticize *(including through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations*) a supervised financial institution for, and agencies will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with supervisory guidance.

Proposed Statement (emphasis added). As discussed *infra* in footnote [18], the proposed Statement also removes the sentences in the 2018 Statement that referred to ''citation,'' which the Petition suggested had been confusing. These sentences were also removed to clarify that the focus of the proposed Statement relates to the use of guidance, not the standards for MRAs.

[12] The Petition asserts that the federal banking agencies rely on 12 U.S.C. 1818(b)(1) when issuing MRAs based on safety-and-soundness matters. Through statutory examination and reporting authorities, Congress has conferred upon the agencies the authority to exercise visitorial powers with respect to supervised institutions. The Supreme Court has indicated support for a broad reading of the agencies' visitorial powers. *See, e.g., Cuomo* v. *Clearing House Assn L.L.C.,* 557 U.S. 519 (2009); *United States* v. *Gaubert,* 499 U.S. 315 (1991); and *United States* v. *Philadelphia Nat. Bank,* 374 U.S. 321 (1963). The visitorial powers facilitate early identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound banking practice, or breach of fiduciary duty under 12 U.S.C. 1818.

respective supervisory practices relating to supervisory criticisms.

The agencies also note that the 2018 Statement was intended to focus on the appropriate use of supervisory guidance in the supervisory process, rather than the standards for supervisory criticisms. To address any confusion concerning the scope of the 2018 Statement, the agencies have removed two sentences from the 2018 Statement concerning grounds for ''citations'' and the handling of deficiencies that do not constitute violations of law.[13]

III. Request for Comment

1. The proposed Statement provides that in some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

Should examiners reference supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations when criticizing (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, supervisory recommendations, or otherwise) a supervised financial institution? Are there specific situations where providing such examples would be appropriate, or specific situations where providing such examples would not be appropriate?

2. Is it sufficiently clear what types of agency communications constitute supervisory guidance? If not, what steps could the agencies take to clarify this?

3. Are there any additional clarifications to the 2018 Statement that would be helpful?

4. Are there other aspects of the proposal where you would like to offer comment?

[13] The following sentences from the 2018 Statement are not present in the proposed Statement:

Rather, any citations will be for violations of law, regulation, or non-compliance with enforcement orders or other enforceable conditions. During examinations and other supervisory activities, examiners may identify unsafe or unsound practices or other deficiencies in risk management, including compliance risk management, or other areas that do not constitute violations of law or regulation.

2018 Statement at 2. The agencies do not intend these deletions to indicate a change in supervisory policy.

IV. Administrative Law Matters

A. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[14] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the agencies incorporate to make the regulation easier to understand?

B. Paperwork Reduction Act Analysis

The Paperwork Reduction Act of 1995[15] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies have reviewed this notice of proposed rulemaking and determined that it does not contain any information collection requirements subject to the PRA. Accordingly, no submissions to OMB will be made with respect to this proposed rule.

C. Regulatory Flexibility Act Analysis

OCC: In general, the Regulatory Flexibility Act[16] (RFA) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

[14] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[15] 44 U.S.C. 3501–3521.

[16] 5 U.S.C. 601, *et seq.*

The OCC currently supervises approximately 782 small entities.[17] Because the proposed rule would apply to all OCC-supervised depository institutions, the proposed rule would affect a substantial number of OCC-supervised entities. While the proposed rule does clarify that the Statement is binding on the agencies, it would not impose any new mandates on the banking industry. As such, we estimate that the costs, if any, associated with the proposal would be negligible. For these reasons, the OCC certifies that the proposed rule will not have a significant economic impact significant economic impact on a substantial number of small entities.

Board: The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[18] This proposed rule would not impose any obligations on regulated entities, and regulated entities would not need to take any action in response to this proposed rule. The Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.[19] The Board requests comments on this analysis and any relevant data.

FDIC: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities.[20] However, a regulatory

[17] We base our estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[18] 5 U.S.C. 601–612.

[19] 5 U.S.C. 605(b).

[20] 5 U.S.C. 601 *et seq.*

flexibility analysis is not required if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[21] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions.

As of June 30, 2020, the FDIC supervised 3,270 institutions, of which 2,492 were considered small for purposes of RFA.[22] This proposed rule, if adopted, would not impose any obligations on FDIC-supervised entities, and FDIC-supervised entities would not need to take any action in response to this proposed rule. For these reasons, and under section 605(b) of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small FDIC-supervised institutions. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

NCUA: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined by the NCUA for purposes of the RFA to include federally insured credit unions with assets less than $100 million) [23] and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. This proposed rule would not impose any obligations on federally insured credit unions, and regulated entities would not need to take any action in response to this proposed rule. The NCUA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The NCUA requests comments on this analysis and any relevant data.

Bureau: The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[24] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[25] This proposed rule would not impose any obligations on regulated entities, and regulated entities would not need to take any action in response to this proposed rule. Accordingly, the Director of the Bureau certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposed rule. The Bureau requests comments on this analysis and any relevant data.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA).[26] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $157 million or more in any one year (adjusted for inflation). The OCC has determined that the proposal, if implemented, would not impose new mandates on the banking industry. Therefore, we conclude that if implemented, the proposal would not result in an expenditure of $157 million or more annually by State, local, and Tribal governments, or by the private sector.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[27] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[28] Each Federal banking agency has determined that the proposed rule would not impose additional reporting, disclosure, or other requirements on IDIs; therefore, the requirements of the RCDRIA do not apply. However, the agencies invite comments that will further inform their consideration of RCDRIA.

G. Bureau Matters

The Bureau issues its portion of the proposed rule based on the Bureau's authorities under sections 1012(a)(1) and 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[29] Section 1012(a)(1) authorizes the Bureau to establish rules for conducting the general business of the Bureau, in a manner not inconsistent with title X of the Dodd-Frank Act.[30] Section 1022(b)(1) authorizes the Bureau to issue rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer

[21] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[22] FDIC Consolidated Reports of Condition and Income Data, June 30, 2020.

[23] NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2 and 15–1, *available at https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf.*

[24] 5 U.S.C. 601–612.

[25] 5 U.S.C. 609.

[26] 2 U.S.C. 1532.

[27] 12 U.S.C. 4802(a).

[28] 12 U.S.C. 4802.

[29] Public Law 111–203, 124 Stat. 1376 (2010).

[30] 12 U.S.C. 5492(a)(1).

financial laws.[31] The Bureau preliminarily believes that the additional clarity regarding the status of supervisory guidance provided by the proposed rule will enable the Bureau to carry out its supervisory responsibilities under Federal consumer financial law more effectively.

Consistent with section 1022(b)(2)(B) of the Dodd-Frank Act, in developing the proposed rule, the Bureau has consulted, or offered to consult with, the prudential regulators and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by those agencies.[32]

Additionally, consistent with section 1022(b)(2)(A) of the Dodd-Frank Act, the Bureau has considered the potential benefits, costs, and impacts of the Bureau's portion of the proposed rule.[33] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts.

Institutions Affected by the Proposed Rule. The Bureau's portion of the proposed rule applies to supervisory guidance issued by the Bureau, which is addressed to those institutions that are examined by the Bureau. Accordingly, the Bureau's portion of the proposed rule may affect those nondepository institutions that are subject to the Bureau's examination authority under section 1024 of the Dodd-Frank Act.[34] It may also affect those insured depository institutions and insured credit unions that have more than $10 billion in total assets, together with their affiliates, which are subject to the Bureau's examination authority under section 1025 of the Dodd-Frank Act.[35] The Bureau's portion of the proposed rule may additionally affect service providers that are subject to the Bureau's examination authority.[36]

Potential Benefits and Costs to Consumers and Covered Persons. The proposed rule would reiterate the Interagency Statement Clarifying the Role of Supervisory Guidance, which is already the policy of the Bureau, and make it binding on the Bureau. The Bureau evaluates its portion of the proposed rule against a baseline in which no such rule is adopted, and the Bureau is therefore less definitively bound to implement the Interagency Statement in all supervisory activities. Accordingly, the Bureau's portion of the proposed rule provides the relevant institutions with additional assurance that the Bureau's implementation of current and future supervisory guidance will follow the Interagency Statement.

The proposed rule should provide the relevant institutions with greater certainty about legal obligations that are addressed in supervisory guidance. This in turn may reduce compliance costs. It is not feasible, however, to quantify or monetize this benefit. The Bureau can only speculate on the greater certainty about legal obligations and the reduction in compliance costs if the rule is adopted as proposed. Further, the benefit from the greater certainty about legal obligations pertains to future as well as current supervisory guidance. The Bureau can only speculate on the frequency of future supervisory guidance. Supervisory guidance is issued from time to time as the need arises, and the Bureau cannot forecast the volume and nature of future supervisory guidance with sufficient precision to quantify or monetize this benefit.

The Bureau's portion of the proposed rule may also indirectly benefit those consumers that are customers of the relevant institutions, if reduced compliance costs translate into better terms or availability of consumer financial products and services. For the reasons given above, this benefit cannot be quantified or monetized.

Finally, the Bureau's portion of the proposed rule does not impose any new obligations on institutions. Thus, the proposed rule should have no costs for institutions. The effects of the rule, as described above, impose no clear costs on any consumers.

Impact on Depository Institutions and Credit Unions With No More Than $10 Billion in Assets. Under section 1026 of the Dodd-Frank Act, the Bureau has only limited examination authority with respect to those insured depository institutions and insured credit unions that have no more than $10 billion in total assets,[37] and so the Bureau does not normally address supervisory guidance to these institutions. Accordingly, the Bureau does not expect there to be any appreciable impact on these institutions from the Bureau's portion of the proposed rule.

Impact on Access to Credit. The Bureau does not expect the Bureau's portion of the proposed rule to affect consumers' access to credit, except to the extent that reduced compliance costs and additional assurance, relative to the baseline, that the Bureau will follow the Interagency Statement in the future might indirectly make some credit more available, as discussed above.

Impact on Consumers in Rural Areas. The Bureau does not believe that the Bureau's portion of the proposed rule would have any unique impact on consumers in rural areas, and so the impact on these consumers should be similar to consumers generally.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 262

Administrative practice and procedure, Banks, banking, Federal Reserve System.

12 CFR Part 302

Administrative practice and procedure, Banks, banking.

12 CFR Part 791

Administrative practice and procedure, Sunshine Act.

12 CFR Part 1074

Administrative practice and procedure.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the Supplementary Information, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

[31] 12 U.S.C. 5512(b)(1).

[32] 12 U.S.C. 5512(b)(2)(B). The prudential regulators are the OCC, Board, FDIC, and NCUA. *See* 12 U.S.C. 5481(24) (defining "prudential regulators").

[33] Section 1022(b)(2)(A) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(2)(A), requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact of the proposed rule on insured depository institutions and credit unions with no more than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act, 12 U.S.C. 5516; and the impact on consumers in rural areas.

[34] 12 U.S.C. 5514.

[35] 12 U.S.C. 5515.

[36] 12 U.S.C. 5514(e), 5515(d), 5516(e).

[37] 12 U.S.C. 5516.

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

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

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.,* 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

■ 2. Subpart F is added to part 4 to read as follows:

Subpart F—Use of Supervisory Guidance

Sec.
4.81 Purpose.
4.82 Implementation of the Interagency Statement.
4.83 Rule of construction.
Appendix A to Subpart F of Part 4—Interagency Statement Clarifying the Role of Supervisory Guidance

§ 4.81 Purpose.

The OCC issues regulations and guidance as part of its supervisory function. This subpart reiterates the distinctions between regulations and guidance, as stated in the Interagency Statement Clarifying the Role of Supervisory Guidance (appendix A to this subpart) (Interagency Statement).

§ 4.82 Implementation of the Interagency Statement.

The Interagency Statement describes the official policy of the OCC with respect to the use of supervisory guidance in the supervisory process. The Interagency Statement is binding on the OCC.

§ 4.83 Rule of construction.

This subpart does not alter the legal status of guidelines authorized by statute, including but not limited to, 12 U.S.C. 1831p–1, to create binding legal obligations.

Appendix A to Subpart F of Part 4—Interagency Statement Clarifying the Role of Supervisory Guidance

Interagency Statement Clarifying the Role of Supervisory Guidance

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency (together, the ''prudential agencies'') are responsible for promoting safety and soundness and effective consumer protection at supervised institutions. The Bureau of Consumer Financial Protection (''Bureau,'' and, with the prudential agencies, the ''agencies'') is generally responsible for regulating the offering and provision of consumer financial products or services under the Federal consumer financial laws. The agencies are issuing this statement to explain the role of supervisory guidance and to describe the agencies' approach to supervisory guidance.

Difference Between Supervisory Guidance and Laws or Regulations

The agencies issue various types of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions, to their respective supervised institutions. A law or regulation has the force and effect of law.[1] Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that the agencies generally consider consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing Agency Efforts To Clarify the Role of Supervisory Guidance

The agencies are clarifying the following policies and practices related to supervisory guidance:

- The agencies intend to limit the use of numerical thresholds or other ''bright-lines'' in describing expectations in supervisory guidance. Where numerical thresholds are used, the agencies intend to clarify that the thresholds are exemplary only and not suggestive of requirements. The agencies will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.
- Examiners will not criticize (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations) a supervised financial institution for, and agencies will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.
- Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.
- The agencies also have at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the agencies to improve their understanding of an issue, to gather information on institutions' risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.
- The agencies will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.
- The agencies will continue efforts to make the role of supervisory guidance clear in their communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

[1] Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System proposes to amend part 262 to 12 CFR chapter II as follows:

PART 262—RULES OF PROCEDURE

■ 3. The authority citation for part 262 is revised to read as follows:

Authority: 5. U.S.C. 552; 12 U.S.C. 248, 321, 325, 326, 483, 602, 611a, 625, 1467a, 1828(c), 1842, 1844, 1850a, 1867, 3105, 3106, 3108, 5361, 5368, 5467, and 5469.

■ 4. Section 262.7 is added to read as follows:

§ 262.7 Use of supervisory guidance.

(a) *Purpose.* The Board issues regulations and guidance as part of its supervisory function. This subpart reiterates the distinctions between regulations and guidance, as stated in the Interagency Statement Clarifying the

Role of Supervisory Guidance (appendix A to this part) (Interagency Statement).

(b) *Implementation of the Interagency Statement.* The Interagency Statement describes the official policy of the Board with respect to the use of supervisory guidance in the supervisory process. The Interagency Statement is binding on the Board.

(c) *Rule of construction.* This subpart does not alter the legal status of guidelines authorized by statute, including but not limited to, 12 U.S.C. 1831p–1, to create binding legal obligations.

■ 5. Appendix A is added to read follows:

Appendix A to Part 262—Interagency Statement Clarifying the Role of Supervisory Guidance

Interagency Statement Clarifying the Role of Supervisory Guidance

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency (together, the ''prudential agencies'') are responsible for promoting safety and soundness and effective consumer protection at supervised institutions. The Bureau of Consumer Financial Protection (''Bureau,'' and, with the prudential agencies, the ''agencies'') is generally responsible for regulating the offering and provision of consumer financial products or services under the Federal consumer financial laws. The agencies are issuing this statement to explain the role of supervisory guidance and to describe the agencies' approach to supervisory guidance.

Difference Between Supervisory Guidance and Laws or Regulations

The agencies issue various types of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions, to their respective supervised institutions. A law or regulation has the force and effect of law.[1] Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that the agencies generally consider consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing Agency Efforts To Clarify the Role of Supervisory Guidance

The agencies are clarifying the following policies and practices related to supervisory guidance:

• The agencies intend to limit the use of numerical thresholds or other ''bright-lines'' in describing expectations in supervisory guidance. Where numerical thresholds are used, the agencies intend to clarify that the thresholds are exemplary only and not suggestive of requirements. The agencies will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.

• Examiners will not criticize (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations) a supervised financial institution for, and agencies will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

• Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.

• The agencies also have at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the agencies to improve their understanding of an issue, to gather information on institutions' risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.

• The agencies will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

• The agencies will continue efforts to make the role of supervisory guidance clear in their communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

[1] Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation proposes to add part 302 to 12 CFR chapter III, subchapter A, to read as follows:

PART 302—USE OF SUPERVISORY GUIDANCE

Authority: 5. U.S.C. 552; 12 U.S.C. 1818, 1819(a) (Seventh and Tenth), 1831p–1.

§ 302.1 Purpose.

The FDIC issues regulations and guidance as part of its supervisory function. This subpart reiterates the distinctions between regulations and guidance, as stated in the Interagency Statement Clarifying the Role of Supervisory Guidance (appendix A to this part) (Interagency Statement).

§ 302.2 Implementation of the interagency statement.

The Interagency Statement describes the official policy of the FDIC with respect to the use of supervisory guidance in the supervisory process. The Interagency Statement is binding on the FDIC.

§ 302.3 Rule of construction.

This subpart does not alter the legal status of guidelines authorized by statute, including but not limited to, 12 U.S.C. 1831p–1, to create binding legal obligations.

Appendix A to Part 302—Interagency Statement Clarifying the Role of Supervisory Guidance

Interagency Statement Clarifying the Role of Supervisory Guidance

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency (together, the ''prudential agencies'') are responsible for promoting safety and soundness and effective consumer protection at supervised institutions. The Bureau of Consumer Financial Protection (''Bureau,'' and, with the prudential agencies, the ''agencies'') is generally responsible for regulating the offering and provision of consumer financial products or services under the Federal consumer financial laws. The agencies are issuing this statement to explain the role of supervisory guidance and to describe the agencies' approach to supervisory guidance.

Difference Between Supervisory Guidance and Laws or Regulations

The agencies issue various types of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions, to their respective supervised institutions. A law or regulation has the force and effect of law.[1] Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that the agencies generally consider consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing Agency Efforts To Clarify the Role of Supervisory Guidance

The agencies are clarifying the following policies and practices related to supervisory guidance:

• The agencies intend to limit the use of numerical thresholds or other "bright-lines" in describing expectations in supervisory guidance. Where numerical thresholds are used, the agencies intend to clarify that the thresholds are exemplary only and not suggestive of requirements. The agencies will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.

• Examiners will not criticize (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations) a supervised financial institution for, and agencies will not issue an enforcement action on the basis of, a "violation" of or "non-compliance" with supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

• Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.

• The agencies also have at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the agencies to improve their understanding of an issue, to gather information on institutions' risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.

• The agencies will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

• The agencies will continue efforts to make the role of supervisory guidance clear in their communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

[1] Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Authority and Issuance

For the reasons stated in the Supplementary Information, chapter VII of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

■ 7. The authority citation for part 791 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1786, 1787, 1789, and 5 U.S.C. 552b.

■ 8. Subpart D is added to part 791 to read as follows:

Subpart D—Use of Supervisory Guidance

Sec.
791.19 Purpose.
791.20 Implementation of the Interagency Statement.
791.21 Rule of construction.
Appendix A to Subpart D of Part 791—Interagency Statement Clarifying the Role of Supervisory Guidance

§ 791.19 Purpose.

The NCUA issues regulations and guidance as part of its supervisory function. This subpart reiterates the distinctions between regulations and guidance, as stated in the Interagency Statement Clarifying the Role of Supervisory Guidance (Interagency Statement) in appendix A to this subpart and provides that the Statement is binding on the NCUA.

§ 791.20 Implementation of the Interagency Statement.

The Interagency Statement describes the official policy of the NCUA with respect to the use of supervisory guidance in the supervisory process. The Interagency Statement is binding on the NCUA.

§ 791.21 Rule of construction.

This subpart does not alter the legal status of guidance that is authorized by statute, including but not limited to 12 U.S.C. 1781, 1786, and 1789, to create binding legal obligations.

Appendix A to Subpart D of Part 791—Interagency Statement Clarifying the Role of Supervisory Guidance

Interagency Statement Clarifying the Role of Supervisory Guidance

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency (together, the "prudential agencies") are responsible for promoting safety and soundness and effective consumer protection at supervised institutions. The Bureau of Consumer Financial Protection ("Bureau," and, with the prudential agencies, the "agencies") is generally responsible for regulating the offering and provision of consumer financial products or services under the Federal consumer financial laws. The agencies are issuing this statement to explain the role of supervisory guidance and to describe the agencies' approach to supervisory guidance.

Difference Between Supervisory Guidance and Laws or Regulations

The agencies issue various types of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions, to their respective supervised institutions. A law or regulation has the force and effect of law.[1] Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of

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practices that the agencies generally consider consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing Agency Efforts To Clarify the Role of Supervisory Guidance

The agencies are clarifying the following policies and practices related to supervisory guidance:

- The agencies intend to limit the use of numerical thresholds or other ''bright-lines'' in describing expectations in supervisory guidance. Where numerical thresholds are used, the agencies intend to clarify that the thresholds are exemplary only and not suggestive of requirements. The agencies will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.
- Examiners will not criticize (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations) a supervised financial institution for, and agencies will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.
- Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.
- The agencies also have at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the agencies to improve their understanding of an issue, to gather information on institutions' risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.
- The agencies will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

The agencies will continue efforts to make the role of supervisory guidance clear in their communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend 12 CFR part 1074 as set forth below:

PART 1074—RULEMAKING AND GUIDANCE

■ 9. The authority citation for part 1074 continues to read as follows:

Authority: 12 U.S.C. 5492(a)(1), 5512(b).

■ 10. The heading to part 1074 is revised as set forth above.

§ 1074.1 [Designated as Subpart A]

■ 11. Designate § 1074.1 as subpart A and add a heading for newly designated subpart A to read as follows:

Subpart A—Procedure for Issuance of Bureau Rules

■ 12. Add subpart B, consisting of §§ 1074.2 and 1074.3, to read as follows:

Subpart B—Use of Supervisory Guidance

Sec.
1074.2 Purpose.
1074.3 Implementation of the Interagency Statement.

§ 1074.2 Purpose.

The Bureau issues regulations and guidance as part of its supervisory function. This subpart reiterates the distinctions between regulations and guidance, as stated in the Interagency Statement Clarifying the Role of Supervisory Guidance (appendix A to this part) (Interagency Statement) and provides that the Statement is binding on the Bureau.

§ 1074.3 Implementation of the Interagency Statement.

The Interagency Statement describes the official policy of the Bureau with respect to the use of supervisory guidance in the supervisory process. The Interagency Statement is binding on the Bureau.

■ 13. Appendix A to part 1074 is added to read as follows:

Appendix A to Part 1074—Interagency Statement Clarifying the Role of Supervisory Guidance

Interagency Statement Clarifying the Role of Supervisory Guidance

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency (together, the ''prudential agencies'') are responsible for promoting safety and soundness and effective consumer protection at supervised institutions. The Bureau of Consumer Financial Protection (''Bureau,'' and, with the prudential agencies, the ''agencies'') is generally responsible for regulating the offering and provision of consumer financial products or services under the Federal consumer financial laws. The agencies are issuing this statement to explain the role of supervisory guidance and to describe the agencies' approach to supervisory guidance.

Difference Between Supervisory Guidance and Laws or Regulations

The agencies issue various types of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions, to their respective supervised institutions. A law or regulation has the force and effect of law.[1] Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that the agencies generally consider consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing Agency Efforts To Clarify the Role of Supervisory Guidance

The agencies are clarifying the following policies and practices related to supervisory guidance:

- The agencies intend to limit the use of numerical thresholds or other ''bright-lines'' in describing expectations in supervisory guidance. Where numerical thresholds are used, the agencies intend to clarify that the thresholds are exemplary only and not suggestive of requirements. The agencies will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or

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programs to supervised institutions, and as required by statute.

• Examiners will not criticize (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations) a supervised financial institution for, and agencies will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

• Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.

• The agencies also have at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the agencies to improve their understanding of an issue, to gather information on institutions' risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.

• The agencies will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

The agencies will continue efforts to make the role of supervisory guidance clear in their communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about October 20, 2020.

James P. Sheesley,

Assistant Executive Secretary.

By the National Credit Union Administration Board on October 28, 2020.

Melane Conyers-Ausbrooks,

Secretary of the Board.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

Dated: On or about October 29, 2020.

[FR Doc. 2020–24484 Filed 11–4–20; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 7535–01–P; 6714–01–P; 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0982; Project Identifier MCAI–2020–01037–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by a report that the oil used to protect the nose landing gear (NLG) main fittings for transportation and storage was not removed before final heat treatment of the affected parts, possibly generating sub-surface cavities during heat treatment of the affected parts. This proposed AD would require replacing each affected NLG main fitting with a serviceable part, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 21, 2020.

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

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0982.

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–2020–0982; 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 NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2020–0982; Product Identifier MCAI–2020–01037–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0165, dated July 23, 2020 (''EASA AD 2020–0165'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318, A319, and A321 series airplanes and Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that the oil used to protect the NLG main fittings for transportation and storage was not removed before final heat treatment of the affected parts, possibly generating sub-surface cavities during heat treatment of the affected parts. The FAA is proposing this AD to address possible sub-surface cavities in the NLG main fittings, which could cause detrimental impact on fatigue performance and affect the structural integrity of the NLG. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0165 describes procedures for replacing each NLG main fitting having a certain part number and serial number with a serviceable part. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0165 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0165 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0165 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0165 that is required for compliance with EASA AD 2020–0165 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0982 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 15 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × $85 per hour = $680	$ *	$680	$10,200

* The FAA has received no definitive data on which to base the parts cost estimates for the replacements specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2020–0982; Project Identifier MCAI–2020–01037–T.

(a) Comments Due Date

The FAA must receive comments by December 21, 2020.

(b) Affected ADs

None.

(c) Applicability

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

(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, –251–252N, –253N, –271N, –272N, and –273N airplanes.

(4) 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 a report that the oil used to protect the nose landing gear (NLG) main fittings for transportation and storage was not removed before final heat treatment of the affected parts, possibly generating sub-surface cavities during heat treatment of the affected parts. The FAA is issuing this AD to address possible sub-surface cavities in the NLG main fittings, which could cause detrimental impact on fatigue performance and affect the structural integrity of the NLG.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0165, dated July 23, 2020 (''EASA AD 2020–0165'').

(h) Exceptions to EASA AD 2020–0165

(1) Where EASA AD 2020–0165 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0165 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0165 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or 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 (k)(2) 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)*: For any service information referenced in EASA AD 2020–0165 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2020–0165, 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.* 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–2020–0982.

(2) 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; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

Issued on October 29, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–24535 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0480; Product Identifier 2019–NM–041–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposal to supersede Airworthiness Directive (AD) 2013–07–09, which applies to certain The Boeing Company Model 737–700, –700C, –800, and –900ER series airplanes, Model 747–400F series airplanes, and Model 767–200 and –300 series airplanes. This action revises the notice of proposed rulemaking (NPRM) by adding airplanes to the applicability. The FAA is proposing this AD to address the unsafe condition on these products. Since these actions would impose an additional burden over that proposed in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: The comment period for the NPRM published in the **Federal Register** on June 25, 2019 (84 FR 29818), is reopened.

The FAA must receive comments on this SNPRM by December 21, 2020.

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

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

For Boeing service information identified in this SNPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For Intertechnique service information identified in this SNPRM, contact Aerotechnics, 61 rue Pierre Curie BP 1, 78373 Plaisir, CEDEX, France; phone: +33 1 6486 6964; internet *http://www.zodiacaerospace.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0480.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0480; 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 SNPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Brown, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3563; email: *Eric.M.Brown@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one copy of the comments. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0480; Product Identifier 2019–NM–041–AD'' at the beginning of your comments. Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this SNPRM because of those comments.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Eric Brown, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3563; email: *Eric.M.Brown@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2013–07–09, Amendment 39–17413 (78 FR 22178, April 15, 2013) (''AD 2013–07–09''). AD 2013–07–09 requires actions to address an unsafe condition on certain The Boeing Company Model 737–700, –700C, –800, and –900ER series airplanes, Model 747–400F series airplanes, and Model 767–200 and –300 series airplanes. AD 2013–07–09 requires a general visual inspection for affected serial numbers of the crew oxygen mask stowage box units, and replacement or re-identification as necessary.

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD to supersede AD 2013–07–09 that would apply to all The Boeing Company Model 737–700, –700C, –800, and –900ER series airplanes, Model 747–400F series airplanes, and Model 767–200 and –300 series airplanes. The NPRM published in the **Federal Register** on June 25, 2019 (84 FR 29818) (''the NPRM''). The NPRM was prompted by reports indicating that certain crew oxygen mask stowage box units were possibly delivered with a burr in the inlet fitting. The burr might break loose during test or operation, and might pose an ignition source or cause an inlet valve to jam. The NPRM was also prompted by a determination that the affected parts may be installed on airplanes outside the applicability of AD 2013–07–09. The NPRM proposed to require a general visual inspection for affected serial numbers of the crew oxygen mask stowage box units, and replacement or re-identification as necessary.

Actions Since NPRM Was Issued

Since the FAA issued the NPRM, it has been determined that the affected parts may be installed as rotable spares on airplanes outside of the applicability of the NPRM, thereby subjecting those airplanes to the unsafe condition. Therefore, the applicability in this proposed AD has been expanded to add all The Boeing Company Model 737–200, 300, –400, –500, –600, and –900 series airplanes; Model 737–8 and 737–9 airplanes; Model 747–200B, 747–200C, 747–200F, 747–400, and 747–400D series airplanes; Model 757–200, –200PF, –200CB, and –300 series airplanes; and Model 767–300F, and –400ER series airplanes.

Related Service Information Under 1 CFR Part 51

This proposed AD would require Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; Boeing Alert Service Bulletin 747–35A2126, Revision 1, dated September 29, 2011; Boeing Alert Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011; and Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011; which the Director of the Federal Register approved for incorporation by reference as of May 20, 2013 (78 FR 22178, April 15, 2013). 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.

Comments

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

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of blended or split scimitar winglets per Supplemental Type Certificate (STC) ST00830SE on Model 737NG airplanes (Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes), and blended winglets per STC ST01920SE on Model 767 airplanes, does not affect the accomplishment of the manufacturer's service instructions.

The FAA agrees with the commenter that STC ST00830SE and STC ST01920SE do not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST00830SE or STC ST01920SE does not affect the ability to accomplish the actions required by this proposed AD. The FAA has not changed this proposed AD in this regard.

Request To Expand the Applicability of the Proposed AD

United Airlines (UAL), Delta Airlines (DAL), American Airlines (AAL), and Boeing requested that the FAA expand the applicability of the proposed AD to include all Boeing airplane models on which the part could possibly be installed. Boeing noted that it permits installation of the affected oxygen mask boxes on several of their models. The commenters pointed out that the affected parts can be installed on more airplane models than are specified in the applicability of the proposed AD. AAL pointed out that adding additional airplane models on which the crew oxygen mask stowage box units could be installed to the proposed AD could prevent future additional regulatory action for the same part numbers of the crew oxygen mask stowage box units.

The FAA agrees with the request to expand the applicability of the proposed AD for the reasons provided. The FAA has revised paragraph (c) of this proposed AD to include all The Boeing Company Model 737–200, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes; Model 737–8 and 737–9 airplanes; Model 747–200B, 747–200C, 747–200F, 747–400, 747–400D, and 747–400F series airplanes; Model 757–200, –200PF, –200CB, and –300 series airplanes; and Model 767–200, –300, –300F, and –400ER series airplanes. This revision includes adding paragraphs (c)(4) and (5) of this proposed AD.

Request To Remove Paragraph (i)(3) of the Proposed AD

AAL requested that paragraph (i)(3) of the proposed AD be removed. AAL stated that it does not believe that re-installing the crew oxygen mask stowage box units after they have been inspected in accordance with paragraph (i)(1) of the proposed AD should be regarded as a mandatory regulatory item. AAL maintained that paragraph (i)(3) of the proposed AD does not appear to address any safety concern regarding the stowage boxes. AAL reasoned that removing paragraph (i)(3) of the proposed AD does not impact airplane safety and airworthiness and that the removal and reinstallation of the crew oxygen mask stowage box units can be done safely using the aircraft maintenance manual (AMM). AAL went on to recommend that if paragraph (i)(3) of the proposed AD is retained, it should be revised to include an option to install a new or serviceable crew oxygen mask stowage box unit.

The FAA agrees with the commenter's request to delete paragraph (i)(3) from this proposed AD for the reasons provided. The FAA notes that existing regulations require maintaining airplanes in an airworthy condition, which would include reinstalling removed parts. In addition, reinstalling a part does not directly address the unsafe condition identified in this AD. The FAA has deleted paragraph (i)(3) from this proposed AD.

Request To Remove Certain Required Service Information

AAL requested that the FAA remove Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; and Boeing Alert Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011; from the requirements in paragraph (i) of the proposed AD. All Nippon Airways (ANA) noted that the key point of the proposed AD is removing the crew oxygen mask stowage boxes identified in table 1 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011. ANA requested that operators be allowed to show compliance through referencing the service information only for serial number identification (the FAA infers ANA is requesting that the FAA revise the proposed AD to not require doing the inspections and replacements in accordance with the service information). AAL noted that it does not operate any of the airplanes identified in the effectivity of the specified service information, though the proposed AD would apply to its fleet. AAL noted that this discrepancy could cause confusion regarding showing compliance with the proposed AD and may lead to several alternative method of compliance (AMOC) approval requests. AAL stated that it does not believe that the phrase ''for airplanes other than those identified in paragraph (g) of this AD'' in paragraph (i) of the proposed AD is sufficient to address its concerns about showing compliance with the proposed AD. AAL went on to suggest that removing the service information would be an acceptable change to the proposed AD because the inspection for the part number and serial number of crew oxygen mask stowage boxes is a common and straightforward maintenance action. AAL noted that operators remove and replace the crew oxygen mask stowage boxes by using the instructions in AMMs and stated that the service information specified in the proposed AD does not contain instructions not already in the AMMs. AAL observed that many of the work instructions in the service information require the operator to reference its applicable AMM for additional instructions, and the AMMs define the general visual inspection of the crew oxygen mask stowage boxes for the serial number. Additionally, AAL pointed out that paragraph (i) of the proposed AD would mandate accomplishment of the general visual inspection of the crew oxygen mask stowage boxes for the serial number.

The FAA agrees with the commenters' request. The service information referenced in the proposed AD does not include all airplanes on which the affected crew oxygen mask stowage units may be installed, and operators may have difficulty determining which part of the Accomplishment Instructions to comply with. In addition, as AAL noted, the service information refers operators to applicable AMM tasks for replacing affected parts. The FAA has determined that operators can use existing accepted procedures, including AMM tasks, to perform the inspections and replacements specified in paragraph (i) of this proposed AD. The FAA has therefore revised the introductory text of paragraph (i) and paragraphs (i)(1) and (2) of this proposed AD to remove the requirement to use certain service information to do the inspections and replacements specified in this proposed AD. As noted previously, the FAA has deleted paragraph (i)(3) from this proposed AD.

Request To Revise the Effectivity of the Service Information

DAL, ANA, and Cathay Pacific requested that Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; Boeing Alert Service Bulletin 747–35A2126, Revision 1, dated September 29, 2011; and Boeing Alert Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011; be revised to correctly reflect the applicability of the proposed AD. DAL also recommended that new service information be released to provide instructions for any models that might be added to the applicability of the proposed AD. ANA noted that it has airplanes not reflected in the effectivity of the service information and added that it cannot determine which instructions to follow for those airplanes because the service information lists groups by airplane variable numbers. Cathay Pacific Airways noted that it is not possible to satisfy the requirements of paragraph (i) of the proposed AD unless the effectivity of the service information is revised.

The FAA acknowledges the commenters' concern regarding the service information effectivity. As noted previously, the FAA has determined that the actions specified in the introductory text of paragraph (i) and paragraphs (i)(1) and (2) of this proposed AD can be done using existing accepted procedures, including AMM tasks. The FAA has revised the introductory text of paragraph (i) and paragraphs (i)(1) and (2) of this proposed AD to remove reference to the Boeing service information. This revision allows operators to use existing accepted procedures to perform the specified actions, negating the need to revise existing service information or create new service information for the models being added to this proposed AD.

Request To Allow Installation of Certain Crew Oxygen Mask Stowage Boxes

AAL requested that the FAA allow installation of crew oxygen mask stowage boxes if the serial number is illegible, but the date of manufacture can be determined to be outside of the range of July 12, 2007, through November 20, 2007, inclusive. AAL requested that this exception be included in the proposed AD, and recommended revising paragraph (i)(1) of the proposed AD. AAL reasoned that this change to the language in paragraph (i)(1) of the proposed AD would avoid possible misinterpretation of the compliance requirements of the proposed AD for airplanes on which the Boeing service information is not effective as well as prevent unnecessary removal of crew oxygen mask stowage boxes. AAL stated that the proposed new language would allow it to show compliance on its Boeing Model 757–200 airplanes and Model 737–8 airplanes, if those airplanes are added to the applicability of the proposed AD.

The FAA agrees that crew oxygen mask stowage box units manufactured outside of the range of July 12, 2007, through November 20, 2007, inclusive are not subject to the unsafe condition identified in this proposed AD. The FAA has revised paragraph (i)(1) of this proposed AD to state that ''If any crew oxygen mask stowage box unit's serial number is unreadable or undetermined, but the manufacturing date can conclusively be determined to be outside the range of July 12, 2007, through November 20, 2007, inclusive, the crew oxygen mask stowage box unit does not need to be replaced.''

Request To Remove Paragraph (i)(2) of the Proposed AD

AAL requested that the FAA remove paragraph (i)(2) of the proposed AD. AAL stated that it understands that all the crew oxygen mask stowage box units' serial numbers included in table 2 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, have been inspected and have already been determined to be compliant. AAL reasoned that paragraph (i)(2) of the proposed AD does not address any safety concerns and adds an undue burden on operators. AAL pointed out that Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, is included in the applicable component maintenance manual, and it is a mandatory inspection item within AAL's component maintenance program. AAL stated that it believes it is acceptable to re-identify the crew oxygen mask stowage box units included in table 2 of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, on attrition, as these stowage box units are removed from the airplane and sent for routine maintenance, without any safety impact.

The FAA disagrees with the commenter's request. Marking the acceptable parts is necessary so they can be easily identified and operators can verify that the actions specified by this proposed AD have been done on this part. In addition, the FAA notes that not all operators may have such a requirement in their component maintenance program, so an AD requirement is the appropriate means to ensure this action is done uniformly among operators. Therefore, the FAA has not changed this proposed AD regarding this issue.

Request To Revise Parts Installation Prohibition

AAL requested that the FAA revise paragraph (j) of the proposed AD to limit the prohibition to parts specified in table 1 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, as only those parts that present a safety risk. AAL and DAL requested that the FAA revise paragraph (j) of the proposed AD to exclude stowage boxes that have been corrected and re-identified as specified in Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011.

The FAA agrees with the request to revise paragraph (j) of the proposed AD. Only crew oxygen mask stowage box units with a serial number identified in table 1 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2 dated May 10, 2011, are prohibited from installation on an airplane. Crew oxygen mask stowage box units that are inspected and determined to have a serial number identified in table 2 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, may be installed on an airplane, provided they are modified as required by paragraph (i)(2) of this proposed AD. The FAA has revised paragraph (j) of this proposed AD accordingly, including restructuring the paragraph to add paragraphs (j)(1) and (2) of this proposed AD.

Request To Delay Start of Parts Installation Prohibition

UAL requested that the FAA delay the start of the parts installation prohibition specified in paragraph (j) of the proposed AD to ''within 30 days after the effective date of this AD'' as opposed to ''as of the effective date of this AD.'' UAL stated that restricting the installation of the crew oxygen mask box assemblies immediately after the effective date of the AD presents a logistical challenge that could disrupt supply chain balances. UAL pointed to the challenges presented by previous similar rulemaking regarding crew oxygen equipment, and argued that operators, the OEMs, and suppliers lost considerable time, effort, and material as operators ordered an over-abundance of parts prior to knowing the modification status of existing parts and crew oxygen equipment needs. UAL noted that it performs a system-wide inventory to determine its material requirements, then allocates the appropriate resources to inspect and modify a suitable number of components to begin its program, and that other carriers use similar processes. UAL stated that it does not believe that delaying the start of the parts installation prohibition would significantly increase any level of risk in relation to the total time allowed for operators to comply with the rest of the proposed AD.

The FAA disagrees with the commenter's request. This proposed AD specifies a parts installation prohibition with a timeline similar to that in AD 2013–07–09. The FAA notes that in developing appropriate compliance times for this proposed AD, the FAA considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the proposed actions. Additionally, the FAA notes that the number of affected parts did not increase, only the range of airplane models on which those parts could possibly be installed.

Request To Change to an Appliance-Based AD

Boeing requested that the FAA consider issuing an appliance-based AD that is based on a component or appliance service bulletin. Boeing suggested that a component or appliance service bulletin would capture the applicability in the form of a serial number range, rather than expanding the scope of the proposed AD to all airplane line numbers. Boeing acknowledged the difference between the effectivity specified in the Boeing service information and the applicability of the proposed AD. Boeing stated it understands the FAA's concerns regarding the possibility of parts being rotated outside the effectivity contained in the Boeing service information. As a result, Boeing expressed its desire to seek an alternative solution to address the concerns of the FAA. Boeing recommended a collaboration between airline partners, other original equipment manufacturers (OEMs), and civil aviation authorities to develop an action to implement safe, fair, and consistent policy to address concerns on rotable parts for the industry.

The FAA does not agree with the request to issue an appliance-based AD that applies to specific components or appliances. The FAA has determined that the affected parts are installed only on Boeing airplanes, so an appliance-based AD is not appropriate. In addition, the affected parts are rotable parts, and the FAA has determined that, regardless of operator diligence, these parts could later be installed on Boeing airplanes that were initially delivered with acceptable parts, thereby subjecting those airplanes to the unsafe condition. Therefore, the FAA has not changed this proposed AD in this regard.

Request To Extend the Compliance Time

DAL, UAL, and AAL requested that the compliance time for the inspection specified in paragraph (i) of the proposed AD be extended from 24 months to 36 months. UAL and DAL cited concern over parts availability due to the expansion of the applicability in the proposed AD. DAL noted there is a long lead time to obtain replacement parts. DAL and AAL stated that existing pre-flight checks provide a sufficient level of safety by accomplishing regular functional checks of the oxygen mask box assemblies, which would identify any units that are not functioning correctly. DAL maintained that the additional compliance time will allow sufficient time to adequately inspect all fleets. AAL stated that an extended compliance time would allow it to perform inspections in a main base environment where more ground time and manpower are available. AAL also noted that some of the older crew oxygen mask stowage boxes have parts data printed on the boxes instead of physical data plates; the printed data is more prone to scratches which cause difficulty in identifying the part information. AAL reasoned that this difficulty coupled with the large amount of boxes that must be inspected could cause operational disruptions.

The FAA does not agree with the commenters' request. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the inspection and replacement or re-identification as necessary. The FAA has determined an adequate number of replacement parts will be available within the compliance time specified in this proposed AD. Additionally, the number of affected parts did not increase, only the range of airplane models on which those parts could possibly be installed. In consideration of these items, the FAA has determined that a 24-month compliance time will ensure an acceptable level of safety. The FAA has not changed the proposed AD in this regard.

FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM. As a result, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This SNPRM would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; Boeing Alert Service Bulletin 747–35A2126, Revision 1, dated September 29, 2011; Boeing Alert Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011; and Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011; at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0480.

Costs of Compliance

The FAA estimates that this proposed AD affects 3,723 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained action from AD 2013–07–09) (40 airplanes).	1 work-hour × $85 per hour = $85	$0	$85	$3,400
Inspection (new action) (3,683 airplanes)	1 work-hour × $85 per hour = $85	0	85	313,055

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by

■ a. Removing Airworthiness Directive (AD) 2013–07–09, Amendment 39–17413 (78 FR 22178, April 15, 2013); and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2019–0480; Product Identifier 2019–NM–041–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by December 21, 2020.

(b) Affected ADs

This AD replaces AD 2013–07–09, Amendment 39–17413 (78 FR 22178, April 15, 2013) (''AD 2013–07–09'').

(c) Applicability

This AD applies to all The Boeing Company airplanes, certificated in any category, as identified in paragraphs (c)(1) through (5) of this AD.

(1) Model 737–200, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes.

(2) Model 737–8 and 737–9 airplanes.

(3) Model 747–200B, 747–200C, 747–200F, 747–400, 747–400D, and 747–400F series airplanes.

(4) Model 757–200, –200PF, –200CB, and –300 series airplanes.

(5) Model 767–200, –300, –300F, and –400ER series airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by reports indicating that certain crew oxygen mask stowage box units were possibly delivered with a burr in the inlet fitting. The burr might break loose during test or operation, and might pose an ignition source or cause an inlet valve to jam. This AD was also prompted by a determination that the affected parts may be installed on airplanes outside the applicability of AD 2013–07–09. The FAA is issuing this AD to address this possible ignition source, which could result in an oxygen-fed fire; or an inlet valve jam in a crew oxygen mask stowage box unit, which could result in restricted flow of oxygen.

(f) Compliance

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

(g) Retained Inspection and Corrective Action, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–07–09 with no changes. For The Boeing Company Model 737 airplanes as identified in Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; The Boeing Company Model 747 airplanes as identified in Boeing Alert Service Bulletin 747–35A2126, Revision 1, dated September 29, 2011; and The Boeing Company Model 767 airplanes as identified in Boeing Alert

Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011: Within 24 months after May 20, 2013 (the effective date of AD 2013–07–09); Do a general visual inspection to determine if the serial number of the crew oxygen mask stowage box unit is identified in the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; Boeing Alert Service Bulletin 747–35A2126, Revision 1, dated September 29, 2011; or Boeing Alert Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011; as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the crew oxygen mask stowage box unit can be conclusively determined from that review.

(1) If any crew oxygen mask stowage box unit has a serial number identified in table 1 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011: Before further flight, replace the crew oxygen mask stowage box unit with a new or serviceable unit in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; Boeing Alert Service Bulletin 747–35A2126, Revision 1, dated September 29, 2011; or Boeing Alert Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011; as applicable.

(2) If any crew oxygen mask stowage box unit has a serial number identified in table 2 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011: Before further flight, add the letter ''I'' to the end of the serial number (identified as ''SER'') on the identification label, in accordance with the Accomplishment Instructions of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011; and reinstall in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; Boeing Alert Service Bulletin 747–35A2126, Revision 1, dated September 29, 2011; or Boeing Alert Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011; as applicable.

(3) If no crew oxygen mask stowage box unit has a serial number identified in the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011: Unless a records review was done to determine the serial number, before further flight, reinstall the crew oxygen mask stowage box unit, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–35A1121, Revision 1, dated November 7, 2011; Boeing Alert Service Bulletin 747–35A2126, Revision 1, dated September 29, 2011; or Boeing Alert Service Bulletin 767–35A0057, Revision 1, dated November 17, 2011; as applicable.

(h) Retained Parts Installation Prohibition, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2013–07–09 with no changes. For airplanes identified in paragraph (g) of this AD: As of May 20, 2013 (the effective date of AD 2013–07–09), no person may install a crew oxygen mask stowage box unit with a serial number listed in the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, on any airplane.

(i) New Inspection and Corrective Action

For airplanes other than those identified in paragraph (g) of this AD: Within 24 months after the effective date of this AD, do a general visual inspection to determine if the serial number of the crew oxygen mask stowage box unit is identified in the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the crew oxygen mask stowage box unit can be conclusively determined from that review.

(1) If any crew oxygen mask stowage box unit has a serial number identified in table 1 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011: Before further flight, replace the crew oxygen mask stowage box unit with a new or serviceable unit. If any crew oxygen mask stowage box unit's serial number is unreadable or undetermined, but the manufacturing date can conclusively be determined to be outside the range of July 12, 2007, through November 20, 2007, inclusive, the crew oxygen mask stowage box unit does not need to be replaced.

(2) If any crew oxygen mask stowage box unit has a serial number identified in table 2 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011: Before further flight, add the letter ''I'' to the end of the serial number (identified as ''SER'') on the identification label, in accordance with the Accomplishment Instructions of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011; and reinstall the crew oxygen mask stowage box unit.

(j) New Parts Installation Prohibition

(1) For airplanes other than those identified in paragraph (g) of this AD: As of the effective date of this AD, no person may install a crew oxygen mask stowage box unit with a serial number identified in table 1 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, on any airplane.

(2) For airplanes other than those identified in paragraph (g) of this AD: As of the effective date of this AD, no person may install a crew oxygen mask stowage box unit with a serial number identified in table 2 of the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, Revision 2, dated May 10, 2011, on any airplane, unless that crew oxygen mask stowage box unit has been modified as required by paragraph (i)(2) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously for AD 2013–07–09 are approved as AMOCs for the corresponding provisions of this AD.

(l) Related Information

(1) For more information about this AD, contact Eric Brown, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3563; email: *Eric.M.Brown@faa.gov.*

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

(3) For Intertechnique service information identified in this AD, contact Aerotechnics, 61 rue Pierre Curie BP 1, 78373 Plaisir, CEDEX, France; phone: +33 1 6486 6964; internet *http://www.zodiacaerospace.com.*

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

Issued on October 14, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–24346 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0944; Airspace Docket No. 20–AGL–26]

RIN 2120–AA66

Proposed Amendment of V–67, V–190, and V–429; Establishment of T–312; and Revocation of V–125 and V–335 in the Vicinity of Marion, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–67, V–190, and V–429; establish Area Navigation (RNAV) route T–312; and remove VOR Federal airways V–125 and V–335 in the vicinity of Marion, IL. The Air Traffic Service (ATS) route modifications are necessary due to the planned decommissioning of the VOR portion of the Marion, IL, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID). With the exception of the RNAV route T–312 proposed to be established, the Marion VOR/DME NAVAID provides navigation guidance for portions of the affected air traffic service (ATS) routes. The VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before December 21, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0944; Airspace Docket No. 20–AGL–26 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0944; Airspace Docket No. 20–AGL–26) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0944; Airspace Docket No. 20–AGL–26.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Marion, IL, VOR/DME in June 2021. The VOR portion of the Marion, IL, VOR/DME is a candidate VOR identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the

Federal Register of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Marion VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained.

The existing ATS route dependencies to the Marion, IL, VOR/DME NAVAID are VOR Federal airways V–67, V–125, V–190, V–335, and V–429.

With the planned decommissioning of the VOR portion of the Marion, IL, VOR/DME, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected VOR Federal airways. As such, proposed modifications to the affected VOR Federal airways would result in an increased gap in one of the airways (V–67), the removal of the affected airway segment at the end of an airway and at the beginning of an airway (V–190 and V–429, respectively), and the removal of the remaining airways (V–125 and V–335).

To overcome the loss of an ATS route, the increased gap in another route, and the loss of route segments at the beginning and end of the other ATS routes, instrument flight rules (IFR) traffic could use adjacent ATS routes, including VOR Federal airways V–4, V–11, V–47, V–72, V–305, and V–540, or receive air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. Additionally, IFR pilots equipped with RNAV PBN capabilities could also navigate point to point using the existing fixes that will remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

Further, the FAA proposes to establish RNAV route T–312 between the Hill City, KS, VORTAC and the Pocket City, IN, VORTAC to, in part, mitigate the proposed removal of the V–190 airway segment affected by the planned decommissioning of the Marion VOR. Additionally, establishing T–312 would provide RNAV routing capability from the Hill City, KS, area eastward to the Pocket City, IN, area; as well as, support ongoing FAA NextGen efforts to transition the NAS to performance-based navigation.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–67, V–190, and V–429; establishing RNAV route T–312; and removing VOR Federal airways V–125 and V–335. The planned decommissioning of the VOR portion of the Marion, IL, VOR/DME has made this action necessary.

The proposed VOR Federal airway changes are outlined below.

V–67: V–67 currently extends between the Choo Choo, TN, VOR/Tactical Air Navigation (VORTAC) and the Shelbyville, TN, VOR/DME; and between the Cunningham, KY, VOR/DME and the Rochester, MN, VOR/DME. The FAA proposes to remove the airway segment overlying the Marion, IL, VOR/DME between the Cunningham, KY, VOR/DME and the Centralia, IL, VORTAC due to the Marion VOR being decommissioned; and between the Centralia, IL, VORTAC and the intersection of the Centralia, IL, VORTAC 010° and Vandalia, IL, VOR/DME 162° radials (CORKI fix) due to V–313 overlaying the same airway segment. The unaffected portions of the existing airway would remain as charted.

V–125: V–125 currently extends between the intersection of the Farmington, MO, VORTAC 046° and Marion, IL, VOR/DME 282° radials (NIKEL fix) and the St. Louis, MO, VORTAC. The FAA proposes to remove the airway in its entirety.

V–190: V–190 currently extends between the Phoenix, AZ, VORTAC and the Pocket City, IN, VORTAC. The FAA proposes to remove the airway segment overlying the Marion, IL, VOR/DME between the Farmington, MO, VORTAC and the Pocket City, IN, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–335: V–335 currently extends between the St. Louis, MO, VORTAC and the Marion, IL, VOR/DME. The FAA proposes to remove the airway in its entirety.

V–429: V–429 currently extends between the Marion, IL, VOR/DME and the Bible Grove, IL, VORTAC; and between the Champaign, IL, VORTAC and the Joliet, IL, VOR/DME. The FAA proposes to remove the airway segment overlying the Marion, IL, VOR/DME between the Marion, IL, VOR/DME and the Bible Grove, IL, VORTAC. The unaffected portions of the existing airway would remain as charted.

The proposed new RNAV T-route is outlined below.

T–312: T–312 is a proposed new route that would extend between the Hill City, KS, VORTAC and the Pocket City, IN, VORTAC. This RNAV route would mitigate the proposed loss of the V–190 airway segment proposed to be removed between the Farmington, MO, VORTAC and the Pocket City, IN, VORTAC and provide RNAV routing capability from the Hill City, KS, area eastward to the Pocket City, IN, area.

All NAVAID radials in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) and United States RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–67 [Amended]

From Choo Choo, TN; to Shelbyville, TN. From INT Centralia 010° and Vandalia, IL, 162° radials; Vandalia; Spinner, IL; Burlington, IA; Iowa City, IA; Cedar Rapids, IA; Waterloo, IA; to Rochester, MN.

* * * * *

V–125 [Removed]

* * * * *

V–190 [Amended]

From Phoenix, AZ; St. Johns, AZ; Albuquerque, NM; Fort Union, NM, Dalhart, TX; Mitbee, OK; INT Mitbee 059° and Pioneer, OK, 280° radials; Pioneer; INT Pioneer 094° and Bartlesville, OK, 256° radials; Bartlesville; INT Bartlesville 075° and Oswego, KS, 233° radials; Oswego; INT Oswego 085° and Springfield, MO, 261° radials; Springfield; Maples, MO; to Farmington, MO.

* * * * *

V–335 [Removed]

* * * * *

V–429 [Amended]

From Champaign, IL; Roberts, IL; to Joliet, IL.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–312 Hill City, KS (HLC) to Pocket City, IN (PXV) [New]

Hill City, KS (HLC)	VORTAC	(Lat. 39°15′31.49″ N, long. 100°13′33.06″ W)
MOZEE, KS	WP	(Lat. 38°50′51.20″ N, long. 099°16′35.85″ W)
Hutchinson, KS (HUT)	VOR/DME	(Lat. 37°59′48.91″ N, long. 097°56′02.94″ W)
DROOP, MO	FIX	(Lat. 37°06′09.12″ N, long. 094°26′42.39″ W)
Dogwood, MO (DGD)	VORTAC	(Lat. 37°01′24.49″ N, long. 092°52′36.92″ W)
REINS, MO	WP	(Lat. 37°33′35.84″ N, long. 090°43′00.70″ W)
Farmington, MO (FAM)	VORTAC	(Lat. 37°40′24.46″ N, long. 090°14′02.61″ W)
JEDPA, IL	WP	(Lat. 37°50′22.09″ N, long. 088°41′05.55″ W)
Pocket City, IN (PXV)	VORTAC	(Lat. 37°55′41.95″ N, long. 087°45′44.57″ W)

* * * * *

Issued in Washington, DC, on October 30, 2020.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–24489 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0992; Airspace Docket No. 20–ANE–3]

RIN 2120–AA66

Proposed Deletion of VOR Federal Airways V–346 and V–400 in the Vicinity of Beauce, Canada

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove VHF Omnidirectional Range (VOR) Federal airway V–346 and V–400, in the vicinity of Beauce, Canada. This action is necessary due to NAV Canada's, Canada's civil air navigation services provider, planned decommissioning of the Beauce, Canada, VOR/Distance Measuring Equipment (DME) navigation aid, which provides navigation guidance for segments of the routes. NAV Canada has deleted the portions of both airways that resided in their airspace.

DATES: Comments must be received on or before December 21, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0992 and Airspace Docket No. 20–ANE–3 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Sean Hook, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2020–0992 and Airspace Docket No. 20–ANE–3) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0992 and Airspace Docket No. 20–ANE–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020 and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to remove VOR Federal airways V–346 and V–400, in the vicinity of Beauce, Canada due to the planned decommissioning of the Beauce, Canada, VOR/DME navigational aid. The routes have already been removed by NAV Canada for those portions in Canada. The proposed route changes are described below.

V–346: V–346 currently extends from the Beauce, PQ, Canada, VOR/DME to the Millinocket, ME, VOR/DME, excluding the airspace within Canada. The FAA proposes to remove the entire route.

V–400: V–400 currently extends from the Presque Isle, ME, VOR/DME to the Beauce, PQ, Canada, VOR/DME, excluding the airspace within Canada. The FAA proposes to remove the entire route.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020 and effective September 15, 2020, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–346 [Remove]

* * * * *

V–400 [Remove]

Issued in Washington, DC, on October 30, 2020.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–24491 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AF07

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–90246; File No. S7–15–20]

RIN 3235–AM64

Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps

AGENCY: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively, the ''Commissions'') seek public comment on potential ways to implement portfolio margining of uncleared swaps and non-cleared security-based swaps.

DATES: Comments should be received on or before December 7, 2020.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

CFTC: You may submit comments, identified by RIN 3038–AF07, by any of the following methods: CFTC website: *https://comments.cftc.gov.* Follow the instructions for submitting comments through the website.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish for the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Rule 145.9, 17 CFR 145.9.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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

Electronic Comments

- Use the SEC's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–15–20 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–15–20. This file number should be included on the subject line if email is used. To help the SEC process and review your comments more efficiently, please use only one method of submission. The SEC will post all comments on the SEC's website (*http://www.sec.gov*). Comments are also available for website viewing and printing in the SEC'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. 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 publicly available.

FOR FURTHER INFORMATION CONTACT:

CFTC: Thomas J. Smith, Deputy Director, at (202) 418–5495, *tsmith@cftc.gov* or Joshua Beale, Associate Director, at (202) 418–5446, *jbeale@cftc.gov,* Division of Swap Dealer and Intermediary Oversight; Robert B. Wasserman, Chief Counsel and Senior Advisor, at (202) 418–5092, *rwasserman@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SEC: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522; Raymond Lombardo, Assistant Director, at 202–551–5755; or Sheila Dombal Swartz, Senior Special Counsel, at (202) 551–5545, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Title VII'') established a new regulatory framework for the U.S. over-the-counter (''OTC'') derivatives markets.[1] The Dodd-Frank Act assigns responsibility for certain aspects of the U.S. OTC derivatives markets to the CFTC and the SEC. In particular, the CFTC has oversight authority with respect to swaps, and the SEC has oversight authority with respect to security-based swaps.[2] The CFTC has adopted final margin rules for uncleared swaps applicable to nonbank swap dealers and nonbank major swap participants.[3] The SEC has adopted final margin requirements for non-cleared security-based swaps applicable to nonbank security-based swap dealers (''SBSDs'') and nonbank major security-based swap participants (''MSBSPs'').[4]

[1] *See* Public Law 111–203, 771 through 774 (''Dodd-Frank Act'').

[2] The CFTC has oversight authority with respect to a ''swap'' as defined in Section 1(a)(47) of the Commodity Exchange Act (''CEA'') (7 U.S.C. 1(a)(47)), including to implement a registration and oversight program for a ''swap dealer'' as defined in Section 1(a)(49) of the CEA (7 U.S.C. 1(a)(49)) and a ''major swap participant'' as defined in Section 1(a)(33) of the CEA (7 U.S.C. 1(a)(33)). The SEC has oversight authority with respect to a ''security-based swap'' as defined in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)), including to implement a registration and oversight program for a ''security-based swap dealer'' as defined in Section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)) and a ''major security-based swap participant'' as defined in Section 3(a)(67) of the Exchange Act (15 U.S.C. 78c(a)(67)). The SEC and the CFTC jointly have adopted rules to further define those terms. *See Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (Aug. 13, 2012); *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,''* Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

[3] CFTC, *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,* 81 FR 636 (Jan. 6, 2016) (''*CFTC Final Margin Release*''). The Commissions use the terms ''uncleared swaps'' and ''non-cleared security-based swaps'' throughout this request for comment because those are the defined terms adopted in their respective final margin rules.

[4] SEC, *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and*

Bank regulators have adopted capital and margin requirements for bank swap dealers and bank major swap participants and for bank SBSDs and bank MSBSPs pursuant to Title VII.[5] The SEC and CFTC also have issued exemptive orders to facilitate the portfolio margining of cleared swaps and security-based swaps that are credit default swaps (''CDS'') held in a swap account.[6]

In implementing Title VII, the Commissions are committed to working together to ensure that each agency's respective regulations are effective, consistent, mutually reinforcing, and efficient. In certain cases, the Commissions believe that these objectives may be served better by harmonizing requirements. Portfolio margining is one area where the Commissions believe it is appropriate to explore whether increased harmonization would better serve the purposes of Title VII.

Portfolio margining generally refers to the cross margining of related positions in a single account, allowing netting of appropriate offsetting exposures. Portfolio margining of uncleared swaps, non-cleared security-based swaps, and related positions can offer benefits to customers and the markets, including promoting greater efficiencies in margin calculations with respect to offsetting positions. This can align margining and other costs more closely with overall risks presented by a customer's portfolio. This alignment can reduce the aggregate amount of collateral required to meet margin requirements, facilitating the availability of excess collateral that can be deployed for other purposes. The netting of exposures allowed by portfolio margining may also help to improve efficiencies in collateral management, alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility.

At the same time, facilitating portfolio margining for uncleared swaps, non-cleared security-based swaps, and related positions requires careful consideration to ensure that any customer protection, financial stability and other applicable regulatory objectives and potential impacts are appropriately considered and addressed. These considerations include, among other things, potential impacts on margin requirements, the segregation and bankruptcy treatment of uncleared swaps and non-cleared security-based swaps in different account types and entities, and the potential impact on regulatory capital requirements.

The implementation of portfolio margining of uncleared swaps and non-cleared security-based swaps also requires careful consideration of the differences in the capital, margin, and segregation requirements of the CFTC and SEC applicable to uncleared swaps and non-cleared security-based swaps, respectively. These differences reflect the policy objectives of, and choices made by, each agency and reflect each agency's assessment of potential costs and benefits of alternative approaches and the impact on the markets for swaps and security-based swaps. The differences between the CFTC and SEC requirements is a result of these differing policy objectives and related assessments.

For example, the CFTC's margin rule for uncleared swaps requires swap dealers to collect and post initial margin to certain counterparties, subject to exceptions.[7] When adopting this requirement, the CFTC stated that ''the posting requirement under the final rule is one way in which the Commission seeks to reduce overall risk to the financial system, by providing initial margin to non-dealer swap market counterparties that are interconnected participants in the financial markets (*i.e.,* financial end users that have material swap exposure).'' [8] The CFTC further noted that commenters stated that requiring swap dealers to post initial margin ''not only would better protect financial end users from concerns about the failure of [the swap dealer], but would also act as a discipline on [swap dealers] by requiring them to post margin reflecting the risk of their swaps business.'' [9]

The SEC's margin rule for non-cleared swaps does not require nonbank SBSDs to post initial margin.[10] The SEC stated when adopting the margin rule that ''[r]equiring nonbank SBSDs to deliver initial margin could impact the liquidity of these firms'' and that ''[d]elivering initial margin would prevent this capital of the nonbank SBSD from being immediately available to the firm to meet liquidity needs.'' [11] The SEC further stated that, ''[i]f the delivering SBSD is undergoing financial stress or the markets more generally are in a period of financial turmoil, a nonbank SBSD may need to liquidate assets to raise funds and reduce its leverage'' and that ''[a]ssets in the control of a counterparty would not be available for this purpose.'' [12]

In addition, the CFTC's margin rule requires that initial margin posted to or by the swap dealer must be held by a third-party custodian and does not permit the initial margin to be re-hypothecated.[13] When adopting the margin rule, the CFTC stated ''that the ultimate purpose of the custody agreement is twofold: (1) That the initial margin be available to a counterparty when its counterparty defaults and a loss is realized that exceeds the amount of variation margin that has been collected as of the time of default; and (2) initial margin be returned to the posting party after its swap obligations have been fully discharged.'' [14]

The SEC margin rule for non-cleared swaps does not require that initial margin posted to the nonbank SBSD be held at a third-party custodian.[15] The SEC stated that this difference from the CFTC's margin rule reflects its ''judgment of how to 'help ensure the safety and soundness' of nonbank

Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers (''SEC Final Capital, Margin and Segregation Release''), Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43956–43957 (Aug. 22, 2019). The compliance date for the SEC's margin rules is October 6, 2021. Covered counterparties under the CFTC's uncleared swap margin rules already post and collect variation margin. CFTC initial margin requirements are being implemented under a phase-in schedule through September 1, 2022. *See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,* 85 FR 41463 (Jul. 10, 2020); *see also* CFTC, Press Release Number 8287–20, *CFTC Finalizes Position Limits Rule at October 15 Open Meeting, Commission Also Approves Final Rules on Margin Requirements for Uncleared Swaps and Registration Exemptions for Foreign Commodity Pools* (Oct. 15, 2020).

[5] *See Margin and Capital Requirements for Covered Swap Entities,* 80 FR 74840 (Nov. 30, 2015). These margin requirements for bank entities were adopted by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, these organizations are known as the ''prudential regulators'').

[6] *Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-based Swaps,* Exchange Act Release No. 68433 (Dec. 12, 2012) 77 FR 75211 (Dec. 19, 2012); CFTC, Order, *Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps* (Jan. 13, 2013), *available at: https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/icecreditclearorder011413.pdf*; CFTC, Order, *Treatment of Funds Held in Connection with Clearing by ICE Clear Europe of Credit Default Swaps* (Apr. 9, 2013), *available at: https://www.cftc.gov/sites/default/files/stellent/groups/public/@requestsandactions/documents/ifdocs/icecleareurope4dfcds040913.pdf.*

[7] *See* 17 CFR 23.152.

[8] *See CFTC Final Margin Release,* 81 FR at 649.

[9] *Id.*

[10] *See* 17 CFR 240.18a–3.

[11] *See SEC Final Capital, Margin and Segregation Release,* 84 FR at 43918.

[12] *Id.*

[13] *See* 17 CFR 23.157.

[14] *See CFTC Final Margin Release,* 81 FR at 670.

[15] *See* 17 CFR 240.18a–3.

SBSDs . . . as required by Section 15F(e)(3)(i) of the Exchange Act.'' [16]

Moreover, there are differences in the segregation schemes for swaps and security-based swaps. As discussed above, the CFTC's margin rule requires initial margin received from customers with respect to uncleared swaps to be held by an independent third-party custodian.

With respect to the SEC's rules for non-cleared security-based swaps, Section 3E(f) of the Exchange Act establishes a program by which a counterparty to an SBSD can elect to have an independent third-party custodian hold the initial margin it posts to the SBSD.[17] Section 3E(f)(4) provides that if the counterparty does not choose to require segregation of funds or other property (*i.e.,* waives segregation), the SBSD shall send a report to the counterparty on a quarterly basis stating that the firm's back office procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.[18] Security-based swap customers of a broker-dealer (other than an OTC derivatives dealer), including a broker-dealer registered as an SBSD, that are not affiliates of the firm cannot waive segregation. The SEC explained that this prohibition against waiving the segregation requirement in the case of a non-affiliated customer of the broker-dealer is a consequence of the broker-dealer segregation rule—Rule 15c3–3—being promulgated under Section 15(c)(3) of the Exchange Act, which does not have an analogous provision to Section 3E(f) of the Exchange Act.[19] More specifically, Section 15(c)(3) of the Exchange Act and Rule 15c3–3 thereunder do not contain provisions pursuant to which a customer can waive segregation.[20] The SEC further explained that the prohibition will protect customers and the safety and soundness of broker-dealers.[21]

In addition to these two statutory options, the SEC adopted segregation rules permitting broker-dealers and SBSDs to hold and commingle initial margin received from security-based swap customers. These rules restrict how initial margin can be used by a broker-dealer or SBSD and require that it be held in a manner that is designed to facilitate its prompt return to the customers (''omnibus segregation rules'').[22] The omnibus segregation rules are mandatory requirements with respect to cleared security-based swaps and the default requirements with respect to non-cleared security-based swaps if a customer of an SBSD does not choose one of the two statutory options: (1) Having initial margin held by an independent third-party custodian or (2) waiving segregation, if permitted.

The omnibus segregation rules permit broker-dealers and SBSDs to re-hypothecate initial margin received with respect to non-cleared swaps under limited circumstances. In the case of a broker-dealer (other than an OTC derivatives dealer), including a broker-dealer registered as an SBSD, the ability to re-hypothecate initial margin is limited. For example, if the broker-dealer enters into a non-cleared security-based swap with a customer and hedges that transaction with a second broker-dealer, the first broker-dealer can use the initial margin collected from its customer to meet a regulatory margin requirement arising from a transaction with a second SBSD to hedge the transaction with the customer.[23] The SEC stated that it ''designed the hedging exception for non-cleared security-based swap collateral to accommodate dealers in OTC derivatives maintaining 'matched books' of transactions.'' [24]

Similarly, an SBSD that is registered as an OTC derivatives dealer or not registered as a broker-dealer (both types of SBSDs hereinafter a ''Stand-Alone SBSD'') that enters into a non-cleared, security-based swap with a customer and hedges that transaction with another SBSD also may use the initial margin collected from its customer to meet a regulatory margin requirement arising from the hedging transaction with the other SBSD.[25] This provision applies if the Stand-Alone SBSD is required to comply with the omnibus segregation requirements of Rule 18a–4 or offers omnibus segregation to its customers.[26] However, pursuant to Section 3E(f) of the Exchange Act, customers of a Stand-Alone SBSD also may waive their right to have initial margin for non-cleared security-based swaps segregated, and a Stand-Alone SBSD can operate under an exemption from the omnibus segregation requirements of Rule 18a–4, subject to certain conditions.[27] If the customer waives segregation or the Stand-Alone SBSD operates under the exemption from Rule 18a–4, the Stand-Alone SBSD may re-hypothecate the initial margin without restriction. Pursuant to Section 3E(f) of the Exchange Act, customers of this Stand-Alone SBSD can elect to have the initial margin they post to the SBSD held by a third-party custodian rather than waiving the right to segregation.[28] The SEC explained that permitting customers to elect to either have their initial margin held by a third-party custodian or waive their right to segregation reflected the provisions of Section 3E(f) of the Exchange Act, providing customers with these two options.[29]

Finally, the implementation of portfolio margining of uncleared swaps and non-cleared security-based swaps also requires careful consideration of the potential impact on competition, including how it might influence customer behavior in selecting to do business with certain types of registrants (*e.g.,* firms with multiple registrations that permit them to engage in a broader range of activities).

Given the scope, importance and interrelationships among the matters to consider, the Commissions believe it would be helpful to gather further information and comment from interested persons regarding portfolio margining of uncleared swaps and non-cleared security-based swaps. In section III below, the Commissions request comment generally on portfolio margining these instruments and on portfolio margining these positions in different account types.

II. Regulatory Background

The specific requests for comment below take into account: (1) The types of registrations (broker-dealer, OTC derivatives dealer, SBSD, futures commission merchant (''FCM''), and swap dealer) an entity may need in order to engage in portfolio margining of uncleared swaps, non-cleared security-based swaps, and related positions; (2) the account types (securities account, security-based swap account, and swap account) these registrants can maintain; and (3) the margin and segregation requirements that apply to products carried in these account types. In particular, a broker or dealer in securities must be registered with the SEC. A broker-dealer that limits

[16] *See SEC Final Capital, Margin and Segregation Release,* 84 FR at 43909.

[17] *See* 15 U.S.C. 78c–5(f).

[18] *See* 15 U.S.C. 78c–5(f)(4),

[19] *See SEC Final Capital, Margin and Segregation Release,* 84 FR at 43931. *See also* 17 CFR 240.15c3–3; 15 U.S.C. 78o(c)(3); 15 U.S.C. 78c–5(f)(4).

[20] *See SEC Final Capital, Margin and Segregation Release,* 84 FR at 43931.

[21] *Id.* at 43931.

[22] *See* 17 CFR 240.15c3–3(p); 17 CFR 240.18a–4. *See also SEC Final Capital, Margin and Segregation Release,* 84 FR at 43930–43.

[23] *See* 17 CFR 240.15c3–3(p)(1)(ii)(B) and (p)(2).

[24] *See SEC Final Capital, Margin and Segregation Release,* 84 FR at 43937 (footnote omitted).

[25] *See* 17 CFR 240.18a–4(a)(2)(ii) and (b).

[26] *See* 17 CFR 240.18a–4.

[27] *See* 15 U.S.C. 78c–5(f)(4); 17 CFR 18a–4(f).

[28] *See* 15 U.S.C. 78c–5(f)(4).

[29] *See SEC Final Capital, Margin and Segregation Release,* 84 FR at 43877–78, 43930, 43937.

securities dealing to OTC equity options and other OTC derivatives can operate as a special purpose broker-dealer known as an OTC derivatives dealer. An entity that deals in security-based swaps above a de minimis notional threshold will need to register with the SEC as an SBSD. An entity that solicits and accepts funds from customers to margin, secure, or guarantee futures, options on futures, or cleared swap transactions must register with the CFTC as an FCM. And, an entity that deals in swaps above a de minimis notional threshold must register with the CFTC as a swap dealer.

A. Broker-Dealers

A broker-dealer is subject to initial margin requirements promulgated by the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') in Regulation T.[30] A broker-dealer also is subject to maintenance margin requirements promulgated by self-regulatory organizations (''SROs'').[31] The initial margin requirements of Regulation T generally govern the amount of credit that can be extended by a broker-dealer to finance a position in a margin account. The maintenance margin requirements of the SROs govern the amount of equity that must be maintained in the margin account on an ongoing basis. Regulation T has an exception from its initial margin requirements for accounts that are margined pursuant to an SRO portfolio margin rule.[32] SROs have adopted portfolio margin rules subject to this exception and, therefore, a broker-dealer must collect initial and maintenance margin in a portfolio margin account in accordance with the SRO portfolio margin rules. Margin calculations under the SRO portfolio margin rules are based on the method in Appendix A to Rule 15c3–1 (''Appendix A Methodology'').[33] With respect to options, initial and maintenance margin requirements are generally set by the SROs.[34]

A broker-dealer also is subject to margin rules for security futures promulgated jointly by the Commissions.[35] Security futures margined in an SRO portfolio margin account are not subject to the Commissions' rules and, therefore, are margined according to the SRO portfolio margin rules.[36]

A broker-dealer that operates as an OTC derivatives dealer is exempt from the requirements of Regulation T, provided that the firm complies with Regulation U of the Federal Reserve Board.[37] While an OTC derivative dealer is subject to Regulation U, this rule generally does not prescribe margin requirements for OTC derivatives such as OTC equity options. The firm also is exempt from membership in an SRO and, therefore, not subject to SRO margin rules.[38]

A broker-dealer that is also registered as an SBSD will be subject to the margin requirements of Rule 18a–3 for non-cleared security-based swaps on the compliance date for that rule.[39] A broker-dealer SBSD may apply to the SEC for authorization to use a model (including an industry standard model) to calculate initial margin for non-cleared security-based swaps. However, broker-dealer SBSDs (other than OTC derivatives dealers registered as SBSDs (''OTCDD/SBSDs'')) must use standardized haircuts prescribed in Rule 15c3–1 (which includes the option to use the Appendix A Methodology) to compute initial margin for non-cleared equity security-based swaps (even if the firm is approved to use a model to calculate initial margin for other types of positions).[40] Moreover, as discussed above, Rule 18a-3 does not require a nonbank SBSD to post initial margin to any counterparties.

A broker-dealer that holds customer securities and cash (including securities and cash being used as initial margin) is subject to Rule 15c3–3.[41] The SEC amended Rule 15c3–3 to adopt the omnibus segregation requirements for security-based swaps applicable to a broker-dealer and a broker-dealer (other than an OTC derivatives dealer) also registered as a SBSD.[42] A customer of a broker-dealer that is also registered as an SBSD can elect to have initial margin held by a third-party custodian pursuant to Section 3E(f) of the Exchange Act or held by the SBSD subject to the omnibus segregation requirements of Rule 15c3–3. Customers that are not affiliates of the broker-dealer cannot waive segregation, whereas affiliates can waive segregation.

As discussed above, the broker-dealer can re-hypothecate initial margin received from a customer for the limited purpose of entering into a transaction with another SBSD that hedges the transaction with the customer.[43] Cash and securities held in a securities account at a broker-dealer (other than an OTC derivatives dealer)[44] is protected under the Securities Investor Protection Act (''SIPA''), subject to certain exceptions. An OTC derivatives dealer is not subject to Rule 15c3–3 and is not a member of the Security Investor Protection Corporation.[45] Consequently, cash and securities held in a securities account at an OTC derivatives dealer are not protected by SIPA.

B. Nonbank Stand-Alone SBSDs

A Stand-Alone SBSD that is not a bank (''Nonbank Stand-Alone SBSD'') will be subject to the margin requirements of Rule 18a–3 for non-cleared security-based swaps on the compliance date for that rule.[46] A Nonbank Stand-Alone SBSD may apply to the SEC for authorization to use a model (including an industry standard model) to calculate initial margin for non-cleared security-based swaps. Moreover, unlike a broker-dealer (other than an OTCDD/SBSD) registered as an SBSD, a Nonbank Stand-Alone SBSD may use a model to calculate initial margin for non-cleared equity security-based swaps, provided the account of the counterparty does not hold equity security positions other than equity security-based swaps and equity swaps. Initial margin requirements also may be calculated by applying the standardized haircuts prescribed in Rule 18a–1, the net capital rule for Stand-Alone SBSDs.[47] As discussed above, Rule 18a–3 does not require a Nonbank Stand-Alone SBSD to post initial margin to its counterparties.

Pursuant to Section 3E(f) of the Exchange Act, a customer of a Nonbank Stand-Alone SBSD can elect to have initial margin posted to the firm held by a third-party custodian or waive segregation with respect to the initial margin.[48] In addition, a Nonbank Stand-

[30] 12 CFR 220.1, *et seq.*

[31] *See, e.g.,* FINRA Rules 4210–4240. Customers of broker-dealers are also subject to specific margin rules for security futures, jointly regulated by the CFTC and the SEC.

[32] 12 CFR 220.1(b)(3)(i).

[33] *See, e.g.,* FINRA Rule 4210(g).

[34] 12 CFR 220.12(f).

[35] *See* 17 CFR 41.42–41.49 (CFTC regulations); 17 CFR 242.400–242.406 (SEC regulations).

[36] *See* 17 CFR 242.400(c)(2).

[37] 17 CFR 240.36a1–1.

[38] 17 CFR 240.15b9–2.

[39] *See* 17 CFR 240.18a–3.

[40] 17 CFR 240.15c3–1.

[41] 17 CFR 240.15c3–3. For a discussion of Rule 15c3–3, *see* SEC, *Capital, Margin, and Segregation Proposing Release,* 77 FR at 70276–70277. Regulation T and portfolio margin accounts are combined when calculating segregation requirements under Exchange Act Rule 15c3–3.

[42] *See* 17 CFR 240.15c3–3(p).

[43] *See* 17 CFR 240.15c3–3(p)(1)(ii)(B) and (p)(2).

[44] *See* section II.A (describing regulatory requirements for OTC derivatives dealers).

[45] 17 CFR 240.15c3–3(a)(1) (defining the term customer to exclude a counterparty to an OTC derivatives transaction with an OTC derivatives dealer if certain conditions are met) and 17 CFR 240.36a1–2 (Exemption from SIPA for OTC derivatives dealers).

[46] 17 CFR 240.18a–3.

[47] 17 CFR 240.18a–1.

[48] *See* 15 U.S.C. 78c–5(f).

Alone SBSD will be subject to the omnibus segregation requirements of Rule 18a–4 with respect to non-cleared security-based swaps.[49] The omnibus segregation requirements are the default requirement if the counterparty does not elect to have initial margin held by a third-party custodian or waive segregation.

A Nonbank Stand-Alone SBSD, however, will be exempt from the requirements of Rule 18a–4 if the firm meets certain conditions, including that the firm: (1) Does not clear security-based swap transactions for other persons; (2) provides notice to the counterparty regarding the right to segregate initial margin at an independent third-party custodian; (3) discloses to the counterparty in writing that any collateral received by the Nonbank Stand-Alone SBSD will not be subject to a segregation requirement; and (4) discloses to the counterparty how a claim of the counterparty for the collateral would be treated in a bankruptcy or other formal liquidation proceeding of the Nonbank Stand-Alone SBSD.[50]

C. Swap Dealers

The CFTC's margin rules impose initial and variation margin requirements on covered swap dealers and covered major swap participants for swap transactions (''covered swap entities'') that are not cleared by a registered derivatives clearing organization.[51] The CFTC's initial margin rules require a covered swap dealer to both collect and post initial margin on uncleared swap transactions entered into with other swap dealers and with financial end users with material swaps exposure.[52] CFTC margin rules require that initial margin be calculated using a standardized table-based method or a model (including an industry standard model).[53] The initial margin model must be approved by the CFTC or a registered futures association (*i.e.,* National Futures Association).

The CFTC's uncleared swap margin rules also establish minimum standards for the safekeeping of collateral. The rules generally require that initial margin collateral received or posted by the covered swap entity must be held by one or more unaffiliated third-party custodians.[54] The rules also require the custodian to act pursuant to a custodial agreement that is legal, valid, binding, and enforceable under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or similar proceedings.[55] The custodial agreement must prohibit the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, repurchase agreement, reverse repurchase agreement, or other means) the funds or other property held by the custodian.[56]

III. Request for Comment

A. General Request for Comment

The Commissions request comment on all aspects of the portfolio margining of uncleared swaps and non-cleared security-based swaps, including on the merits, benefits, and risks of portfolio margining these types of positions, and on any regulatory and operational issues associated with portfolio margining them. The Commissions seek comment on these matters generally and commenters are encouraged to address matters related to portfolio margining not specifically identified in the requests for comment below.

In responding to this general request for comment and on the specific requests for comment below, the Commissions encourage commenters to provide empirical support for their arguments and analyses. Comments are of the greatest assistance to the Commissions when accompanied by supporting data and analysis.

B. Specific Requests for Comment

1. Securities Account

The Commissions request comment on whether uncleared swaps, non-cleared security-based swaps, cash market securities positions, listed securities options, OTC securities options, futures, options on futures, and security futures should be permitted to be portfolio margined in the following account types: (1) A securities account that is subject to SRO portfolio margin rules; and (2) a securities account that is subject to the initial margin requirements of Regulation T and maintenance margin requirements of the SRO margin rules (*i.e.,* a securities account that is not subject to the SRO portfolio margin rules). Commenters are asked to address the following matters.

• Identify and describe the relative benefits of portfolio margining in each of these securities account types, and describe how the benefits compare to the benefits of other account types discussed in this request for comment.

• Identify and describe the risks of portfolio margining in each of these securities account types, and describe how those risks compare to the risks of other account types discussed in this request for comment, as well as how the risks compare to margining under the existing framework.

• Identify and describe what models might be appropriate for portfolio margining positions in each of these securities account types, as well as the process for approving and reviewing such models.

• Identify and describe any regulatory issues associated with portfolio margining in each of these securities account types, including issues relating to (1) differences in the statutes governing futures, options on futures, uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps, (2) differences in the regulatory requirements of the CFTC, SEC, and SROs applicable to futures, options on futures, uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps (including differences in margin and segregation requirements), and (3) differences in the bankruptcy treatment of futures, options on futures, uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps.

• As discussed above, the CFTC's rules prohibit the re-hypothecation of initial margin collateral. The SEC's rules permit limited re-hypothecation of initial margin collateral received from customers or counterparties. Discuss the potential implications of the differences in the Commissions' approaches to the re-hypothecation of initial margin collateral relevant to a portfolio margin scheme.

• Section 16 of SIPA defines the terms ''customer,'' ''customer property,'' and ''net equity'' to include securities, futures, and options on futures, but not swaps or security-based swaps.[57] The

[49] 17 CFR 240.18a–4.

[50] 17 CFR 240.18a–4(f). Rule 18a–4 also has exceptions pursuant to which a foreign stand-alone SBSD need not comply with the segregation requirements (including the omnibus segregation requirements) for certain transactions. 17 CFR 240.18a–4(e).

[51] The CFTC's uncleared swap margin rules are codified in part 23 of the CFTC's regulations (17 CFR 23.150—23.161).

[52] 17 CFR 23.152. The term ''material swaps exposure'' for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days.

[53] 17 CFR 23.154.

[54] 17 CFR 23.157(a)–(b).

[55] 17 CFR 23.157(c).

[56] *Id.*

[57] Section 983 of the Dodd-Frank Act amended Section 16 of SIPA to define the term ''customer'' to include a person that has a claim for futures and options on futures, and to define the term

Commissions request comment on steps broker-dealers (including broker-dealers that are SBSDs) can take to ensure the protections afforded by SIPA will apply to all positions held in a securities account. Comment also is sought on the types of disclosures broker-dealers and SBSDs can make to their portfolio margin accountholders about positions in a securities account that are not within the SIPA definitions of ''customer,'' ''customer property,'' and ''net equity.'' Comment also is sought on the expectations of market participants as to whether the initial margin and accrued gains associated with uncleared swaps and non-cleared security-based swaps held in a portfolio margin account that is a securities account is subject to SIPA protection in the event of the insolvency of the broker-dealer.

- As noted above, the CFTC margin rules require swap dealers to post initial margin for uncleared swaps entered into with other swap dealers or with financial end users with material swaps exposure. The SEC's margin rules permit, but do not require, an SBSD to post initial margin for non-cleared security-based swaps entered into with other broker-dealers, SBSDs, swap dealers, or financial end users. How should the Commissions address the differences in the initial margin posting requirements in a portfolio margin account? If portfolio margining resulted in the transfer of significant swap trading relationships to SBSDs, which would operate under a ''collect only'' regime, would that increase the potential for counterparty risk, including liquidity mismatches between counterparties? Alternatively, would it lower systemic risk by promoting the liquidity of SBSDs? Discuss the potential impact on the markets and market participants if entities registered as broker-dealers and swap dealers or as broker-dealers, SBSDs, and swap dealers are not required to post initial margin to counterparties for uncleared swaps held in a portfolio margin account while stand-alone swap dealers are required to post initial margin to counterparties for uncleared swap transactions. Should the Commissions require entities registered as broker-dealers and swap dealers or as broker-dealers, SBSDs, and swap dealers to post margin for uncleared swaps held in a portfolio margin account with covered counterparties? How should such margin be computed? Would requiring these entities to post margin undermine the benefits of portfolio margining? Would it increase costs to customers to compensate these entities for having to use their capital to meet margin requirements? In addition, would requiring these entities to post initial margin create a barrier to entry for smaller firms that do not have the resources to post initial margin?
- If portfolio margining resulted in the transfer of significant swap trading relationships to broker-dealer SBSDs, which would operate under a ''collect only'' regime, how would this impact the risks customers face in the event of an SBSD's default? How should the Commissions balance the relative concerns related to trying to enhance liquidity of SBSDs while ensuring customer protection? Are there any lessons to be learned from events impacting swap markets during the recent COVID market volatility?
- Identify and describe any operational issues associated with portfolio margining in each of these securities account types.
- SIPA defines the term ''customer'' to include a person that has a claim for futures and options on futures, and defines the term ''customer property'' to include futures and options on futures, in each case where they are held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the SEC. The Commissions request specific comment on any legal and operational issues associated with holding futures and options on futures in a portfolio margin account that is a securities account.
- As discussed above, an entity that effects transactions in securities must be registered with the SEC as a broker-dealer. A broker-dealer that limits securities dealing to OTC equity options and other OTC derivatives can operate as a special purpose broker-dealer known as OTC derivatives dealer. An entity that deals in security-based swaps above a de minimis notional threshold will need to register with the SEC as an SBSD. An entity that deals in swaps above a de minimis notional threshold must register with the CFTC as a swap dealer. And, an entity that clears futures, or options on futures, or swaps for customers must register as an FCM. Please discuss any regulatory or operational issues raised by portfolio margining in each securities account type in light of these and any other relevant registration requirements.
- Discuss how the Commissions could implement portfolio margin requirements for each securities account type, including potential relief the Commissions could provide to address regulatory and operational issues associated with portfolio margining in each securities account type.
- Identify and describe any conditions the Commissions should consider with respect to portfolio margining in each securities account type to mitigate risk and address regulatory and operational issues.
- Identify the categories of futures, options on futures, uncleared swaps, non-cleared security-based swaps, and securities (other than security-based swaps) that should be permitted to be portfolio margined in each securities account type and discuss why they should be included and, if applicable, why other categories of these instruments should be excluded.
- Discuss whether market participants would be likely to use either of these securities account types to portfolio margin futures, options on futures, uncleared swaps, non-cleared security-based swaps, cash market securities positions, listed securities options, and OTC securities options, and explain why they would or would not use the securities account type.
- Identify and describe the potential costs and benefits, as well as the competitive impact—either positive or negative—of permitting market participants to portfolio margin futures, options on futures, uncleared swaps, non-cleared security-based swaps, cash market securities positions, listed securities options, OTC securities options, and security futures in either of these securities account types. Please quantify, including by way of example, these potential costs, benefits and impacts to the extent practicable.

2. Security-Based Swap Account

The Commissions request comment on whether non-cleared security-based swaps, uncleared swaps, and OTC securities options (if the firm is registered as an OTCDD/SBSD) should be permitted to be portfolio margined in a security-based swap account. Commenters are asked to address the following matters.

- Identify and describe the relative benefits of portfolio margining in a security-based swap account, and describe how the benefits compare to the benefits of other account types discussed in this request for comment, as well as how the risks compare to margining under the existing framework.
- Identify and describe the risks of portfolio margining in a security-based swap account, and describe how those risks compare to the risks of other

''customer property'' to include futures and options on futures, in each case where they are held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the SEC. Section 3(a)(10) of the Exchange Act defines the term ''security'' to include a security-based swap for purposes of the Exchange Act. 15 U.S.C 78c(a)(10).

account types discussed in this request for comment.

• Identify and describe what models might be appropriate for portfolio margining positions in a security-based swap account, as well as the process for approving and reviewing such models.

• Identify and describe any regulatory issues associated with portfolio margining in a security-based swap account, including issues relating to (1) differences in the statutes governing uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps, (2) differences in the regulatory requirements of the CFTC, SEC, and SROs applicable to uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps (including differences in margin and segregation requirements), and (3) differences in the bankruptcy treatment of uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps.

• The Dodd-Frank Act amended section 3E(g) of the Exchange Act to provide that a *security-based swap* shall be considered a ''security'' as the term is used in a stockbroker liquidation under Subchapter III of title 11 of the U.S. bankruptcy code (11 U.S.C. 741–753). Section 3E(g) was not amended to provide that a *swap* shall be considered a ''security'' as the term is used in a stockbroker liquidation under Subchapter III of title 11 of the U.S. bankruptcy code. Section 3E(g) of the Securities Exchange Act also provides that the term ''customer'' as defined in section § 741 of title 11 of the U.S. bankruptcy code, excludes any person to the extent that such person has a claim based on a non-cleared option or non-cleared security-based swap except to the extent of margin delivered to or by the customer with respect to which there is a customer protection requirement under Section 15(c)(3) of the Exchange Act or a segregation requirement. The Commissions request specific comment on steps SBSDs can take to ensure the protections afforded by the stockbroker liquidation provisions will apply to positions held in a security-based swap account, including swaps and accrued gains on open options and non-cleared security-based swaps. What are the implications for customer protection? Can those implications be mitigated? If so, how?

• Comment also is sought on the types of disclosures SBSDs can make to their portfolio margin accountholders about positions in a security-based swap account that are not within the definitions of ''customer,'' ''customer property,'' and ''net equity'' in the stockbroker liquidation provisions of the U.S. bankruptcy code. Comment also is sought on the expectations of market participants as to the extent to which customer claims in a stockbroker liquidation under the U.S. bankruptcy code include property held to margin swaps or accruing to the customer as a result of swap transactions in a portfolio margining account held in a security-based swap account.

• As noted above, the CFTC margin rules require swap dealers to post initial margin for uncleared swaps entered into with other swap dealers or with financial end users with material swaps exposure. The SEC's margin rules permit, but do not require, an SBSD to post initial margin for non-cleared security-based swaps entered into with other broker-dealers, SBSDs, swap dealers, or with financial end users. How should the Commissions address the differences in the initial margin posting requirements in a portfolio margin account? If portfolio margining resulted in the transfer of significant swap trading relationships to SBSDs, which would operate under a ''collect only'' regime, would that increase the potential for risk and liquidity mismatches between counterparties? Alternatively, would it lower systemic risk by promoting the liquidity of SBSDs? Discuss the potential impact on the markets and market participants if entities registered as SBSDs and swap dealers are not required to post initial margin to counterparties for uncleared swaps held in a portfolio margin account while stand-alone swap dealers are required to post initial margin to counterparties for uncleared swap transactions. Should the Commissions require entities registered as SBSDs and swap dealers to post margin for uncleared swaps held in a portfolio margin account with covered counterparties? How should such margin be computed? Alternatively, would requiring these entities to post margin undermine the benefits of portfolio margining? Would it increase costs to customers to compensate these entities for having to use their capital to meet margin requirements? In addition, would requiring these entities to post initial margin create a barrier to entry for smaller firms that do not have the resources to post initial margin?

• If portfolio margining resulted in the transfer of significant swap trading relationships to Nonbank Stand-Alone SBSDs, which would operate under a ''collect only'' regime, how would this impact the risks customers face in the event of an SBSD's default? How should the Commissions balance the relative concerns related to trying to enhance liquidity of SBSDs while ensuring customer protection? Are there any lessons to be learned from events impacting swap markets during the recent COVID market volatility?

• Identify and describe any operational issues associated with portfolio margining in a security-based swap account.

• As discussed above, an entity that effects transactions in securities must be registered with the SEC as a broker-dealer. A broker-dealer that limits securities dealing to OTC equity options and other OTC derivatives can operate as special purpose broker-dealer known as OTC derivatives dealer. An entity that deals in security-based swaps above a de minimis notional threshold will need to register with the SEC as an SBSD. And, an entity that deals in swaps above a de minimis notional threshold must register with the CFTC as a swap dealer. Please discuss any regulatory or operational issues raised by portfolio margining in a security-based swap account in light of these and any other relevant registration requirements.

• Discuss how the Commissions could implement portfolio margin requirements for a security-based swap account, including potential relief the Commissions could provide to address regulatory and operational issues associated with portfolio margining in a security-based swap account.

• Identify and describe any conditions the Commissions should consider with respect to portfolio margining in a security-based swap account to mitigate risk and address regulatory and operational issues.

• Identify the categories of uncleared swaps, non-cleared security-based swaps, and OTC securities options (if the firm is registered as an OTC derivatives dealer) that should be permitted to be portfolio margined in the security-based swap account and discuss why they should be included and, if applicable, why other categories of these instruments should be excluded.

• Discuss whether market participants would use a security-based swap account to portfolio margin uncleared swaps, non-cleared security-based swaps, and OTC securities options (if the firm is registered as an OTCDD/SBSD) and explain why they would or would not use this account type for this purpose.

• Identify and describe the potential costs and benefits, as well as the competitive impact—either positive or negative—of permitting market participants to portfolio margin non-cleared security-based swaps, uncleared swaps, and OTC securities options (if the firm is registered as an OTCDD/SBSD) in a security-based swap account. Please quantify, including by way of example, these potential costs, benefits and impacts to the extent practicable.

3. Swap Account

The Commissions request comment on whether uncleared swaps and non-cleared security-based swaps should be permitted to be portfolio margined in a swap account. Commenters are asked to address the following matters.

• Identify and describe the relative benefits of portfolio margining in a swap account, and describe how the benefits compare to the benefits of other account types discussed in this request for comment.

• Identify and describe the risks of portfolio margining in a swap account, and describe how those risks compare to the risks of other account types discussed in this request for comment, as well as how the risks compare to margining under the existing framework.

• Identify and describe what models might be appropriate for portfolio margining positions in a swap account, as well as the process for approving and reviewing such models.

• Identify and describe any regulatory issues associated with portfolio margining in a swap account, including issues relating to (a) differences in the statutes governing uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps, (b) differences in the regulatory requirements of the CFTC, SEC, and SROs applicable to uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps (including differences in margin and segregation requirements), and (c) differences in the bankruptcy treatment of uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps.

• As noted above, the CFTC margin rules require swap dealers to post initial margin for uncleared swaps entered into with other swap dealers or with financial end users with material swaps exposure. The SEC's margin rules permit, but do not require, an SBSD to post initial margin for non-cleared security-based swaps entered into with other broker-dealers, SBSDs, swap dealers, or with financial end users. How should the Commissions address the differences in the initial margin posting requirements in a portfolio margin account? If portfolio margining resulted in the transfer of significant swap trading relationships to SBSDs, which would operate under a ''collect only'' regime, would that increase the potential for risk and liquidity mismatches between counterparties? How do commenters view any systemic risk implications of SBSDs not posting initial margin? Would it lower systemic risk by promoting the liquidity of SBSDs? Discuss the potential impact on the markets and market participants if entities registered as broker-dealers and swap dealers or as broker-dealers, SBSDs, and swap dealers or as SBSDs and swap dealers are not required to post initial margin to counterparties for uncleared swaps held in a portfolio margin account while stand-alone swap dealers are required to post initial margin to counterparties for uncleared swap transactions. Would such a portfolio margining approach provide a disincentive for customers to trade with stand-alone swap dealers and what would be the potential market impact of such a disincentive? Should the Commissions require entities registered as broker-dealers and swap dealers or as broker-dealers, SBSDs, and swap dealers or as SBSDs and swap dealers to post margin for uncleared swaps held in a portfolio margin account with covered counterparties? How should such margin be computed? Alternatively, would requiring these entities to post margin undermine the benefits of portfolio margining? Would it increase costs to customers to compensate these entities for having to use their capital to meet margin requirements? In addition, would requiring these entities to post initial margin create a barrier to entry for smaller firms that do not have the resources to post initial margin?

• As discussed above, an entity that effects transactions in securities must be registered with the SEC as a broker-dealer. A broker-dealer that limits securities dealing to OTC equity options and other OTC derivatives can operate as special purpose broker-dealer known as OTC derivatives dealer. An entity that deals in security-based swaps above a de minimis notional threshold will need to register with the SEC as an SBSD. And, an entity that deals in swaps above a de minimis notional threshold must register with the CFTC as a swap dealer. And, an entity that clears futures, options on futures, or swaps for customers must register as an FCM. Please discuss any regulatory or operational issues raised by portfolio margining in a swap account in light of these and any other relevant registration requirements.

• Identify and describe any operational issues associated with portfolio margining in a swap account.

• Discuss how the Commissions could implement portfolio margin requirements for a swap account, including potential relief the Commissions could provide to address regulatory and operational issues associated with portfolio margining in a swap account.

• Identify and describe any conditions the Commissions should consider with respect to portfolio margining in a swap account to mitigate risk and address regulatory and operational issues.

• Identify the categories of swaps and security-based swaps that should be permitted to be portfolio margined in the swap account and discuss why they should be included and, if applicable, why other categories of these instruments should be excluded.

• Discuss whether market participants would use a swap account to portfolio margin uncleared swaps and non-cleared security-based swaps, and explain why they would or would not use this account type for this purpose.

• Identify and describe the potential costs and benefits, as well as the competitive impact—either positive or negative—of permitting market participants to portfolio margin uncleared swaps and non-cleared security-based swaps in a swap account. Please quantify, including by way of example, these potential costs, benefits and impacts to the extent practicable.

4. Other Potential Portfolio Margin Scenarios

In addition to the requests for comment on the specific account types discussed above, the Commissions request comment on whether there are any other potential portfolio margin scenarios with regard to uncleared swaps, non-cleared security-based swaps, and other related positions that the Commissions should consider at this time. Commenters should identify and describe the specific products and account type involved in any other potential portfolio margin alternatives. Commenters also are asked to address any potential regulatory or operational issues involving a particular portfolio margin scenario. Finally, commenters should address any potential costs and benefits and competitive impact the Commissions should consider in evaluating a particular portfolio margin scenario.

By the Securities and Exchange Commission.

Dated: October 22, 2020.

Vanessa A. Countryman,

Secretary.

Issued in Washington, DC, on October 23, 2020, by the Commodity Futures Trading Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—CFTC Voting Summary and Commissioner's Statement

Appendix 1—CFTC Voting Summary

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

Appendix 2—Supporting Statement of CFTC Commissioner Brian Quintenz

I am proud to support today's request for comment, which marks the beginning of the agencies' consideration of ways to implement a portfolio margining regime for uncleared swaps and non-cleared security-based swaps. Portfolio margining can lead to efficiencies in margin calculation by appropriately accounting for the impact offsetting positions have on a portfolio's actual risk profile. This, in turn, gives firms and customers additional capital that can be deployed elsewhere. However, given the differences between the regulatory regimes for swaps and security-based swaps, it also implicates incredibly important legal and policy considerations. This request for comment solicits critical feedback from market participants on how portfolio margining could impact the safety and soundness of firms, result in competitive advantages for certain types of registrants, and raise questions about how collateral would be treated in the event of bankruptcy. In order to make an informed decision about if, and how, portfolio margining should be implemented for uncleared swaps and non-cleared security-based swaps, we need thoughtful feedback on these complex questions. I encourage all interested parties to provide written comments, including data wherever possible, in order to further the agencies' understanding of the various options presented in the request for comment.

[FR Doc. 2020–23928 Filed 11–4–20; 8:45 am]

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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–12]

Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective: Request for Additional Comments

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice of proposed rulemaking (''SNPRM'') updates the Copyright Office's July 17, 2020 proposed rule concerning the Music Modernization Act transition period transfer and reporting of royalties to the mechanical licensing collective. Specifically, this SNPRM provides an alternate approach to requirements concerning the content of cumulative statements of account to be submitted by digital music providers to the mechanical licensing collective at the conclusion of the statutory transition period and proposes estimate and adjustment provisions with respect to payment of accrued royalties to the mechanical licensing collective in connection with this reporting.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on November 25, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/rulemaking/mma-transition-reporting.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* John R. Riley, Assistant General Counsel, by email at *jril@copyright.gov,* or Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

This SNPRM is issued subsequent to a notification of inquiry published in the **Federal Register** on September 24, 2019 and a notice of proposed rulemaking (''NPRM'') published on July 17, 2020 relating to implementation of the Music Modernization Act (''MMA'').[1] In its NPRM, the Office proposed regulations pertaining to cumulative statements of account, which digital music providers (''DMPs'') are required to provide to the mechanical licensing collective (''MLC'') for such DMPs to be eligible for the statutory limitation on liability for unlicensed uses of musical works prior to the license availability date.[2] This SNPRM generally assumes familiarity with the prior NPRM and notification of inquiry, as well as the public comments and summaries of *ex parte* meetings received in response to those documents, all of which are publicly accessible from the Copyright Office's website.[3]

As relevant here, the NPRM considered whether to propose regulations with respect to the ability of DMPs to rely upon estimates and subsequently adjust their cumulative statements of account. The NPRM tentatively declined to propose broad language given the ''one-time nature'' of cumulative statements of account, but did propose that DMPs could estimate applicable performance royalties, and that ''any overpayment (whether resulting from an estimate or otherwise) should be credited to the DMP's account, or refunded upon request.'' [4]

[1] 85 FR 43517 (July 17, 2020); 84 FR 49966 (Sept. 24, 2019). All rulemaking activity, including public comments, as well as legislative history and educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.* Comments received in response to the September 2019 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001.* Comments received in response to the July 2020 notice of proposed rulemaking are available at *https://beta.regulations.gov/document/COLC-2020-0011-0001/comment.* Related *ex parte* letters are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* References to these comments and letters are by party name (abbreviated where appropriate), followed by ''Initial Comment,'' ''Reply Comment,'' ''NPRM Comment,'' or ''*Ex Parte* Letter'' as appropriate.

[2] *See* 17 U.S.C. 115(d)(10).

[3] Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* As stated in the guidelines, *ex parte* meetings with the Office are intended to provide an opportunity for participants to clarify evidence and/or arguments made in prior written submissions, and to respond to questions from the Office on those matters.

[4] 85 FR at 43520.

The NPRM also considered comments from the Digital Licensee Coordinator (''DLC'') asking for regulatory language to clarify the relationship between this reporting obligation and pre-existing private agreements between a large number of music publishers and certain digital services that the DLC characterized as providing for the liquidation of accrued royalties for unmatched works through payments based on market share to publishers signing releases.[5] At the time, the Office tentatively declined to propose regulatory language. Instead, the Office provided initial guidance regarding the statutory obligation to transfer and report information related to accrued royalties for unlicensed uses under the MMA and noted that it remained available to dialogue further.[6]

In response to a request from the MLC, the NPRM also proposed expanding the present cumulative statement of account regulations, which require providing ''all of the information that would have been provided to the copyright owner had the digital music provider been serving Monthly Statements of Account,'' [7] to requirements for reporting information that would ''largely mirror the requirements proposed for reports of usage.'' [8] While the DLC initially contended that such a proposal was ''impractical,'' [9] it now describes such a requirement as ''impossible'' given the business practicalities of how this information was or was not compiled and stored over time.[10] Similarly, the Digital Media Association (''DiMA'') stated that the NPRM's expanded reporting requirements would create ''massive operational hurdles'' and would ''jeopardize[ ] every [DMP's] eligibility for the limitation on liability.'' [11]

II. Supplemental Proposed Regulatory Provisions

As discussed further below, while the Copyright Office continues to consider the proposed rule described in the NPRM, it is now also providing alternative regulatory language for public comment. As with other MMA rulemakings to date, the Office has received robust engagement from interested parties in this proceeding, as reflected in the administrative record.[12] Since issuing its NPRM, the Office has reviewed many written comments and conducted several *ex parte* meetings with various parties on these matters, which have further informed its thinking.[13] In addition, the D.C. Circuit partially vacated and remanded the Copyright Royalty Judges' ''Phonorecords III'' determination, which was intended to set rates and terms for the section 115 mechanical license for the period from January 1, 2018 through December 31, 2022,[14] which provides an additional ground for the Office to establish a mechanism for DMPs to estimate the amount of royalties due and subsequently adjust payments (since the ultimate rates for this time period have not yet been finalized).

The Office also received guidance from Senate Judiciary Chairman Graham regarding the issue of certain industry agreements between publishers and DMPs that predate the MMA's enactment and required the payment of unmatched accrued royalties to copyright owners by market share, stating:

> Since the intent of the MMA was to provide legal certainty for past, present, and future usage, it is critical that this issue be resolved in a manner that protects copyright owner interests while ensuring that songwriters are paid their splits and services are not burdened with double payments. . . . If the parties are unable to address this current dispute on their own in the immediate future, I urge the Copyright Office to bring them together in order to prevent a return to the inefficient litigation that featured prominently in the prior licensing regime.[15]

Since receiving the letter, the Office understands that the parties have continued to communicate on other aspects of the proposed rule, but have not on their own resolved their disagreement over the proper interpretation of the relevant statutory provisions.

Indeed, subsequent information provided to the Office in this proceeding confirms that the underlying dispute remains. Specifically, the DLC has clarified that its reference to prior negotiated agreements centers around agreements between four specific DMPs and the National Music Publishers' Association (''NMPA'') (and subsequent agreements with participating publishers), and both the DLC and individual DMPs have provided additional views regarding those agreements.[16] The Office also heard from multiple songwriter groups, all of which stressed the importance of royalties for uses of works being paid over by DMPs in a manner that results in payments to songwriters, and expressed uncertainty over whether payments under such agreements had indeed been passed through to songwriters.[17] The MLC confirmed that it believes its role to be a ''trusted party to receive unmatched royalties and ensure that they are paid to the right parties, with interest (for the period that

[5] *Id.* at 43522–23; *see also* DLC *Ex Parte* Letter at 1 (Aug. 11, 2020); NMPA *Ex Parte* Letter at 5 (Aug. 25, 2020).

[6] 85 FR at 43523 (noting that because ''voluntary licenses'' ''remain in effect'' by law, ''by implication, DMPs would not retain accrued royalties (as defined in the MMA) for works licensed under private agreements'').

[7] 37 CFR 210.10(b)(3)(i); *see also* 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa).

[8] 85 FR at 43519.

[9] DLC Reply Comment at 24.

[10] DLC NPRM Comment at 2, 8–9 (explaining that some of the additional information was not collected by DMPs in the past and cannot be collected in time to include in cumulative statements of account); DLC *Ex Parte* Letter at 2 (Aug. 11, 2020) (''[S]ervices have been compiling reporting under the regulatory regime that the Office put in place shortly after the enactment of the MMA. We explained the impossibility—mere months before license availability date—of completely revamping royalty accounting systems to accommodate the Office's new proposed rules.'').

[11] DiMA NPRM Comment at 6–7 (''digital music providers have maintained usage information . . . with the *existing* statement of account regulations in mind'').

[12] *See* 85 FR at 43523 (''The Office . . . remains available to dialogue further, in accordance with the public process for written comments and/or *ex parte* meetings.''); 84 FR at 49968 (noting that the Office is willing to ''utilize informal meetings to gather additional information . . . [and would] establish[ ] guidelines for *ex parte* communications'' to be issued on its website).

[13] *See, e.g.,* DiMA NPRM Comment at 2–5; DLC NPRM Comment at 3–6, 11–18; MLC NPRM Comment at 8–9; Songwriters Guild of America & Society of Composers and Lyricists NPRM Comment at 3–8; Artist Rights Alliance *Ex Parte* Letter at 2–3 (Sept. 22, 2020); DLC *Ex Parte* Letter at 1 (Aug. 11, 2020); DLC *Ex Parte* Letter at 1–3 (Oct. 14, 2020); NMPA *Ex Parte* Letter at 1–2 (Aug. 25, 2020); MediaNet *Ex Parte* Letter at 2 (Oct. 28, 2020); MLC *Ex Parte* Letter at 2–6 (Oct. 5, 2020); MLC *Ex Parte* Letter at 2–5 (Oct. 16, 2020); Songwriters Guild of America et al. *Ex Parte* Letter at 1–2 (Sept. 14, 2020); Sony/ATV Music Pub. *Ex Parte* Letter at 1–2 (Oct. 28, 2020); Spotify *Ex Parte* Letter at 1 (Sept. 1, 2020); Spotify *Ex Parte* Letter at 1–5 (Oct. 9, 2020); Warner Music Grp. *Ex Parte* Letter at 1 (Oct. 21, 2020).

[14] *Johnson* v. *Copyright Royalty Bd.,* 969 F.3d 363, 381 (D.C. Cir. 2020).

[15] Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020).

[16] DLC NPRM Comment at 12–14; DLC Initial Comment at 3–4 n.11, U.S. Copyright Office Dkt. No. 2019–6, *https://beta.regulations.gov/comment/COLC-2020-0007-0012* (citing Paul Resnikoff, *Exclusive: This Is the Contract Songwriters Are Signing With Spotify,* Digital Music News (Apr. 27, 2016), *https://www.digitalmusicnews.com/2016/04/27/exclusive-spotify-establishing-direct-publisher-contracts-to-solve-mechanicals-issues/*); DLC *Ex Parte* Letter at 1–2 (Oct. 14, 2020); Google *Ex Parte* Letter at 1–3 (Oct. 23, 2020); MediaNet *Ex Parte* Letter at 2 (Oct. 28, 2020); Spotify *Ex Parte* Letter at 1–3, 5 (Oct. 9, 2020); *see also* NMPA *Ex Parte* Letter at 1–2 (Aug. 25, 2020).

[17] *See* Artist Rights Alliance et al. *Ex Parte* Letter (Sept. 22, 2020); Songwriters Guild of America et al. *Ex Parte* Letter (Sept. 15, 2020).

the MLC held such royalties).'' [18] The MLC also offered its view that the proper statutory read would require DMPs to transfer payment for all unmatched uses, regardless of whether a valid agreement previously resulted in the liquidation of a portion of associated royalties or whether there have been related voluntary releases.[19] The Office has also heard from the NMPA as well as individual publishers on this issue, with the NMPA urging the Office to avoid a regulation that might interfere with private agreements.[20] While publisher perspectives varied, significantly, some noted that they consider claims settled pursuant to these agreements to be closed, and to date, all publishers the Office has heard from confirmed that their associated songwriters have already participated in unclaimed royalties received by those publishers pursuant to the agreements at issue.[21] Overall, the comments, in particular as between the MLC on the one hand, and the DLC or individual services, on the other, reveal competing statutory interpretations regarding the provision requiring DMPs to transfer over accrued royalties that have been maintained in accordance with generally accepted accounting principles.[22]

For its part, the Office is carefully analyzing the statutory text and will give appropriate weight to the legislative history and consideration of these public comments when promulgating a final rule. At this point, however, the Office has determined that the public process would benefit from providing supplemental, alternative regulatory language, to ensure that further stakeholder views can be duly considered as the Office evaluates these important issues. Although the Office has not made any final conclusions on these matters, this SNPRM is being issued so that interested parties have adequate notice and an opportunity to comment specifically on these potential alternatives sufficiently in advance of the February 2021 deadline to submit cumulative statements of account to the MLC.

While the NPRM outlined in detail several considerations with respect to these and other issues, and while the Office continues to seriously consider the insightful comments it has received to date, in light of those comments, Chairman Graham's letter, and the Phonorecords III remand, the Office now provides regulatory language regarding the following topics.[23] This regulatory language is largely additive to the language proposed in the NPRM, and also includes potential substitutes for certain provisions included in the NPRM. Interested commenters may wish to review that earlier NPRM and the public comments received to date offering varying perspectives on factual and legal issues underlying this proposal.

Estimates and adjustments, including previously released claims. The Office is providing proposed provisions that would allow DMPs to rely upon certain estimates and subsequently submit adjustments to cumulative statements of account where the computation of accrued royalties depends upon an input that is unable to be finally determined at the time the cumulative statement of account is due.

One set of estimate and adjustment provisions would address situations where a DMP cannot calculate a necessary input in a royalty calculation (*e.g.,* performance royalties, sound recording-related consideration) or needs to make a future adjustment under other specified circumstances (*e.g.,* in response to a change in the statutory royalty rates or terms). Statements of adjustment adjusting cumulative statements of account would be required to detail the changes to facilitate accurate reporting. The Office understands that both the DLC and MLC now generally support this type of rule.[24]

Related provisions would address situations where a DMP has accrued and maintained royalties in reasonable good-faith belief as to the impact of negotiated agreements upon the computation of accrued royalties required to be transferred to the MLC and it is necessary to estimate such amount at the time the cumulative statement of account is delivered to the MLC because of the unmatched status of the relevant musical works. They would clarify that the statutory obligation to maintain accrued royalties in accordance with generally accepted accounting principles includes maintenance in accordance with such principles concerning derecognition of liabilities.[25] They would accordingly accommodate situations where a DMP has made good-faith estimates where the DMP has used unmatched works in covered activities prior to the license availability date and the DMP has determined that accrued liability for an amount of otherwise attributable royalties has been extinguished due to negotiated agreements (whether considered a voluntary agreement, liquidation agreement, settlement, or release, etc.) executed on a catalog or participating party basis, rather than a matched-work basis.[26] In such a circumstance, the DMP could report based upon its good-faith estimate of accrued royalties for unmatched uses when reporting to the MLC, and would be required to make an adjustment to retain the limitation on liability if that estimate ends up being incorrect. Under no circumstances could this provision be used to shortchange payment of accrued royalties for musical work copyright owners who did not

[18] MLC *Ex Parte* Letter at 5 (Oct. 5, 2020).

[19] MLC NPRM Comment at 8; MLC *Ex Parte* Letter at 5 (Oct. 5, 2020); MLC *Ex Parte* Letter at 2–4 (Oct. 16, 2020).

[20] *See* NMPA *Ex Parte* Letter (Aug. 25, 2020).

[21] Sony/ATV Music Pub. *Ex Parte* Letter at 1–2 (Oct. 28, 2020) (noting that ''distribution of unmatched funds, whether title bound or not, are always paid through to [Sony/ATV's] songwriters''); Warner Music Grp. *Ex Parte* Letter at 1 (Oct. 21, 2020) (noting that songwriters were paid portions of royalties received by publishers pursuant to pre-enactment agreements with certain DMPs that liquidated unclaimed royalties).

[22] *See* DLC NPRM Comment at 16–18; MLC Reply Comment at 28–30; Spotify *Ex Parte* Letter at 3–4 (Oct. 9, 2020); MLC *Ex Parte* Letter at 2–4 (Oct. 5, 2020); MLC *Ex Parte* Letter at 2–4 (Oct. 16, 2020); *see also* 17 U.S.C. 115(d)(10)(B)(iv).

[23] *See* 17 U.S.C. 115(d)(12)(A), 702. The Copyright Office considers this additional proposed regulatory language to be a logical outgrowth of the NPRM, including comments received from a wide variety of *ex parte* meeting participants. Nevertheless, to ensure that all interested parties have fair notice and an opportunity to participate in the rulemaking with respect to these issues in a meaningful and informed manner, the Office is inviting further written comments on these issues. *See* 5 U.S.C. 553(b)(3); *Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 174 (2007).

[24] DLC NPRM Comment at 5–6; MLC *Ex Parte* Letter at 2 (Oct. 5, 2020).

[25] *See* Accounting Standards Codification 405–20–40–1 (stating a debtor ''shall derecognize a liability if and only if it has been extinguished. A liability has been extinguished if either of the following conditions is met: a. The debtor pays the creditor and is relieved of its obligation for the liability[, or] b. The debtor is legally released from being the primary obligor under the liability, either judicially or by the creditor.''); *see also* Black's Law Dictionary (11th ed. 2019) (defining ''accrued liability'' as ''[a] debt or obligation that is properly chargeable in a given accounting period but that is not yet paid'').

[26] Again, it has been represented to the Office that for certain DMPs, for certain periods of time, the overwhelming majority of the music publishing industry participated in such agreements and has settled relevant claims for those periods. This proposed mechanism is intended to allow DMPs who believe that these agreements impact the calculation of their accrued royalties to transfer over their reasonable estimation of accrued royalties remaining, including royalties accrued for non-participating publishers during the relevant periods, subject to a later true-up to maintain eligibility for the limitation on liability. In this regard and without opining on the substance of these private agreements, the proposal is intended to further congressional intent to ''protect[ ] copyright owner interests'' without burdening services with ''double payments,'' and avoid incentivizing inefficient litigation. Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020).

participate in such agreements. A DMP relying upon such an estimate would be required to provide a list of such agreements to the MLC to use in connection with matching against musical work information provided by copyright owners and to provide an avenue for copyright owners to dispute the fact or effect of such agreements. As the DLC has requested, the proposal includes a requirement for such a DMP to cover any deficit through prompt payment of an invoice issued by the MLC.[27] Under the proposed rule, unreasonable or bad-faith withholding of accrued royalties by a DMP may result in loss of the limitation on liability.

Sound Recording and Musical Work Information and Format. In addition to continuing to consider the requirements proposed in the NPRM, the Copyright Office is now considering whether to instead potentially adopt language closer to existing regulations for reporting sound recording and musical work information,[28] to reflect the DLC's comments and incentivize optional participation in this transition period reporting for cumulative statements of account.[29] To ensure the MLC receives additional information potentially valuable to reduce the amount of unmatched uses, the Office, however, also proposes adding a requirement that DMPs report information referenced in 17 U.S.C. 115(d)(10)(B)(i)(I)(aa) or (bb) that was acquired by the DMP in connection with its efforts to obtain such information under 17 U.S.C. 115(d)(10)(B)(i)(I), or a DMP-assigned identifier, if such information is requested by the MLC. The Office proposes that the requirement to provide a DMP identifier, at a separate time from the February 2021 deadline to submit a cumulative statement of account, may aid the MLC by providing a unique identifier that can easily link up with the robust usage data the MLC will be receiving on an ongoing basis in monthly reporting for blanket uses. The Office requests comments on the feasibility and adequacy of this proposal, including whether there are additional categories of information that DMPs should be required to provide, and whether establishing set time periods by which a DMP is obligated to submit such supplementary information may be preferable to the request-based format of the proposed provision. The Office further seeks comment on other methods to facilitate supplemental reporting, such as bifurcating the timing required for reporting each of the fields proposed in the July NPRM but otherwise retaining that proposed structure; parties advocating an alternate approach are encouraged to submit proposed regulatory language to that effect in their comments. In providing such language to ensure ample opportunity for public input, the Office does not wish to discourage continued dialogue between the MLC and DLC as to this aspect of the reporting regulations, as well as submission of any joint proposals that may result from discussions.

Additionally, MediaNet recently voiced its concern with being able to report its pre-2013 royalty and usage data in cumulative statements of account, stating that such data is not in its possession and may not have been maintained by its former vendors.[30] Noting that it is one of the oldest digital services, it asked for a regulatory exemption to address these concerns.[31] Given the timing of MediaNet's request, the Office is not proposing its own regulatory language, but requests comments on MediaNet's proposal.

The SNPRM also proposes imposing a records of use provision on DMPs, and allowing the MLC and a DMP flexibility to agree to alter non-substantive procedures, for example reporting formats, provided that any such alteration does not materially prejudice copyright owners owed royalties required to be transferred to the MLC or for the DMP's eligibility for the 17 U.S.C. 115(d)(10) limitation on liability. The SNPRM further proposes a modified version of the provision concerning partially matched works.

In addition, at the DLC's request, the SNPRM proposes that if a DMP is unable to report cumulative statements of account in the MLC's preferred formats, a DMP may report in an alternative format, but must always report in a flat-file or other machine-readable format (*e.g.,* Excel, comma-separated values (CSV)) if the data exists in such format.[32] The Office invites comments on this subject, including joint comments as appropriate. Finally, the Office invites comments on whether to adopt a harmless error provision, similar to the provision adopted for reporting by significant nonblanket licensees.[33]

III. Additional Comments and Timing

While the Copyright Office is interested in comments regarding the above issues, it welcomes public comment on all aspects of the NPRM and submitted comments, including comments contained in *ex parte* meeting summary letters. In light of the statutory deadline related to the submission of cumulative statements of account, the Office is providing twenty days' notice for comment on this issue, and will continue to be available for *ex parte* meetings with attendant disclosures concurrently with the comment submission period.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Amend § 210.2 by revising paragraph (k) and removing paragraphs (l) through (o) to read as follows:

§ 210.2 Definitions.

* * * * *

(k) Any terms not otherwise defined in this section shall have the meanings set forth in 17 U.S.C. 115(e).

■ 3. Amend § 210.10 by revising paragraphs (b) introductory text, (b)(1), (b)(2) introductory text, and (b)(3)(i) and

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[27] *See* DLC NPRM Comment at 16. The Office understands the DMPs believe that their estimates err on the side of overpayment. Nonetheless, to ensure prompt payment, the Office notices a rule requiring ''true-up'' of underpayments within 14 business days of being invoiced, rather than the 45 days proposed by the DLC. *Cf.* 17 U.S.C. 512(g)(2)(C) (setting out 14-day deadline for copyright owners to institute court action).

[28] *See Long Island Care at Home, Ltd.,* 551 U.S. at 175 (suggesting that it is ''reasonably foreseeable'' that an agency may withdraw a proposed rule).

[29] *See* DLC NPRM Comment at 2, 7–10.

[30] MediaNet *Ex Parte* Letter at 2–3 (Oct. 28, 2020).

[31] *Id.* MediaNet proposes a new 37 CFR 210.20(c)(4)(iii) of the proposed rule: ''The digital music provider shall be excused from providing the information set forth in paragraphs (i) and (ii) where the usage is from a period of time more than five years prior to license availability date, and the digital music provider certifies the following: that the information was solely held by a vendor with whom the digital music provider no longer has a business relationship, the digital music provider has requested that information from such vendor, and the vendor has informed the digital music provider that it cannot or will not provide that information.'' *Id.* at 3 (Oct. 28, 2020).

[32] *Id.* at 10, 23; DLC *Ex Parte* Letter at 3 (Aug. 27, 2020).

[33] *See* 37 CFR 210.28(k); *see also id.* at § 210.9 (pre-MMA harmless error rule pertaining to Monthly and Annual Statements of Account). No harmless error provision was adopted for blanket licensee reports of usage in light of the statutory default provision, which requires reporting to be ''materially deficient.'' *See* 17 U.S.C. 115(d)(4)(E)(i)(III).

adding paragraphs (c) through (m) to read as follows:

§ 210.10 Statements required for limitation on liability for digital music providers for the transition period prior to the license availability date.

* * * * *

(b) If the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work, from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective, as follows:

(1) Accrued royalties shall be maintained by the digital music provider in accordance with generally accepted accounting principles, including those concerning derecognition of liabilities. Accrued royalties can cease being accrued royalties within the meaning of 17 U.S.C. 115(e)(2) if the digital music provider's payment obligation is extinguished, such as pursuant to a voluntary license or other agreement whereby the digital music provider is legally released from the liability by the relevant creditor copyright owner.

(2) If a copyright owner of an unmatched musical work (or share thereof) is identified and located by or to the digital music provider before the license availability date, the digital music provider shall, unless a voluntary license or other relevant agreement entered into prior to the time period specified in paragraph (b)(2)(i) of this section applies to such musical work (or share thereof)—

* * * * *

(3) * * *

(i) Not later than 45 calendar days after the license availability date, transfer accrued royalties to the mechanical licensing collective (as required by paragraph (i)(2) of this section), such payment to be accompanied by a cumulative statement of account that:

(A) Includes all of the information required by paragraphs (c) through (e) of this section covering the period starting from initial use of the work;

(B) Is delivered to the mechanical licensing collective as required by paragraph (i)(1) of this section; and

(C) Is certified as required by paragraph (j) of this section; and

* * * * *

(c) Each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section shall be clearly and prominently identified as a ''Cumulative Statement of Account for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (months and years) covered by the cumulative statement of account.

(2) The full legal name of the digital music provider and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the digital music provider engages, or has engaged at any time during the period identified in paragraph (c)(1) of this section, in covered activities. If the digital music provider has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the digital music provider. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) For each sound recording embodying a musical work that is used by the digital music provider in covered activities during the period identified in paragraph (c)(1) of this section and for which a copyright owner of such musical work (or share thereof) is not identified and located by the license availability date, a detailed cumulative statement, from which the mechanical licensing collective may separate reported information for each month and year for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) The total accrued royalty payable by the digital music provider for the period identified in paragraph (c)(1) of this section, computed in accordance with the requirements of this section and part 385 of this title, and including detailed information regarding how the royalty was computed, with such total accrued royalty payable broken down by month and year and by each applicable activity or offering including as may be defined in part 385 of this title.

(i) Where a digital music provider has a reasonable good-faith belief that the total accrued royalties payable are less than the total of the amounts reported under paragraph (c)(4)(i) of this section, and the precise amount of such accrued royalties cannot be calculated at the time the cumulative statement of account is delivered to the mechanical licensing collective because of the unmatched status of relevant musical works embodied in sound recordings reported under paragraph (c)(4)(ii) of this section, a reasonable estimation of the total accrued royalties may be reported and transferred, determined in accordance with GAAP and broken down by month and year and by each applicable activity or offering including as may be defined in part 385 of this title. Any such estimate shall be made in good faith and on the basis of the best knowledge, information, and belief of the digital music provider at the time the cumulative statement of account is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section. In no case shall the failure to match a musical work by the license availability date be construed as prohibiting or limiting a digital music provider's entitlement to use such an estimate if the digital music provider has satisfied its obligations under 17 U.S.C. 115(d)(10)(B) to engage in required matching efforts.

(ii) A digital music provider reporting and transferring estimated accrued royalties must provide a description of any voluntary license or other agreement containing an appropriate release of royalty claims relied upon by the digital music provider in making its estimation that is sufficient for the mechanical licensing collective to engage in efforts to confirm uses of musical works subject to any such agreement. Such description shall be sufficient if it includes at least the following information:

(A) An identification of each of the digital music provider's services, including by reference to any applicable types of activities or offerings that may be defined in part 385 of this title, relevant to any such agreement. If such an agreement pertains to all of the digital music provider's applicable services, it may state so without identifying each service.

(B) The start and end dates of each covered period of time.

(C) Each applicable musical work copyright owner, identified by name and any known and appropriate unique identifiers, and appropriate contact information for each such musical work copyright owner or for an administrator or other representative who has entered into an applicable agreement on behalf of the relevant copyright owner.

(D) A satisfactory identification of any applicable catalog exclusions.

(E) At the digital music provider's option, and in lieu of providing the information listed in paragraph (c)(5)(ii)(D) of this section, a list of all covered musical works, identified by appropriate unique identifiers.

(F) A unique identifier for each such agreement.

(iii) After receiving the information required by paragraph (c)(5)(ii) of this section, the mechanical licensing collective shall, among any other actions required of it, engage in efforts to confirm uses of musical works embodied in sound recordings reported under paragraph (c)(4)(ii) of this section that are subject to any identified agreement, and may notify relevant copyright owners of the digital music provider's reliance on such identified agreement(s). Where the mechanical licensing collective confirms a reported use of a musical work to be subject to an identified agreement, the mechanical licensing collective shall presume that the digital music provider has appropriately relied upon the agreement, including during the pendency of a dispute between a digital music provider and copyright owner over the digital music provider's reliance on an identified agreement. During the pendency of such a dispute, the mechanical licensing collective shall not make a corresponding distribution to the relevant copyright owner(s) or treat the amount at issue as an overpayment unless it is directed to do so pursuant to the mutual agreement of the relevant parties or by order of an adjudicative body with appropriate authority.

(iv) Subject to paragraph (c)(5)(iii) of this section, if the amount transferred to the mechanical licensing collective is insufficient to cover any required distributions to copyright owners, the mechanical licensing collective shall deliver an invoice and/or response file to the digital music provider consistent with paragraph (h) of this section that includes the amount outstanding (which shall include the interest that would have accrued on such amount had it been held by the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(3)(H)(ii) from the original date of transfer) and the basis for the mechanical licensing collective's conclusion that such amount is due. No later than 14 business days after receipt of such notice, the digital music provider must either pay the invoiced amount or notify the mechanical licensing collective that it is disputing that additional amounts are owed (whether in whole or in part). If disputed, the mechanical licensing collective shall notify the relevant copyright owner(s) and shall act in accordance with paragraph (c)(5)(iii) of this section. In the event a digital music provider is found by an adjudicative body with appropriate authority to have erroneously, but not unreasonably or in bad faith, withheld accrued royalties, the digital music provider may remain in compliance with this section for purposes of retaining its limitation on liability if the digital music provider has otherwise satisfied the requirements for the limitation on liability described in 17 U.S.C. 115(d)(10) and if the additional amount due is paid in accordance with a relevant order.

(v) Any overpayment of royalties based upon an estimate permitted by paragraph (c)(5)(i) of this section shall be handled in accordance with paragraph (k)(5) of this section.

(vi) Any underpayment of royalties shall be remedied by a digital music provider without regard for the adjusted statute of limitations described in 17 U.S.C. 115(d)(10)(C). By using an estimate permitted by either paragraph (c)(5)(i) or (d)(2) of this section, a digital music provider agrees to waive any statute-of-limitations-based defenses with respect to any asserted underpayment of royalties connected to the use of such an estimate.

(6) If the total accrued royalty reported under paragraph (c)(5) of this section does not reconcile with the royalties actually transferred to the mechanical licensing collective, or if the royalties reported include use of an estimate as permitted under paragraph (c)(5)(i) of this section, a clear and detailed explanation of the difference and the basis for it.

(d) The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) A detailed and step-by-step accounting of the calculation of attributable royalties under applicable provisions of this section and part 385 of this title, sufficient to allow the mechanical licensing collective to assess the manner in which the digital music provider determined the royalty and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording.

(2) Where computation of the attributable royalties depends on an input that is unable to be finally determined at the time the cumulative statement of account is delivered to the mechanical licensing collective and where the reason the input cannot be finally determined is outside of the digital music provider's control (*e.g.,* the amount of applicable public performance royalties and the amount of applicable consideration for sound recording copyright rights), a reasonable estimation of such input, determined in accordance with GAAP, may be used or provided by the digital music provider. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after being finally determined. A cumulative statement of account containing an estimate permitted by this paragraph (d)(2) should identify each input that has been estimated, and provide the reason(s) why such input(s) needed to be estimated and an explanation as to the basis for the estimate(s).

(3) All information and calculations provided pursuant to paragraph (d) of this section shall be made in good faith and on the basis of the best knowledge, information, and belief of the digital music provider at the time the cumulative statement of account is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section.

(e)(1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) The information referenced in § 210.6(c)(3) that would have been provided to the copyright owner had the digital music provider been serving Monthly Statements of Account as a compulsory licensee in accordance with this subpart on the copyright owner from initial use of the work.

(ii) Any additional information requested in writing by the mechanical licensing collective that either is referenced in 17 U.S.C. 115(d)(10)(B)(i)(I)(aa) or (bb) and that was acquired by the digital music provider in connection with its efforts to obtain such information under 17 U.S.C. 115(d)(10)(B)(i)(I), or, if available, is a unique identifier assigned by the digital music provider to a reported sound recording. The digital music provider must respond to such a request within a reasonable period of time and may deliver any such requested supplemental information to the mechanical licensing collective outside of its cumulative statement of account in a commercially reasonable manner of the digital music provider's choosing. Providing such supplemental information shall not be construed as an adjustment to a cumulative statement of account under paragraph (k) of this section.

(2) For each track for which a share of a musical work has been matched and for which accrued royalties for such share have been paid, but for which one or more shares of the musical work remains unmatched and unpaid, the digital music provider must provide a clear identification of the total aggregate percentage share that has been matched and paid and the owner(s) of the aggregate matched and paid share (including any unique party identifiers for such owner(s) that are known by the digital music provider), provided that, in the event such information is maintained by a third-party vendor, that information is made available to the digital music provider on commercially reasonable terms.

(f) The information required by paragraphs (c), (d), (e), and (k) of this section requires intelligible, legible, and unambiguous statements in the cumulative statements of account, without incorporation of facts or information contained in other documents or records.

(g) References to part 385 of this title, as used in paragraphs (c), (d), and (k) of this section, refer to the rates and terms of royalty payments as in effect as to each particular reported use based on when the use occurred.

(h) If requested by a digital music provider, the mechanical licensing collective shall deliver an invoice and/or a response file to the digital music provider within a reasonable period of time after the cumulative statement of account and related royalties are received. The response file shall contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to digital music providers by applicable third-party administrators.

(i)(1) To the extent practicable, each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section shall be delivered in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective as reasonably determined by the mechanical licensing collective and set forth on its website, taking into consideration relevant industry standards and the potential for different degrees of sophistication among digital music providers. The mechanical licensing collective must offer at least two options, where one is dedicated to smaller digital music providers that may not be reasonably capable of complying with the requirements of a reporting or data standard or format that the mechanical licensing collective may see fit to adopt for larger digital music providers with more sophisticated operations. Nothing in this section shall be construed as prohibiting the mechanical licensing collective from adopting more than two reporting or data standards or formats. If it is not practicable for a digital music provider to deliver its cumulative statement of account in the manner specified by the mechanical licensing collective, such digital music provider must deliver its cumulative statement of account in a flat-file or other machine-readable format (*e.g.,* Excel, comma-separated values (CSV)) to the extent such digital music provider's applicable data exists in such a format.

(2) To the extent practicable, royalty payments shall be delivered to the mechanical licensing collective in such manner and form as the mechanical licensing collective may reasonably determine and set forth on its website. A cumulative statement of account and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the cumulative statement of account to the payment.

(j) Each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section shall be accompanied by:

(1) The name of the person who is signing and certifying the cumulative statement of account.

(2) A signature, which in the case of a digital music provider that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the digital music provider is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the cumulative statement of account.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this cumulative statement of account on behalf of the digital music provider, (2) I have examined this cumulative statement of account, and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this cumulative statement of account on behalf of the digital music provider, (2) I have prepared or supervised the preparation of the data used by the digital music provider and/or its agent to generate this cumulative statement of account, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this cumulative statement of account was prepared by the digital music provider and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly statements that accurately reflect, in all material respects, the digital music provider's usage of musical works, the statutory royalties applicable thereto, and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(6) A certification by a duly authorized officer of the digital music provider that the digital music provider has fulfilled the requirements of 17 U.S.C. 115(d)(10)(B)(i) and (ii) but has not been successful in locating or identifying the copyright owner.

(k)(1) A digital music provider may adjust its previously delivered cumulative statement of account, including related royalty payments, by delivering to the mechanical licensing collective a statement of adjustment.

(2) A statement of adjustment shall be clearly and prominently identified as a ''Statement of Adjustment of a Cumulative Statement of Account.''

(3) A statement of adjustment shall include a clear statement of the following information:

(i) The previously delivered cumulative statement of account, including related royalty payments, to which the adjustment applies.

(ii) The specific change(s) to the previously delivered cumulative statement of account, including a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the digital music provider depends. Such description shall include the adjusted royalties payable and all information used to compute the adjusted royalties payable, in accordance with the requirements of this section and part 385 of this title, such that the mechanical licensing collective can provide a detailed and step-by-step accounting of the calculation of the adjustment under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the digital music provider determined the adjustment and the accuracy of the adjustment. As appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2) of this section.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) In the case of an underpayment of royalties, the digital music provider shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the statement of adjustment or promptly after being notified by the mechanical licensing collective of the amount due. A statement of adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the statement of adjustment to the payment.

(5) In the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the digital music provider's account, or upon request, issue a refund within a reasonable period of time.

(6)(i) A statement of adjustment must be delivered to the mechanical licensing collective no later than 6 months after the occurrence of any of the scenarios specified by paragraph (k)(6)(ii) of this section, where such an event necessitates an adjustment. Where more than one scenario applies to the same cumulative statement of account at different points in time, a separate 6-month period runs for each such triggering event.

(ii) A statement of adjustment may only be made:

(A) Except as otherwise provided for by paragraph (c)(5) of this section, where the digital music provider discovers, or is notified of by the mechanical licensing collective or a copyright owner, licensor, or author (or their respective representatives, including by an administrator or a collective management organization) of a relevant sound recording or musical work that is embodied in such a sound recording, an inaccuracy in the cumulative statement of account, or in the amounts of royalties owed, based on information that was not previously known to the digital music provider despite its good-faith efforts;

(B) When making an adjustment to a previously estimated input under paragraph (d)(2) of this section;

(C) Following an audit of a digital music provider that concludes after the cumulative statement of account is delivered and that has the result of affecting the computation of the royalties payable by the digital music provider (*e.g.,* as applicable, an audit by a sound recording copyright owner concerning the amount of applicable consideration paid for sound recording copyright rights); or

(D) In response to a change in applicable rates or terms under part 385 of this title.

(7) A statement of adjustment must be certified in the same manner as a cumulative statement of account under paragraph (j) of this section.

(l)(1) Subject to the provisions of 17 U.S.C. 115, a digital music provider and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties required to be transferred to the mechanical licensing collective for the digital music provider to be eligible for the limitation on liability described in 17 U.S.C. 115(d)(10). The procedures surrounding the certification requirements of paragraph (j) of this section may not be altered by agreement. This paragraph (l)(1) does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (l)(1) of this section that includes the name of the digital music provider (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the digital music provider engages, or has engaged at any time during the period identified in paragraph (c)(1) of this section, in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (l)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.

(m) Each digital music provider shall, for a period of at least seven years from the date of delivery of a cumulative statement of account or statement of adjustment to the mechanical licensing collective, keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such statement (except that such records and documents that relate to an estimated input permitted under paragraph (d)(2) of this section must be kept and retained for a period of at least seven years from the date of delivery of the statement containing the final adjustment of such input).

Dated: October 30, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

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BILLING CODE 1410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 70

RIN 2900–AP89

Change in Rates VA Pays for Special Modes of Transportation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations concerning beneficiary travel. The revisions would amend the Veterans Health Administration's (VHA) beneficiary travel regulations to establish a new payment methodology for special modes of transportation. The new payment methodology would apply in the absence of a contract between VA and a vendor of the special mode of transportation. For transport by ambulance, VA proposes to pay the lesser of the actual charge or the amount determined by the Medicare Part B Ambulance Fee Schedule (AFS) established by the Centers for Medicare & Medicaid Services (CMS). For travel by modes other than ambulance, VA proposes to establish a payment methodology based on states' posted rates or the actual charge. VA would replace this payment methodology for travel by modes other than ambulance at

some time in the future, once VA has collected enough data to develop a new methodology.

DATES: Comments must be received on or before January 4, 2021.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Paul Perry, Deputy Director, Veterans Transportation Program (10NB2G), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (404) 828–5691 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 111, VA provides beneficiary travel benefits to eligible veterans who need to travel in connection with vocational rehabilitation, counseling required by the Secretary pursuant to chapter 34 or 35 of Title 38, U.S.C., or for the purpose of examination, treatment, or care. Regulations governing beneficiary travel benefits provided by the Veterans Health Administration (VHA) are in part 70 of title 38, CFR. See also Executive Order 11302. Under part 70, VA pays for a ''special mode of transportation'' when that travel is medically required, the beneficiary is unable to defray the cost of that transportation, and VHA approved the travel in advance or the travel was undertaken in connection with a medical emergency. See 38 CFR 70.2 (defining the term ''[s]pecial mode of transportation''), and 38 CFR 70.4(d) (establishing criteria for approval of special mode travel). We propose to amend these regulations to implement the discretionary authority in 38 U.S.C. 111(b)(3)(C), which permits VA to pay the lesser of the actual charge for ambulance transportation or the amount determined by the Medicare Part B AFS established under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), unless VA has entered into a contract for that transportation. Additionally, VA proposes to establish a payment methodology for other types of special modes of transportation, including wheelchair and stretcher van services. VA would use this payment methodology while VA collects data for the purpose of developing a new payment methodology. In doing so, VA would establish two (2) categories of special modes of transportation for purposes of determining the payment rate: Travel by ambulance, which would be defined in 38 CFR 70.2, and travel by modes other than ambulance. We believe that these changes would reduce improper payments and help eliminate payment error, waste, and abuse in line with the goals of Executive Order 13520.

§70.2 Definitions

We propose to add a definition of ''ambulance'' that would be necessary in administering payments for special mode transportation. VA would define ambulance by cross-referencing the CMS regulations related to coverage and payment for ambulance services. See 42 CFR 410.40, 410.41, and Part 414, Subpart H. VA proposes to define ambulance to mean advanced life support, level 1 (ALS1); advanced life support, level 2 (ALS2); basic life support (BLS); fixed wing air ambulance (FW); rotary wing air ambulance (RW); and specialty care transport (SCT), as those services are defined in 42 CFR 414.605. Consistent with 42 CFR 414.605, the definitions of these terms would apply to ground (both land and water) ambulance services and to air ambulance services unless otherwise specified. Currently Medicare Part B covers these levels of ambulance services under 42 CFR 410.40(c), as well as paramedic ALS intercept, when applicable criteria are met. VA would exclude paramedic ALS intercept (PI) because this service involves arriving on scene, providing initial care, and intermittent accompaniment of a person on an ambulance. Paramedic ALS intercept does not involve actual transport of the person, and the vendor may charge for mere arrival on scene rather than providing care during transport. VA would not pay for this charge because PI does not involve active care during transportation from the point of emergency to the final location. CMS regulations are an appropriate reference source in our proposed definition of ''ambulance'' because VA is proposing to rely on the Medicare Part B AFS payment rates in its new ambulance payment methodology as authorized by 38 U.S.C. 111(b)(3)(C). VA would make this change in an effort to maintain uniformity with CMS and eliminate confusion for vendors.

§70.30 Payment Principles

Under current 38 CFR 70.30(a)(4), VA pays the ''actual cost of a special mode of transportation.'' Current 38 CFR 70.30(a)(4) has not been revised to reflect VA's payment authority for travel by ambulance in 38 U.S.C. 111(b)(3)(C), and this proposed rule would implement that authority in 38 CFR 70.30(a)(4). Moreover, VA would revise 38 CFR 70.30(a)(4) to prescribe a payment methodology for travel by modes other than ambulance while VA collects data for the purpose of developing a new payment methodology. The new payment methodology would be the subject of a separate and later rulemaking.

We would restructure the current language in 38 CFR 70.30(a)(4) to distinguish between travel by ambulance and travel by modes other than ambulance in new 38 CFR 70.30(a)(4)(i) and 70.30(a)(4)(ii), respectively. Additionally, VA would state that the proposed payment methodologies for special modes of transportation would apply notwithstanding 38 CFR 17.55 and 17.56 for purposes of 38 CFR 17.120, which relates to payment or reimbursement of the expenses of emergency treatment under 38 U.S.C. 1728. Proposed 70.30(a)(4) would also specify that the payment methodologies for travel by ambulance and travel by modes other than ambulance would not apply when VA has entered into a contract with the vendor. When VA has entered into a contract with the vendor, the terms of the contract would govern VA's payments. Finally, proposed 70.30(a)(4) would define the term ''posted rate'' for purposes of the payment methodology for travel by modes other than ambulance, discussed further below.

Proposed 38 CFR 70.30(a)(4)(i) would establish in regulation a new payment methodology for travel by ambulance. VA would adopt the Medicare Part B AFS for transport by ambulance, and we would pay for ambulance services based on the lesser of either the AFS payment amount or the actual charge, unless (as would be stated in 38 CFR 70.30(a)(4)) VA has executed a contract for ambulance services from the vendor in which case the terms of the contract would govern VA payments. For ALS1 and BLS, the AFS includes rates for emergency and nonemergency transportation. For purposes of proposed section 70.30(a)(4)(i), VA would apply the applicable CMS rate based on the vendor's coded invoice. New 38 CFR 70.30(a)(4)(i) would read as follows: ''Travel by ambulance: VA will pay the lesser of the actual charge for ambulance transportation or the amount determined by the fee schedule established under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)).''

Proposed 38 CFR 70.30(a)(4)(ii) would establish in regulation a payment methodology for travel by modes other than ambulance. Unlike travel by ambulance, there are no existing Medicare Part B payment rates for transport by modes other than ambulance to include wheelchair and stretcher van services. While Medicare Part B does not currently cover these services, there are Healthcare Common Procedure Coding System (HCPCS) codes for them, and CMS makes reference to the published Medicaid rates in each respective state. In this proposed rule, we refer to the published Medicaid rates in each respective state as ''posted rates.'' If a state has a posted rate, then VA would be able to access it. Relying on posted rates alone, however, would present two challenges: (1) VA cannot direct vendors to one source to obtain the posted rate for these services, and (2) not every state has posted rates for these services or makes them available. Because of this, VA proposes to establish a payment methodology for these other types of special mode of transportation services, while VA collects data for the purpose of developing a new payment methodology, which would be the subject of a separate and later rulemaking.

Proposed 38 CFR 70.30(a)(4) would define the term ''posted rate'' for purposes of section 70.30(a)(4)(ii) to mean ''the applicable Medicaid rate for the special mode transport in the state or states where the vendor is domiciled or where transport occurred (''involved states'').'' Proposed 38 CFR 70.30(a)(4)(ii)(A)–(C) would create a payment methodology to pay the lesser of either: (1) A state's posted rate for these services, or (2) the vendor's actual charge. VA would undertake this action as stated above to comport with Executive Order 13520. By paying the lowest rate between a state's posted rate or the vendor's actual charge, VA would actively reduce the possibility of waste and abuse in a major VA program.

VA recognizes that some vendors provide services only in states where they are domiciled or are domiciled in states other than the ones in which they provide services. VA would attempt to account for both singular and multi-jurisdictional vendors. VA also recognizes that transport can occur across state lines, and we would account for this in the payment methodology. For situations where the vendor provides services in a state or states other than where the vendor is domiciled, or where special mode transport occurs across state lines, VA would pay the lowest posted rate among the states involved or the actual charge, whichever is lowest. If the states involved have no posted rate, then VA would pay the vendor's actual charge. We would make this change in an effort to control costs where we work with regional or national vendors who provide services in multiple jurisdictions, and the posted rates in the areas where they deliver services are lower or higher than the vendor's state or states of domicile. In the absence of a posted rate for an involved state, VA would pay the lowest among the posted rates of the other state or states or the vendor's actual charge. Proposed 70.30(a)(4)(ii) would read as follows: ''Travel by modes other than ambulance: VA will pay the lesser of: (A) The vendor's actual charge. (B) The posted rate in the state where the vendor is domiciled. If the vendor is domiciled in more than one state, the lowest posted rate among all involved states. (C) The posted rate in the state where transport occurred. If transport occurred in more than one state, the lowest posted rate among all involved states. NOTE TO PARAGRAPH (a)(4)(ii): In the absence of a posted rate for an involved state, VA will pay the lowest among the available posted rates or the vendor's actual charge.''

After utilizing this methodology for an initial 90 calendar day period after this rule becomes final in the **Federal Register**, VA would analyze the payments made to vendors for travel by modes other than ambulance and determine whether we have enough payment data (*e.g.,* arithmetic average of actual charges, locality rates, or posted rates) to develop a new methodology. If VA determines that it has enough payment data, then VA would develop a payment methodology using the lowest possible rate. If VA does not have enough payment data to create a methodology after the initial 90 calendar day period, then VA would continue to collect data for as many 90 calendar day intervals as VA would deem necessary to gather sufficient payment data, which we do not anticipate exceeding 18 months from the effective date of the final rule. Subsequently, VA would propose a new methodology for travel by modes other than ambulance in a separate rulemaking in the **Federal Register**.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. VA estimates that this proposed rule would potentially impact 2,979 small entities within NAICS Code 621910 (Ambulance Services), which represents 97 percent of the total entities covered by NAICS Code 621910. However, VA assumes that all entities within NAICS Code 621910 would bear VA's cost avoidance equally. The per entity burden is estimated to be less than 1% of preliminary receipts for all entities in NAICS Code 621910. VA does not believe the impact on vendors within NAICS Code 621999 (All Other Miscellaneous Ambulatory Health Care

Services) or NAICS Code 485991 (Special Needs Transportation) will be significant because we do not typically pay for non-contract wheelchair or stretcher van services. Because VA estimates that over 99% of its payments to vendors potentially covered within NAICS Codes 621999 and 485991 are made pursuant to a contract, less than 1% of small entities within these NAICS Codes are estimated to be impacted by this proposed rule. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.008—Veterans Domiciliary Care; 64.012—Veterans Prescription Service; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.026—Veterans State Adult Day Health Care; 64.029—Purchase Care Program; 64.035—Veterans Transportation Program; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care.

List of Subjects in 38 CFR Part 70

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on October 28, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 70 as follows:

PART 70—VETERANS TRANSPORTATION PROGRAMS

■ 1. The authority citation for part 70 is revised to read as follows:

Authority: 38 U.S.C. 101, 111, 111A, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302, and E.O. 13520.

■ 2. Amend § 70.2, by adding in alphabetical order the definition ''Ambulance'' to read as follows:

Ambulance for this subpart, means advanced life support, level 1 (ALS1); advanced life support, level 2 (ALS2); basic life support (BLS); fixed wing air ambulance (FW); rotary wing air ambulance (RW); and specialty care transport (SCT), as those terms are defined in 42 CFR 414.605.

* * * * *

■ 3. In § 70.30 amend paragraph (a)(4) to read as follows:

§ 70.30 Payment principles.

(a) * * *

(4) VA payments for special modes of transportation will be made in accordance with this section, unless VA has entered into a contract with the vendor in which case the terms of the contract will govern VA payments. This section applies notwithstanding 38 CFR 17.55 and 17.56 for purposes of 38 CFR 17.120. For purposes of paragraph (ii), the term ''posted rate'' refers to the applicable Medicaid rate for the special mode transport in the state or states where the vendor is domiciled or where transport occurred (''involved states'').

(i) Travel by ambulance: VA will pay the lesser of the actual charge for ambulance transportation or the amount determined by the fee schedule established under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)).

(ii) Travel by modes other than ambulance: VA will pay the lesser of:

(A) The vendor's actual charge.

(B) The posted rate in the state where the vendor is domiciled. If the vendor is domiciled in more than one state, the lowest posted rate among all involved states.

(C) The posted rate in the state where transport occurred. If transport occurred in more than one state, the lowest posted rate among all involved states.

Note to paragraph (a)(4)(ii) of this section: In the absence of a posted rate for an involved state, VA will pay the lowest among the available posted rates or the vendor's actual charge.

* * * * *

[FR Doc. 2020–24261 Filed 11–4–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0388; FRL–10016–08–Region 5]

Air Plan Approval; Ohio; Base Year Emission Inventories and Emissions Statement Rule Certification for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), a revision to the State Implementation Plan (SIP) submitted by the Ohio Environmental Protection Agency on July 24, 2020. The CAA establishes emission inventory requirements for all ozone nonattainment areas. The revision will address the emission inventory requirements for the Cleveland, Ohio (OH) nonattainment area and the Ohio portion of the Cincinnati, Ohio-Kentucky (Cincinnati) ozone nonattainment area, as designated under the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard). Also, EPA is proposing to approve Ohio's certification that its stationary annual emissions statement regulation, which has been previously approved by EPA under a prior ozone standard, satisfies the CAA emissions statement rule requirement for the Cleveland and Cincinnati nonattainment areas under the 2015 ozone NAAQS.

DATES: Comments must be received on or before December 7, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0388 at *http://www.regulations.gov* or via email to *blakley.pamela@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 disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

I. The 2015 Ozone NAAQS Emissions Inventory and Emissions Statement Rule Requirements

On October 26, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292. The Cleveland and Cincinnati areas were designated as marginal nonattainment areas for the 2015 ozone NAAQS. See 83 FR 25776 (August 3, 2018). The Cleveland nonattainment area includes Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit Counties. The Cincinnati nonattainment area includes Butler, Clermont, Hamilton, and Warren Counties.

A. Emission Inventories

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as a SIP revision, emission inventories for all areas designated as nonattainment for any NAAQS. An emission inventory for ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. Ozone is a gas that is formed by the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the atmosphere in the presence of sunlight (VOC and NO_X are referred to as ozone precursors). Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO_X. VOC is emitted by many types of sources, including power plants, industrial sources, on-road and off-road mobile sources, smaller stationary sources collectively referred to as area sources, and biogenic sources. NO_X is primarily emitted by combustion sources, both stationary and mobile.

Emission inventories provide emissions data for a variety of air quality planning tasks, including establishing baseline emission levels (anthropogenic [manmade] emissions associated with ozone standard violations), calculating emission reduction targets needed to attain the NAAQS and to achieve reasonable further progress (RFP) toward attainment of the ozone standard (not required in the areas considered here), determining emission inputs for ozone air quality modeling analyses, and tracking emissions over time to determine progress toward achieving air quality and emission reduction goals. For the 2015 ozone NAAQS, states should submit ozone season day emission estimates for an inventory calendar year to be consistent with the baseline year for RFP plan as required by 40 CFR 51.1310(b). For the RFP baseline year for the 2015 ozone NAAQS under 40 CFR 51.1310(b) states may use a calendar year for the most recently available complete triennial (3-year cycle) emissions inventory (40 CFR 51, subpart A) preceding the year of the area's effective date of designation as a nonattainment area. (83 FR 63034–63035, December 6, 2018).[1] States are required to submit estimates of VOC and NO_X emissions for four general classes of anthropogenic sources: Stationary point sources; area sources; on-road mobile sources; and off-road mobile sources.

B. Emissions Statement Rules

Section 182(a)(3)(B) of the CAA requires states with ozone nonattainment areas to submit revisions to their SIP to require the owner or operator of each stationary source of NO_X or VOC to provide the state with an annual statement documenting the actual emissions of NO_X and VOC from their source. This requirement applies to each stationary source emitting greater than or equal to 25 tons per year of VOC or NO_X in an ozone nonattainment area.

Many states have adopted these emissions statement rules for a prior ozone NAAQS that cover all the state's nonattainment areas and relevant classes and categories of sources. For these states, EPA is accepting certifications that their previously adopted emissions statement rules remain in place and are adequate to meet the emissions statement rule requirement under the 2015 ozone standard. (83 FR 63002).

II. Ohio's Emission Inventories

On July 24, 2020, Ohio submitted a SIP revision addressing the emissions inventory requirement of CAA section 182(a)(1). Ohio provided documentation of a 2014 NO_X and VOC base year emissions inventory requirement for the Cleveland and Cincinnati ozone nonattainment areas. Ohio selected 2014 because this was one of the three years of ozone data indicating a violation of the ozone standard that were used to designate the areas as nonattainment for the 2015 ozone NAAQS. 83 FR 25778, 25779. In addition, the 2014 base year emissions inventory was the most recent comprehensive, accurate, and quality assured triennial emissions inventory in the National Emissions Inventory (NEI) database, available at the time the state began preparing the emissions inventory submittal for the Cleveland and Cincinnati areas.[2] Tables 1 and 2 summarize the 2014 NO_X and VOC emissions for Cleveland and Cincinnati areas in tons of emissions per ozone season day.[3]

[1] The RFP requirements specified in CAA section 182(b)(1) shall apply to all area's designated nonattainment for ozone classified Moderate or higher.

[2] The Cleveland and Cincinnati areas are currently classified as marginal nonattainment areas for the 2015 NAAQS and are therefore not subject to the reasonable further progress (RFP) requirement. If one or both areas are reclassified as moderate, the area(s) would become subject to the RFP provisions and Ohio would be required to replace the 2014 base year emissions inventory with a 2017 base year emissions inventory in accordance with the 2015 ozone NAAQS Implementation Rule, 83 FR 62998, 63004.

[3] The ozone season is the portion of the year in which high ozone concentrations may be expected in a given area.

TABLE 1—2014 OZONE SEASON DAY NO_X EMISSIONS

County/NAA	2014 Ozone season day NO_X emissions (tons/day)					
	EGU [1]	Non-EGU point	Area	Non-road	Onroad	Total NO_X
Butler	0.39	10.83	2.28	4.28	12.40	30.18
Clermont	48.30	0.01	1.14	2.29	6.64	58.38
Hamilton	20.47	4.84	6.82	8.44	30.37	70.94
Warren	0.00	0.92	1.16	3.25	7.72	13.05
Cincinnati NAA	69.16	16.60	11.40	18.26	57.13	172.55
Cuyahoga	0.82	9.64	12.42	22.51	33.32	78.71
Geauga	0.00	0.02	0.75	1.88	2.49	5.14
Lake	5.46	1.83	3.90	6.26	6.51	23.96
Lorain	10.88	1.38	4.07	7.51	7.89	31.73
Medina	0.00	0.22	1.46	3.23	5.40	10.31
Portage	0.00	0.33	2.40	2.96	6.07	11.76
Summit	0.00	1.66	4.96	6.84	17.78	31.24
Cleveland NAA	17.16	15.08	29.96	51.19	79.46	192.85

[1] Electric Generating Units (EGU).

TABLE 2—2014 OZONE SEASON DAY VOC EMISSIONS

County/NAA	2014 Ozone season day VOC emissions (tons/day)					
	EGU	Non-EGU point	Area	Non-road	Onroad	Total VOC
Butler	0.02	2.97	13.36	3.41	7.22	26.98
Clermont	0.27	0.40	6.50	2.39	4.01	13.57
Hamilton	0.34	2.05	31.30	8.61	14.51	56.81
Warren	0.00	0.51	9.02	2.74	3.93	16.20
Cincinnati NAA	0.63	5.93	60.18	17.15	29.67	113.56
Cuyahoga	0.01	3.14	42.66	32.24	14.38	92.43
Geauga	0.00	0.09	4.27	4.66	1.34	10.36
Lake	0.04	0.81	9.91	10.58	2.94	24.28
Lorain	0.17	1.90	8.88	11.81	3.57	26.33
Medina	0.00	0.55	6.83	4.84	2.36	14.58
Portage	0.00	1.14	7.29	6.68	2.33	17.44
Summit	0.00	1.16	19.63	9.40	6.89	37.08
Cleveland NAA	0.22	8.79	99.47	80.21	33.81	222.50

A. Base Year Emissions Inventory

Ohio estimated NO_X and VOC emissions for all source categories by county for the Cleveland and Cincinnati ozone nonattainment areas. Emissions for these counties were totaled by source category for each ozone nonattainment area. To develop the NO_X and VOC emissions inventories, Ohio used the annual emissions data contained in EPA's 2014 National Emissions Inventory (2014 NEI.v2) database. To document the derivation of these emissions data, Ohio included EPA's ''Technical Support Document (TSD) Preparation of Emissions Inventories for the Version 7.1 Emissions Modeling Platform'' (August 2018) in the July 24, 2020, submittal. All annual NO_X and VOC emissions data collected from the 2014 v2 NEI were temporally allocated to ozone season day by using temporal files found in EPA's 2014v2 Air Emissions Modeling Platform (2014fd), *https://www.epa.gov/air-emissions-modeling/2014-version-71-platform.* Ozone season day emissions were derived by applying a separate conversion factor to the annual emissions for each source category by pollutant and nonattainment area.

B. How did the State develop the emission inventories?

For point sources (EGUs and non-EGUs), Ohio calculates and stores emissions data annually in the state's STARS database. Under the authority of Ohio Administrative Code (OAC) 3745–15–03, Ohio requires regulated stationary sources in the ozone nonattainment areas to submit emission inventory statements annually. These reports contain detailed source type-specific or annual source unit-specific and seasonal actual emissions for all source units in a facility. The point source data for 2014 base year emissions inventory were submitted through EPA's bridge tool for submission to the Emissions Inventory System (EIS) Gateway for the 2014 NEI. Ohio provided a detailed list of EGU and non-EGU point sources included the 2014 base year emissions inventory by county, facility ID, unit ID, with their respective NO_X and VOC emissions within appendices A and B of their July 24, 2020, submittal.

For area source emissions, Ohio relied on a variety of state specific data to estimate emissions based on EPA's procedures and guidance for the 2014 base year emissions inventory. Area sources are spread over wide areas with no distinct discharge points or are comprised of a large number of small point sources that are difficult to describe separately and whose emissions are not well characterized (*e.g.,* heating furnaces in individual homes, architectural surface coating, automobile refueling, dry cleaning, etc.).

To develop an accurate and complete area source inventory, Ohio used EPA's default data to describe activity levels or emissions when no state specific data was available. Ohio implemented quality control and quality assurance (QA) measures throughout the development of this inventory, with the help of EPA's Nonpoint Method Advisory committee. The emission data Ohio collected were submitted through the EIS Gateway using EPA's bridge tool for submission into NEI. The quality control and QA of nonpoint data was primarily an ad-hoc process led by EPA. This process included comparing 2014 estimates to previous NEI cycles, gap-filling for missing pollutants, and evaluating outliers. In addition, for some source categories that have already been reported in the point source inventory, Ohio used EPA's ''Point to Nonpoint Crosswalk'' tool, which describes the similarities between point Source Classification Codes (SCCs) and nonpoint SCCs to help avoid double counting emissions.

Ohio has provided a detailed list of the area sources included in the 2014 base year emissions inventory by SCC and county, with their respective NO_X and VOC emissions in appendix C, including a discussion how the emissions were derived for each source category within their July 24, 2020, submittal.

The nonroad mobile source emissions in the 2014 NEI were developed by the EPA using the 2014 NEI the Motor Vehicle Emissions Simulator (MOVES–2014a). Ohio did not provide state specific data for the development of nonroad emissions. In appendix D, Ohio provides a list of the nonroad sources included in the 2014 base year emissions inventory by SCC and county, with their respective NO_X and VOC emissions.

On-road mobile source emissions in the 2014 NEI were developed by the EPA using the MOVES–2014a. The state specific data was retrieved from the Ohio Department of Transportation, local metropolitan planning organizations (MPOs), and the Ohio Bureau of Motor Vehicles.

Most of the QA for on-road mobile emissions was processed through tools built into MOVES. Additionally, just like the point and nonpoint inventories, QA was performed when the data was submitted to the EIS Gateway. In appendix E, of the July 24, 2020, submittal, Ohio has documented on-road emissions by SCC and county.

The data provided by the Ohio Department of Transportation accounted for Highway Performance Monitoring System Vehicle Type Year and Road Type Distribution. Alternate Vehicle and Fuel Technology, Average Speed Distribution, and Month, Day and Hour Vehicle Miles Traveled Fractions were also provided by the Ohio Department of Transportation along with MPOs. The Ohio Bureau of Motor Vehicles provided Source Type Age Distribution and Source Type Year for all counties and for source types 11 (motorcycles), 21 (passenger cars), 31 (passenger trucks) and 32 (light commercial trucks) only. For the remaining source types, EPA defaults were used.

Most of the QA for on-road mobile emissions was processed through tools built into MOVES. Additionally, just like the point and nonpoint inventories, QA was performed when the data was submitted to the EIS Gateway. In appendix E, of the July 24, 2020, submittal, Ohio has documented on-road emissions by SCC and county.

III. Ohio's Emissions Statement Rule

Section 182(a)(3)(B) of the CAA requires states to include regulations in the SIP to require sources (source facilities) to submit annual statements characterizing sources of NO_X and VOC emission within the source facilities and to report actual NO_X and VOC emissions for these sources. Ohio confirmed in the July 24, 2020, submittal that their existing emissions reporting rule at OAC 3745–24, approved in Ohio's SIP remains in place and adequate to meet the CAA section 182(a)(3)(B) emissions statement requirement for the 2015 ozone standard. EPA approved this rule into the Ohio SIP on September 27, 2007 (72 FR 54844). This rule specifically requires all regulated source facilities in the ozone nonattainment areas that emit greater than or equal to 25 tons/year of NO_X or VOC during the reporting year to submit annual emissions statements. Ohio included a copy of rule OAC 3745–24 in the July 24, 2020, submission. See appendices, F1–F4.

On May 18, 2020, Ohio notified the public of the 30-day period the opportunity for comment, with respect to the requested SIP revision on Ohio's Department of Air Pollution Control website at: *https://epa.ohio.gov/dapc/sip/2015*. No comments were received, and no public hearing was requested.

IV. EPA's Evaluation

A. Emissions Inventory

EPA has reviewed Ohio's July 24, 2020 requested SIP revision for consistency with sections 172(c)(3) CAA and 182(a)(1) of the CAA, and EPA's emission inventory requirements. In particular, EPA has reviewed the techniques used by Ohio to derive and quality assure the emission estimates. Ohio documented the procedures used to estimate the emissions for each of the major source types. The documentation of the emission estimation procedures is very thorough and is adequate for us to determine that Ohio followed acceptable procedures to estimate the emissions.

Ohio developed a QA plan and followed this plan during various phases of the emissions estimation and documentation process to quality assure the emissions for completeness and accuracy. These QA procedures were summarized in the documentation describing how the emissions totals were developed. EPA has determined that the QA procedures are complete, adequate and acceptable. EPA proposes to find that Ohio has developed approvable inventories of NO_X and VOC emissions for the Cleveland and Cincinnati ozone nonattainment areas.

B. Emissions Statement Rule

EPA approved Ohio's emissions statement rule, OAC 3745–24, into the Ohio SIP on September 27, 2007 (72 FR 54844), and it is currently being implemented. The rule requires sources of NO_X and VOC in the Cleveland and Cincinnati ozone nonattainment areas to annually report these emissions to the state if the sources emit NO_X and VOC equaling or exceeding 25 tons per year. EPA finds this acceptable and proposes to find that Ohio's emissions statement rule OAC 3745–24 meets the requirements of CAA section 182(a)(3)(B).

V. What action is EPA taking?

We are proposing to approve Ohio's SIP revision submitted to address the ozone-related emission inventory requirements for the Cleveland and Cincinnati ozone nonattainment areas for the 2015 ozone NAAQS. The emission inventories we are approving into the SIP are specified in Tables 1 and 2, shown above. We are proposing to approve the emission inventories because they contain comprehensive, accurate, and current inventories of actual emissions for all relevant sources in accordance with CAA sections 172(c)(3) and 182(a), and because Ohio adopted the emission inventories after providing for reasonable public notice and opportunity for a public hearing. Finally, we are also confirming that Ohio has acceptable and enforceable stationary annual emission statement regulations for the 2015 ozone standard.

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: October 30, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–24487 Filed 11–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2018–0506; FRL–10015–47–Region 6]

Texas: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Texas Commission on Environmental Quality (TCEQ) has applied to the Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Texas' application and has determine that these changes appear to satisfy all requirements needed to qualify for final authorization and is proposing to authorize the State's changes. The EPA is seeking public comment prior to taking final action.

DATES: Comments on this proposed rule must be received by December 7, 2020. Today's document also corrects errors in the **ADDRESSES** section of a previous Texas authorization **Federal Register** document published on August 18, 1999 (64 FR 44836).

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: patterson.alima@epa.gov.*

Instructions: EPA must receive your comments by December 7, 2020. Direct your comments to Docket ID Number EPA–R06–RCRA–2018–0506. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The Federal *regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any CD you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

You can view and copy Texas' application and associated publicly available docket materials either through *www.regulations.gov* at the following locations: Texas Commission on Environmental Quality, (TCEQ), 12100 Park S Circle, Austin, Texas 78753–3087, (512) 239–6079 and EPA, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. The EPA facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Alima Patterson, Regional Authorization/Codification Coordinator at (214) 665–8533, before visiting the Region 6 office. Interested persons wanting to examine these documents should make an appointment with the office.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533, *patterson.alima@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:

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have EPA made in this rule?

On December 5, 2018, the State of Texas submitted a final complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between February 7, 2014, and April 17, 2015, which includes portions of RCRA Cluster XXIII and RCRA Cluster XXIV (Checklists 231 and 233A, 233B, 233C, 233D2 and 233E), as well as, state-initiated changes. The EPA has reviewed Texas' application to revise its authorized program and is proposing to find that it meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant the State of Texas final authorization to operate its hazardous waste program with the changes described in the authorization application, except for federal provisions that were vacated from the January 13, 2015, final rule (Revisions to the Definition of Solid Waste (DSW)) by the United States Court of Appeals for the District of Columbia Circuit (*Am. Petroleum Inst.* v. *EPA,* 862 F.3d 50 (D.C. Cir. 2017) and *Am. Petroleum Inst.* v. *EPA,* No. 09–1038 (D.C. Cir. Mar. 6, 2018).

The State of Texas will continue to have responsibility for permitting treatment, storage and disposal facilities (TSDFs) within its borders (except in Indian Country), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in the State of Texas, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this proposed authorization decision?

If the State of Texas is authorized for these changes, a facility in Texas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Additionally, such facilities will have to comply with any applicable Federal requirements such as, for example, HSWA regulations issued by the EPA for which the State has not received authorization. The State of Texas will continue to have enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013 and 7003, which include, among others, authority to:

- Conduct inspections and require monitoring, tests, analyses, or reports;
- enforce RCRA requirements and suspend or revoke permits, and
- take enforcement actions after notice to and consultation with the State.

The action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which the State of Texas is requesting authorization are already effective under State law and are not changed by the act of authorization.

D. What happens if the EPA receives comments on this action?

If the EPA receives comments on this proposed action, we will address those comments in our final action. You may not have another opportunity to comment. If you wish to comment on this proposed authorization, you must do so at this time.

E. What has Texas previously been authorized?

The State of Texas initially received final authorization on December 26, 1984 (49 FR 48300), to implement its Base Hazardous Waste Management Program. This authorization was clarified in a notice published March 26, 1985 (50 FR 11858). Texas received authorization for revisions to its program, effective October 4, 1985 (51 FR 3952), February 17, 1987 (51 FR 45320), March 15, 1990 (55 FR 7318), July 23, 1990 (55 FR 21383), October 21, 1991 (56 FR 41626), December 4, 1992 (57 FR 45719), June 27, 1994 (59 FR 16987), June 27, 1994 (59 FR 17273), November 26, 1997 (62 FR 47947), December 3, 1997 (62 FR 49163), October 18, 1999 (64 FR 44836), November 15, 1999 (64 FR 49673), September 11, 2000 (65 FR 43246), June 14, 2005 (70 FR 34371), December 29, 2008, (73 FR 64252), and July 13, 2009 (74 FR 22469); March 7, 2011 (76 FR 12283), effective May 6, 2011; March 6, 2012 (77 FR 13200), effective May 7, 2012; November 30, 2012 (77 FR 71344), effective January 29, 2013; September 3, 2014 (79 FR 52220), effective November 3, 2014; October 21, 2015 (80 FR 63691), effective December 21, 2015; December 28, 2015 (80 FR 80672), effective February 26, 2016; and April 10, 2020 (85 FR 20187), effective April 10, 2020.

The EPA incorporated by reference Texas' then authorized hazardous waste program effective December 3, 1997 (62 FR 49163), November 15, 1999 (64 FR 49673), December 29, 2008 (73 FR 64252), May 6, 2011 (76 FR 12283), January 29, 2013 (77 FR 71344), February 26, 2016 (80 FR 80672), and April 10, 2020 (85 FR 20187).

In 1991, Texas Senate Bill 2 created the Texas Natural Resource Conservation Commission (TNRCC) which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. House Bill 2912, Article 18 of the 77th Texas Legislature, 2001, changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ) and directed the TNRCC to adopt a timetable for phasing in the change of the agency's name. The TNRCC decided to make the change of the agency's name to the TCEQ effective September 1, 2002. The change of name became effective September 1, 2002, and the legislative history of the name change is documented at (See, Act of June 15, 2001, 77th Leg. R. S., Ch 965, Section 18.01, 2001 Tex. Gen. Laws 1985). The

TCEQ may perform any act authorized by law either as the TNRCC or as the TCEQ. *Id.* Therefore, references to the TCEQ are references to TNRCC and to its successor, the TCEQ.

The TCEQ has primary responsibility for administration of laws and regulations concerning hazardous waste. The official State regulations may be found in Title 30, Texas Administrative Code, Chapters 305, 324 and 335, effective June 16, 2016. Some of the State rules incorporate the Federal regulations by reference. Texas Water Code Section 5.103 and Section 5.105 and Texas Health and Safety Code Section 361.017 and Section 361.024 confer on the Texas Commission on Environmental Quality the powers to perform any acts necessary and convenient to the exercise of its jurisdiction. The TCEQ is authorized to administer the RCRA program. However, the Railroad Commission (RRC) has jurisdiction over the discharge, storage, handling, transportation, reclamation, or disposal of waste materials (both hazardous and non-hazardous) that result from the activities associated with the exploration, development, or production of oil or gas or geothermal resources and other activities regulated by the RRC. A list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at Texas Health and Safety Code Section 401.415. Such wastes are termed ''oil and gas wastes.'' The TCEQ has responsibility to administer the RCRA program, however, hazardous waste generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer that waste under RCRA. The TCEQ jurisdiction over Solid waste can be found at Chapter 361, Sections 361.001 through 361.754 of the Texas Health and Safety Code. The TCEQ's jurisdiction encompasses hazardous and nonhazardous, industrial and municipal Solid waste. The definition of Solid waste can be found at Texas Health and Safety Code Section 361.003(34). When the RRC is authorized by EPA to administer the RCRA program for these wastes, jurisdiction over such hazardous waste will transfer from the TCEQ to the RRC. The EPA has designated the TCEQ as the lead agency to coordinate RCRA activities between the two agencies. The EPA is responsible for the regulation of any hazardous waste for which TCEQ has not been previously authorized.

Further clarification of the jurisdiction between the TCEQ and the RRC can be found in a separate document. This document, a Memorandum of Understanding (MOU), became effective on May 31, 1998.

The TCEQ has the rules necessary to implement EPA's portion of RCRA Cluster XXIII and RCRCA Cluster XXIV rule. The State is seeking authorization for Hazardous Electronic Manifest rule (Checklist 231) and Revisions to the Definition of Solid Waste, excluding provisions related to the vacatur of Factor 4 of the Legitimacy Test on Checklist 233B and also provisions related to the vacatur of the verified recycler exclusion on Checklist 233D2. The Commissioners adopted revisions to the Federal hazardous waste standards promulgated between February 7, 2014 and January 13, 2015. TCEQ regulations 30 Texas Administrative Code Chapter 335 were revised to include portions of the RCRA Cluster XXIII and RCRA Cluster XXIV. The TCEQ adopted the Federal regulations on June 10, 2016, effective June 16, 2016. The TCEQ authority to incorporate Federal rules by reference can be found at Texas Administrative Code 335 Sections 335.28, 335.29 and 335.31.

F. What changes is EPA proposing to authorize with today's action?

On December 5, 2017, the State of Texas submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. The State of Texas' program revision application includes revisions to the federal hazardous waste program, as well as, state-initiated changes to the state's previously authorized program. We have determined that the TCEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization, with the exception of the final rule addressed by Checklist 232 (Revisions to the Export Provisions of the Cathode Ray Tube Rule; June 26, 2014; 79 FR 36220). EPA cannot authorize the State for Checklist 232 because the State has not amended the date of its incorporation by reference to include the changes addressed by this final rule.

The EPA proposes to authorize, subject to receipt of written comments that oppose this action that the State of Texas hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization.

1. Program Revision Changes for Federal Rules

The TCEQ revisions consist of regulations which specifically govern Federal hazardous waste revisions promulgated February 7, 2014, (RCRA Cluster XXIII; Checklist 231) and January 13, 2015 (RCRA Cluster XXIV; Checklists 233A, 233B, 233C, 233D2 and 233E). Texas' adoption of the January 13, 2015 final rule (80 FR 1694; Revisions to the Definition of Solid Waste (DSW)), includes provisions that have been vacated by the United States Court of Appeals for the District of Columbia Circuit (*Am. Petroleum Inst.* v. *EPA,* 862 F.3d 50 (D.C. Cir. 2017) and *Am. Petroleum Inst.* v. *EPA*, No. 09–1038 (D.C. Cir. Mar. 6, 2018). The impact of the vacaturs on the Texas hazardous waste program is discussed in Section G of this document. We propose to authorize Texas for the following program changes in Table 1 below:

TABLE 1—PROGRAM REVISION CHANGES FOR FEDERAL RULES

Description of Federal requirement (include Checklist No., if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
1. Hazardous Waste Electronic Manifest Rule. (Checklist 231).	79 FR 7518–7563 February 7, 2014.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code Chapter 335 Sections 335.1(50)–(51), 335.1(101), 335.1(180); 335.10(a), 335.11(a), 335.12(a), as amended, effective June 16, 2016.
2. Revisions to the Definition of Solid Waste Changes affecting non-waste determinations and variances. (Checklist 233A).	80 FR 1694–1814 January 13, 2015.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code Chapter 335. Sections 335.19(c), 335.19(c)(1)–(5), 335.21, 335.21(4)–(6), 335.26, as amended, effective June 16, 2016.

TABLE 1—PROGRAM REVISION CHANGES FOR FEDERAL RULES—Continued

Description of Federal requirement (include Checklist No., if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
3. Revisions to the Definition of Solid Waste—Legitimacy-related provisions. (Checklist 233B).	80 FR 1694–1814 January 13, 2015.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code Chapter 335 Sections 335.1(33), 335.1(33)(A)–(D), 335.27 (except for the incorporation by reference of 260.43(a)(4)), 335.1(146)(C)(iii), 335.1(146)(C)(iv), and 335.1(146)(J) as amended, effective June 16, 2016.
4. Revisions to the Definition of Solid Waste—Speculative Accumulation. (Checklist 233C).	80 FR 1694–1814 January 13, 2015.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code Chapter 335 Section 335.17(a)(8) as amended, effective June 16, 2016.
5. Revisions to the Definition of Solid Waste—Exclusions and non-waste determinations. (Checklist 233D2).	80 FR 1694–1814 January 13, 2015.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code: Chapter 335, Sections 335.1(61), 335.1(61)(A)–(C), 335.1(71), 335.1(89), 335.1(92), 335.1(146)(A)(iv) (incorporation by reference of 40 CFR 261.4(a)(23) and (a)(27)), 335.1(146)(D)(iii)–(iv), 335.1(146)(D)(iv) Table 1, 335.1(161), 335.17(a)(4), 335.18 Heading, 335.18(a), 335.18(a)(2), 335.18(a)(4)–(5), 335.21 Heading, 335.21, 335.21(1)–(2), 335.32, 335.701, 335.702(a)(3), 335.703(a)(1)–(2), 335.703(b), 335.703(c)–(k), 335.704(a), 335.704(b), 335.704(b)(1)–(4), 335.704(c)–(e), 335.705, 335.705(a), 335.705(b), 335.705(b)(1)–(4), 335.705(c)–(d), 335.706; Chapter 37, Sections 37.11, 37.41, 37.51, 37.61, 37.61(a)(1)–(2), 37.61(1), 37.71(a)–(b), 37.131, 37.141, 37.151, 37.161, 37.161(a), 37.161(a)(1), 37.161(a)(2), 37.161(a)(2)(A)–(D), subchapter C, 37.201(a)–(e), 37.201(g)–(k), 37.211(a)–(b), 37.211(c), 37.211(d), 37.211(d)(1)–(3), 37.211(e)–(f), 37.211(g), 37.231(a)–(b), 37.231(c), 37.231(d)–(f), 37.231(h), 37.251(a)–(b), 37.251(b)(1), 37.251(b)(1)(A)–(D), 37.251(b)(2), 37.251(b)(2)(A)–(D), 37.251(c), 37.251(c)(1)–(3), 37.251(d)–(g), 37.261(a)–(d), 37.261(e)(2), 37.261(e)(3), 37.301(a)–(b), 37.311, 37.331, 37.351, 37.361, 37.402, 37.404(b), 37.404(b)(1)–(3), 37.411, 37.501, 37.501(a)–(d), 37.511, 37.511(a)–(d), 37.521, 37.521(a)–(e), 37.531(a)–(d), 37.541, 37.541(a), 37.541(b), 37.541(b)(1), 37.541(b)(1)(A)–(C), 37.541(b)(2), 37.541(b)(2)(A)–(D), 37.541(c), 37.541(d), 37.541(d)(1)–(3), 37.541(e)–(f), 37.541(h), 37.551(a)–(d), 37.551(f)–(h), 37.661, 37.601(a)–(b), 37.611, 37.621, 37.631, 37.641, 37.651, 37.671(a)–(b), as amended, effective June 16, 2016.
6. Revisions to the Definition of Solid Waste—Remanufacturing exclusion. (Checklist 233E).	80 FR 1694–1814 January 13, 2015.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code Chapter 335 Sections 335.1(134), 335.1(146)(D) Table, 335.1(146)(D)(iii)–(iv), 335.701, 335.702(a)(1)–(2), 335.702(a)(4)–(6), as amended, effective June 16, 2016.

2. State-Initiated Changes

In addition to adopting the federal program revisions in Section F.1, Texas has made amendments to its regulations that are not directly related to any of the federal rules addressed in Item F.1. Some of the state provisions have no direct federal analog but are related to particular paragraphs, sections, or parts of the federal hazardous waste regulations. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's regulations, as amended by these provisions, provide authority which remains equivalent to, and no less stringent than the Federal laws and regulations. The EPA has reviewed the state-initiated changes and have determined they satisfy the requirements of 40 CFR 271.21(a).

We are proposing to grant Texas final authorization to carry out the State's hazardous waste program, as amended by the state-initiated changes, in lieu of the Federal program. These provisions listed in Table 2 are analogous to the indicated RCRA regulations found at 40 CFR as of January 13, 2015. The Texas provisions are from the Texas Administrative Code (TAC), Title 30, amended to be effective December 31, 2016.

TABLE 2—STATE-INITIATED CHANGES

State citation—30 TAC (effective 12/31/16)	Reason for change	Analogous Federal citation—40 CFR
20.15	Conforming and clarifying changes, including paragraph restructuring, renumbering and correlated corrections to internal references.	260.20.
335.1 (Definitions)	Amended to include names for acronyms plus minor edits involving the use of quotation marks and capitalizations.	260.10 related.
335.4	Conforming change to correct State Agency name from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality.".	Part 264 related.

TABLE 2—STATE-INITIATED CHANGES—Continued

State citation—30 TAC (effective 12/31/16)	Reason for change	Analogous Federal citation—40 CFR
335.602(c)	Revised provision to correctly reference title of Chapter 37, Subchapter P instead of Chapter 335, Subchapter P.	Part 267, Subpart H related.

G. Where are the revised State rules different from the Federal rules?

1. Evaluation and Analysis on When State Regulations Are More Stringent or Broader in Scope Than the Federal Regulations

Under 40 CFR 271.1(i), EPA allows states to (1) adopt and enforce requirements which are more stringent or more extensive than those required by the federal RCRA program, and (2) operate a program with a greater scope of coverage than that required by the federal program. To determine whether particular state provisions are more stringent or broader in scope, EPA uses the December 23, 2014, guidance document: ''Determining Whether State Hazardous Waste Requirements are More Stringent (MS) or Broader in Scope (BIS) than the Federal RCRA Program.'' [1] In the guidance document, EPA uses a two-part test to determine if state regulations are MS or BIS. The two-part test requires that the following questions be answered sequentially:

a. Does imposition of the particular state requirement increase the size of the regulated community or universe of wastes beyond what is covered by the federal program through either directly enforceable requirements or certain conditions for exclusion?

b. Does the particular requirement under review have a counterpart in the federal regulatory program?

If the answer to the first part of the test is yes, then the state requirement is generally considered broader in scope. If the answer is no, then EPA uses the second part of the test to determine whether the state requirement is more stringent or broader in scope. If the state requirement has a counterpart in the federal program, the state requirement is classified as more stringent. However, if the state requirement does not have a counterpart, it is classified as broader in scope.

State provisions that are broader in scope are not part of the federally authorized program and thus, are not federally enforceable.

2. Texas Requirements That are Broader in Scope Than the Federal Program

TCEQ has adopted the Revisions to the Definition of Solid Waste (DSW) Rule published on January 13, 2015 (80 FR 1694). However, the Court of Appeals for the District of Columbia Circuit, *Am. Petroleum Inst.* v. *EPA,* 862 F.3d 50 (D.C. Cir. 2017) and *Am. Petroleum Inst.* v. *EPA,* 883F.3d 918 (D.C. Cir. 2018) vacated certain aspects of the 2015 federal DSW rule and replaced them with provisions from the 2008 DSW rule, see 73 FR 64668 (October 30, 2008). The Court (1) vacated the federal 2015 verified recycler exclusion for hazardous waste that is recycled off-site (except for certain provisions) (40 CFR 261.4(a)(24)) and the associated provisions at 40 CFR 260.30(f) and 260.31(d); (2) reinstated the transfer-based exclusion at 261.4(a)(24) and (25) from the 2008 rule to replace the now vacated 2015 verified recycler exclusion; (3) vacated Factor 4 of the 2015 definition of legitimate recycling in its entirety (40 CFR 260.43(a)(4)); and (4) reinstated the 2008 version of Factor 4 at 40 CFR 260.43(c)(2) to replace the now-vacated 2015 version of Factor 4.

In order to determine whether the State of Texas regulations are more stringent or broader in scope than the federal RCRA program, the EPA used the two-part test described in Section G.1. With respect to the first test, Texas regulates the same size of the regulated community and the same universe of hazardous secondary materials as the federal RCRA program. With respect to the second test, EPA has determined that the following State of Texas provisions from the 2015 federal DSW rule are broader in scope: Texas Administrative Code (TAC), Title 30, sections 335.18(a)(6) [260.30(f)], 335.19(d) [260.31(d)], 335.1(146)(A)(iv) incorporation by reference of 261.4(a)(24) with respect to the verified recycler exclusion and 335.27 incorporation by reference of 260.43(a)(4) with respect to Factor 4 definition of legitimate recycling.

Due to the vacatur of certain 2015 federal DSW provisions and the reinstatement of 2008 federal DSW provisions, EPA's regulations do not include the provisions that were vacated by the Court.[2] Texas has adopted these vacated provisions, including the vacated 2015 DSW Factor 4 in the definition of legitimate recycling of hazardous secondary material and the verified recycler exclusion.[3] As a result of the federal vacatur, the Texas provisions at 30 TAC sections 335.18(a)(6), 335.19(d), 335.1(146)(A)(iv) incorporation by reference of 261.4(a)(24), and 335.27 incorporation by reference of 40 CFR 260.43(a)(4) have no direct analogs in the federal regulations. Our December 23, 2014, guidance supports this conclusion. On page 6 of our December guidance, EPA provides that, ''. . . Further, if a state adopts a federal solid or hazardous waste exclusion, but adds additional conditions that must be met for the state exclusion to apply, those additional conditions would be considered outside the scope of the federal program and would not be part of the federally authorized program, although the entity would still be subject to federal enforcement regarding the part of the state regulations which track the federal conditions.'' Following the vacatur of portions of the federal rules, Texas' program effectively contains additional conditions that must be met for the exclusion to apply. This makes the State's additional provisions broader in scope and not part of the federally authorized program, see 40 CFR part 271.1(i)(2).

The TCEQ provisions that are broader in scope than the federal regulations are not part of the program being proposed to be authorized by today's proposed action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Texas law. For the purposes of RCRA section 3009, the Agency has determined that the broader in scope provisions are more protective/stricter, thus being within the State's authority to maintain them as part of the State's RCRA program. We make this determination due to the fact that the broader in scope provisions in Texas' verified recycler exclusion require

[1] A copy of this guidance is included in the docket of this proposed rule.

[2] EPA issued a final rule referred to as the Transfer Base Exclusion reflecting the Court's ruling, see 83 FR 24664 (May 30, 2018).

[3] The **Federal Register** citation for the ''2015 DSW rule'' is 80 FR 1694, January 13, 2015, and for the ''2008 DSW rule'' is 73 FR 64668, October 30, 2008.

additional conditions to be met in order to qualify for the exclusion when compared to the reinstated transfer-based exclusion found in 83 FR 24664 (May 30, 2018).

3. Texas Requirements That are More Stringent Than the Federal Program

Texas' regulations contain financial assurance requirements for the management of excluded hazardous secondary materials that are more stringent than are required by the RCRA program. The specific more stringent requirements are noted in the State's authorization Program Revision Application package and include, but are not limited to, the following:

a. Financial Mechanisms

(1) The TCEQ rules are more stringent than the federal rules to the extent that, unlike the federal program which allows the use of insurance under 40 CFR 261.143(d) and 261.151(d), in Texas, insurance may not be used for financial assurance for removal, decontamination, and corrective action as a condition of the exclusion for hazardous secondary material. As a result, 30 TAC sections 335.703(c) and 37.41 are also more stringent than 40 CFR 261.143(f) because insurance is not included among the financial assurance mechanisms that may be combined to satisfy financial assurance for removal, decontamination, and corrective action as a condition of an exclusion for hazardous secondary materials. However, at 30 TAC section 335.703(i)(1), the TCEQ did adopt the use of insurance endorsements as an acceptable financial assurance mechanism for an owner or operator of a reclamation facility or intermediate facility that is required to establish financial assurance for liability coverage, as found in 40 CFR 261.147.

(2) The TCEQ provisions regarding financial test for a corporate guarantee at 30 TAC section 335.703(d) and sections 37.251(b)(1)(B), (b)(1)(D), (b)(2)(B) and (b)(2)(D) are more stringent than the federal rules at 40 CFR 261.143(e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B) and (e)(1)(ii)(D) to the extent that a broader scope of financial obligations are required to be included in the eligibility determination for a financial test. The requirements of the eligibility determination in the federal rule compare the owner or operator's net working capital and tangible net worth to a sum of the current plugging and abandonment cost estimates multiplied by six. In contrast, the requirements of the eligibility determination in the TCEQ rule compare the owner or operator's net working capital and tangible net worth to a sum of the current plugging and abandonment cost estimates multiplied by six plus the cost of liability coverage plus any other financial obligations that exist under state and federal environmental laws and regulations.

(3) The TCEQ provisions at 30 TAC sections 335.703(d) and 37.251(c)(2) are more stringent than the federal provision at 261.143(e)(3)(ii) to the extent that the TCEQ rule requires an ''unqualified opinion'' of the owner or operator's financial auditor.

(4) The TCEQ provisions at 30 TAC sections 335.703(d) and 37.251(c)(3) are more stringent than the federal provision at 261.143(e)(3)(iii) to the extent that the TCEQ requires a special report from the owner or operator's independent CPA in every case, whereas, the federal rule requires a special report only under certain circumstances.

(5) The TCEQ provisions at 30 TAC sections 335.703(d) and 37.261(e)(2) are more stringent than the corresponding federal rule at 261.143(e)(10)(ii) to the extent that the TCEQ rule requires a guarantee to remain in force until the executive director approves alternative financial assurance, while the federal rule provides that a guarantee remains in place for 120 day from the date of receipt of cancellation.

b. Liability Requirements

(1) Texas has no analog to 40 CFR 261.147(c). The TCEQ rules are more stringent than the federal rules to the extent that the TCEQ did not adopt an opportunity for an owner or operator to request an adjustment in the level of financial responsibility required for liability coverage.

(2) The TCEQ rules at 30 TAC sections 335.703(i) and 37.541(d)(3) are more stringent than the corresponding federal provision at 40 CFR 261.147(f)(3)(iii) to the extent that the TCEQ rules require a special auditor's report in every instance, while the federal rules require a special auditor's report only if an audited financial statement or financial data filed with the SEC differs from the financial data in the letter from the Chief Financial Officer demonstrating how the owner or operator satisfies the financial test. Furthermore, the TCEQ rules go into more detail regarding a CPA's positive/negative verification.

(c) Acceptability of State Assumption of Responsibility: The TCEQ rule at 30 TAC section 335.703(k) is more stringent than 40 CFR 261.150(a) to the limited extent that an owner or operator is not considered to be in compliance until the executive director has made a determination of equivalency, while the federal rule considers an owner or operator to be in compliance while an equivalency determination is pending.

(d) Financial Instruments

(1) The TCEQ provisions at 30 TAC sections 335.703(e) and 37.351 are more stringent than the federal provision at 40 CFR 261.151(e) to the extent the Chief Financial Officer letter discusses and integrates the components of the financial test because, the TCEQ rules require a broader scope of financial obligations to be included in the eligibility determination for a financial test. Similarly, at 30 TAC sections 335.703(j) and 37.651 (analogous to 40 CFR 261.151(f)), Texas includes a similar requirement regarding the letter from the Chief Financial Officer for liability.

(2) The TCEQ provisions at 30 TAC sections 335.703(j) and 37.661 are more stringent than 261.151(f) and 261.151(g)(2). The TCEQ rule allows a firm whose parent corporation is also the parent corporation of the owner or operator to be a guarantor if it has a substantial business relationship with the owner or operator. However, the federal rules and the TCEQ rules require the amount of consideration received by the corporate guarantor from the owner or operator to be disclosed in different places. The federal rules require consideration to be discussed in the letter from the chief financial officer, while the TCEQ rules require the amount of consideration to be included as a provision of the corporate guarantee instrument.

H. Who handles permits after the authorization takes effect?

The State of Texas will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will not issue any more new permits or new portions of permits for the provisions listed in Table 1 in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Texas is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C. 1151) in Texas?

Texas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

J. What is codification and is the EPA codifying Texas' hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR parts 272. We reserve the amendment of 40 CFR parts 272, subpart SS for this authorization of Texas' program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

K. Corrections to the August 18, 1999 (64 FR 44836) Authorization Federal Register Document for Texas

In the **ADDRESSES** section of the August 18, 1999 authorization notice, the reference to ''the State of Louisiana'' is corrected to read ''the State of Texas.'' In addition, the State's address referencing Louisiana Department of Environmental Quality is corrected to read ''Texas Commission on Environmental Quality, (TCEQ), 12100 Park S Circle, Austin, Texas 78753–3087, (512) 239–6079.''

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State Authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action proposes to authorize State requirements for the purpose of RCRA 3006, and imposes no additional requirements beyond those imposed by State law. Because this proposed rule is not subject to Executive Order 12866, this proposed rule is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017), entitled Reducing Regulations and Controlling Regulatory Costs. Accordingly, this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposed to authorize preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' ' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application; to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule proposed to authorize pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Parts 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 26, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–24242 Filed 11–4–20; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: The Legal Services Corporation (LSC) is proposing to amend its rule establishing timekeeping requirements for LSC funding recipients.

DATES: Comments must be received by February 3, 2021.

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

- *Federal Rulemaking Portal:* Follow the instructions for submitting comments.
- *Email: lscrulemaking@lsc.gov.* Include ''Part 1635 Rulemaking'' in the subject line of the message.
- *Fax:* (202) 337–6519.
- *Mail:* Stefanie K. Davis, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW,

Washington, DC 20007, ATTN: Part 1635 Rulemaking.

• *Hand Delivery/Courier:* Stefanie K. Davis, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1635 Rulemaking.

Instructions: LSC prefers electronic submissions via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1563 (phone), (202) 337–6519 (fax), or *sdavis@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, LSC initiated rulemaking to require recipient employees to keep records of time spent working on LSC-funded activities. 60 FR 48956, Sep. 21, 1995. LSC took this step to ''improve accountability of recipients for their Corporation funds, and in response to concerns expressed during Congressional hearings.'' *Id.* LSC wanted to assure that recipients maintained adequate documentation to support allocation of costs to the LSC grant. *Id.* at 48957. Consequently, LSC intended the rule ''to require all recipients to account for the time spent on all cases, matters and other activities by their *attorneys and paralegals,* whether funded by [LSC] or other sources.'' *Id.* (emphasis added). LSC did not define either *attorney* or *paralegal,* although LSC did define the terms *cases* and *matters.*[1] *Id.* LSC did not prescribe either the format or the content of the required timekeeping reports. *Id.*

After receiving public comment, LSC adopted the proposed rule as final, with limited changes. 61 FR 14261, Apr. 1, 1996. In the preamble to the final rule, LSC stated that the rule applied to recipient attorneys and paralegals regardless of whether their salaries were paid using LSC funds. *Id.* Applying the rule to all attorneys and paralegals, LSC explained, reflected language that Congress included in a version of the fiscal year 1996 appropriations act that it passed, but the President vetoed. *Id.* LSC retained the requirement because it anticipated that Congress and the President would agree on legislation containing a similar requirement for fiscal year 1996, which they did. Sec. 504(a)(10), Public Law 104–134, 110 Stat. 1321, 1321–54 (1996) (stating that LSC could not award appropriated funds to any person or entity unless ''such person or entity agrees to maintain records of time spent on each case or matter with respect to which the person or entity is engaged.'').

In the preamble to the final rule, LSC explained how it expected recipients to implement the requirement to maintain ''contemporaneous'' time records. LSC stated that ''contemporaneous'' meant ''in most cases, by the end of the day.'' 61 FR at 14262.

LSC initiated its first revision of part 1635 in 1998. That year, the Office of Inspector General (OIG) conducted an audit of recipients' compliance with specific regulations, including part 1635, and issued a report that formed the basis for Management's recommended changes. In the report, OIG stated its finding that, based on records maintained in compliance with part 1635, it could not tell whether part-time employees of an LSC funding recipient engaged in restricted work during LSC-funded time. 63 FR 56594, Oct. 22, 1998.

In response to OIG's findings, LSC proposed two changes. The first was to require recipients to ensure that the time records for both full- and part-time employees were consistent with their payroll time and attendance records. In other words, ''the time spent by an employee must at least add up to the amount reflected in the attendance records.'' *Id.* at 56595. LSC also proposed to require full-time and part-time attorneys and paralegals to record, for each case, matter, or supporting activity that they handled, the date and exact time of day they worked on that activity. *Id.* Alternatively, LSC proposed that part-time attorneys and paralegals could certify that they did not engage in restricted activities during the time they were working for the recipient. *Id.*

LSC did not finalize its revisions to part 1635 until 2000. At that time, LSC adopted the rule with two changes relevant here. 65 FR 41879, Jul. 7, 2000. First, LSC removed the proposed text requiring attorney and paralegal time records to be consistent with their payroll time and attendance records. *Id.* at 41880. Several commenters on the proposed rule expressed concern that a rule requiring employee time records to match the payroll records would put recipients at risk of violating the Fair Labor Standards Act. *Id.* Although LSC did not agree with the commenter raising the concern, LSC removed the language because it believed the language was not necessary. *Id.* Second, LSC adopted the certification requirement for part-time attorneys and paralegals. *Id.* Put differently, part-time attorneys and paralegals do not have to report the date and exact time of day that they worked on cases, matter, or supporting activities, but must certify that they did not work on restricted activities during the hours they worked for a recipient.

Management believes that regulatory action is justified at this time for three reasons. First, the lack of a definition for the term *paralegal* creates a lack of uniformity across recipients regarding which employees must keep time. In other words, some recipients employ staff who are called paralegals, but who do only administrative work, while others employ staff who perform substantive legal work under an attorney's supervision or who have satisfied their state's requirements for holding oneself out as a paralegal, but who may not have the title of paralegal. Because the regulation does not define the term *paralegal,* it is unclear whether some or all recipient employees described in the preceding sentence must keep time consistent with part 1635. Consequently, LSC cannot be certain that part 1635 covers all recipient employees who are doing substantive work on the LSC grant, which appears to be what LSC intended when it originally drafted the rule to cover attorneys and paralegals. LSC proposes to remedy this problem by revising the language to include all employee staff, regardless of qualification or title, who are doing substantive work on identifiable awards. Conversely, employee staff who are not doing substantive work on identifiable awards need not record their time under part 1635.

Second, the federal government rules governing recipient timekeeping have changed significantly, as have best practices for nonprofit timekeeping. LSC believes it is reasonable to reconsider the requirements of part 1635 in light of these advances and determine whether to revise the rule to reflect the new standards. Finally, LSC proposes to remove any provisions of the rule that are obsolete.

LSC added rulemaking on part 1635 to its annual rulemaking agenda in April 2016. On January 30, 2020, the Operations and Regulations Committee (''Committee'') of the Board voted to recommend that the Board authorize rulemaking on part 1635. The Board

[1] LSC's regulations at part 1600 define terms used throughout the regulations. 45 CFR part 1600. These terms govern unless LSC defined the term differently in a part. For purposes of this discussion, the Part 1600 definition of the term *attorney* (''a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered'') applies. *Id.* § 1600.1. There is no part 1600 definition for the term *paralegal.*

voted to authorize rulemaking on January 31, 2020. On October 19, 2020, the Committee voted to recommend that the Board approve publication of an NPRM in the **Federal Register** with a 60-day public comment period. On October 20, 2020, the Board accepted the Committee's recommendation and voted to approve publication of the NPRM.

Materials regarding this rulemaking are available in the open rulemaking section of LSC's website at *http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking.*

II. Section-by-Section Discussion of Proposed Changes

Section 1635.1 What is the purpose of this section?

LSC proposes to make technical edits to this section for clarity.

Section 1635.2 Definitions

LSC proposes to revise the definition of the term *case* in paragraph (a) to be more consistent with the definition of the same term in the Case Service Report Handbook (CSR Handbook). In the CSR Handbook, LSC defined a *case* as ''the provision of LSC-permissible legal assistance to an eligible client with a legal problem, or a set of closely related legal problems, accepted for assistance in accordance with the requirements of the LSC Act, appropriations acts, regulations, and other applicable law.'' *See* Legal Services Corporation, Case Service Reporting Handbook, at 2 (2017). LSC is now proposing to revise the first sentence of the definition in part 1635 to read ''*Case* means a form of program service in which a recipient employee provides legal assistance to one or more specific clients[. . .]''

LSC proposes to introduce a new definition for the term *case oversight* in paragraph (b) of this section. The new definition is necessary to ensure that supervisors accurately report the time they spend examining attorneys' and paralegals' case files for regulatory compliance, CSR compliance, and quality of legal assistance provided.

LSC proposes to relocate the definitions in existing paragraphs (b) through (d) of this section to paragraphs (c) through (e) in the revised rule with only minor technical edits.

Section 1635.3 Who is covered by the timekeeping requirement?

LSC proposes to create a new section dedicated to explaining which recipient employees must report time consistent with the requirements of this section. LSC proposes to replace the language limiting the application to part 1635 to recipient employees and paralegals with language extending part 1635 to any recipient employee whose salary is allocated, in whole or in part, to any of the recipient's funding sources as a direct cost.

As noted earlier in this preamble, LSC has determined that the current rule's use of the term *paralegal,* without a definition, makes it difficult to ensure that all recipient employees who do substantive work on the recipient's awards accounts for the time they spend on cases, matters, and supporting activities. Additionally, since LSC last revised part 1635 in 2000, states have explored novel structures that would permit nonlawyers, as well as paralegals, to practice law in a limited fashion. For example, in 2013, the Washington State Bar Association initiated the Limited License Legal Technician (LLLT) program, through which individuals could become licensed to provide litigants with a limited range of legal services in family law. Similarly, the Arizona Supreme Court recently adopted changes to the state rules governing the practice of law that will allow legal paraprofessionals to provide legal services in family law, limited criminal cases where no jail time is involved, limited civil cases, and administrative cases where permitted by the agency. As more states expand access to justice by authorizing nonlawyers to provide services traditionally limited to licensed attorneys, LSC anticipates that legal services providers will hire these paraprofessionals to assist their clients.

The purpose of part 1635 is to establish the standards for reporting time that any employee of an LSC funding recipient who provides legal assistance to clients must follow. LSC believes that removing the current language limiting the timekeeping requirement to attorneys and an undefined group of paralegals and instead tying the requirement to employees whose salaries are charged to awards as direct costs is necessary to ensure that the recipient's funds are spent in compliance with LSC's governing statutes and regulations. In other words, if a recipient employee handles cases and the recipient allocates the costs associated with those cases to the LSC grant as direct costs, then that employee must keep time consistent with part 1635, regardless of their title.

LSC cross-references the standards for allocating costs as direct costs contained in 45 CFR 1630.5(d) as the basis for determining which recipient employees must keep time under this section. In that section, LSC describes direct costs as including ''salaries and wages of recipient staff who are working on cases or matters that are identified with specific grants or contracts[.]'' 45 CFR 1630.5(d). This connection means that a recipient employee who enters time worked on a case into the case management system with a code that designates the case as an LSC-funded case must comply with the timekeeping requirements contained in part 1635. If adopted, this proposed change would mean that a recipient employee who does not handle cases as part of their regular duties but who accepts a case or steps into a case on an emergency basis would have to keep time consistent with part 1635 for the periods in which that employee's salary is being allocated to an award as a direct cost.

Example 1: A recipient's executive director does not handle cases at all and does not participate in the recipient's legal information activities. The executive director's duties are purely administrative, and the costs associated with their salary are allocated across all the recipient's funding sources as indirect costs. Because none of the costs associated with the executive director's salary are allocated to the LSC grant as direct costs, the executive director does not need to keep time consistent with this part.

Example 2: A recipient's board has adopted a policy that management staff who are licensed attorneys will maintain a small caseload in addition to their administrative responsibilities. Costs associated with handling individual cases must be allocated to one of the recipient's grants as direct costs. Consequently, each manager must comply with this part when recording their time.

Example 3: A recipient's executive director does not handle cases on a regular basis. The executive director's salary is allocated across all the recipient's funding sources as an indirect cost. On the day of a court hearing, however, a recipient attorney could not attend due to a family emergency. The executive director represented the attorney's client at the hearing. For that pay period, the executive director must keep their time consistent with part 1635.

Section 1635.4 What are LSC's timekeeping standards?

LSC proposes to replace existing section 1635.3 with a new section 1635.4 that adopts documentation requirements for personal compensation from the Uniform Guidance. Section 200.430(i) of the Uniform Guidance requires that ''[c]harges to Federal awards for salaries and wages [ ] be based on records that accurately reflect the work performed.'' 2 CFR 200.430(i). LSC concurs with this policy and proposes to incorporate the requirements contained in § 200.430(i) in significant part.

LSC specifically seeks comment on the question of when employees covered by part 1635 must record their time in a recipient's timekeeping system. Current section 1635.3(b)(1) states that ''[t]ime records must be created contemporaneously[.]'' 45 CFR 1635.3(b)(1). LSC established this requirement in the 1996 final rule for part 1635. 61 FR 14261, 14262, Apr. 1, 1996. LSC intended that ''in most cases, records should be created no later than the end of the day.'' *Id.* Recipients and LSC staff alike have identified two problems with this language. The first is that it is not always possible for attorneys and paralegals currently subject to part 1635 to enter their time by the end of the day for multiple reasons, including lack of remote access to the case management system. The second is that the rule is not clear on what type of time records must be created by the end of the day—personal timekeeping records or the entry of official time into the recipient's timekeeping system.

LSC proposes to address the second issue by introducing language in this section stating that the rule applies to the entry of time into the recipient's timekeeping system. LSC believes entry of time into the recipient's official system is the appropriate activity to cover in this rule rather than employees' individual timekeeping practices. However, LSC has not concluded what the appropriate time frame for entering time should be. LSC has considered several time periods in which employees covered by part 1635 should enter their time into the recipient's official system, including by the end of the business day; within 48 hours of the completion of a business day; within two business days of the completion of a business day; within one week of the completion of a business day; or by the end of the pay period. *LSC requests public comment on this question.*

Paragraph (a) establishes the following requirements for recipients' timekeeping records:

- Records are supported by a system of internal controls that provide reasonable assurance that charges to the recipient's awards are accurate, allowable, and properly allocated;
- Records are incorporated into the recipient's official records;
- Records reflect the total activity for which the recipient compensates the employee;
- Records encompass both LSC-funded and all other activities compensated by the recipient on an integrated basis, but may include the use of subsidiary records if permitted by the recipient's written policies;
- Records comply with the recipient's established accounting policies and procedures;
- Records support the allocation of employees' salary or wages across specific activities or cost objectives if the employees work on more than one award or charge their salaries to one or more awards as direct costs; and
- Records must contain specific information for cases and matters that will allow recipients and LSC to connect cases and matters handled by recipient employees to the awards that they will be charged to.

LSC believes it is appropriate to incorporate the documentation standards applicable to Federal awards for two reasons. First, many of LSC's also receive Federal funding and must comply with the same requirements under the Uniform Guidance. LSC does not see a reason to create different documentation standards except insofar as LSC needs to obtain specific information on cases, matters, and supporting activities handled to ensure compliance with LSC's governing statutes and regulations. Second, LSC believes that allowing recipients to develop their own internal policies for recording and maintaining time records, rather than continuing to dictate how recipients keep time, will improve the quality and accuracy of recipient timekeeping records and the level of compliance with part 1635.

Paragraphs (b) and (c) are taken verbatim from the Uniform Guidance. Paragraph (b) requires recipients to maintain records for employees who are not exempt from Fair Labor Standards Act overtime requirements stating the total number of hours worked each day. Paragraph (c) requires recipients to use the same documentation and standards to justify counting salaries and wages of staff working on the LSC grant toward the cost matching requirements of any Federal awards that they use to charge the salaries to the LSC grant. This requirement ensures that recipients maintain consistency across funding sources when documenting time charged by employees to those sources.

LSC proposes to move current section 1635.3(b)(1) to paragraph (d) of this section with revisions. Existing section 1635.3(b)(1) requires recipient attorneys and paralegals to document their time ''in increments not greater than one-quarter of an hour.'' LSC proposes to allow recipients to establish the increments for which employees subject to part 1635 report their time, recommending that the increment be no greater than one-quarter of an hour. The primary reason for proposing this change is that LSC recognizes that the same reporting increment may not work for all its recipients. In 2018, the last year for which numbers are available, LSC funding represented between less than 20% of some recipients' total funding and more than 80% of other recipients' total funding. *See* Lim, L., Layton, J., Abdelhadi, S., Bernstein, D., Ahmed, R. 2018. *LSC by the Numbers: The Data Underlying Legal Aid Programs (2018).* Legal Services Corporation, Washington, DC. Overall, LSC funding represented 34% of total funding for civil legal aid, with the remainder coming from sources such as state and local appropriations, court fees, Interest on Lawyers' Trust Accounts (IOLTA) income, and other awards from federal, state, and local governments and private foundations. *Id.* LSC is sensitive to its role as a minority funder for many of its recipients and, accordingly, is attempting to balance its need for effective oversight measures with the demands that recipients' other funders may place on them as a condition of receiving funds.

Recipients also vary in the number of funding sources they have, which further decreases the practicality of requiring all recipients to use the same time increment for timekeeping. In other words, while it may be reasonable for a recipient who has only two or three funding sources to require its employees to report their time in 15-minute increments, it may be more practical for a recipient whose staff are funded by a larger number of sources to keep time in smaller increments. When a recipient has only a small number of funding sources, it may be appropriate for the recipient to use a larger increment of time for reporting, including up to as long as half an hour or an hour. LSC recommends that to maximize the accuracy of reporting, recipients use increments no larger than 15 minutes. Although LSC does not propose imposing a maximum increment, LSC may consider adopting such a requirement after receiving public comments on this proposed rule.

LSC proposes to relocate existing section 1635.3(d), the certification requirement for part-time employees, to paragraph (e) of this section with revisions. LSC initially created this section to require paralegals and attorneys who work part-time for recipients and part-time for organizations that engage in restricted activities to certify on a quarterly basis that they neither conduct restricted activities on recipient time nor use recipient resources to carry out such activities. LSC proposes to rewrite this paragraph for clarity and to eliminate the existing language regarding *de minimis* activities.

In current section 1635.3(d), part-time attorneys and paralegals do not need to certify when they have engaged in ''*de minimis* action related to a restricted activity.'' 45 CFR 1635.3(d). The paragraph states that ''[a]ctions consistent with the *de minimis* standard are those that meet all or most of the following criteria: Actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable.'' *Id.* A review of the preamble to the 2000 final rule for part 1635 indicates that LSC intended to exclude from the certification requirement activities that appear to be part of regular intake or reception duties. LSC's examples of *de minimis* activity included answering the phone, establishing another non-LSC program time to discuss restricted activity, and opening and screening mail. Examples of activity that went beyond the *de minimis* standard included researching and preparing legal documents, meeting with or providing advice to the client, and conferring with third parties on behalf of the client.

65 FR 41879, 41881, July 7, 2000. While LSC believes that the certification requirement continues to be a necessary element of ensuring recipient compliance with the restrictions imposed by LSC's governing statutes, it does not believe the language regarding *de minimis* activities is needed. The removal of this language does not reflect a relaxation of the rule; it is merely an administrative action intended to simplify the rule. Part-time employees remain prohibited from actively engaging in restricted activities during times they are compensated by the recipient and using recipient resources to engage in restricted activities and must continue to certify on a quarterly basis that they have done neither.

Section 1635.5 What are LSC's standards for ensuring the proper allocation of employee compensation costs across awards?

Through conducting onsite and remote oversight activities, LSC has experienced challenges in verifying that salary costs allocated to the LSC grant actually supported activities that were properly chargeable to the LSC grant. For that reason, LSC proposes to create a new section requiring recipients to have a method for ensuring the accuracy of timekeeping records and proper allocation of salaries and wages charged to awards as direct costs. In paragraph (a), LSC proposes to require recipients to choose one method of cross-checking payroll records against timekeeping records: Linking their payroll system to their case management or manually reconciling the records on a regular basis. In paragraph (b), LSC proposes to require recipients, regardless of which method of comparing records they choose under paragraph (a), to reconcile their payroll and timekeeping records at least once a year and prior to making final entries into their accounting records. By taking this approach in the rule, LSC intends to allow recipients flexibility in how they reconcile the records supporting employee compensation costs while still requiring them to affirmatively compare the records before finalizing the accounting records for the relevant award year.

Section 1635.6 Who outside the recipient has access to these records?

LSC proposes to make only stylistic changes to changes to this section.

Finally, LSC seeks specific comment on the burdens the proposed changes to this rule may place on recipients' resources. LSC approached this rulemaking with the intention of simplifying the timekeeping requirement and decreasing recipients' burden of compliance. LSC would appreciate comments about the measurable impact on employee time and any financial expenditures that complying with the rule as proposed would require.

List of Subjects in 45 CFR Part 1635

Grant program—law, Legal services, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Legal Services Corporation proposes to revise 45 CFR part 1635 as follows:

PART 1635—TIMEKEEPING REQUIREMENT

Sec.

Authority: 42 U.S.C. 2996g(e).

§ 1635.1 What is the purpose of this part?

This part is intended to improve recipient accountability for the use of all funds by:

(a) Assuring that allocations of direct costs to a recipient's LSC grant pursuant to 45 CFR part 1630 are supported by accurate records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the recipient's ability to determine the cost of specific functions; and

(c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) *Case* means a form of program service in which a recipient employee provides legal assistance to one or more specific clients, including but not limited to providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services, and transactional assistance.

(b) *Case oversight* means a supervisor's review of a case for regulatory compliance, consistency with Case Service Report reporting rules, and quality control purposes. Case oversight activities include, but are not limited to, review of file for retainer, citizenship attestation or documentation of eligible non-citizen status, and documentation of financial eligibility determination; review of closing codes; and review of advice provided or pleadings filed.

(c) *Matter* means an action that contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, supervision of program services, preparing and disseminating desk manuals, PAI recruitment, referral, intake when no case is undertaken, and tracking substantive law developments.

(d) *Restricted activities* means those activities that recipients may not engage in pursuant to 45 CFR part 1610.

(e) *Supporting activity* means any action that is not a case or matter.

§ 1635.3 Who is covered by the timekeeping requirement?

Any recipient employee whose compensation is charged to one or more awards as a direct cost (as defined in 45 CFR 1630.5(d)) must keep time according to the standards set forth in § 1635.4.

§ 1635.4 What are LSC's timekeeping standards?

(a) *Standards for Documentation of Personnel Expenses.* Recipients must base allocations of salaries and wages on records that accurately reflect the work performed. These records must:

(1) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(2) Be incorporated into the recipient's official records;

(3) Reflect the total activity for which the recipient compensates the employee;

(4) Encompass both LSC-funded and all other activities compensated by the recipient on an integrated basis, but may include the use of subsidiary records as defined in the recipient's written policies;

(5) Comply with the recipient's established accounting policies and practices;

(6) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one award or an indirect cost activity and a direct cost activity; and

(7) Contain. (i) For cases, a unique client name or case number, the amount of time spent on the case, a description of the activities performed, and the dates on which a recipient employee worked on the case;

(ii) For matters or supporting activities, the amount of time and type of activity on which a recipient employee spent time and sufficient information to link the activity to a specific award. For example, if a recipient employee conducts a legal information session on filing a pro se divorce petition, the employee could record ''pro se divorce group information session, 1.5 hours, LSC grant.''

(b) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(c) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(d) Recipients may establish the increments of time for which employees must record their activities (*e.g.,* .25 hours, one-sixth of an hour). LSC recommends that recipients require employees to record their time in increments no greater than one quarter of an hour.

(e) *Certification requirement for part-time employees.* (1) Any recipient employee subject to this part who works part-time for the recipient and part-time for an organization that engages in restricted activities shall certify in writing that the employee has not engaged in restricted activity during any time for which the employee was compensated by the recipient or has not used recipient resources to carry out restricted activities.

(2) Employees shall make the required certification on a quarterly basis using a form determined by LSC.

§ 1635.5 What are LSC's standards for ensuring the accuracy of timekeeping records and proper allocation of employee compensation costs across awards?

(a) A recipient must do one of the following:

(1) Link its payroll records to its case management system; or

(2) For each employee described in 1635.3, reconcile the time reported in payroll records with the time recorded in the timekeeping records. Recipients must conduct this manual reconciliation on a regular basis required by their established accounting policies and practices.

(b) Recipients must reconcile their payroll and timekeeping records at least once a year before final entries are entered into the accounting system.

§ 1635.6 Who outside the recipient has access to these records?

Recipients must make time records required by this section available for examination by auditors and representatives of LSC, and by any other person or entity statutorily entitled to access to such records. LSC shall not disclose any time record except to a Federal, State, or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

Dated: October 22, 2020.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2020–23811 Filed 11–4–20; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20–343; FCC 20–145; FRS 17191]

FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in Upcoming 2021 Filing Window

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed action.

SUMMARY: The Commission recently adopted changes to its rules and procedures for considering competing applications for new noncommercial educational (NCE) FM radio stations in *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations,* MB Docket No. 19–3, Report and Order. In this document, the Commission announces that it is directing the Media Bureau (Bureau) to open a filing window for NCE FM new station applications for the FM reserved band (channels 201–220). The Bureau will issue a future Public Notice to announce the specific dates of the 2021 window. The Commission also seeks comment on a proposal establishing a ten-application limit in the upcoming 2021 filing window.

DATES: Comments are due on or before November 20, 2020, and reply comments are due or before November 30, 2020.

ADDRESSES: You may submit comments, identified by MB Docket No. 20–343, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Federal Communications Commission's ECFS website: *http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020).
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

People with Disabilities: 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), 1–888–835–5322 (tty).

FOR FURTHER INFORMATION CONTACT: For additional information, contact Amy Van de Kerckhove, *Amy.Vandekerckhove@fcc.gov;* James Bradshaw, *James.Bradshaw@fcc.gov;* or Lisa Scanlan, *Lisa.Scanlan@fcc.gov,* of the Media Bureau, Audio Division, (202) 418–2700. Direct press inquiries to Janice Wise, *Janice.Wise@fcc.gov,* (202) 418–8165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Public Notice, FCC-20-145, released October 19, 2020. The full text of this document is available for public inspection and can be downloaded at *https://docs.fcc.gov/public/attachments/FCC-20-145A1.docx* or by using the search function for MB Docket No. 20–343 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

I. Background

1. In the initial rulemaking proceeding on comparative standards for NCE applicants, the Commission reserved the right to establish by public notice a limit on the number of NCE applications filed by a party in a filing window. In 2007, before the window opened, the Commission sought comment on an application cap and subsequently established a limit of ten NCE FM new station applications filed by any party during the October 2007 filing window. This application limit helped restrict the number of mutually exclusive applications (including ''daisy chains'' of mutually exclusive applications), and thereby minimized the delay caused by processing complicated application chains. The ten application cap allowed the Commission to expeditiously process and grant thousands of applications to a wide range of local and diverse applicants, therefore promoting the rapid expansion of new NCE FM service throughout the country.

II. Discussion

2. Given the success of the October 2007 window, we tentatively conclude that we should establish a ten-application limit in the upcoming NCE FM filing window. We believe this limit would deter speculative filings, permit the expeditious processing of the applications filed in the window, and provide interested parties with a meaningful opportunity to file for and obtain new NCE FM station licenses. In contrast, we tentatively conclude that the failure to establish a limit on the number of new NCE FM applications that a party may file in the window could lead to a large number of speculative filings, creating the potential for extraordinary procedural delays.

3. We acknowledge that the Commission previously stated in 2000 that the point system criteria and window filing procedures should be sufficient to ''ameliorate the filing of large numbers of mutually exclusive applications by speculative, barely qualified, applicants'' and that it would consider an application limit ''[i]f the number of mutually exclusive applications received under the new [point] system exceeds our expectations.'' However, after the 2003 FM translator window, in which the Commission received over 13,000 applications, many filed by speculative filers, the Commission and NCE FM applicants were concerned that failure to establish an application cap *before* the 2007 window could lead to similar mass speculative filings and procedural delays.

4. Consistent with the Commission's predictions in connection with establishing an application cap before opening the October 2007 window, we expect there will be a large volume of NCE FM applications filed in the forthcoming window that will require establishing an application cap before the window opens. There are several factors that could contribute to a large volume of NCE FM applications in this window: (a) There is no application filing fee; (b) there are no ownership limits in the reserved band; (c) there has not been a filing window for new NCE FM applications for over ten years; and (d) the Commission recently simplified and clarified its rules and procedures for filing applications for new NCE applications and considering competing applications. Accordingly, we tentatively conclude that establishing an application limit before the window opens will provide certainty to potential applicants and allow for expeditious processing of applications. We seek comment on this approach.

5. Accordingly, we tentatively conclude that a ten-application cap is a reasonable limit to prevent mass filings by speculators and to permit the efficient and expeditious processing of window-filed applications while at the same time supporting the goals of localism and diversity reflected in the NCE FM point system. As such, we propose the following limit:

An applicant may file no more than a total of ten applications in the 2021 NCE FM filing window. Furthermore, a party to an application filed in the 2021 NCE FM filing window may hold attributable interests in no more than a total of ten applications filed in the window. If it is determined that any party to an application has an attributable interest in more than ten applications, the Bureau will retain the ten applications that were filed first—based on the date of application receipt—and dismiss all other applications.

6. We seek comment on this proposed limit. We specifically seek comment on whether ten applications is the appropriate limit to enable the efficient processing of applications and initiation of new NCE FM service, whether a different number would be more appropriate, or whether we should establish no limit at all. In particular, we note that our goal is to give interested parties the opportunity to apply for local and regional NCE FM outlets, subject to the apparent need for an application cap for the reasons described above.

III. Procedural Matters

7. *Statement of Legal Authority.* The Commission's legal authority for limiting the number of applications a party may file during a broadcast filing window is found in 47 U.S.C. 151, 152(a), 154(i) and (j), 301, 303(g) and (r), 308(b), and 309(j).

8. *Filing Requirements*—Comments may be filed using the Commission's Electronic Comment Filing System

(ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Pleadings sent via email to the Commission will be considered informal and will not be part of the official record. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.

9. *Ex Parte Restrictions.* The proceeding in this Public Notice shall be treated as a ''permit but disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

10. *Initial Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, we have prepared an Initial Regulatory Flexibility Analysis (IRFA), which is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing procedures and deadlines for comments on the proposed application limit, and should have a separate and distinct heading designating them as responses to the IRFA.

11. The Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Public Notice,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the **Federal Register**.

12. *Paperwork Reduction Act.* This document contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). The Commission has OMB approval to collect these applications under OMB Control Number 3060–0029.

IV. Initial Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the potential application limit considered in *FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in Upcoming 2021 Window,* FCC 20–145 (Public Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Public Notice and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Limit

14. The Commission has determined that, absent a limit on the number of applications that a party may file in the filing window described in the Public Notice, some parties may file a large number of speculative applications, including applications proposing stations in communities to which the applicant has no apparent connection and applications that are mutually exclusive with each other. Accordingly, the Commission has tentatively determined that a limit of ten applications for new NCE FM construction permits in the filing window is an appropriate procedural safeguard to deter speculation and permit the expeditious processing of the NCE FM applications filed in the window. The Commission believes that the proposed limit will benefit small entities, as defined below.

B. Legal Basis

15. The Public Notice is released pursuant to sections 1, 2(a), 4(i) and (j), 301, 303(g) and (r), 308(b), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i) and (j), 301, 303(g) and (r), 308(b), and 309(j).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Procedures Will Apply

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

17. *NCE FM Radio Stations.* The proposed application limit will apply to potential licensees of the NCE FM radio service. This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard. In addition, the Commission has estimated the number of NCE FM radio stations to be 4,197. Because NCE licensees must be non-profit, we will presume that all are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. We anticipate that none of the changes adopted as a result of the Public Notice would result in an increase to the reporting and recordkeeping requirements of broadcast stations or applicants for NCE FM authorizations. As noted above, we invite small business entities to comment in response to the Public Notice.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (c) the use of performance, rather than design, standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

20. We are directed under law to describe any alternatives we consider, including alternatives not explicitly listed above. The Public Notice describes and seeks comment on a proposed limit on the number of new NCE FM applications that may be filed during the filing window described in the Public Notice. The proposed limit is intended to benefit all small NCE entities seeking to establish a new NCE FM service on a local or regional basis by preventing mass filings of speculative applications. The proposed limit should benefit applicants by expediting the review and processing of applications filed during the window. The proposed limit does not impose any significant compliance or reporting requirements because it would merely set a limit on the number of applications for new NCE FM authorizations that a party could file during the window. Accordingly, we are not aware of any alternatives that would benefit small entities. We encourage small entities to comment on the proposed limit described in the Public Notice.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Limit

21. None.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.503 is amended by adding paragraph (g) to read as follows:

§ 73.503 Licensing requirements and service.

* * * * *

(g) *Application Limit.* An applicant may file no more than a total of ten applications in the 2021 NCE FM filing window. A party to an application filed in the 2021 NCE FM filing window may hold attributable interests, as defined in § 73.7000, in no more than a total of ten applications filed in the window. If it is determined that any party to an application has an attributable interest in more than ten applications, the Media Bureau will retain the ten applications that were filed first—based on the date of application receipt—and dismiss all other applications.

[FR Doc. 2020–24366 Filed 11–4–20; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

48 CFR Part 9904

Conformance of the Cost Accounting Standards to Generally Accepted Accounting Principles for Operating Revenue and Lease Accounting

AGENCY: Cost Accounting Standards Board, Office Federal Procurement Policy, Office of Management and Budget.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (Board), is publishing this document to announce the availability of an advance notice of proposed rulemaking to address the potential conformance of the Cost Accounting Standards (CAS) to Generally Accepted Accounting Principles (GAAP) for operating revenue and lease accounting. This ANPRM follows the issuance of a Staff Discussion Paper (SDP) published on March 13, 2019.

DATES: Comments must be in writing and must be received by January 4, 2021.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments should be submitted to *CASB@omb.eop.gov.* Be sure to include your name, title, organization, and reference case CASB2020–02. If you must submit by regular mail, please do so at Office of Federal Procurement Policy, 725 17th Street NW, Washington, DC 20503, ATTN: Mathew Blum.

Please note that all public comments received are subject to the Freedom of Information Act and will be posted in their entirety, including any personal and/or business confidential information provided. Do not include any information you would not like to be made publically available.

FOR FURTHER INFORMATION CONTACT: Mathew Blum, Cost Accounting Standards Board (Telephone 202–680–9579; email *mblum@omb.eop.gov*).

Availability: The full text of the ANPRM, including the Board's response to public comments on the SDP and the draft proposed amendments to the Cost Accounting Standards, is available on the Office of Management and Budget homepage at: *https://www.whitehouse.gov/omb/management/office-federal-procurement-policy/#_Office_of_Federal_5.*

SUPPLEMENTARY INFORMATION:

I. Regulatory Process

Rules, regulations and standards issued by the Board are codified at 48 CFR Chapter 99. Pursuant to 41 U.S.C. 1502(c), the Board, prior to the establishment of any new or revised CAS, is required to complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed standard.
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

II. Background and Summary

The Board is releasing an ANPRM addressing how CAS might be modified to conform to the changes to GAAP that occurred after a related CAS was promulgated. In accordance with 41 U.S.C. 1502(c), the Board is required to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed standard prior to the promulgation of any new or revised CAS.

On March 13, 2019 (84 FR 9143), the Board published a SDP to solicit information and viewpoints on how to implement the Board's statutory requirement to review and conform CAS to GAAP to the maximum extent practicable. Among other things, the SDP asked commenters what recommended actions, if any, the Board should take regarding the changes in GAAP for operating revenue and lease accounting rules that occurred after CAS was promulgated. Three respondents urged the Board to give these issues the highest priority in the CAS–GAAP conformance initiative. They were concerned that if recent changes in GAAP are inconsistent with CAS, there may be inadvertent CAS violations, confusion over CAS requirements, inconsistent treatment among contractors, and additional costs to maintain separate accounting practices for GAAP and CAS.

The Board appreciates these comments and recognizes the need to take timely action to resolve the potential confusion on the interpretation of CAS as a result of changes in GAAP addressing operating revenue and lease accounting rules. Accordingly, this ANPRM requests public comment on proposed revisions that are being considered to (i) align CAS with GAAP on the handling of operating revenue and (ii) clarify CAS definitions to make clear that GAAP changes on lease accounting are not recognized for CAS purposes.

III. Public Comments

Interested persons are invited to provide input on the ANPRM. All comments must be in writing and submitted as instructed in the **ADDRESSES** section.

In commenting on the ANPRM, the Board encourages respondents, and especially entities that are covered by CAS, to discuss what, if any, burdens they believe would be added or reduced if the ANPRM was finalized as described below. Specifically, the Board seeks to understand what, if any, burden is created or reduced for contractors by relying solely on the GAAP definition of operating revenue and deleting the more detailed CAS definition. Similarly, the Board welcomes feedback regarding any burden that is expected to be created or reduced for contractors by making clear that property formerly classified as operating leases and reclassified as right-of-use assets should be excluded from treatment as intangible capital assets and tangible capital assets for CAS.

IV. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this draft proposed rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

V. Executive Orders 12866 and 13563 and the Regulatory Flexibility Act

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Because the affected contractors and subcontractors are those who are already subject to CAS and the draft proposed rule would seek to rely more heavily on GAAP, which these contractors are using in their commercial transactions, the economic impact of this draft proposed rule on contractors and subcontractors is expected to be minor. Accordingly, this is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

Michael E. Wooten,

Administrator for Federal Procurement Policy, and Chair, Cost Accounting Standards Board.

[FR Doc. 2020–22904 Filed 11–4–20; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 201029–0281; RTID 0648–XX064]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2021 Bluefish Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2021 Atlantic bluefish fishery, as recommended by the Mid-Atlantic Fishery Management Council. This action is necessary to comply with the implementing regulations of the Bluefish Fishery Management Plan that require NMFS to publish specifications for the fishery after providing the opportunity for public comment. The proposed specifications are intended to establish allowable harvest levels for the stock that will prevent overfishing, consistent with the most recent scientific information. This action also informs the public of the proposed fishery specifications and provides an opportunity for comment.

DATES: Comments must be received by November 20, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0129, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2020-0129,*
2. Click the ''Comment Now!'' icon, complete the required fields, and
3. Enter or attach your comments.

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 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). If you are unable to submit your comment through *www.regulations.gov,* contact Cynthia Ferrio, Fishery Policy Analyst, *Cynthia.Ferrio@noaa.gov.*

Copies of the Supplemental Information Report (SIR) prepared for this action and other supporting documents for the proposed specifications are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage the Atlantic Bluefish Fishery Management Plan (FMP). The FMP requires the specification of the acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quota, recreational harvest limit, and other management measures, for up to three years at a time. This action proposes bluefish specifications for the 2021 fishing year.

The August 2019 bluefish operational assessment concluded that the Atlantic bluefish stock is overfished but not subject to overfishing. The most recent data update (2020) showed increases in both commercial and recreational catch in 2019 from 2018, but no change in the stock status determinations from the 2019 assessment. Based on this best available scientific information, the Council's Scientific and Statistical Committee (SSC) found no compelling reason to change the overfishing limit, ABC, or subsequent catch limits and targets for the 2021 bluefish fishery. Therefore, the SSC recommended a status quo ABC of 7,385 metric tons (16.28 million pounds). The Council's Bluefish Monitoring Committee also made status quo recommendations for 2021 at its meeting on July 28, 2020, as projected in the revised 2020–2021 specifications final rule (85 FR 38794; June 29, 2020), consistent with the SSC.

The Bluefish FMP has a prescriptive process for deriving specifications from the ABC. First, the ACL is set equal to the ABC. Then, the ACL is allocated 17 percent to the commercial ACT, and 83 percent to the recreational ACT. Applicable discards are subtracted from each sector's ACT to calculate the sector's total allowable landings (TAL). Commercial discards are assumed to be negligible and recreational discards are projected using a terminal year estimate derived from Marine Recreational Information Program (MRIP) data. If the recreational fishery is not projected to land its harvest limit, then recreational sector quota may be transferred to the commercial sector resulting in a commercial quota of up to 10.5 million pounds (4,763 metric tons). The final commercial quota is then allocated to coastal states from Maine to Florida based on percent shares specified in the FMP.

The Council and the Commission's Bluefish Management Board approved catch specifications for fishing year 2021 at a joint meeting in August 2020, based on the data update and recommendations from the SSC and Monitoring Committee. The Council and Board recommended status quo specifications for the 2021 bluefish fishery using the most recent catch and discard data to calculate the final harvest limits. This recommendation uses the complete and final 2019 estimates for recreational catch and discards, which increase the recreational discard estimates from what were originally projected for 2021 and subsequently decreases the recreational TAL and harvest limit. The recreational sector is still projected to fully achieve this recreational harvest limit with the updated estimates, so no sector transfer to the commercial fishery is permitted. The Council and Board did not recommend changes to any other regulations in place for bluefish; therefore, all other fishery management measures will remain unchanged for the 2021 fishing year unless changed through a separate rulemaking.

Proposed Specifications

This action proposes the Council's recommendations for 2021 bluefish catch specifications, which are consistent with the SSC's recommendations. A comparison of the current 2020 and the proposed 2021 specifications is summarized below in Table 1.

TABLE 1—SUMMARY OF CURRENT 2020 AND PROPOSED 2021 BLUEFISH SPECIFICATIONS *

	Current 2020 specifications		Proposed 2021 specifications	
	million lb	metric tons	million lb	metric tons
Overfishing Limit	32.97	14,955	37.98	17,228
ABC = ACL	16.28	7,385	16.28	7,385
Commercial ACT	2.77	1,255	2.77	1,255
Recreational ACT	13.51	6,130	13.51	6,130
Commercial Discards	0	0	0	0
Recreational Discards	4.03	1,829	5.17	2,343
Commercial TAL	2.77	1,255	2.77	1,255
Recreational TAL	9.48	4,301	8.34	3,785
Sector Transfer	0.00	0	0.00	0
Commercial Quota	2.77	1,255	2.77	1,255
Recreational Harvest Limit	9.48	4,301	8.34	3,785

* Specifications are derived from the ABC in metric tons (mt). When values are converted to millions of pounds the numbers may slightly shift due to rounding. The conversion factor used is 1 mt = 2204.6226 pounds.

These proposed specifications are largely status quo compared to the current 2020 catch limits, with only slight changes to the recreational TAL and recreational harvest limit to account for the increase in recreational discards. The Council and Board did not recommend any changes to the recreational management measures in these specifications, but may do so through a separate action at the joint meeting in December 2020. Therefore, this proposed action does not change the existing recreational daily bag limits of three fish per person for private anglers and five fish per person for for-hire (charter/party) vessels. All other Federal management measures, including commercial management measures, and recreational season (open all year) and minimum fish size (none), will also remain unchanged.

Table 2 provides the proposed commercial state allocations based on the Council-recommended coastwide commercial quota for 2021. No state exceeded its allocated quota in 2019, nor is projected to do so in 2020; therefore, no accountability measures for the commercial fishery are required for the 2021 fishing year.

TABLE 2—PROPOSED 2021 BLUEFISH STATE COMMERCIAL QUOTA ALLOCATIONS

State	Percent share	Proposed quota (lb)	Proposed quota (kg)
Maine	0.67	18,503	8,391
New Hampshire	0.41	11,473	5,203
Massachusetts	6.72	185,904	84,310
Rhode Island	6.81	188,434	85,458
Connecticut	1.27	35,049	15,895
New York	10.39	287,438	130,357
New Jersey	14.82	410,082	185,978
Delaware	1.88	51,985	23,576
Maryland	3.00	83,084	37,680
Virginia	11.88	328,800	149,116
North Carolina	32.06	887,377	402,438
South Carolina	0.04	974	442
Georgia	0.01	263	119
Florida	10.06	278,432	126,273
Total	100.00	2,767,793	1,255,235

The Council is developing a rebuilding plan for the bluefish stock that will be implemented by the end of November 2021. This rebuilding plan will inform development of the next set of specifications for fishing year 2022.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from review under Executive Order 12866.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. There are no proposed regulatory changes in this bluefish action, so none are considered in the evaluation. The proposed 2021 specifications will maintain the existing 2020 bluefish catch limits and management measures with only minor adjustments to the final recreational TAL and recreational harvest limit.

According to the Northeast Fisheries Science Center commercial ownership database, 735 affiliate firms landed bluefish commercially during 2016–2018. Of those commercial fishing operations, 728 are categorized as small businesses and 7 as large businesses. For the recreational for-hire fishery, 389 for-hire affiliate firms generated revenues from recreational fishing for various species during 2016–2018. All of those business affiliates are categorized as small businesses, but it is not possible to derive the proportion of overall revenues for these for-hire firms resulting from fishing activities for an individual species, such as bluefish.

The Council-recommended specifications for 2021 are expected to provide similar fishing opportunities when compared to the previous year, because they are largely status quo. As such, revenue changes are not expected in 2021 as a result of the proposed action. Overall, analyses indicate that the proposed specifications will not substantially change: Fishing effort, the risk of overfishing, prices/revenues, or fishery behavior. Additionally, this action will not have a significant impact on small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

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

Dated: October 29, 2020.

Samuel D. Rauch III,

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

[FR Doc. 2020–24364 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 215
Thursday, November 5, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 2, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 7, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products.

OMB Control Number: 0583–0092.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statues mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

Need and Use of the Information: FSIS will collect information to ensure that meat, poultry, and egg products are accurately labeled. To control the manufacture of marking devices bearing official marks, FSIS requires that official meat and poultry establishments and the manufacturers of such marking devices submit FSIS form 5200-, Authorization Certificate, FSIS form 7234–1, Application for Approval of Labels, Marking or Device, and FSIS Form 8822–4 Request for Label Reconsideration. If the information is not collected it would reduce the effectiveness of the meat, poultry, and egg products inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6,418.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 128,267.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–24584 Filed 11–4–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0091]

Decision To Revise Import Requirements for the Importation of Fresh Citrus From South Africa Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to revise the import requirements for citrus (grapefruit, lemon, mandarin orange, sweet orange, tangelo, and Satsuma mandarin) fruit from South Africa into the United States. Based on the findings of a commodity import evaluation document (CIED), which we made available to the public for review and comment through a previous notice, we are removing restrictions on the ports of entry into which such citrus may be imported. This action will allow these citrus species to be imported into more ports in the United States without presenting a risk of introduction or dissemination of plant pests or noxious weeds.

DATES: The articles covered by this notification may be authorized for importation under the revised requirements after November 5, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Roman, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, IRM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2242; *Juan.A.Roman@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spreading within the United States.

Section 319.56–4 of the regulations provides the requirements for authorizing the importation of fruits and vegetables into the United States, and it revises existing requirements for the importation of fruits and vegetables.

Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized importation into the United States, as well as their importation requirements, are listed on the internet in APHIS' Fruits and Vegetables Import Requirements database, or FAVIR (*https://epermits.aphis.usda.gov/manual*).

It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment.

Citrus (grapefruit, lemon, mandarin orange, sweet orange, tangelo, and Satsuma mandarin) fruit from South Africa are currently listed in FAVIR as commodities authorized importation into the United States, subject to certain phytosanitary measures.

One of these phytosanitary measures requires citrus to be cold treated according to treatment schedule T107–e. This treatment schedule is listed in the Plant Protection and Quarantine (PPQ) Treatment Manual as an effective mitigation for *Thaumatotibia leucotreta* (false codling moth, or FCM).[1]

We implemented the current treatment schedule for FCM on South African citrus in 2013 on a provisional basis, provided that the citrus was only imported into the ports of Newark, NJ, Philadelphia, PA, and Wilmington, DE. We included these port restrictions because the national plant protection organization (NPPO) of South Africa requested T107–e as a less stringent alternative to the treatment schedule at the time, T107–k, and because the ports in question had cold treatment facilities should the revised treatment schedule have proven to be ineffective.

In 2014, we also added Houston, TX, as an authorized port. These port restrictions were also currently found in FAVIR.

Over the following 2 years, we conducted enhanced inspections for FCM on citrus from South Africa at the four authorized ports. During that time, South Africa imported more than 2,000 shipments of citrus into the United States with no detections of live FCM.

Based on these results, the NPPO of South Africa asked that we remove the port restrictions and authorize the importation of citrus from South Africa into all ports of entry within the United States.

In response to this request, we prepared a commodity import evaluation document (CIED) that recommends removing the port restrictions. Based on the recommendations of the CIED we published a notice[2] in the **Federal Register** on April 1, 2020 (85 FR 18185–18186, Docket No. APHIS–2018–0091), announcing the availability of our CIED for public review and comment and proposing to remove these port restrictions.

We solicited comments on the CIED for 60 days, ending June 1, 2020. We received 19 comments by that date. They were from domestic citrus producers, other domestic producers, importers, wholesalers, a representative for South African citrus producers, port authorities, organizations representing citrus production in the States of Georgia and Florida, and the Georgia and Florida Departments of Agriculture. Of the 19 comments, 12 opposed the notice, 6 were supportive, and 1 took a neutral position.

Most comments favoring expanded port-of-entry importation were based on the following considerations: Cold treatment effectively kills pests, making infestation risk low; expanding ports of entry beyond present importation would get cold-treated South African citrus to U.S. customers near other ports faster, fresher; this change would also curb land freight traffic, congestion, and emissions, and address driver shortages; cargo economic activity and jobs would increase in other ports; shipping and distribution supply chains would increase efficiencies; and increased competition and service levels would benefit consumers.

Commenters against removing restricted ports of entry to South African citrus raised concerns and/or requested specific changes in mitigation measures regarding the importation of citrus from South Africa. We address first the issues commenters raised under topic headings that characterize the issues. We then address commenters' specific requested changes to the pest mitigation measures for the importation of citrus fruit from South Africa.

Comments Regarding the Scope of the Pilot Project

Four commenters objected to APHIS using a pilot project limited to four ports of entry over 2 years as a basis for allowing importation now to all other U.S. ports. The commenters said this expansion, which they believed was based on limited and inadequate inspection results, increases cold treatment failure risk exponentially for multiple pests.

We understand the commenters' concerns but disagree that the pilot project was not sufficiently robust. The volume of South African citrus that entered the United States during the pilot period, 119,128 metric tons in 2,116 shipments, is not a small shipment volume. Indeed, because the total volume of South Africa citrus shipments is not expected to increase significantly as a result of the removal of port restrictions, the pilot project likely evaluated a similar volume of citrus to that which is expected to be imported into the United States as a result of this notice. Moreover, the commenters provided no scientific evidence to support concerns that South African citrus entry to multiple ports or reducing the cold treatment from 24 to 22 days increases cold treatment failure risk.

Finally, the commenters failed to take into consideration that the other existing conditions for importation of citrus fruit from South Africa would remain. Other existing requirements that will remain unchanged as a result of this notice include surveillance and monitoring at South African production sites for quarantine pests, inspection in South Africa of shipments intended for export to the United States and issuance of a phytosanitary certificate by the NPPO of South Africa or APHIS preclearance inspection in South Africa, and inspection at all U.S. ports of entry.

Comments Regarding Possible Introduction of Other Moth Species

Four commenters expressed concerns that other moth species could also follow the pathway on the importation of citrus from South Africa and have no known traps, no lures for surveillance, and no post-harvest treatments to mitigate shipping risks. They also said some traps for these moths are not available in the United States and stated that the pests feed on or inside fruit while on the tree.

The commenters failed to take into consideration the lengthy history of safe importation of citrus from South Africa. In 1997, APHIS established the current regulatory framework for the importation of citrus from South Africa, apart from the port restrictions mentioned earlier in this document (62 FR 593–597, Docket No. 95–098–3). In the past 23 years of citrus importation from South Africa into the United States

[1] To view the manual, go to *https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

[2] To view the notice, the CIED, a description of the economic considerations associated with removing port restrictions, and the comments we received, go to *https://www.regulations.gov/docket?D=APHIS-2018-0091.*

(well before the 2-year pilot project), APHIS has not intercepted any moth species in commercial shipments of South African citrus other than FCM. As with the previous commenters, these commenters also failed to consider other requirements for the importation of citrus from South Africa that would remain unchanged as a result of this notice and that have a mitigative effect on the likelihood of other quarantine species of moth being introduced into the United States. These include place-of-production monitoring and surveillance for quarantine pests, issuance of a phytosanitary certificate by the NPPO of South Africa or APHIS preclearance inspection, and the cold treatment itself.

Comments Regarding FCM Detections in South African Citrus at European Union Ports

One commenter stated that European Union (EU) ports intercepted FCM 12 times and other pests and diseases 5 times in South African citrus shipments in 2019, and that these detections came after the 2-year U.S. pilot project.

The EU does not require South African citrus to be cold-treated for FCM. The disease that the EU intercepted was citrus black spot (CBS). While the EU takes action against CBS interceptions, APHIS has determined that fresh fruit is not an epidemiologically significant pathway for the introduction and establishment of CBS.

Comments Regarding Other Fruit Fly Risks

Five commenters cited fruit fly risks as of even greater concern than FCM in expanded South African citrus port access. Commenters were concerned that the Natal fruit fly *(Ceratitis rosa)* showed less susceptibility to cold treatment, that both the Natal fruit fly and Marula fruit fly *(Ceratitis cosyra)* had been detected in South African citrus crops and intercepted in shipments destined for Europe, and that an Oriental fruit fly *(Bactrocera dorsalis*) outbreak had occurred in South Africa at the time APHIS prepared its CIED. Commenters from Florida also stated that the Oriental fruit fly necessitated Florida's two largest eradication efforts (2015, 2018).

As indicated in the PPQ Treatment Manual, schedule T107-e mitigates risks that Natal and Oriental fruit flies pose. Marula fruit fly is admittedly not mitigated by this treatment schedule. However, while a major pest of mangoes, it does not attack citrus (except for sour orange), according to the *Crop Pest Compendium* (CABI, 2020). Sour orange is not a citrus variety authorized importation into the United States from South Africa.

Moreover, the Oriental fruit fly is not widespread in South Africa, and it is only present in the Northeastern region of that nation, which is outside of areas where South Africa grows citrus for export.

Finally, no live fruit flies have ever been intercepted in the past 23 years of commercial citrus shipments from South Africa to the United States. This is indicative of the efficacy of the mitigation structure for citrus fruit from South Africa.

Comments Regarding Mite Risk With Expanded Citrus Imports

Three commenters raised concerns that mite and disease introduction and transmission could become even greater than FCM with South African citrus port restrictions lifted. The commenters stated that oriental red mite and mite-vectored citrus leprosis virus, both found in South Africa and detected in 17 orchards in 2018, could spread rapidly on introduction to Florida. They noted both can survive cold treatment and that they exploit calices and stems in shipment. The commenters stated that they believe sieves for mite washes that inspectors use at ports of entry are the wrong sizes to detect immature mite species.

Oriental red mite (*Eutetranychus orientalis*) is indeed present in South Africa. However, port restrictions based on the use of cold treatment schedule T107-e are not the mitigation APHIS employs for Oriental red mite. Instead, we require washing, brushing, and waxing of fruit at the packinghouse processing stage of production. Consignments that are not washed, brushed, and waxed in such a manner are not considered commercial consignments. This remains part of the systems approach for South African citrus imports to the United States. These measures are efficacious in removing Oriental red mite from the pathway prior to shipment throughout all the pests' life stages. Finally, Oriental red mite does not vector citrus leprosis virus.

Two other mite species, *Brevipalpus californicus* and *B. phoenicis,* are present in South Africa and have been reported as vectors of citrus leprosis virus. However, only *B. phoenicis* has been proven to be a vector. Moreover, as with *E. orientalis,* cold treatment is not used as a mitigation for the mites. The primary mitigation for these two species of mites on citrus is packinghouse processing with washing, brushing, and waxing, which are efficacious at removing all life stages of the mites from citrus.

Finally, no mites have ever been intercepted in commercial shipments of South African citrus, and citrus fruit itself is not an epidemiologically significant pathway for the transmission of citrus leprosis virus, in the absence of mite vectors.

Comments Regarding Surveillance for and Eradication of Fruit Flies

Six commenters maintained that the fruit fly species found in South Africa are polyphagous and attack nearly all dooryard fruits and some vegetables. The commenters stated that South African fruit fly species do not respond to any lures used domestically in the States of Florida or California.

These commenters' concerns pertain to perceived difficulties in surveillance, control, and eradication in the event fruit fly species ever were to be introduced into the United States through the importation of citrus from South Africa. However, live fruit flies have never been detected in South African commercial citrus shipments at U.S. ports of entry under the current regulatory framework, which, as noted above, was in place in 1997. The absence of detections of live fruit flies at ports of entry over a 23-year period is a reliable indicator of the efficacy of the current systems approach.

APHIS also respectfully disagrees with the commenters' characterization of traps and lures for the species in question. All of the fruit fly species in South Africa respond to lures commonly used by APHIS and the State departments of agriculture. The Mediterranean fruit fly and Natal fruit fly respond to tri-medlure, and the Oriental fruit fly responds to methyl eugenol-based lures.[3] As noted earlier in this document, Marula fruit fly does not attack commercial citrus apart from sour orange (CABI, 2020). However, it can be trapped with standard protein baits in multi-lure traps commonly used in Florida and California.

Comments Regarding Perceived Pest Identification Weaknesses

One commenter stated that U.S. port-of-entry identification technology is poor and that species identification of most intercepted larvae is not known.

We disagree. In recent years, APHIS has invested significant resources in molecular diagnostic technology, which allows APHIS to identify almost any interception in commercial fruit

[3] See IAEA *Trapping Manual for Area-Wide Fruit Fly Programmes, http://www-naweb.iaea.org/nafa/ipc/public/FruitFlyTrapping.pdf.*

commodities to the species level. In instances in which this is not possible, and only a genus level identification can occur, if one of the species in the genus is of quarantine significance, the shipment is nonetheless refused entry and must be treated, re-exported, or destroyed.

Comments Regarding Cold Treatment Efficacy

Six commenters stated that cold treatment is not an inerrant mitigation measure for moths, fruit flies, mites, and viruses. As evidence of the limitations of cold treatment, they stated that Mediterranean fruit flies or larvae have been found in cold-treated Moroccan and Peruvian fruit imports.

These commenters erroneously assumed that cold treatment was the only mitigation we were proposing for South African citrus fruit. This is not the case. As discussed previously in this document, there are many mitigations in place, including surveillance and monitoring at places of production; washing, brushing, and waxing of fruit during packinghouse processing; phytosanitary inspection by the NPPO of South Africa or APHIS preclearance inspection; and port-of-entry inspection in the United States.

The detection of fruit flies on clementines from Morocco was determined to be the result of failure to pre-cool the fruit adequately prior to applying cold treatment. We also determined that this pre-cooling failure was, in turn, due to uniquely inhospitable climatic conditions in the area of Morocco surrounding the pre-cooling facility, a desert where daytime temperatures during the summer months routinely exceed 90 °F. We addressed this failure by revising the operational workplan that Morocco had entered into with APHIS to specify additional pre-cooling and temperature reading procedures at pre-cooling facilities.

The fruit fly larvae intercepted on citrus from Peru were moribund based on the morphological characteristics of the larvae found. As a precaution, APHIS rejected the shipment, investigated the interception, and sent warning letters to the exporting country. This is not indicative of a larger failure in APHIS' cold treatment procedures that would be applicable to the importation of citrus fruit from South Africa.

Comments Regarding Perceived Inspection Deficiencies

Two commenters stated that external inspection and fruit cutting for detection at ports of entry are unreliable measures for screening fruit fly larvae; mites, they stated, also readily escape detection during inspection. Growers also said that they have little confidence inspection at a greatly expanded number of ports will prevent pest introduction.

External inspection and fruit cutting procedures at ports of entry are based on sampling algorithms intended to detect a 2 percent or greater infestation rate in the shipment with 95 percent confidence. This longstanding inspection protocol, when coupled with other pest-specific provisions of a systems approach, is very reliable in detecting quarantine pests on imported shipments of fruits and vegetables.

Mites, as noted previously in this document, are removed from the pathway by the required packinghouse procedures of washing, brushing, and waxing the citrus fruit prior to export.

Comments Regarding Consistency With the APHIS Mission and Strategic Plan

One commenter stated that multiple pests that show resistance to cold treatment could evade mitigation measures and inspection and harm U.S. fruit and vegetable production in temperate climate States. The commenter opined that this contradicts both APHIS' mission to safeguard domestic agriculture from exotic pests and diseases and its Strategic Plan to protect the health and value of U.S. agriculture, natural, and other resources.

The commenter is correct that some of the quarantine pests of citrus that exist in South Africa are not mitigated by cold treatment; however, we did not say they were. As noted previously in this document, APHIS employs multiple mitigation measures to address the plant pest risk associated with the importation of citrus from South Africa.

We disagree that this is inconsistent with APHIS' mission under its statutory authorities. Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), restrictions or prohibitions that APHIS places on the importation of a fruit or vegetable must have the intent of preventing the introduction or dissemination of a plant pest or noxious weed within the United States, which the requirements for the importation of citrus from South Africa do. Moreover, as noted previously, the only quarantine pests intercepted on citrus from South Africa at ports of entry within the United States have been the two detections of FCM, both of which occurred more than 15 years ago. For this reason, we also consider the requirements to be consistent with APHIS' stated goals in our Strategic Plan.

Comments Requesting Changes to the Mitigation Structure for the Importation of Citrus Fruit From South Africa

Restrict Ports of Entry

Eight commenters asked that APHIS limit South African citrus importation to northern climate ports of entry, and/or those ports above the 39th parallel and away from the southeast commodity-growing region.

Additionally, one of these commenters asked that port of entry restrictions especially exclude ports where pest introductions threaten tomato production, specifically Florida, Georgia, and South Carolina ports of entry. Another commenter asked exclusion of ports affecting peach production in Georgia, especially excluding the Port of Savannah, and a third asked exclusion of the citrus imports from Florida ports of entry.

For the reasons already stated in initial notice of this action, the CIED, and this final notice, APHIS does not consider these additional mitigations to be warranted. As noted previously, there are already in place multiple, other requirements for the importation of citrus from South Africa into the United States, and APHIS has no indication that these other requirements are ineffective.

Existing conditions for South African citrus imports at all ports of entry will remain unchanged as a result of this notice. These include surveillance and monitoring at South African production sites for quarantine pests, inspection in South Africa of shipments intended for export to the United States, issuance of a phytosanitary certificate by the NPPO of South Africa or APHIS preclearance inspection in South Africa, and inspection at all U.S. ports of entry.

Couple Cold Treatment With Additional Requirements

Three commenters asked that cold treatment be employed to eliminate pests with ''multiple'' (unspecified) additional mitigation methods.

As noted previously, additional mitigations are currently in place and will remain unchanged as a result of this notice, which merely lifts one of these mitigations, that is port restrictions.

Make Technological Improvements and Stronger Knowledge Base Prerequisites

Three commenters asked for more effective technology that identifies fruit fly larvae and species in infested fruit, also better knowledge of introduction pressure from South African imported fruits and vegetables, before expanded port permissions are granted, especially citrus importation to Florida ports of entry.

This request is unwarranted since South African citrus has been imported into the United States with almost no interceptions, and no detections of fruit fly larvae in 23 years. Moreover, as noted previously in this document, diagnostic technologies the commenters requested already exist and are being deployed. Molecular technology already allows APHIS to identify almost any fruit fly larval interception in commercial fruit commodities. Finally, APHIS' preclearance personnel are stationed in South Africa and routinely monitor pest populations and pest pressures.

Adjust Sieve Size for Mite Wash Detection

One commenter suggested that inspection at U.S. ports of entry must adjust the size of sieves for mite washes to detect immature mite species before South African citrus importation is allowed to expand to all U.S. ports of entry.

As noted above, washing, brushing, and waxing of citrus fruit at packinghouses is demonstrated to remove mites from the pathway on the importation of citrus to the United States. Accordingly, additional inspection tools for mites at ports of entry are not warranted.

Comments Regarding Economic Cost Considerations

We received multiple comments on the economic effects assessment (EEA) that accompanied the initial notice. We address these in a revised EEA that accompanies this document (See footnote 2).

Therefore, in accordance with § 319.56–4(c)(4)(ii) of the regulations, we are announcing our decision to remove restrictions on the ports of entry into which South African citrus (grapefruit, lemon, mandarin orange, sweet orange, tangelo, and Satsuma mandarin) fruit may be imported into the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in this notice are covered under the Office of Management and Budget (OMB) control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 30th day of October 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–24402 Filed 11–4–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–65–2020]

Foreign-Trade Zone (FTZ) 168—Dallas/Fort Worth, Texas; Notification of Proposed Production Activity; Gulfstream Aerospace Corporation (Disassembly of Aircraft); Dallas, Texas

The Metroplex International Trade Development Corporation, grantee of FTZ 168, submitted a notification of proposed production activity to the FTZ Board on behalf of Gulfstream Aerospace Corporation (Gulfstream), located in Dallas, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on October 29, 2020.

Gulfstream already has authority to produce and disassemble passenger jet aircraft within Subzone 168E. The current request would add finished products to the scope of authority related to the disassembly of aircraft. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Gulfstream from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components in the existing scope of authority, Gulfstream would be able to choose the duty rates during customs entry procedures that apply to: Pressure vessels; cartridge squibs; and, underwater locator beacons (duty rate ranges from duty-free to 2.9%). Gulfstream would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 15, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov.*

Dated: November 2, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–24569 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2020]

Foreign-Trade Zone (FTZ) 106—Oklahoma City, Oklahoma; Notification of Proposed Production Activity; Miraclon Corporation (Flexographic/Aluminum Printing Plates and Direct Imaging/Thermo Imaging Layer Film), Weatherford, Oklahoma

Miraclon Corporation (Miraclon) submitted a notification of proposed production activity to the FTZ Board for its facility in Weatherford, Oklahoma. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on October 27, 2020.

Miraclon already has authority to produce flexographic printing plates, aluminum printing plates, direct imaging film, and thermo imaging layer film within Subzone 106F (originally approved as Eastman Kodak Company). The current request would add a foreign-status material to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Miraclon from customs duty payments on the foreign-status material used in export production. On its domestic sales, for the foreign-status material noted, Miraclon would be able to choose the duty rate during customs entry procedures that apply to flexographic printing plates, aluminum printing plates, direct imaging film, and thermo imaging layer film (duty-free to 3.7%). Miraclon would be able to avoid duty on foreign-status material which becomes scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material sourced from abroad is polyethylene terephthalate (PET) film (duty rate, 3.7%). The request indicates that PET film is subject to antidumping/countervailing duty (AD/CVD) orders and investigations if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that PET film is subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 15, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: November 2, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–24570 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–196–2020]

Foreign-Trade Zone 44—Mt. Olive, New Jersey; Application for Subzone; MANE USA; Wayne and Parsippany, New Jersey

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the State of New Jersey Department of State, grantee of FTZ 44, requesting subzone status for the facilities of MANE USA, located in Wayne and Parsippany, New Jersey. 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 November 2, 2020.

The proposed subzone would consist of the following sites: *Site 1* (5.56 acres) 60 Demarest Drive, Wayne; and, *Site 2* (2.21 acres) 259 New Road, Parsippany. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 44.

In accordance with the FTZ Board's regulations, Christopher Kemp 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 15, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 30, 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 Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: November 2, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–24571 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Abdul Majid Saidi, 2948 Pease Drive, Apt. 201, Rocky River, OH 44116; Order Denying Export Privileges

On March 13, 2019, in the U.S. District Court for the Western District of Michigan, Abdul Majid Saidi (''Saidi''), was convicted of violating 18 U.S.C. 371. Specifically, Saidi was convicted of knowingly and willfully conspiring to export from the United States to Lebanon guns and gun parts designated as defense articles on the United States Munitions List, without first obtaining the required licenses from the U.S. Department of State. Saidi was sentenced to three (3) months in prison, with credit for time served, two (2) years of supervised release, a $5,000 fine, and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[2] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any BIS licenses or other authorizations issued under ECRA in which the person had an interest at the time of the conviction may be revoked. *Id.*

BIS received notice of Saidi's conviction for violating 18 U.S.C. 371, and has provided notice and opportunity for Saidi to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[3] BIS

[2] ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Saidi's conviction post-dates ECRA's enactment on August 13, 2018.

[3] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2020). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). Section 1768 of ECRA, 50 U.S.C. 4826, provides in pertinent part that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. *See* note 1, *supra.*

has received a written submission from Saidi.

Based upon my review of the record, including Saidi's written submission from Counsel, and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Saidi's export privileges under the Regulations for a period of seven years from the date of Saidi's conviction. I have also decided to revoke any BIS-issued licenses in which Saidi had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until March 13, 2026, Abdul Majid Saidi, with a last known address of 2948 Pease Drive, Apt. 201, Rocky River, OH 44116, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 819(e) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Saidi by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Saidi may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Saidi and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until March 13, 2026.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2020–24512 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau Of Industry And Security

In the Matter of: Oswaldo Sanchez, 17216 Running Doe Street, Laredo, TX 78045–5509; Order Denying Export Privileges

On February 14, 2019, in the U.S. District Court for the Western District of Texas, Oswaldo Sanchez (''Sanchez''), was convicted of violating 18 U.S.C. 554(a). Specifically, Sanchez was convicted of knowingly facilitating the transportation and concealment and aiding and abetting the facilitation and attempted facilitation of a .50 caliber rifle from the United States to Mexico, in violation of 18 U.S.C. 554. Sanchez was sentenced to probation of four years and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554(a), may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Sanchez's conviction for violating 18 U.S.C. 554(a), and has provided notice and opportunity for Sanchez to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has received a written submission from Sanchez.

Based upon my review of the record, including Sanchez's written submission, and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Sanchez's export privileges under the Regulations for a period of 10 years from the date of Sanchez's conviction. I have also decided to revoke any BIS-issued

[1] ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Sanchez's conviction post-dates ECRA's enactment on August 13, 2018.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2020). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). Section 1768 of ECRA, 50 U.S.C. 4826, provides in pertinent part that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. *See* note 1, *supra.*

licenses in which Sanchez had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until February 14, 2029, Oswaldo Sanchez, with a last known address of 17216 Running Doe Street, Laredo, TX 78045–5509, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Sanchez by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this *order* in order to prevent evasion of this *order.*

Fourth, in accordance with Part 756 of the Regulations, Sanchez may file an appeal of this *order* with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this *order* and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this *order* shall be delivered to Sanchez and shall be published in the **Federal Register**.

Sixth, this *order* is effective immediately and shall remain in effect until February 14, 2029.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2020–24521 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Patrick Germain, 1837 Leland Avenue, Evanston, IL 60201; Order Denying Export Privileges

On May 16, 2019, in the U.S. District Court for the Northern District of Illinois, Patrick Germain (''Germain'') was convicted of violating 18 U.S.C. 554(a). Specifically, Germain was convicted of knowingly and fraudulently attempting to export firearms and ammunition from the United States to Haiti, contrary to the laws and regulations of the United States. Germain was sentenced to time served, two years supervised release and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554(a), may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA in which the person had an interest at the time of the conviction may be revoked. *Id.*

BIS received notice of Germain's conviction for violating 18 U.S.C. 554(a), and has provided notice and opportunity for Germain to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has received a written submission from Germain.

Based upon my review of the record, including Germain's written submission from Counsel, and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Germain's export privileges under the Regulations for a period of 10 years from the date of Germain's conviction. I have also decided to revoke any BIS-issued licenses in which Germain had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until May 16, 2029, Patrick Germain, with a last known address of 1837 Leland Avenue, Evanston, IL 60201, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any

[1] ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Germain's conviction post-dates ECRA's enactment on August 13, 2018.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2020). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). Section 1768 of ECRA, 50 U.S.C. 4826, provides in pertinent part that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. *See* note 1, *supra.*

transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Germain by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Germain may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Germain and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 16, 2029.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2020–24514 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on November 19, 2020, 10:00 a.m., Eastern Daylight Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Presentation by Joel Kreps, Clara Foods Company.
3. Public Comments and New Business.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than November 12, 2020.

A limited number of slots will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 19, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–24536 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Notice of Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 15, 2020, the Department of Commerce (Commerce) published the preliminary results of a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. For these final results, Commerce continues to find that Hyson Exports Private Limited (Hyson Exports) is the successor-in-interest to Hyson Logistics and Marine Exports Private Limited (Hyson Logistics).

DATES: Applicable November 5, 2020.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 2020, Hyson Exports requested that Commerce conduct an expedited changed circumstances review, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), to confirm that Hyson Exports is the successor-in-interest to Hyson Logistics for purposes of determining antidumping duty cash deposits and liabilities. In its submission, Hyson Exports stated that Hyson Logistics undertook a name change to Hyson Exports but is otherwise unchanged.[1]

On September 15, 2020, Commerce initiated this changed circumstances review and published its notice of preliminary results, determining that Hyson Exports is the successor-in-interest to Hyson Logistics.[2] In the *Initiation and Preliminary Results,* we provided all interested parties with an opportunity to comment and request a public hearing regarding our preliminary finding that Hyson Exports is the successor-in-interest to Hyson Logistics.[3] We received no comments or requests for a public hearing from interested parties within the time period set forth in the *Initiation and Preliminary Results.*[4]

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[5] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Final Results of Changed Circumstances Review

For the reasons stated in the *Initiation and Preliminary Results,* and because we received no comments from interested parties, Commerce continues to find that Hyson Exports is the successor-in-interest to Hyson Logistics. As a result of this determination and consistent with established practice, we find that Hyson Exports should receive the cash deposit rate previously assigned to Hyson Logistics. Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by Hyson Exports and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 1.35 percent, which is the current antidumping duty cash deposit rate for Hyson Logistics.[6] This cash deposit requirement shall remain in effect until further notice.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: October 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[1] *See* Hyson Exports' Letter ''Request for Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,'' dated July 23, 2020.

[2] *See Certain Frozen Warmwater Shrimp from India: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 85 FR 57192, 57193 (September 15, 2020) (*Initiation and Preliminary Results*).

[3] *Id.*

[4] *Id.*

[5] For a complete description of the Scope of the Order, *see Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32835 (July 16, 2018) (*2016–2017 Final Results*), and accompanying Issues and Decision Memorandum at ''Scope of the Order'' section.

[6] *See 2016–2017 Final Results.*

[FR Doc. 2020–24566 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–843]

Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Alignment of Final Countervailing Duty Determination With Final Less-Than-Fair-Value Determinations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 5, 2020.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon or Jacob Garten, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274 or (202) 482–3342, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2020, the Department of Commerce (Commerce) initiated the countervailing duty (CVD) investigation of prestressed concrete steel wire strand (PC strand) from the Republic of Turkey (Turkey).[1] Simultaneously, Commerce initiated the less-than-fair-value (LTFV) investigations of PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the United Arab Emirates (UAE).[2] The CVD investigation and the LTFV investigations cover the same class or kind of merchandise.

Alignment With Final LTFV Determinations

On September 22, 2020, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corp. (collectively, the petitioners) timely requested an alignment of the final CVD determination in this investigation with the final determinations in the LTFV investigations of PC strand from Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the UAE.[3] The petitioners stated that, if certain of these final LTFV determinations are postponed, then they request that the final determination in this CVD investigation remain aligned with any LTFV final determinations that are not postponed. Therefore, in accordance with section 705(a)(1) of the

[1] *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Initiation of Countervailing Duty Investigation,* 85 FR 28610 (May 13, 2020).

[2] *See Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, the Republic of Turkey, Ukraine, and the United Arab Emirates: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 28605 (May 13, 2020).

[3] *See* Petitioners' Letter, ''Prestressed Concrete Steel Wire Strand from the Republic of Turkey—Petitioners' Request to Align Final Determinations,'' dated September 22, 2020. The petitioners' letter states that they request alignment with the final LTFV investigations of PC strand that are not postponed and scheduled to issue final determinations on December 7, 2020. As of the date of this notice, these investigations are PC strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates.

Act and 19 CFR 351.210(b)(4)(i), Commerce is aligning the final CVD determination with the final determinations in the LTFV investigations of PC strand from Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the UAE. Consequently, the final CVD determination will be issued on the same date as these final LTFV determinations, which are currently scheduled to be issued no later than December 7, 2020, unless postponed.

This notice is issued and published pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).

Dated: October 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–24564 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–845]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Federal Republic of Germany: Rescission of Antidumping Duty Administrative Review: 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the Federal Republic of Germany (Germany) for the period of review (POR) June 1, 2019, through May 31, 2020, based on the timely withdrawal of the request for review.

DATES: Applicable November 5, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Berger, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2483.

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 Germany for the POR.[1] Pursuant to a timely request from ArcelorMittal Tubular Products LLC, Michigan Seamless Tube, LLC, Plymouth Tube Co., PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries (the petitioners),[2] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the antidumping duty order on cold-drawn mechanical tubing from Germany on August 6, 2020, with respect to five companies: BENTELER Steel/Tube GmbH (Benteler); BENTELER Distribution International GmbH (BDI); Mubea Fahrwerksfedern GmbH (Mubea Fahrwerksfedern); Salzgitter Mannesmann Line Pipe GmbH (Salzgitter Mannesmann Line Pipe); and Salzgitter Mannesmann Precision GmbH (Salzgitter Mannesmann Precision).[3] On October 9, 2020, the petitioners timely withdrew their request for an administrative review of all of the companies named in their June 30, 2020, request for review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. The petitioners, who were the only parties to request a review, withdrew their request within the 90-day deadline. Accordingly, we are rescinding the administrative review of cold-drawn mechanical tubing from Germany for the period June 1, 2019, through May 31, 2020, in its entirety.

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 Germany. Antidumping duties shall be assessed at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: November 2, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–24567 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Enforcement and Compliance, International Trade Administration Department of Commerce.

DATES: Applicable November 5, 2020.

FOR FURTHER INFORMATION CONTACT: John Hoffner, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 33628 (June 2, 2020).

[2] *See* Petitioners' Letter, "Cold-Drawn Mechanical Tubing from Germany—Domestic Industry's Request for Second Administrative Review of the Antidumping Duty Order," dated June 30, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 47731 (August 6, 2020).

[4] *See* Petitioners' Letter, "Cold-Drawn Mechanical Tubing from Germany—Domestic Industry's Withdrawal of Request for Second Administrative Review," dated October 9, 2020.

Constitution Ave. NW, Washington, DC 20230, telephone: (202) 482–3315.

SUPPLEMENTARY INFORMATION: On July 17, 2020, the Department of Commerce (Commerce), pursuant to section 702(h) of the Trade Agreements Act of 1979 (as amended) (the Act), published the quarterly update to the annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty covering the period January 1, 2020 through March 31, 2020.[1] In the *First Quarter 2020 Update,* we requested that any party that has information on foreign government subsidy programs that benefit articles of cheese subject to an in-quote rate of duty submit such information to Commerce.[2] We received no comments, information, or requests for consultation from any party.

Pursuant to section 702(h) of the Act, we hereby provide Commerce's update of subsidies on articles of cheese that were imported during the period April 1, 2020 through June 30, 2020. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

Commerce will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed. Commerce encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing through the Federal eRulemaking Portal at *http://www.regulations.gov,* Docket No. ITA–2020–0005, ''Quarterly Update to Cheese Subject to an In-Quota Rate of Duty.'' The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only. All comments should be addressed to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: October 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[3] subsidy ($/lb)	Net[4] subsidy ($/lb)
27 European Union Member States[5]	European Union Restitution Payments	$0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.47	0.47
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[FR Doc. 2020–24565 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA616]

New England 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 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 Monday, November 23, 2020 at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/7845303946695330574.* Call in information: +1 (213) 929–4212, Access Code 615–476–202.

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 the results of the 2020 management track assessment and the information provided by the Council's Scallop Plan Development Team and recommend the overfishing limits (OFLs) and acceptable biological catches (ABCs) for Atlantic sea scallops for fishing years 2021 and 2022 (default). 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.

[1] *See Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty,* 85 FR 43537 (July 17, 2020) (*First Quarter 2020 Update*).

[2] *Id.*

[3] Defined in 19 U.S.C. 1677(5).

[4] Defined in 19 U.S.C. 1677(6).

[5] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

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: November 2, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–24574 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA545]

Fisheries of the Gulf of Mexico; 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 74 Stock Identification (ID) Scoping Webinar for Gulf of Mexico red snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data Workshop, a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Stock ID Scoping Webinar will be held on November 20, 2020, from 11 a.m. to 1 p.m., Eastern.

ADDRESSES: 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; phone: (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 in the Stock ID webinars are as follows:

1. Participants will use review genetic studies, growth patterns, existing stock definitions, prior SEDAR stock ID recommendations, and any other relevant information on red snapper stock structure.

2. Participants will make recommendations on biological stock structure and define the unit stock or stocks to be addressed through this assessment.

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 10 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: November 2, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–24572 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA573]

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 hold a meeting of its Citizen Science Program's Projects Advisory Committee via webinar.

DATES: The meeting will be held on Friday, November 20, 2020, from 3 p.m. until 5 p.m.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd (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. There will be an opportunity for public comment at the beginning of the meeting.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, Citizen Science Program Manager, SAFMC; phone: (843) 302–8433 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Citizen Science Projects Advisory

Committee serves as advisors to the Council's Citizen Science Program. Committee members include representatives from the Council's fishery Advisory Panels (AP), Habitat & Ecosystem AP, and Information & Education AP. Their responsibilities include identifying citizen science research and data needs across all the Council's fishery management plans; assisting with development of volunteer engagement strategies for recruiting, training, retaining, and communicating with volunteers; and serving as outreach ambassadors for the Program.

Agenda Items Include

1. Update on the Citizen Science Program
2. Discuss and provide feedback on volunteer engagement and outreach strategies
3. Discuss the development of a volunteer recognition program
4. Other Business

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: November 2, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–24573 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2020–0043]

Sovereign Immunity Study

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for Information.

SUMMARY: At the request of Senators Thom Tillis and Patrick Leahy, the United States Patent and Trademark Office (USPTO) is undertaking a study of the extent to which patent or trademark rights holders are experiencing infringement by state entities without adequate remedies under state law, and the extent to which such infringements appear to be based on intentional or reckless conduct. The USPTO seeks public input on these matters to assist in preparing the study.

DATES: Comments must be received by 5 p.m. ET on December 21, 2020.

ADDRESSES: You may submit comments and responses to the questions below by one of the following methods:

(a) *Electronic Submissions:* Submit all electronic comments via the Federal e-Rulemaking Portal at *http://www.regulations.gov* (at the homepage, enter PTO–T–2020–0043 in the ''Search'' box, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments). The materials in the docket will not be edited to remove identifying or contact information, and the USPTO cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word or Excel, or Adobe PDF formats only. Comments containing references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Please do not submit additional materials. If you submit a comment with business confidential information that you do not wish to have made public, please do so as a written/paper submission in the manner detailed below.

(b) *Written/Paper Submissions:* Send all written/paper submissions to: United States Patent and Trademark Office, Mail Stop OPIA, P.O. Box 1450, Alexandria, Virginia 22314. Submission packaging should clearly indicate that materials are responsive to [Docket Number: PTO–T–2020–0043], Office of Policy and International Affairs, Comment Request; State Sovereign Immunity.

Submissions of Business Confidential Information: Any submissions containing business confidential information must be delivered in a sealed envelope marked ''confidential treatment requested'' to the address listed above. Submitters should provide an index listing the document(s) or information that they would like the Department of Commerce to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public as well. The USPTO also requests that submitters of business confidential information include a non-confidential version (either redacted or summarized) that will be available for public viewing and posted on *https://www.regulations.gov.* In the event that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the submitter post a notice in the docket stating that it has provided the USPTO with business confidential information. Should a submitter either fail to docket a non-confidential version of its submission or to post a notice that business confidential information has been provided, the USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

FOR FURTHER INFORMATION CONTACT: Laura Hammel, USPTO, Office of Policy and International Affairs, at *Laura.Hammel@uspto.gov* or 571–272–9300. Please direct media inquiries to the Office of the Chief Communications Officer, USPTO, at 571–272–8400.

SUPPLEMENTARY INFORMATION: Several Supreme Court decisions have invalidated statutes that barred states' assertions of sovereign immunity in intellectual property (IP) disputes. In *Florida Prepaid Postsecondary Education Expense Board* v. *College Savings Bank* [1] (*Florida Prepaid*), the Court found that the Patent and Plant Variety Protection Remedy Clarification Act, which had abrogated states' immunity from patent infringement suits, was unconstitutional. In *College Savings Bank* v. *Florida Prepaid Postsecondary Education Expense Board* (*College Savings*),[2] the Court found that the Trademark Remedy Clarification Act, which provided that states could be sued for false and misleading advertising under section 43(a) of the Trademark Act, was unconstitutional. This year, in *Allen* v. *Cooper,*[3] the Court ruled that the Copyright Remedy Clarification Act of 1990, which abrogated states' immunity for liability for copyright infringement, was also unconstitutional.

In both *Florida Prepaid* and *Allen,* the Supreme Court made clear that Congress does have authority, in certain circumstances, to strip states of the immunity they enjoy under the 11th Amendment.[4] Both decisions pointed to a line of cases, including *Fitzpatrick* v. *Bitzer* [5] and *City of Boerne* v. *Flores,*[6] holding that section 5 of the 14th

[1] 527 U.S. 627 (1999).

[2] 527 U.S. 666 (1999).

[3] 140 S. Ct. 994 (2020).

[4] U.S. Const. amend. XI.

[5] 427 U.S. 445 (1976).

[6] 521 U.S. 507 (1997).

Amendment[7] empowers Congress to abrogate state sovereign immunity in order to prevent conduct prohibited by section 1 of that Amendment,[8] such as the deprivation of property without due process of law. In principle, Congress may abrogate state sovereign immunity to prevent the *unconstitutional* deprivation of an IP right.

Nevertheless, in both *Allen* and *Florida Prepaid,* the Court emphasized that some, but not all such deprivations are unconstitutional. A state's deprivation of property will violate the 14th Amendment[9] only if (1) it is ''intentional, or at least reckless''[10] and (2) the state does not provide an adequate remedy to redress the deprivation. Due process is not lacking where there is an adequate remedy in place.[11]

In both cases, the Court found that Congress's abrogation of state sovereign immunity was not supported either by a record that showed a pattern of infringing conduct by the states[12] or by consideration of whether there were adequate state remedies available for any infringement that does occur.[13] *Allen* stressed that Congress was not precluded from passing a valid law in the future that abrogated state sovereign immunity for copyright infringement.[14] It suggested that such a statute should ''link the scope of its abrogation to the redress or prevention of constitutional injuries,''[15] and that this linkage should be supported by a legislative record.

In a letter to the Director of the USPTO dated April 28, 2020, Senators Thom Tillis and Patrick Leahy asked that the USPTO study the extent to which patent and trademark owners experience infringements by state entities without adequate state law remedies. They further asked that the analysis include a study of the extent to which such infringements may be intentional or reckless. Finally, they requested that the USPTO provide a public report summarizing the findings of the study so that Congress can evaluate whether legislative action should be taken.[16]

[7] U.S. Const. amend. XIV(5).

[8] U.S. Const. amend. XIV(1).

[9] U.S. Const. amend. XIV.

[10] *Allen,* 140 S. Ct. at 1004.

[11] *Florida Prepaid,* 527 U.S. at 643.

[12] *Florida Prepaid,* 527 U.S. at 645; *Allen,* 140 S. Ct. at 1006.

[13] *Florida Prepaid,* 527 U.S. at 643–44; *Allen,* 140 S. Ct. at 1006–7.

[14] *Allen,* 140 S. Ct. at 1007.

[15] *Id.*

[16] Senators Tillis and Leahy also requested the United States Copyright Office (USCO) to conduct a parallel study on copyright issues. See a Notice of Inquiry that the USCO published in the **Federal Register** (85 FR 34252, June 3, 2020) in connection with that request.

Request for Information: To aid in the study that Senators Tillis and Leahy requested, the USPTO invites written comments on the questions below. In responding to the questions, commenters are encouraged to explain the reasons for their responses when appropriate. In addition, the USPTO asks that commenters explain their interest in the study and the basis for their knowledge (*e.g.,* the commenter is a patent and/or a trademark rights holder, or a state attorney general or other state official, or represents a state entity, such as a state university). Commenters need not respond to every question and may provide relevant information even if not responsive to a particular question.

1. Extent of asserted patent and/or trademark infringements by states or state entities:[17]

a. How frequently do rights holders assert that a state or state entity has infringed their patents or trademarks, either via lawsuits or through some other means?

b. Has there been an increase in the number of assertions of patent and/or trademark infringements by states or state entities since the Supreme Court's decision in *Florida Prepaid,* which had invalidated a statutory abrogation of state sovereign immunity from patent infringement, and what empirical evidence is available to determine whether there has been a change over time? What metrics can be used to determine the frequency of state patent and/or trademark infringement?

c. If you are an official of a state or a state entity, does your state track claims of patent and/or trademark infringement, and if so, how many such claims were asserted before and since 1999, (i) via lawsuits and (ii) otherwise?

d. Do you anticipate that the *Allen* decision will result in a rise in the number of instances in which states and state entities will engage in, or be accused of engaging in, patent and/or trademark infringement?

e. Are you aware of state laws, regulations, and/or policies that either minimize or increase the likelihood that the state or a state entity will engage in patent or trademark infringement? If yes, can you provide copies of, or citations to, those state laws, regulations, and/or policies?

2. Information about particular instances of infringement:

[17] As used in this Notice, ''state entities'' includes entities such as public state universities and state-owned entities such as transportation entities, and economic development entities.

a. Please identify all instances you are aware of in which, since 1999, a state or state entity was accused of infringing a patent or trademark. For each, please indicate what role, if any, you had in the dispute (*e.g.,* you acted on behalf of a state through its Attorney General's office, or as counsel to a state entity; or you acted as or on behalf of a rights holder; or you were an observer), and for each please:

i. Identify the patent or trademark asserted to have been infringed and the state entity involved, and with respect to the trademark, indicate whether it was registered, either federally or with one or more states;

ii. Describe how, when, and where the asserted acts of infringement were committed;

iii. If the matter was the subject of a lawsuit, identify: (a) The court, (b) the names of the parties, (c) the claims asserted and the relief sought, and (d) the ultimate resolution, if any. In addition, if the litigation resulted in the issuance of judicial opinions, please provide copies of these if unpublished, and citations if published;

iv. If the matter was not the subject of a lawsuit, clarify whether the state was nevertheless contacted about it, and if so, how did the state respond, and how was the matter resolved? If you are the rights holder or its representative, what was the basis of the decision not to litigate the matter?

v. Were there allegations that the asserted infringement was intentional or reckless, and if yes, what was the basis for that allegation?

vi. Explain whether the asserted infringement was carried out pursuant to a state policy. If yes, and that policy is set forth in an official state document, please provide a citation to, or a copy of, that document.

vii. Explain whether the asserted infringement was carried out pursuant to a state law or regulation. If yes, please provide a citation to that law or regulation.

3. How defenses of sovereign immunity are asserted and treated in patent and trademark infringement cases:

a. How do states and state entities typically respond to credible claims of patent and trademark infringement? Do they frequently assert defenses of sovereign immunity in litigation and in discussions with rights holders about claims of infringement? Do they frequently seek to resolve the claims outside of litigation, even though sovereign immunity would be available if the rights holder filed suit?

b. Which state entities are entitled to assert sovereign immunity, and pursuant to which state policies, laws, or regulations?

c. Are there formal or informal state policies that require or permit states and/or particular state entities to assert sovereign immunity? Are there any policies that *prohibit* such assertions? If any such policies are set forth in official government documents, or in relevant laws, regulations, ordinances, or constitutions, please provide copies or citations.

d. Are there instances in which states or state entities have explicitly waived sovereign immunity in patent and/or trademark infringement cases, and if so, under what authority? Alternatively, are there state laws, regulations, or policies that *preclude* such waivers, and if yes, please provide copies or citations.

e. Are there instances in which a court has found that a state or state entity has waived sovereign immunity in patent and/or trademark infringement cases, and if yes, what were the bases of those findings?

f. When states or state entities assert defenses of sovereign immunity in patent and/or trademark infringement cases, do courts generally accept these defenses? If courts reject these defenses, on what basis do they do so?

g. What defenses other than sovereign immunity, if any, do states or state entities typically assert in patent and/or trademark infringement lawsuits?

4. Other impacts of availability of sovereign immunity:

a. In your view, do the outcomes of claims of patent and trademark infringement, whether asserted in litigation or otherwise, differ depending on whether the asserted infringement was carried out by a private party or a state or state entity, and, if yes, are such differences attributable to the availability of sovereign immunity? Please explain the basis for your view, and if it is based on particular instances in which there were claims of patent or trademark infringement, please describe those instances.

b. In your view, does the availability of sovereign immunity as a defense in litigation lead patent and/or trademark rights holders to enter into licensing arrangements with states or state entities on terms that are more favorable than those granted to private licensees or to otherwise change their licensing practices? Please explain the basis for your view, and if it is based on particular instances in which the availability of sovereign immunity did or did not impact the outcome of licensing negotiations, please describe those instances.

c. Are you aware of instances in which the availability of sovereign immunity as a defense in litigation has deterred patent and/or trademark rights holders from commencing litigation against a state entity and/or from notifying it about an infringement?

5. Nature and availability of state remedies:

a. Are there causes of action under state law that may provide adequate remedies for patent and/or trademark infringement by states or state entities? For example, are any of the following causes of action available and typically asserted: State trademark infringement; takings claims, such as conversion or reverse eminent domain; tort claims; contract claims; or writs of trover, replevin, or detinue?

i. If yes, are the elements of these causes of action and the associated remedies comparable to those associated with infringement actions brought pursuant to the Lanham Act [18] and/or the Patent Act?[19]

ii. Are you aware of instances in which damages were awarded in patent and/or trademark suits brought against states or state entities pursuant to such causes of action? If yes, please identify those instances and provide information about them.

iii. In which state courts can a rights holder bring a patent or trademark infringement action against a state or state entity? Which of the following doctrines, if any, are impediments to doing so: Sovereign immunity, state law, federal preemption, or others?

b. In cases of patent and/or trademark infringement by states and state entities, to what extent is injunctive relief available against state officials who act within the scope of their authority? Is such relief adequate to address the needs of patent and/or trademark rights holders whose rights are infringed?

6. Other matters:

a. Please describe any formal or informal policies that states may have for responding to claims of patent and/or trademark infringement, including policies regarding payments to or negotiations with rights holders. If these policies are written, please provide copies.

b. When rights holders notify states or state entities of patent or trademark infringements informally rather than via lawsuits, do they typically do so through the Attorney General's office or through other officials? In cases in which the interactions are with offices other than the Attorney General, is the Attorney General's office typically notified?

c. Do states or state agencies typically carry insurance policies that would cover patent or trademark infringement by state employees, and if so, would such coverage extend to intentional, reckless, or negligent infringements?

d. Please identify any other pertinent issues that the USPTO should consider in conducting its study.

Dated: October 30, 2020.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2020–24621 Filed 11–4–20; 8:45 am]

BILLING CODE 3510–16–P

[18] 15 U.S.C. 1051 *et seq.*

[19] 35 U.S.C. 1 *et seq.*

INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

Notice of Public Hearing

AGENCY: International Development Finance Corporation.

ACTION: Announcement of public hearing.

SUMMARY: The Board of Directors of the U.S. International Development Finance Corporation (''DFC'') will hold a public hearing on December 9, 2020. This hearing will afford an opportunity for any person to present views in accordance with Section 1413(c) of the BUILD Act of 2018. Those wishing to present at the hearing must provide advance notice to the agency as detailed below.

DATES: Public hearing: 2:00 p.m., Wednesday, December 9, 2020.

Deadline for notifying agency of an intent to attend or present at the public hearing: 5:00 p.m., Wednesday, December 2, 2020.

Deadline for submitting a written statement: 5:00 p.m., Wednesday, December 2, 2020.

ADDRESSES: Public hearing: Virtual; Access information provided at the time of attendance registration.

You may send notices of intent to attend, present, or submit a written statement to Catherine F. I. Andrade, DFC Corporate Secretary, via email at *candrade@dfc.gov.*

Instructions: A notice of intent to attend the public hearing or to present at the public hearing must include the individual's name, title, organization, address, email, telephone number, and a concise summary of the subject matter to be presented. Oral presentations may not exceed five (5) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard. Submission of written statements must include the individual's name, title, organization, address, email, and telephone number. The statement must be typewritten, double-spaced, and may not exceed ten (10) pages.

FOR FURTHER INFORMATION CONTACT: Catherine F. I. Andrade, DFC Corporate Secretary, (202) 336–8768, or *candrade@dfc.gov.*

SUPPLEMENTARY INFORMATION: The public hearing will take place via video- and teleconference. Upon registering, participants and observers will be provided instructions on accessing the hearing. DFC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the time of the hearing.

Authority: 22 U.S.C. 9613(c).

Catherine F. I. Andrade,

DFC Corporate Secretary.

[FR Doc. 2020–24599 Filed 11–4–20; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2020–0042; OMB Control Number 0704–0341]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 239, Acquisition of Information Technology

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed revision and extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed revision and extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the 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 information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through January 31, 2021. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by January 4, 2021.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0341, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: osd.dfars@mail.mil. Include OMB Control Number 0704–0341 in the subject line of the message.

Mail: Defense Acquisition Regulations System, Attn: Ms. Heather Kitchens, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B938, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, 571–372–6104.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 239, Acquisition of Information Technology, and the associated clause at DFARS 252.239–7000; OMB Control Number 0704–0341.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision and extension of a currently approved collection.

Reporting Frequency: On occasion.

Number of Respondents: 820.

Responses per Respondent: Approximately 7.

Annual Responses: 5,932.

Average Burden per Response: Approximately 0.5 hour.

Annual Burden Hours: 3,025.

Needs and Uses: This requirement provides for the collection of information from contractors regarding security of information technology and proposals from common carriers to perform special construction under contracts for telecommunications services. Contracting officers and other DoD personnel use the information to ensure that information technology is protected and to establish reasonable prices for special construction by common carriers.

The clause at DFARS 252.239–7000, Protection Against Compromising Emanations, requires that the contractor provide, upon request of the contracting officer, documentation that information technology used or provided under the contract meets appropriate information assurance requirements. DFARS 239.7408 requires the contracting officer to obtain a detailed special construction proposal from a common carrier that submits a proposal or quotation that has special construction requirements related to the performance of basic telecommunications services.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–24561 Filed 11–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2020–0038; OMB Control No. 0750–0004]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Assessing Contractor Implementation of Cybersecurity Requirements

AGENCY: Defense Acquisition Regulations System, Department of Defense (DOD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the 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 information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through April 30, 2021. DoD proposes that OMB extend its approval for use for three additional

years beyond the current expiration date.

DATES: Consideration will be given to all comments received by January 4, 2021.

ADDRESSES: You may submit comments, identified by OMB Control Number 0750–0004, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: osd.dfars@mail.mil. Include OMB Control Number 0750–0004 in the subject line of the message.

Mail: Defense Acquisition Regulations System, Attn: Ms. Heather Kitchens, OUSD(A&S)DPC(DARS), 3060 Defense Pentagon, Room 3B938, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, telephone 571–372–6104.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Assessing Contractor Implementation of Cybersecurity Requirements; OMB Control Number 0750–0004.

Affected Public: Businesses and other for-profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Extension of a currently approved collection.

Reporting Frequency: On occasion.

DOD estimates the annual public reporting burden for the information collection as follows:

a. Basic Assessment

Respondents: 13,068.
Responses per respondent: 1 approximately.
Total annual responses: 13,068.
Hours per response: .75.
Total burden hours: 9,801.

b. Medium Assessment

Respondents: 200.
Responses per respondent: 1.
Total annual responses: 200.
Hours per response: 8.
Total burden hours: 1,600.

c. High Assessment

Respondents: 110.
Responses per respondent: 1.
Total annual responses: 110.
Hours per response: 420.
Total burden hours: 46,200.

d. Total Public Burden (All Entities)

Respondents: 13,068.
Total annual responses: 13,378.
Total burden hours: 57,601.

e. Total Public Burden (Small Entities)

Respondents: 8,823.
Total annual responses: 9,023.
Total burden hours: 41,821.

DoD requested and OMB authorized emergency processing of an information collection that was assigned OMB Control Number 0750–0004. DFARS interim rule, Case 2019–D041, Assessing Contractor Implementation of Cybersecurity Requirements, published in the **Federal Register** at 85 FR 61505 on September 29, 2020, also provided a discussion of this information collection requirement.

Needs and Uses: The collection of information is necessary for DoD to immediately begin assessing where vulnerabilities in its supply chain exist and take steps to correct such deficiencies. In addition, the collection of information is necessary to ensure Defense Industrial Base (DIB) contractors that have not fully implemented the NIST SP 800–171 security requirements pursuant to DFARS 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, begin correcting these deficiencies immediately.

This collection of information supports implementation of section 1648 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92). Section 1648(c)(2) directs the Secretary of Defense to develop a risk-based cybersecurity framework for the DIB sector, such as the Cybersecurity Maturity Model Certification (CMMC) framework, as the basis for a mandatory DoD standard. This requirement is implemented in the DFARS through the provision at 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirement, and the clause at 252.204–7020, NIST SP 800–171 DoD Assessment Requirements. This information collection covers the following requirements:

- DFARS 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirement, is prescribed for use in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, except for solicitations solely for the acquisition of commercially available off-the-shelf (COTS) items. Per the new provision, if an offeror is required to have implemented NIST SP 800–171 per DFARS clause 252.204–7012, then the offeror shall have a current assessment posted in the Supplier Performance Risk System (SPRS)for each covered contractor information system that is relevant to the offer, contract, task order, or delivery order in order to be considered for award. If the offeror does not have summary level scores of a current NIST SP 800–171 DoD Assessment (*i.e.,* not more than 3 years old, unless a lesser time is specified in the solicitation) posted in SPRS, the offeror may conduct and submit a Basic Assessment for posting in SPRS.
- DFARS 252.204–7020, NIST SP 800–171 DoD Assessment Requirements, is prescribed for use in in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except for solicitations and contracts solely for the acquisition of COTS items. The clause requires the contractor to provide the Government access to its facilities, systems, and personnel in order to conduct a Medium or High Assessment, if necessary. For Basic Assessments, the contractor may submit summary level scores for posting to SPRS. Medium Assessments are assumed to be conducted by DoD Components, primarily by Program Management Office cybersecurity personnel, in coordination with the Defense Contract Management Agency (DCMA) Defense Industrial Base Cybersecurity Assessment Center (DIBCAC), as part of a separately scheduled visit (*e.g.,* for a Critical Design Review). High Assessments will be conducted by, or in conjunction with, the DCMA DIBCAC. The Department may choose to conduct a Medium or High Assessment when warranted based on the criticality of the program(s)/technology(ies) associated with the contracted effort(s). For example, a Medium Assessment may be initiated by a Program Office that has determined that the risk associated with their programs warrants going beyond the Basic self-assessment. The results of that Medium Assessment may satisfy the Program Office, or may indicate the need for a High assessment. DoD will provide Medium and High Assessment summary level scores to the contractor and offer the opportunity for rebuttal and adjudication of assessment summary level scores prior to posting the summary level scores to SPRS. The requirements of this clause flow down to subcontractors.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–24562 Filed 11–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2020–0043; OMB Control Number 0704–0259]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 216, Types of Contracts

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the 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 information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through January 31, 2021. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by January 4, 2021.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0259, using any of the following methods:

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

Email: osd.dfars@mail.mil. Include OMB Control Number 0704–0259 in the subject line of the message.

Mail: Defense Acquisition Regulations System, Attn: Ms. Carrie Moore, OUSD(A&S)DPC(DARS), 3060 Defense Pentagon, Room 3B938, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, 571–372–6093.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, Types of Contracts, and associated clauses at Part 252.216; OMB Control Number 0704–0259.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Extension.

Reporting Frequency: On occasion.

Number of Respondents: 132.

Responses per Respondent: Approximately 4.

Annual Responses: 533.

Average Burden per Response: 4 hours.

Annual Burden Hours: 2,132.

Needs and Uses: The clauses at DFARS 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products; DFARS 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items; and DFARS 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, require contractors with fixed-price economic price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–24563 Filed 11–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Accrediting Agency Currently Undergoing Review During the Period of Recognition by the U.S. Secretary of Education

AGENCY: Accreditation Group, Office of Postsecondary Education, U.S. Department of Education,

ACTION: Call for written third-party comments.

SUMMARY: This notice provides information to members of the public on submitting written comments for accrediting agencies currently undergoing review during the period of recognition by the U.S. Secretary of Education.

FOR FURTHER INFORMATION CONTACT: Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Room 270–01, Washington, DC 20202, telephone: (202) 453–7615, or email: *herman.bounds@ed.gov.*

SUPPLEMENTARY INFORMATION: This request for written third-party comments concerning the performance of accrediting agencies during their period of recognition is pursuant to 34 Code of Federal Regulations (CFR) § 602.33(c)(4)(iii)(B).

This accrediting agency will be added to the agenda for the Winter 2021 National Advisory Committee on Institutional Quality and Integrity (NACIQI) meeting, notice of which was published May 28, 2020 (85 FRN 32031). The meeting date and location have not been determined but will be announced in a later **Federal Register** notice.

Agencies Under Review and Evaluation

The Department requests written comments from the public on the following accrediting agency, which is currently undergoing review and evaluation during its period of recognition by the Department's Office of Postsecondary Education Accreditation Group, in accordance with the procedures set forth in 34 CFR 602.33.

Inquiries Under 34 Code of Federal Regulations (CFR) § 602.33:

Accrediting Council for Independent Colleges and Schools (ACICS)

a. *34 CFR 602.33 review in response to ACICS monitoring report.* Pursuant to the November 21, 2018 Decision of the Secretary, Docket No. 16–44–0 (available at *https://opeweb.ed.gov/e-Recognition/PublicDocuments* under NACIQI meeting date: 06/23/2016 for ACICS), ACICS submitted a monitoring report on issues identified in the Decision related to the agency's compliance with the Criteria in 34 CFR 602.15(a)(1), 602.16(a)(1)(i), 602.16(a)(1)(vii), and 602.19(b). In its review of the monitoring report, the Department staff noted that one or more deficiencies may exist in the agency's compliance with the Secretary's Criteria for Recognition or the agency's effective application of those Criteria, and therefore processed the monitoring report in accordance with the review procedures set forth in 34 CFR 602.33. The review has identified noncompliance with the Criteria in 34 CFR 602.15(a)(1) and 602.19(b).

b. *34 CFR 602.33 review initiated by inquiry letter dated June 19, 2019 (letter available at https://www.ed.gov/accreditation/acics).* The initiation of the review was based on information from media coverage of ACICS's presentation to the Council for Higher Education Accreditation concerning its financial situation and its review of two institutions, Virginia International University and San Diego University for Integrative Studies. The review has identified noncompliance with the Criteria in 34 CFR 602.15(a)(1), 602.16(c), 602.17(c), and 602.17(e). It should be noted that the new accreditation regulations effective July 1, 2020 changed 602.16(c) to 602.16(d). There are no substantive changes to the regulations, just a change in numbering.

c. *34 CFR 602.33 review initiated by inquiry letter dated February 24, 2020 (letter available at https://www.ed.gov/accreditation/acics*). The initiation of the review was based on information from media coverage alleging that ACICS accredited Reagan National University, an institution not actually in operation. The review has identified noncompliance with the Criteria in 34 CFR 602.15(a)(1), 602.15(a)(2), 602.17(c), 602.18(c), and 602.19(b). It should be noted that the new regulations effective July 1, 2020 changed 602.18(c) to 602.18(b)(3). There are no substantive changes to the regulations, just a change in numbering.

Submission of Written Comments Regarding a Specific Accrediting Agency Under Review

Written comments about the recognition of a specific accrediting agency must be received by November 20, 2020 in the *ThirdPartyComments@ed.gov* mailbox and include the subject line ''Written Comments: (agency name).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Comments about an agency must relate to the Criteria cited in in the Secretary's appeal decision, or to the agency's compliance with the Criteria identified in the inquiry findings specifically listed above. The Criteria are available at *http://www.ed.gov/admins/finaid/accred/index.html.*

Only written material submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and NACIQI in their deliberations.

A later **Federal Register** notice will describe how to register to provide oral comments at the Winter 2021 meeting regarding the recognition of a specific accrediting agency or State approval agency.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register***,* in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Robert L. King,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2020–24595 Filed 11–4–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Notice of Waiver Granted Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce a waiver that the U.S. Department of Education (Department) granted, within the last 30 days, under the CARES Act.

FOR FURTHER INFORMATION CONTACT: Hugh Reid, U.S. Department of Education, 400 Maryland Avenue SW, Room 11114, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7491. Email: *Hugh.Reid@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3511(d)(3) of the CARES Act requires the Secretary to publish, in the **Federal Register** and on the Department's website, a notice of the Secretary's decision to grant a waiver. The Secretary must publish this notice no later than 30 days after granting the waiver and the notice must include which waiver was granted and the reason for granting the waiver. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted under section 3511.

The Department has approved waivers of the following requirement: Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of fiscal year (FY) 2018 funds for programs in which the State educational agency (SEA) participates as the eligible agency until September 30, 2021.

On April 17, 2020, the Secretary delegated to the Assistant Secretary for Career, Technical, and Adult Education (Assistant Secretary), for programs over which the Assistant Secretary has administrative authority, the authority to grant waivers under section 3511 of the CARES Act. On May 15, 2020, the Office of Career, Technical, and Adult Education (OCTAE) published a notice in the **Federal Register** (85 FR 29440) announcing 41 waivers that were granted to SEAs. Twenty-eight of those waivers were for State grants authorized by Title I of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins), and 13 of those waivers were for State grants authorized by Title II of the Workforce Innovation and Opportunity Act (WIOA) (*i.e.,* the Adult Education and Family Literacy Act (AEFLA)).

On June 15, 2020, OCTAE published a notice in the **Federal Register** (85 FR 36195) announcing six waivers that were granted to SEAs. Three of those waivers were for State grants authorized by Title I of Perkins, and the remaining three waivers were for State grants authorized by Title II of WIOA (AEFLA).

On August 6, 2020, OCTAE published a notice in the **Federal Register** (85 FR 47774) announcing two waivers that were granted to SEAs. One of those waivers was for a State grant authorized by Title I of Perkins, and the other waiver was for a State grant authorized by Title II of WIOA (AEFLA).

On September 3, 2020, OCTAE published a notice in the **Federal Register** (85 FR 55001) announcing two waivers that were granted to SEAs. Those waivers were for State grants authorized by Title II of WIOA (AEFLA).

In the last 30 days, OCTAE granted one waiver to an SEA.

Waiver Data

Extensions of the Obligation Period

One waiver was granted to an SEA for a State grant authorized by Title II of WIOA (AEFLA).

Provision waived: Tydings Amendment, section 421(b) of GEPA (*20 U.S.C. 1225*(b)).[1]

Reasons: The waiver was granted under section 421(b) of GEPA to extend the period of availability of FY 2018 funds until September 30, 2021, pursuant to the 2018 Consolidated Appropriations Act (GEPA section 421(b) waivers). It is not possible to obligate funds on a timely basis, as originally planned, due to extensive school and program disruptions in the States. These disruptions are in response to extraordinary circumstances for which a national emergency related to the COVID–19 pandemic has been duly declared by the President of the United States under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207, and will protect the health and safety of students, staff, and our communities.

Waiver Applicant: The SEA GEPA section 421(b) waiver applicant provided assurance that the SEA will: (1) Use, and ensure that its subgrantees will use, funds under the respective programs in accordance with the provisions of all applicable statutes, regulations, program plans, and applications not subject to these waivers; (2) work to mitigate, and ensure that its subgrantees will work to mitigate, any negative effects that may occur as a result of the requested waiver; and (3) provide the public and all subgrantees in the State with notice of, and the opportunity to comment on, this request by posting information regarding the waiver request and the process for commenting on the State website.

The Assistant Secretary reviewed the SEA's request for a GEPA section 421(b) waiver and determined that the following SEA met the requirements for a GEPA section 421(b) waiver on the date indicated below:

State grant authorized by Title II of WIOA (AEFLA):

• Utah State Board of Education, October 7, 2020.

[1] Section 3511(b) of the CARES Act only authorizes the Secretary to grant waivers requested by SEAs of the Tydings Amendment, section 421(b) of GEPA, to extend the period of availability of State formula grant funds authorized by Perkins and AEFLA. The Department currently does not have the authority to grant a waiver of the Tydings Amendment with respect to Perkins or AEFLA to States in which the SEA is not the grantee for these State-administered programs.

The Assistant Secretary also announced the waiver decisions at: *https://www2.ed.gov/about/offices/list/ovae/pi/covid19/index.html.*

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register***,* in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Scott Stump,

Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2020–24537 Filed 11–4–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0170]

Agency Information Collection Activities; Comment Request; Evaluating the DC Opportunity Scholarship Program After the 2017 Reauthorization

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 4, 2021.

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–0170. 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 Meredith Bachman, 202–245–7494.

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: Evaluating the DC Opportunity Scholarship Program After the 2017 Reauthorization.

OMB Control Number: 1850–NEW.

Type of Review: New Information Collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Annual Responses: 856.

Total Estimated Number of Annual Burden Hours: 331.

Abstract: The U.S. Department of Education (ED)'s Institute of Education Sciences (IES) requests clearance for data collection activities to support a congressionally mandated study of the District of Columbia (DC) Opportunity Scholarship Program (OSP). Collecting information about the OSP is critical given ED's interest in private school choice as a way to improve students' educational outcomes and Congress's focus on the program. Proposed legislation supports both expanding the OSP to serve more students in DC and new tax credits that would make up to $5 billion available to fund similar programs nationwide. The importance of the OSP to Congress is reflected in its requirement that IES conduct a third evaluation of the program, following those completed in 2011 and 2019. The study will result in a report on the implementation of the OSP, including identification of challenges encountered by OSP-eligible applicants, participating schools, and the program operator; and potential program or policy changes to help address these challenges. A subsequent issue brief will focus on challenges related to families' ongoing participation in the OSP, since about 20% of students stop using scholarships after one year of participation. The study will also use the collected data to disseminate up to three issue policy briefs. This request covers administrative data as well as surveys of the OSP program operator, administrators of participating and non-participating OSP schools, OSP applicants, and OSP users. Also included is a request for classroom observations in OSP-participating schools.

Dated: November 2, 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. 2020–24608 Filed 11–4–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0136]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Formula Grant EASIE Electronic Application System for Indian Education

AGENCY: Office of Elementary and Secondary Education, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before December 7, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Crystal Moore, 202–453–5593.

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: Formula Grant EASIE Electronic Application System for Indian Education.

OMB Control Number: 1810–0021.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 11,300.

Total Estimated Number of Annual Burden Hours: 7,050.

Abstract: The Indian Education Formula Grant (CFDA 84.060A) requires the annual submission of the application from the local educational agency and/or tribe. The amount of each applicant's award is determined by formula, based upon the reported number of American Indian/Alaska Native students identified in the application, the state per pupil expenditure, and the total appropriation available. Applicants provide the data required for funding electronically, and the Office of Indian Education (OIE) is able to apply electronic tools to facilitate the review and analysis leading to grant awards. This change request will result in a reduction in burden of 1,950 hours and $39,000 for the public. The change in burden is due to technical changes in the forms that made them electronically fillable and a reduction in the number of questions in the collection.

Dated: November 2, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–24593 Filed 11–4–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0169]

Agency Information Collection Activities; Comment Request; Third Party Authorization Form

AGENCY: Federal Student Aid, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 4, 2021.

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 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Third Party Authorization Form.

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 100,000.

Total Estimated Number of Annual Burden Hours: 25,000.

Abstract: This is a request for a new information collection for a third-party authorization form to be used by federal student loan borrowers to designate or revoke a designation of an individual or organization to represent the borrower in matters related to their federally held student loans. This form will standardize the way that borrowers provide privacy act releases and authorization for a third party to take action on borrowers' federal student loan accounts held by various servicers. This will standardize processes and help borrowers and their third-party representatives when loans transfer between servicers. This information collection stems from the Privacy Act of 1974 and the common law legal principles of agency, which is not reflected in the Department's statute or regulations, but with which the Department must comply or which the Department supports.

Dated: October 30, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–24493 Filed 11–4–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Amended Record of Decision for the Complex Transformation Supplemental Programmatic Environmental Impact Statement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the U.S. Department of Energy (DOE), is announcing this amendment to the December 19, 2008, Record of Decision (ROD) for the Complex Transformation Supplemental Programmatic Environmental Impact Statement—Operations Involving Plutonium, Uranium, and the Assembly and Disassembly of Nuclear Weapons (Complex Transformation SPEIS—2008 Programmatic ROD). In this Amended ROD, NNSA announces its programmatic decision to implement elements of a Modified Distributed Centers of Excellence (DCE) Alternative whereby NNSA would produce a minimum of 50 war reserve pits per year at a repurposed Mixed-Oxide Fuel Fabrication Facility (MFFF) at the Savannah River Site (SRS) during 2030 for the national pit production mission and implement surge efforts to exceed 80 pits per year up to the analyzed limit as necessary beginning during 2030 for the nuclear weapons stockpile. This decision is supported at a programmatic level by the analysis in a Supplement Analysis (SA) to the Complex Transformation SPEIS (2019 SPEIS SA) (DOE/EIS–0236–SA–02), which NNSA prepared in 2019. After preparing and considering the 2019 SPEIS SA, NNSA has determined that no further NEPA analysis is needed at a programmatic level prior to issuing this Amended ROD.

FOR FURTHER INFORMATION CONTACT: For further information on this Amended ROD, contact: Mr. James R. Sanderson, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0119; phone: (202) 586–1402; or email to: *Jim.Sanderson@hq.doe.gov.* This Amended ROD, the 2019 SPEIS SA, and related NEPA documents are available on the NNSA NEPA Reading Room website at *https://www.energy.gov/nnsa/nnsa-nepa-reading-room.*

SUPPLEMENTARY INFORMATION:

Background

NNSA has a statutory mission to maintain and enhance the safety, reliability, and performance of the U.S. nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements. In the Complex Transformation SPEIS, NNSA considered how to configure facilities that hold Category I and Category II quantities of Special Nuclear Material (SNM) across the nuclear weapons complex (Complex), including the three functional areas of plutonium, uranium operations, and assembly/disassembly/

high explosives in various ways. These alternatives were broadly categorized into a DCE Alternative, a Consolidated Centers of Excellence (CCE) Alternative, and Capability-Based Alternative. The Complex Transformation SPEIS also analyzed a No Action Alternative. Pit production levels of up to 200 pits per year at a single site were analyzed in the DCE and CCE Alternatives, and nominal pit production levels of up to 50 pits per year were analyzed under the Capability-Based Alternative. With respect to plutonium operations and pit production, the 2008 Programmatic ROD continued NNSA's prior decision to produce 20 pits per year at the Los Alamos National Laboratory (LANL) until completion of a future Nuclear Posture Review (NPR).

Both Federal law and national security policy now require pit production rates of not less than 80 pits per year nationally beginning during 2030 (50 U.S.C. 2538a, as amended). On September 2, 2020, NNSA published an Amended ROD for its programmatic decision to implement elements of a Modified DCE Alternative from the Complex Transformation SPEIS whereby LANL will produce a minimum of 30 war reserve pits per year for the national pit production mission during 2026 and implement surge efforts to exceed 30 pits per year as needed (85 FR 54550). That decision is unchanged by this Amended ROD. Because operations involving SNM are complex, implementing changes in operations such as pit production takes several years. NNSA is now issuing this Amended ROD on those aspects of the national pit production mission at SRS that have been analyzed at both the programmatic and site-specific level by final environmental impact statements. The scope of this Amended ROD is limited to plutonium operations related to pit production to sustain NNSA's pit production capability and fulfill NNSA's requirements under Federal law and national policy. All other activities conducted pursuant to decisions announced in the 2008 Programmatic ROD are outside the scope of this decision.

Synopsis of the Programmatic EIS and the Supplemental Programmatic EIS Related to Plutonium Operations and the Associated Records of Decision

During the Cold War, the U.S. maintained a pit production capacity of approximately 2,000 pits per year (actual production numbers are classified) but lost this large-scale production capability in the late 1980s. In 1996, the environmental effects of a production rate of up to 80 pits per year at SRS and LANL were analyzed in the *Programmatic Environmental Impact Statement for Stockpile Stewardship and Management* (DOE/EIS–0236) (SSM PEIS). In December 1996, NNSA issued a ROD announcing a decision setting pit production at LANL at 20 pits per year (61 FR 68014; December 26, 1996). Tiering from the SSM PEIS, the 1999 *Site-Wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory* (DOE/EIS–0283) (1999 LANL SWEIS) provided site-specific analysis for pit production levels at LANL of up to 80 pits per year. In the 1999 LANL ROD, NNSA confirmed its decision for pit production at LANL at 20 pits per year. Various supplements to and re-evaluations of the SSM PEIS were completed over the next several years.

In 2008, NNSA prepared the Complex Transformation SPEIS, which analyzes the potential environmental impacts of alternatives for transforming the Complex in a manner consistent with national policy. Acknowledging the shifting needs of national security policy, the Complex Transformation SPEIS was prepared to provide NNSA with a flexible programmatic EIS that could be tiered from when the United States faced the need to implement changes to operations such as pit production. As it relates to plutonium operations, the Complex Transformation SPEIS evaluates the potential impacts of alternatives for structuring the Complex including the DCE Alternative, CCE Alternative, and Capability-Based Alternative, and each of these alternatives have several sub-alternatives. The 2008 LANL SWEIS again provided site-specific analysis for pit production levels at LANL of up to 80 pits per year. In the 2008 LANL SWEIS ROD and subsequent RODs, NNSA selected a No Action Alternative (continuation of existing operations) with some elements of an Expanded Operations Alternative, which maintained NNSA's decision for pit production levels of 20 pits per year at LANL. In September 2020, NNSA finalized its first site-specific analysis for pit production at SRS, the *Final Environmental Impact Statement (EIS) for Plutonium Pit Production at the Savannah River Site (SRS) in South Carolina* (DOE/EIS–0541).

The Complex Transformation SPEIS considered a wide range of alternatives to provide NNSA with sufficient flexibility in the continued transformation of the Complex. Some of the specific elements of different alternatives and sub-alternatives in the Complex Transformation SPEIS include an analysis of the impacts associated with construction of a new pit production facility to produce 125 pits per year, with surge capacity to produce 200 pits per year. Sites that the Complex Transformation SPEIS evaluates for this level of pit production include LANL, SRS, the Pantex Plant (Pantex) in Texas, the Y–12 National Security Complex (Y–12) in Tennessee, and the Nevada National Security Site in Nevada. At LANL, the Complex Transformation SPEIS also includes an analysis of two distinct upgrades to existing facilities, rather than construction of a new facilities, including one to support production of 125 pits per year (with surge capacity to produce 200 pits per year) and one to support production of 50–80 pits per year. At SRS, the Complex Transformation SPEIS evaluated a pit production facility that would use the planned MFFF and Pit Disassembly and Conversion Facility infrastructure. The alternative selected in the 2008 Programmatic ROD was a combination of the DCE Alternative and a Capability-Based Alternative in which, with respect to plutonium operations, NNSA did not make any new decisions related to pit production capacity beyond 20 pits per year at LANL.

Changes Since Issuance of the Complex Transformation 2008 Programmatic ROD

The United States has emphasized the need to eventually produce 80 pits per year and while the drivers and the requirement for pit production have remained relatively unchanged there have been specific changes in the law and national policy regarding pit production since issuance of the Complex Transformation SPEIS. Since 2014, Federal law has required the nuclear security enterprise to produce not less than 30 war reserve plutonium pits during 2026. Federal law now requires that the nuclear security enterprise produces not less than 80 war reserve plutonium pits during 2030 (50 U.S.C. 2538a, as amended).

In addition, on January 27, 2017, the President directed the Department of Defense (DoD) to conduct an NPR which was issued in 2018. The 2018 NPR echoed the need for pit production and articulated a national policy that is consistent with Congressional and Presidential direction, stating that the United States will pursue initiatives to ensure the necessary capability, capacity, and responsiveness of the nuclear weapons infrastructure and the needed skill of the workforce, including providing the enduring capability and capacity to produce plutonium pits at a rate of no fewer than 80 pits per year during 2030. The 2018 NPR also details the evolving and uncertain nuclear threat environment facing the United States. Concurrent with the 2018 NPR, DOE conducted an Analysis of Alternatives (AoA) to identify and assess alternatives across DOE sites that could deliver the infrastructure to meet the sustained plutonium pit requirements of 80 pits per year. To achieve the required annual pit production rate, the AoA report considered the construction of new facilities and the refurbishment of existing facilities and identifies SRS and LANL as the two preferred alternatives to meet pit production requirements.

In 2018, Congress and the President also directed that LANL will produce a minimum of 30 pits per year for the national pit production mission and directed it be capable of surge efforts to exceed 30 pits per year to meet NPR and national policy (Pub. L. 115–232, Section 3120). To these ends, the DoD Under Secretary of Defense for Acquisition and Sustainment and the NNSA Administrator issued a Joint Statement on May 10, 2018, describing NNSA's recommended alternative to pursue a two-site approach—50 pits per year produced at SRS and a minimum of 30 pits per year produced at LANL. In addition to improving the resiliency, flexibility, and redundancy of our nuclear security enterprise by reducing reliance on a single production site, this approach enables the capability to allow for enhanced warhead safety and security to meet DoD and NNSA requirements; deliberate, methodical replacement of older existing plutonium pits with newly manufactured pits as risk mitigation against plutonium aging; and response to changes in deterrent requirements driven by renewed great power competition.

Finally, since issuance of the 2008 Programmatic ROD, a significant portion of the MFFF at SRS has been constructed. At the time that the Complex Transformation SPEIS was being completed, construction of the MFFF had just begun. The MFFF was built to produce mixed oxide fuel from surplus plutonium for use in commercial nuclear reactors. For a variety of reasons NNSA issued a Notice of Termination to the MFFF construction contractor on October 10, 2018, cancelling the contract for the facility. The constructed portion of MFFF was built to current safety and security standards and contains three floors and more than 400,000 square feet of available space. The potential availability of this facility is, in part, why NNSA has reevaluated a single pit production site at the programmatic level and has recently completed a site-specific NEPA analysis for pit production at SRS.

NEPA Process for Amending the ROD

NNSA prepared this Amended ROD pursuant to the regulations of the Council on Environmental Quality (CEQ) for implementing NEPA (40 CFR parts 1500–1508) and DOE's NEPA implementing procedures (10 CFR part 1021). This Amended ROD is based on information and analysis in the Complex Transformation SPEIS (DOE/EIS–0236–S4) issued on October 24, 2008 (73 FR 63460) and public comments received; the 2019 SPEIS SA (DOE/EIS–0236–SA–02) and public comments received; other NEPA analysis and public comments as noted in the 2019 SPEIS SA; and other factors including Federal law and NNSA's mission.

The Draft Complex Transformation SPEIS included a robust public participation process. NNSA received comments from Federal agencies; state, local, and tribal governments; public and private organizations; and individuals. In addition, during the 20 public meetings that NNSA held on the Draft Complex Transformation SPEIS, more than 600 speakers made oral comments. NNSA reviewed and considered all comments received on the Draft Complex Transformation SPEIS before issuing the 2008 Programmatic ROD.

NNSA prepared the 2019 SPEIS SA to determine whether, prior to proceeding with the effort to produce plutonium pits at a rate of not less than 80 pits per year beginning during 2030, the existing Complex Transformation SPEIS should be supplemented, a new environmental impact statement be prepared, or that no further NEPA analysis is required. Although pertinent regulations do not require public comment on an SA, NNSA decided, in its discretion, that public comment in this instance would be helpful. NNSA issued the Draft 2019 SPEIS SA for public review on June 28, 2019 (84 FR 31055). NNSA considered all comments received during the public comment period. NNSA also reviewed all comment documents received during the public scoping process for the site-specific SRS Pit Production EIS for relevance to the 2019 SPEIS SA. NNSA included a comment response document as Appendix A to the Final 2019 SPEIS SA. The Final 2019 SPEIS SA was announced on January 8, 2020 (85 FR 887). Since announcing the availability of the Final 2019 SPEIS SA, NNSA has received additional comments related to the need for a programmatic EIS. NNSA considered those comments during the preparation of this Amended ROD.

Summary of Impacts

In Section 2.3 of the 2019 SPEIS SA, NNSA discusses environmental changes at SRS and LANL that have occurred since publication of the Complex Transformation SPEIS and that are relevant to the analysis in the 2019 SPEIS SA. The 2019 SPEIS SA analyzes the potential impacts of the Proposed Action on land resources, visual resources, noise, air quality, water resources, geology and soils, ecological resources, cultural resources, socioeconomics, environmental justice, infrastructure, health and safety for normal operations, accidents and intentional destructive acts, waste management, and transportation and traffic. Section 3.2 of the 2019 SPEIS SA provides (1) a summary of the potential environmental impacts from the Complex Transformation SPEIS, (2) the estimate of potential impacts specific to the Proposed Action, and (3) a more detailed analysis of potential impacts for those NEPA resource areas where NNSA determined that there might be potentially significant new circumstances or information relevant to environmental concerns. Tables 3–1 and 3–2 of the 2019 SPEIS SA present information in a comparative fashion for each resource area. Table 3–3 addresses the combined impacts, to the extent that they are known at this time, from pit production at both SRS and LANL. Table 3–4 addresses Complex-wide transportation impacts. Section 4.0 of the 2019 SPEIS SA analyzes cumulative impacts at both a programmatic level and site-specific level. NNSA's conclusion based on the Final 2019 SPEIS SA is that complex-wide impacts of adopting a Modified DCE Alternative for plutonium operations for all resource areas would not be different, or would not be significantly different, than impacts in existing NEPA analyses. NNSA has determined that that the proposed action does not constitute a substantial change from actions analyzed previously and there are no significant new circumstances or information relevant to environmental concerns. Thus, consistent with 10 CFR 1021.315(e), the existing 2008 Programmatic ROD for the Complex Transformation SPEIS can be amended at this time to document NNSA's decision to implement the two-site approach for pit production at SRS and LANL. In addition, NNSA is separately issuing a ROD for the site-specific SRS Pit Production EIS.

Environmentally Preferable Alternative

The analyses in the Complex Transformation SPEIS of the environmental impacts associated with the programmatic alternatives indicated that the No Net Production/Capability Based Alternative is environmentally preferable. Under this alternative NNSA would maintain capabilities to continue surveillance of the weapons stockpile, produce limited life components, and dismantle weapons, but would not add new types or increased numbers of weapons to the stockpile. This alternative would result in the minimum infrastructure demands, produce the least amount of wastes, reduce worker radiation doses, and require the fewest employees. Almost all of these reductions in potential impacts result from the reduced production levels assumed for this alternative. The environmentally preferable alternative for programmatic alternatives accounts for actions across the complex at multiple sites. This determination may not apply to site-specific determinations where other factors are considered in the analysis.

Amended Decision

NNSA has decided at a programmatic level to implement aspects of a Modified DCE Alternative from the Complex Transformation SPEIS to produce a minimum of 50 pits per year at a repurposed MFFF at SRS, with additional surge capacity, if needed, to meet the requirements of producing not less than 80 pits per year beginning during 2030 for the nuclear weapons stockpile. This decision continues the transformation of the Complex following the end of the Cold War and the cessation of nuclear weapons testing, particularly decisions announced in the 1996 ROD for the SSM PEIS (DOE/EIS–0236) (61 FR 68014; Dec. 26, 1996) and the 2008 Programmatic Alternatives ROD for the Complex Transformation SPEIS. This Amended ROD modifies only the plutonium operations aspects of the 2008 Programmatic ROD. NNSA has made no proposals to, and there are no changes to, NNSA's decisions on other aspects of the 2008 Programmatic ROD or to the September 2020 Amended ROD to produce a minimum of 30 war reserve pits per year at LANL for the national pit production mission during 2026 and implement surge efforts to exceed 30 pits per year as needed.

Basis for Decision

In making this decision, NNSA considered the 2019 SPEIS SA, the Complex Transformation SPEIS, other referenced NEPA analyses, and its statutory responsibilities to support the nuclear weapons stockpile. Federal law and national security policies continue to require NNSA to maintain a safe, secure, and reliable nuclear weapons stockpile and create a responsive nuclear weapons infrastructure that are cost-effective and have adequate capacity to meet reasonably foreseeable national security requirements. This Amended ROD will enable NNSA to continue meeting Federal law and national security requirements.

Mitigation Measures

As described in the Complex Transformation SPEIS and the 2008 Programmatic ROD, NNSA operates in compliance with environmental laws, regulations, and policies within a framework of contractual requirements; many of these requirements mandate actions to control and mitigate potential adverse environmental effects. Examples of mitigation measures include site security and threat protection plans, emergency plans, Integrated Safety Management Systems, pollution prevention and waste minimization programs, cultural resource and protected species programs, and energy and water conservation programs. Any additional site-specific mitigation actions would be identified in site-specific NEPA documents.

Signing Authority

This document of the Department of Energy was signed on October 30, 2020, by Lisa E. Gordon-Hagerty, Under Secretary for Nuclear Security and Administrator, NNSA, 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 30, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–24516 Filed 11–4–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Record of Decision for the Final Environmental Impact Statement (EIS) for Plutonium Pit Production at the Savannah River Site (SRS) in South Carolina (DOE/EIS–0541)

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Record of decision.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the U.S. Department of Energy (DOE), is announcing this Record of Decision (ROD) for the *Final Environmental Impact Statement (EIS) for Plutonium Pit Production at the Savannah River Site (SRS) in South Carolina* (SRS Pit Production EIS) (DOE/EIS–0541). In this ROD, NNSA announces its decision to implement the Proposed Action to repurpose the Mixed-Oxide Fuel Fabrication Facility (MFFF) to produce a minimum of 50 war reserve pits per year at SRS and to develop the ability to implement a short-term surge capacity to enable NNSA to meet the requirements of producing pits at a rate of not less than 80 war reserve pits per year up to the analyzed limit as necessary beginning during 2030 for the nuclear weapons stockpile. NNSA has previously evaluated this action at the programmatic level in the 2008 Complex Transformation Supplemental Programmatic EIS (Complex Transformation SPEIS), and recently in a separate Complex Transformation SPEIS Supplement Analysis (2019 SPEIS SA).

FOR FURTHER INFORMATION CONTACT: For further information on this ROD or the SRS Pit Production EIS, contact: Jennifer Nelson, NEPA Document Manager, National Nuclear Security Administration, Savannah River Field Office, P.O. Box A, Aiken, SC 29802; phone: (803) 557–6372 or (803) 557–NEPA; or via email at *NEPA-SRS@srs.gov.* This ROD, the SRS Pit Production EIS, and related NEPA documents are available at *https://www.energy.gov/nnsa/nnsa-nepa-reading-room.*

SUPPLEMENTARY INFORMATION:

Background

NNSA has a statutory mission to maintain and enhance the safety, reliability, and performance of the U.S. nuclear weapons stockpile including the ability to design, produce, and test, in order to meet national security requirements. Under Federal law and to meet national security requirements, NNSA must implement a strategy to provide the enduring capability and capacity to produce not less than 80 war reserve pits per year beginning during 2030 (50 U.S.C. 2538a, as amended). NNSA's current pit production capacity cannot meet this requirement. To meet this requirement, NNSA has decided to implement the Proposed Action in the SRS Pit Production EIS.

Pit production, at a level of at least 80 pits per year at SRS, has been analyzed in two programmatic EISs and the site-specific SRS Pit Production EIS. The first programmatic EIS in the post-Cold War era was the 1996 *Programmatic Environmental Impact Statement for Stockpile Stewardship and Management* (SSM PEIS) (DOE/EIS–0236). The SSM PEIS evaluated reasonable alternatives for reestablishing interim pit production capability on a small scale. It analyzed a production level of 80 pits per year at SRS and LANL at a programmatic level and associated impacts across the Complex. In December 1996, NNSA issued a ROD announcing a decision setting pit production at LANL at 20 pits per year (61 FR 68014; December 26, 1996).

In 2008, NNSA prepared the *Complex Transformation Supplemental Programmatic Environmental Impact Statement* (Complex Transformation SPEIS) (DOE/EIS–0236–S4). The Complex Transformation SPEIS evaluates, among other things, alternatives for producing 10–200 pits per year at different site alternatives, including SRS. At SRS, the Complex Transformation SPEIS evaluated a pit production facility that would use the planned MFFF and Pit Disassembly and Conversion Facility infrastructure. In the 2008 Programmatic ROD, NNSA did not make any new decisions related to pit production capacity beyond 20 pits per year at LANL (73 FR 77644; December 19, 2008).

Since 2014, Federal law has required the nuclear security enterprise to produce not less than 30 war reserve plutonium pits during 2026. Federal law now requires that the nuclear security enterprise produce not less than 80 war reserve plutonium pits during 2030 (50 U.S.C. 2538a, as amended). The 2018 Nuclear Posture Review reinforces this pit production requirement by stating that NNSA must produce at least 80 plutonium pits per year beginning during 2030 and must sustain the capacity for future life extension programs and follow-on programs. As a result, the United States is pursuing an initiative to provide the enduring capability and capacity to produce plutonium pits at a rate of no fewer than 80 pits per year beginning during 2030. To these ends, the DoD Under Secretary of Defense for Acquisition and Sustainment and the NNSA Administrator issued a Joint Statement on May 10, 2018, describing NNSA's recommended alternative to pursue a two-prong (two-site) approach—a minimum of 50 pits per year produced at SRS and a minimum of 30 pits per year produced at LANL. In addition to improving the resiliency, flexibility, and redundancy of our nuclear security enterprise by reducing reliance on a single production site, this approach enables the capability to allow for enhanced warhead safety and security to meet DoD and NNSA requirements; deliberate, methodical replacement of older existing plutonium pits with newly manufactured pits as risk mitigation against plutonium aging; and response to changes in deterrent requirements driven by renewed great power competition.

In 2019, NNSA prepared the 2019 SPEIS SA, which analyzed NNSA's two-site pit production approach at a programmatic level. Based on the 2019 SPEIS SA, NNSA determined that the proposed approach for pit production does not constitute a substantial change from actions analyzed previously and there are no significant new circumstances or information relevant to environmental concerns. The 2019 SPEIS SA affirmed NNSA's decision to prepare site-specific documentation for the proposal to repurpose the MFFF to produce a minimum of 50 war reserve pits per year at SRS and to develop the ability to implement a short-term surge capacity to enable NNSA to meet the requirements of producing pits at a rate of not less than 80 war reserve pits per year beginning during 2030 for the nuclear weapons stockpile. In the SRS Pit Production EIS and this ROD, the repurposed MFFF is referred to as the Savannah River Plutonium Processing Facility (SRPPF) to reflect the reconfiguration of the existing MFFF to perform plutonium-related processing to support NNSA missions.

Consistent with the SSM PEIS and the Complex Transformation SPEIS, the SRS Pit Production EIS identified that the term, pit production, was used to describe a complex process that involves three main areas: (1) Material receipt, unpacking, and storage; (2) feed preparation; and (3) manufacturing. The production of pits at SRS includes the activities needed to fabricate new pits, to modify the internal features of existing pits, and to certify new pits or requalify existing pits.

NEPA Process for This ROD

NNSA prepared this ROD for the SRS Pit Production EIS pursuant to the regulations of the Council on Environmental Quality (CEQ) for implementing NEPA (40 CFR parts 1500–1508) and DOE's NEPA implementing procedures (10 CFR part 1021). This ROD is based on Federal law and NNSA's mission and information and analysis in the SRS Pit Production EIS, including public comments received.

The SRS Pit Production EIS was distributed electronically for review as part of the public participation process. DOE announced the availability of the Draft SRS Pit Production EIS on April 3, 2020 (85 FR 18947). The Environmental Protection Agency (EPA) announced the availability of the Final SRS Pit Production EIS on September 25, 2020 (85 FR 60458). DOE also published an announcement of the Final SRS Pit Production EIS on September 30, 2020 (85 FR 61741). Approximately 400 comment documents (including approximately 190 comment documents submitted as one of seven email campaign letters) were received from individuals, interested groups, and Federal, State, and local agencies during the public comment period on the Draft SRS Pit Production EIS. In addition, 44 commenters spoke at an online, virtual public hearing (with telephone access), and their comments were recorded in formal transcripts. The majority of the comments received on the Draft EIS focused on policy issues related to the appropriateness or the need for nuclear weapons or the need for additional pits. The primary topics identified in the public comments included: (1) Requests for a programmatic EIS for pit production; (2) requests to consider pit reuse as a reasonable alternative; (3) requests for an extension to the comment period due to the COVID–19 pandemic; (4) disagreement with the two-prong (two-site) approach to pit production; (5) general opposition to, or support for, the proposal; (6) comments about nuclear weapon policies or new weapon design; (7) comments about the need for pits and the lifetime of current pits; (8) comments about waste management; (9) comments about transuranic waste storage at the Waste Isolation Pilot Plant; (10) comments about impacts to human health and potential environmental justice impacts; and (11) comments about budget priorities and the need to clean up SRS. After considering all comments and modifying the Draft EIS, NNSA completed the Final SRS Pit Production EIS.

Summary of Impacts

Both Federal law and national security policy require pit production rates of not less than 80 pits per year nationally during 2030. The SRS Pit Production EIS analyzed the potential impacts of producing 50, 80, and 125 pits per year at SRS. This approach provides a conservative analysis and affords NNSA the flexibility to adapt to shifting requirements or changed circumstances in the future if SRS must produce more than 50 pits per year. Table 2–5 of the SRS Pit Production EIS presents a summary of the potential environmental impacts of the Proposed Action and the No Action Alternative. Table 2–6 summarizes the potential cumulative environmental impacts presented in Chapter 5 of the EIS. Construction activities associated with the Proposed Action would re-disturb approximately 48 acres of previously disturbed land. This land requirement represents less than one percent of the total 198,344-acre SRS. Although construction activities would change the existing land use, the proposed SRPPF would be compatible and consistent with the land use plans at SRS and would be compatible with the current land use designations.

The site for the proposed SRPPF complex is located in a highly developed and previously disturbed industrial area; therefore, there would be no loss of habitat or impacts to biological, cultural, or archaeological resources. Construction impacts would be minor, and appropriate soil and erosion mitigation measures would minimize any adverse impacts. No Federal- or State-threatened or endangered species or other species of special interest are expected to be impacted by the Proposed Action.

During construction and operations, groundwater use would be approximately 2.2 percent and 1.7 percent, respectively, of the total current water use at SRS. The maximum amount of electrical consumption would represent less than four percent of the SRS sitewide electrical capacity.

Although there would be overall positive socioeconomic impacts associated with construction and operational workforces, an increase in vehicle traffic could affect the roads and transportation network surrounding SRS. Employment increases would represent less than one percent of the total employment in the socioeconomic area.

During normal operations, a minimal amount of radioactive material and activation products could be released to the environment. However, any radiation dose received by a member of the public from emissions would be small and well below regulatory limits.

Operation of the proposed SRPPF would generate a variety of wastes (including radioactive, hazardous, mixed, and sanitary) as an unavoidable result of normal operations.

For production of 50 pits per year, there would be approximately 145 annual shipments of radiological materials and wastes, which could impact the public along transportation routes. Potential doses to the public and workers would be well below regulatory limits.

Environmentally Preferable Alternative

Considering the many environmental facets of the alternatives analyzed in the SRS Pit Production EIS, and looking out over the long term, the No-Action Alternative would be the environmentally preferred alternative because no adverse impacts would result compared to the Proposed Action. However, the No-Action Alternative would not meet the purpose and need for agency action.

Comments on the Final SRS Pit Production EIS

NNSA posted the Final SRS Pit Production EIS on the NNSA NEPA Reading Room website (*https://www.energy.gov/nnsa/nnsa-nepa-reading-room*) and EPA published a Notice of Availability in the **Federal Register** (85 FR 60458, September 25, 2020). DOE also published a Notice of Availability of the Final SRS Pit Production EIS in the **Federal Register** on September 30, 2020 (85 FR 61741). In response to these Notices, NNSA received three comment documents related to the Final SRS Pit Production EIS. NNSA considered each of the comments contained in these documents during the preparation of this ROD.

Decision

NNSA has decided to implement the Proposed Action to repurpose the MFFF to produce a minimum of 50 war reserve pits per year at SRS and to develop the ability to implement a short-term surge capacity to enable NNSA to meet the requirements of producing pits at a rate of not less than 80 war reserve pits per year beginning during 2030 for the nuclear weapons stockpile. Pit production at SRS would be limited to the analyzed limit in the SRS Pit Production EIS to meet national security requirements.

Basis for Decision

In making these decisions, NNSA considered the Final SRS Pit Production EIS, other referenced NEPA analyses, and its statutory responsibilities to support the nuclear weapons stockpile. Federal law and national security policies continue to require NNSA to maintain a safe, secure, and reliable nuclear weapons stockpile and to create a responsive nuclear weapons infrastructure that are cost-effective and have adequate capacity to meet reasonably foreseeable national security requirements. This ROD will enable NNSA to continue meeting Federal law and national security requirements.

Mitigation Measures

SRS operates in compliance with environmental laws, regulations, and policies within a framework of contractual requirements; many of these requirements mandate actions to control and mitigate potential adverse environmental effects. Examples of mitigation measures include site security and threat protection plans, emergency plans, land use plans, Integrated Safety Management Systems, an Environmental Management System, pollution prevention and waste minimization programs, cultural resource and protected species management plans, and energy and water conservation programs. If mitigation measures above and beyond those required by regulations are needed to reduce impacts, NNSA is required to describe mitigation commitments in the ROD and prepare a mitigation action plan (10 CFR 1021.331). The mitigation action plan would explain how, before implementing the Proposed Action, certain measures would be planned and implemented to mitigate adverse environmental impacts. Because no potential adverse impacts were identified that would require additional mitigation measures beyond those required by regulation or achieved through design features or best management practices, NNSA does not expect to prepare a mitigation action plan.

Signing Authority

This document of the Department of Energy was signed on October 30, 2020, by Lisa E. Gordon-Hagerty, Under Secretary for Nuclear Security and Administrator, NNSA, 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 30, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–24517 Filed 11–4–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–22–000]

Commission Information Collection Activities (FERC–588); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–588 (Emergency Natural Gas Transportation, Sale, and Exchange Transactions), and is submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due December 7, 2020.

ADDRESSES: Send written comments on FERC–588 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0144) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments to the Commission (identified by Docket No. IC20–22–000) by any of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.
- Effective 7/1/2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852. *Instructions:*

OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the Currently Under Review field, select Federal Energy Regulatory Commission; click submit and select comment to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–588 (Emergency Natural Gas Transportation, Sale, and Exchange Transactions).

OMB Control No.: 1902–0144.

Type of Request: Three-year extension of the FERC–588 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: FERC–588 is an existing information collection consisting of filing requirements and notice procedures at 18 CFR 157.17 and 284.270. These regulations pertain to non-jurisdictional companies' assistance in natural gas emergency circumstances. The non-jurisdictional companies that assist in such emergency transactions must file information with the Commission under 18 CFR 284.270, so that the Commission may ensure compliance with relevant legal requirements. An interstate pipeline that seeks an emergency certificate for facilities must file an application under 18 CFR 157.17.

On July 17, 2020, the Commission published a Notice in the **Federal Register** (85 FR 43579) in Docket No. IC20–22–000 requesting public comments. The Commission received no public comment in response.

Types of Respondents: Providers and recipients of assistance in natural gas emergency circumstances.

Estimate of Annual Burden: [1] The Commission estimates the total annual burden and cost [2] for this information collection in the following table:

Number of respondents A.	Annual number of responses per respondent B.	Total number of responses C. (Col. A × Col. B)	Average burden (hr.) and cost ($) per response D.	Total annual burden (hr.) and cost ($) E. (Col. C × Col D)
10	3	30	10 hrs; $830	300 hrs.; $24,900

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of

[1] Burden is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[2] The Commission staff believes that industry and Commission staff are similarly situated in terms of cost for wages and benefits. Therefore, we are using $83.00 per hour in this calculation. That is the 2020 average hourly cost, for wages plus benefits, for one FERC full-time equivalent.

the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24551 Filed 11–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11322–000]

Tuolumne Utilities District; Notice of Existing Licensee's Failure To File a Notice of Intent To File a Subsequent License Application, And Soliciting Notices of Intent To File a License Application and Pre-Application Documents

The current license for Columbia Water Supply Hydroelectric Project No. 11322 was issued to Tuolumne Utilities District on August 28, 1995, for a term of 30 years, ending July 31, 2025.[1] The 350-kilowatt (kW) project is located near the town of Sonora in Tuolumne County, California.

The project consists of: (1) The 5-mile-long Columbia Ditch from its terminus to the project boundary of the Phoenix Hydroelectric Project No. 1061, licensed to Pacific Gas and Electric Company; (2) an intake structure on the Columbia Ditch; (3) an 18,700-foot-long steel penstock; (4) a powerhouse containing one generating unit with an installed capacity of 350 kW; (5) a 500-foot-long tailrace returning water to the Bureau of Reclamation's existing New Melones Reservoir; (6) a 2,600-foot-long transmission line; and (7) appurtenant facilities.

At least five years before the expiration of a license for a minor water power project in which sections 14 and 15 of the Federal Power Act were waived, the Commission's regulations require the licensee to file with the Commission a notice of intent (NOI) that contains an unequivocal statement of the licensee's intention to file or not to file an application for a subsequent license, details on the principal project works and installed plant capacity, and other information.[2]

[1] *Tuolumne Utilities Dist.*, 72 FERC 62,178 (1995).

[2] 18 CFR 16.19(b) (2020) (citing 18 CFR 16.6(b)).

If such a licensee does not inform the Commission that it intends to file an application for, in this case, a subsequent license for the project, the licensee may not file an application for a subsequent license, either individually or in conjunction with an entity or entities that are not currently licensees of the project.[3]

Because the existing license expires on July 31, 2025, the NOI was due to be filed no later than the close of business on July 31, 2020. Tuolumne Utilities District, the existing licensee for the Columbia Water Supply Hydroelectric Project, failed to file an NOI for the project by this date.

Any party interested in filing a license application for the Columbia Water Supply Hydroelectric Project must first file an NOI[4] and a pre-application document (PAD)[5] pursuant to Part 5 of the Commission's regulations. Although the integrated licensing process (ILP) is the default pre-filing process, section 5.3(b) of the Commission's regulations allows a potential license applicant to request to use alternative licensing procedures when it files its NOI.[6]

This notice sets a deadline of 120 days from the date of this notice for interested applicants, other than the existing licensee, to file NOIs, PADs, and requests to use the traditional licensing process or alternative procedures.

Applications for a subsequent license from potential applicants must be filed with the Commission at least 24 months prior to the expiration of the existing license.[7] Because the existing license expires on July 31, 2025, applications for license for this project must be filed by July 31, 2023.[8]

Questions concerning this notice should be directed to Shannon Boyle at (202) 502–8417 or *shannon.boyle@ferc.gov.*

Dated: October 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24554 Filed 11–4–20; 8:45 am]

BILLING CODE 6717–01–P

[3] 18 CFR 16.24(b).

[4] 18 CFR 5.5.

[5] 18 CFR 5.6.

[6] 18 CFR 5.3(b).

[7] 18 CFR 16.20.

[8] To the extent an interested applicant files an NOI and PAD and elects or is required to use the Commission's ILP, a process plan will be issued within 180 days of this notice, which accelerates the steps of the ILP to allow for filing a subsequent license application by the July 31, 2023 deadline.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–251–000]

Degrees3 Transportation Solutions, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Degrees3 Transportation Solutions, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 19, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24549 Filed 11–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–3–000]

Commission Information Collection Activities (Ferc–725d); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a renewal of currently approved information collection, FERC–725D (Facilities Design, Connections and Maintenance Reliability Standards).

DATES: Comments on the collection of information are due January 4, 2021.

ADDRESSES: You may submit comments (identified by Docket No. IC21–3–000) by one of the following methods:

• *eFiling at Commission's Website: http://www.ferc.gov.*

• *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

• Effective 7/1/2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725D,[1] Facilities Design, Connections and Maintenance Reliability Standards.

OMB Control No.: 1902–0247.

Type of Request: Three-year approval of the FERC–725D information collection requirements, with no changes to the reporting or recordkeeping requirements. (There are adjustments to the estimates to update the totals that represent the numbers reflected in the NERC Compliance Registry as of July 17, 2020.)

Abstract: On August 8, 2005, The Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law. EPAct 2005 added a new section 215 to the Federal Power Act (FPA), which requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight or by the Commission independently. In 2006, the Commission certified NERC (now called the North American Electric Reliability Corporation) as the ERO pursuant to section 215 of the FPA. On March 16, 2007 (pursuant to section 215(d) of the FPA), the Commission issued Order No. 693, approving 83 of the 107 initial Reliability Standards filed by NERC. In the intervening years, numerous changes have been made to update, eliminate, or establish various Reliability Standards.

[1] This renewal is being submitted to extend the OMB expiration date and will not have an effect on the Docket No. RD20–4 that is being addressed separately.

The information collected by FERC–725D is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824c). Pursuant to section 215 of the Federal Power Act (FPA),[2] in Order 836,[3] the commission approved the following standards, FAC–001–2 (Facility Interconnection Requirements), FAC–002–2 (Facility Interconnection Requirements) FAC–001–3 (Facility Interconnection Requirements). Reliability Standard FAC–001–2 requires each transmission owner and applicable generator owner to document facility interconnection requirements, and to make them available upon request to entities seeking to interconnect. In addition, Reliability Standard FAC–001–2 requires each transmission owner and applicable generator owner to include procedures for coordinating studies to determine the impact of interconnecting facilities on existing interconnections as well as on affected systems.

Reliability Standard FAC–002–2 requires each transmission planner and each planning coordinator to study the reliability impact of interconnecting new—or materially modifying existing—generation, transmission, or electricity end-user facilities on affected systems. In particular, Reliability Standard FAC–002–2 requires transmission planners and planning coordinators to perform steady-state, short-circuit, and dynamic studies to evaluate system performance under both normal and contingency conditions. In addition, Reliability Standard FAC–002–2 requires each generator owner seeking to interconnect, each transmission owner, each distribution provider, and each load-serving entity that is seeking to interconnect new—or materially modifying existing—transmission facilities or end-user facilities to coordinate and cooperate on studies with its transmission planner and planning coordinator. Reliability Standard FAC–001–3 (Transmission Owners) are set out to avoid adverse impacts on the reliability of the Bulk Electric System, Transmission Owners and applicable Generator Owners must document and make Facility interconnection requirements available so that entities seeking to interconnect will have the necessary information.

Type of Respondents: PA/PC, TP, TO, DP, & GO.[4]

[2] 16 U.S.C. 824(o).

[3] Order 836 in Docket No. RM16–13 was issued on 9/20/2017 and is posted at *https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14684897.*

[4] PA = Planning Authority; PC = Planning Coordinator; TO = Transmission Owner; GO =

Estimate of Annual Burden[5] *and Cost:*[6] The Commission estimates an increase (adjustment) in the annual public reporting burden for the FERC–725D that follow the two standards FAC–001–3 and FAC–002–2. FAC–002–2 which increased from 1,206 to 1,542 and FAC–001–3 (Formerly FAC–001–2) which has no change, remains at 161 responses. 1,542 responses + 161 responses for at total of 1,703 responses, as shown below in the table:

FERC–725D: MANDATORY RELIABILITY STANDARDS: FAC (FACILITIES, DESIGN, CONNECTIONS, AND MAINTENANCE)

	Number of respondents[7] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours and cost per response (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Average annual cost per respondent (5) ÷ (1)
Annual Reporting and Recordkeeping (PA/PC, TP, TO, DP, & GO).	1,703	1	1,703	270 hrs.; $22,410	459,810 hrs.; $38,164,230	$22,410
Total FERC–725D	1,703	1	1,703	270 hrs.; $22,410	459,810 hrs.; $38,164,230	22,410

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24552 Filed 11–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filing

	Docket Nos.
Bennett, Robert R	ID–7647–003
Blunden, Gregory W	ID–7981–003
Muldoon, Daniel P	ID–8749–003
Schwartz, David E	ID–3396–004
Strickland, Valerie C	ID–8254–002

Take notice that on October 22, 2020, Robert R. Bennett, Gregory W. Blunden, Daniel P. Muldoon, David E. Schwartz, and Valerie C. Strickland, submitted for filing, applications for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2019) and section 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8 (2019).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on November 12, 2020.

Dated: October 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24553 Filed 11–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP19–1353–009.
Applicants: Northern Natural Gas Company.
Description: Report Filing: 20201030 Refund Report.
Filed Date: 10/29/20.
Accession Number: 20201029–5124.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–109–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.

Generator Owner; DP = Distribution Provider; TP = Transmission Provider.

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[6] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–725D are approximately the same as the Commission's average cost. The FERC 2020 average salary plus benefits for one FERC full-time equivalent (FTE) is $172,329/year (or $83.00/hour). See footnote 4.

[7] The total number of planning authorities, transmission planners and transmission owners, generator owners and distribution providers equals 1,703.

Description: § 4(d) Rate Filing: Volume No. 2—Eversource SP98775 & SP330904 Neg Non-Conforming to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5000.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–110–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102920 Negotiated Rates—Emera Energy Services, Inc. R–2715–43 to be effective 12/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5013.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–111–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102920 Negotiated Rates—Emera Energy Services, Inc. R–2715–44 to be effective 12/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5014.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–112–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Con Ed 510371 Releases to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5023.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–113–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Upstream) to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5034.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–114–000.
Applicants: Dominion Energy Overthrust Pipeline, LLC.
Description: § 4(d) Rate Filing: Non-conforming TSAs—Wyoming Interstate Company to be effective 12/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5049.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–115–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: Conexus NRA Amendment to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5055.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–116–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: § 4(d) Rate Filing: GLGT NRA FT18966 Amendment to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5056.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–117–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Bos Gas 510807 Releases eff 11–01–2020 to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5125.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–118–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—PSEG 511047 Release to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5129.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–119–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Bos Gas 510798 Releases eff 11–01–2020 to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5148.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–120–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Eversource 510804 Releases eff 11–01–2020 to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5150.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–121–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Narra Releases 510985 eff 11–01–2020 to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5153.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–122–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Bos Gas 510365 Release eff 11–01–2020 to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5154.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–123–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Nov 2020 to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5155.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–124–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—ConEd 911704 Releases to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5184.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–125–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel and L&U Update to be effective 12/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5183.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–126–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Narra 510801 Releases eff 11–01–2020 to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5189.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–127–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Bos Gas 510366 Release eff 11–01–2020 to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5194.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–128–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—ConEd 910950 Releases to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5195.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–129–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various 11–1–2020 Releases to be effective 11/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5201.
Comments Due: 5 p.m. ET 11/10/20.

Docket Numbers: RP21–130–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Southeastern Trail—Early In-Svc to be effective 11/1/2020.
Filed Date: 10/29/20.

Accession Number: 20201029–5205.
Comments Due: 5 p.m. ET 11/10/20.

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 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24547 Filed 11–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–16–000.
Applicants: Todd Solar LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Todd Solar LLC.
Filed Date: 10/30/20.
Accession Number: 20201030–5144.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: EG21–17–000.
Applicants: Groton Station Fuel Cell, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Groton Station Fuel Cell, LLC.
Filed Date: 10/30/20.
Accession Number: 20201030–5165.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: EG21–18–000.
Applicants: Yards Creek Energy, LLC.
Description: Notice of Self-Recertification of Exempt Wholesale Generator Status.
Filed Date: 10/30/20.
Accession Number: 20201030–5296.
Comments Due: 5 p.m. ET 11/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2589–003.
Applicants: CPV Shore, LLC.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 10/29/20.
Accession Number: 20201029–5191.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER17–481–005.
Applicants: CPV Maryland, LLC.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 10/29/20.
Accession Number: 20201029–5187.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER20–287–004.
Applicants: CPV Fairview, LLC.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 10/29/20.
Accession Number: 20201029–5185.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER20–2283–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–10–30_SA 3517 Deficiency Response NSP–MDU FSA (J316) to be effective 7/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5152.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER20–2712–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: Amended Filing—City Utilities of Springfield, Missouri Formula Rate to be effective 12/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5199.
Comments Due: 5 p.m. ET 11/9/20.

Docket Numbers: ER20–2839–000.
Applicants: Inova Energy LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of RE Slate 1 LLC; and also submitted a Second Amendment [Asset Appendix] to September 9, 2020 Inova Energy LLC tariff filing.
Filed Date: 10/27/20.
Accession Number: 20201002–5193, 20201027–5209.
Comments Due: 5 p.m. ET 11/17/20.

Docket Numbers: ER21–251–000.
Applicants: Degrees3 Transportation Solutions, LLC.
Description: Baseline eTariff Filing: Baseline New to be effective 10/30/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5182.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER21–252–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: Revised DEF Rate Schedule No. 226 (Seminole Electric Cooperative, Inc.) to be effective 1/1/2021.
Filed Date: 10/29/20.
Accession Number: 20201029–5193.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER21–253–000.
Applicants: Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: SFC submits revision to PJM Tariff re: NITS Rate to be effective 1/1/2021.
Filed Date: 10/29/20.
Accession Number: 20201029–5196.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER21–254–000.
Applicants: Harmony Florida Solar, LLC.
Description: Baseline eTariff Filing: Harmony Florida Solar, LLC Application for MBR Authority to be effective 10/30/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5001.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–255–000.
Applicants: Taylor Creek Solar, LLC.
Description: Baseline eTariff Filing: Taylor Creek Solar, LLC Application for MBR Authority to be effective 10/30/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5003.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–256–000.
Applicants: Vermont Transco LLC.
Description: Notice of Cancellation of Rate Schedule No. 2 of Vermont Transco LLC under ER21–256.
Filed Date: 10/29/20.
Accession Number: 20201029–5220.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER21–257–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: 3rd Quarter 2020 Update to OA and RAA Membership Lists to be effective 9/30/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5035.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–258–000.
Applicants: Todd Solar LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 12/30/2020.
Filed Date: 10/30/20.

Accession Number: 20201030–5039.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–259–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1876R6 KEPCO NITSA NOA to be effective 10/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5040.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–260–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: November 2020 Membership Filing to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5045.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–261–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE 2021 TRBAA Update to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5051.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–262–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–10–30_MISO TOs Att O Filing re Schedule 50 to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5101.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–263–000.
Applicants: Startrans IO, LLC.
Description: § 205(d) Rate Filing: Startrans IO Annual TRR TRBAA Update to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5105.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–264–000.
Applicants: California Power Exchange Corporation.
Description: § 205(d) Rate Filing: Rate Filing for Rate Period 38 to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5108.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–265–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Keystone Appalachian Transmission Company submits Revisions to PJM Tariff to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5117.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–266–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 2021 RSBAA Update Filing to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5137.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–267–000.
Applicants: Gulf Power Company.
Description: Tariff Cancellation: Cancellation of Gulf Power Market-Based Rate Agreements to be effective 12/31/2019.
Filed Date: 10/30/20.
Accession Number: 20201030–5146.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–268–000.
Applicants: Gulf Power Company.
Description: Tariff Cancellation: Cancellation of Market-Based Rate Tariff to be effective 12/31/9998.
Filed Date: 10/30/20.
Accession Number: 20201030–5148.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–269–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Service Agreement No. 889 between Tri-State and PacifiCorp to be effective 10/28/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5150.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–270–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Service Agreement No. 216—Notice of Cancellation to be effective 12/31/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5151.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–271–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) Rate Filing: SPP Schedule 1A to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5163.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–272–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) Rate Filing: Revisions to Operating Services Agreement with CPEC, Service Agreement No. 54 to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5168.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–273–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: Florida Power & Light Company, LLC Revised Market-Based Rate Tariff to be effective 12/31/9998.
Filed Date: 10/30/20.
Accession Number: 20201030–5179.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–274–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Changes to Administrative Charge Refund Provisions to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5188.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–275–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP-City of Camden NITSA SA No. 309 to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5189.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–276–000.
Applicants: Georgia Power Company.
Description: Compliance filing: FP&L and JEA Scherer Unit 4 TSAs Order No. 864 Compliance Filing to be effective 1/27/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5190.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–277–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp NITSA SA T–1098 Low Voltage Charges to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5209.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–278–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Effective Load Carrying Capability Construct to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5238.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–279–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCo Reserve Filing to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5255.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–280–000.
Applicants: CO Buffalo Flats, LLC.
Description: § 205(d) Rate Filing: CO Buffalo Flats, LLC Market-Based Rate Tariff to be effective 10/31/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5260.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–281–000.

Applicants: MidAmerican Energy Company.
Description: § 205(d) Rate Filing: Services Tariff v. 2—Revised to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5261.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–282–000.
Applicants: DATC Path 15, LLC.
Description: § 205(d) Rate Filing: Appendix I 2021 to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5240.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–283–000.
Applicants: Hillcrest Solar I, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 2/27/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5266.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–284–000.
Applicants: Groton Station Fuel Cell, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5283.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–285–000.
Applicants: Sigurd Solar LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 12/30/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5292.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–286–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC-Dynamic Transfer Agmt DEP, Carolina Power Partners, Camden RS No. 558 to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5295.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–287–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Amendment to Extend Port of Oakland (TO SA 4) to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5299.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–288–000.
Applicants: AMP Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AMPT submits Revisions to PJM Tariff, Att. H–32A to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5304.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–289–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF-City of Alachua NITSA SA No. 305 to be effective 10/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5323.
Comments Due: 5 p.m. ET 11/20/20.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD21–1–000.
Applicants: North American Electric Reliability Corporation, Western Electric Coordinating Council.
Description: Joint Petition of the North American Electric Reliability Corporation and Western Electricity Coordinating Council for approval of Proposed Reliability Standard PRC–006–5.
Filed Date: 10/27/20.
Accession Number: 20201027–5233.
Comments Due: 5 p.m. ET 11/27/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24546 Filed 11–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–8–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on October 22, 2020, Equitrans, L.P. (Equitrans) filed a prior notice application pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA), and Equitrans' blanket certificate issued in Docket No. CP96–352. Equitrans requests authorization to plug and abandon an injection and withdrawal well in the Hunters Cave Storage Field due to safety concerns. Equitrans estimates the cost of the project to be approximately $407,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

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.

Any questions regarding this application should be directed to Matthew Eggerding, Assistant General Counsel, Midstream, at Equitrans, L.P., 2200 Energy Drive, Canonsburg, PA 15317; by phone at (412) 553–5786; or by email to *MEggerding@equitransmidstream.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on December 29, 2020. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person[2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is December 29, 2020. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is December 29, 2020. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 29, 2020. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP21–8–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. 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; first select General and then select Protest, Intervention, or Comment on a Filing; or[6]

(2) You can file a paper copy of your submission by mailing it to the address below.[7] Your submission must reference the Project docket number CP21–8–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: 9 Greenway Plaza, Houston, Texas, 77046 or at *MEggerding@equitransmidstream.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be 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 as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. 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. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: October 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24548 Filed 11–4–20; 8:45 am]

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[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

[7] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2020–0354; FRL10016–05–OLEM]

Proposed Information Collection Request; Comment Request; Gathering Data on Results of Newly Required Annual and Triennial Testing To Evaluate the Impacts of U.S. E.P.A.'s 2015 Federal Underground Storage Tank Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Gathering Data on Results of Newly Required Annual and Triennial Testing to Evaluate the Impacts of U.S. E.P.A.'s 2015 Federal Underground Storage Tank Regulation'' (EPA ICR No. 2650.01, OMB Control No. 2050–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 4, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2020–0354, online using *www.regulations.gov* (our preferred method), by email to *oira_submission@omb.eop.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Elizabeth McDermott, Prevention Division, Office of Underground Storage Tanks, Mail Code 5401R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0646; email address: *McDermott.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This information collection request will allow U.S. E.P.A. to employ a contractor to compile data from private companies providing regular servicing and maintenance to owners of federally regulated underground storage tank systems (USTs).

The contractor will collect and assimilate testing data from several UST servicing companies. The contractor's deliverable will be a database of the performance results over multiple iterations of newly required UST testing procedures in various states across the country. These new tests were required by the 2015 UST regulation and are performed either annually or triennially. The data gathered will be pass/fail results from several testing measures, taken from facilities in 17 states where regulations went into effect soonest. These facilities were first required to be tested sometime after the 2015 federal regulation passed, with the second round of triennial required testing to be completed by October 2021.

The completed dataset of test results will allow EPA to evaluate the effectiveness of several of the newly required measures to prevent fuel releases that was required in the 2015 federal UST regulation. Data will be compiled from UST servicing companies about tests performed prior to the initial testing deadline, and from tests results for regulatory compliance for the second test required either within one year or three years after the initial test (depending on the test requirements). EPA may use the data to identify if, and by how much, testing required by the regulation impacts pass/fail rates over time. EPA is interested in quantitatively assessing if pass/fail rates improve between initial and subsequent rounds of testing in those states where data is collected.

Form Numbers: None.

Respondents/affected entities: UST testing and compliance companies, UST facility owners and operators.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 680 (total).

Frequency of response: One-time collection.

Total estimated burden: 9,558 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $605,186.40 (per year), includes no annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change of estimate of hours in the total estimated respondent burden. EPA anticipates that the burden hour estimates will not change substantially before final submission to OMB.

Dated: October 29, 2020.

Mark Barolo,

Director, Office of Underground Storage Tanks.

[FR Doc. 2020–24543 Filed 11–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0144; FRL–10015–89]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an April 3, 2020 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II to voluntarily cancel these product registrations. In the April 3, 2020 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would

merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective November 5, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0144, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

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

II. What action is the Agency taking?

This notice announces the cancellations, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
70488–1	70488	Phonewipe	Benzenemethanaminium, N,N-dimethyl-N-(2-(2-(4-(1,1,3,3-tetramethylbutyl)phenoxy)ethoxy)ethyl)-, chloride.
82544–1	82544	Silver Assembly with Washing Machine.	Silver.
82544–2	82544	Silver Assembly	Silver.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
70488	Advantus Corp., 12276 San Jose Blvd., Bldg. 618, Jacksonville, FL 32223.
82544	Samsung Electronics Co., Ltd., Agent Name: Keller And Heckman, LLP, 1001 G Street NW, Suite 500 West, Washington, DC 20001.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the April 3, 2020 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of the products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are the subject of this notice is November 5, 2020. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of April 3, 2020 (85 FR 18951) (FRL–10007–08). The comment period closed on September 30, 2020.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II until November 5, 2021, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 21, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–24523 Filed 11–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10015–64]

Pesticide Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and/or ecological risk assessments for the registration review of 4-aminopyridine, benzoic acid, cycloate, difenoconazole, dimethoxane, fenbuconazole, ferbam, isoxaflutole, mesotrione, metaldehyde, phorate, phosmet, polymeric betaine, pyrasulfotole, tembotrione, thiophanate methyl and carbendazim (amendment), thiram, tolfenpyrad, topramezone, and ziram; and opens a public comment period on these documents.

DATES: Comments must be received on or before January 4, 2021.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, 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: *For pesticide specific information contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

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. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and/or ecological risk assessments for the pesticides shown in the following table and opens a 60-day public comment period on the risk assessments. For tolfenpyrad, EPA is taking comment on both the Preliminary Work Plan and the draft human health and ecological risk assessments. For phosmet and phorate, only the ecological risk assessments are being published for comment.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
4-Aminopyridine, Case 0015	EPA–HQ–OPP–2016–0030	Moana Appleyard, *appleyard.moana@epa.gov*, (703) 308–8175.
Benzoic Acid, Case 5107	EPA–HQ–OPP–2010–0692	Michael McCarroll, *mccarroll.michael@epa.gov*, (703) 347–0147.
Cycloate, Case 2125	EPA–HQ–OPP–2015–0288	Robert Little, *little.robert@epa.gov*, (703) 347–8156.
Difenoconazole, Case 7014	EPA–HQ–OPP–2015–0401	Rachel Fletcher, *fletcher.rachel@epa.gov*, (703) 347–0512.
Dimethoxane, Case 3064	EPA–HQ–OPP–2010–0686	Kimberly Wilson, *wilson.kimberly@epa.gov*, (703) 347–0495.
Fenbuconazole, Case 7012	EPA–HQ–OPP–2015–0716	Alexander Hazlehurst, *hazlehurst.alexander@epa.gov*, (703) 347–0221.
Ferbam, Case 8000	EPA–HQ–OPP–2015–0567	Jaclyn Pyne, *pyne.jaclyn@epa.gov*, (703) 347–0445.
Isoxaflutole, Case 7242	EPA–HQ–OPP–2010–0979	Rachel Eberius, *eberius.rachel@epa.gov*, (703) 347–0492.
Mesotrione, Case 7256	EPA–HQ–OPP–2013–0779	Samantha Thomas, *thomas.samantha@epa.gov*, (703) 347–0514.
Metaldehyde, Case 0576	EPA–HQ–OPP–2015–0649	Rachel Eberius, *eberius.rachel@epa.gov*, (703) 347–0492.
Phorate, Case 0103, (Eco Assessment only)	EPA–HQ–OPP–2009–0055	Lauren Weissenborn, *weissenborn.lauren@epa.gov*, (703) 347–8601.
Phosmet, Case 0242, (Eco Assessment only)	EPA–HQ–OPP–2009–0316	Lauren Weissenborn, *weissenborn.lauren@epa.gov*, (703) 347–8601.
Polymeric Betaine, Case 5116	EPA–HQ–OPP–2013–0374	Erin Dandridge, *dandridge.erin@epa.gov*, (703) 347–0185.
Pyrasulfotole, Case 7272	EPA–HQ–OPP–2016–0391	James Douglass, *douglass.james@epa.gov*, (703) 347–8630.
Tembotrione, Case 7273	EPA–HQ–OPP–2016–0063	Carolyn Smith, *smith.carolyn@epa.gov*, (703) 347–8325.
Thiophanate methyl and Carbendazim (amendment), Case 2680.	EPA–HQ–OPP–2014–0004	Alexandra Feitel, *feitel.alexandra@epa.gov*, (703) 347–8631.
Thiram, Case 0122	EPA–HQ–OPP–2015–0433	Jaclyn Pyne, *pyne.jaclyn@epa.gov*, (703) 347–0445.
Tolfenpyrad, Case 7478	EPA–HQ–OPP–2020–0147	Ana Pinto, *pinto.ana@epa.gov*, (703) 347–8421.
Topramezone, Case 7268	EPA–HQ–OPP–2015–0127	Michelle Nolan, *nolan.michelle@epa.gov*, (703) 347–0258.
Ziram, Case 8001	EPA–HQ–OPP–2015–0568	Jaclyn Pyne, *pyne.jaclyn@epa.gov*, (703) 347–0445.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

Information submission requirements. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a

written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 7, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2020–24524 Filed 11–4–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: EIB–2020–0009]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP703177XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended, the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before November 30, 2020 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *www.regulations.gov*. To submit a comment, EIB–2020–0009 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2020–0009 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP703177XX.

Purpose and Use:

Brief description of the purpose of the transaction: Begoro Water Supply Expansion Project (assess feasibility as well as design and build a turnkey water treatment plant). Brief non-proprietary description of the anticipated use of the items being exported: The project includes design and construction of a new conventional water treatment plant, a new raw water intake on Lake Volta will be provided and linked to the treatment plant by a raw water transmission line. Following treatment, potable water will be distributed by a new distribution network that will include new distribution lines, pump stations, an electrical transmission extension, multiple storage tanks, end use meters, and several hundred standpipes.

Parties:

Principal Supplier: Ageiss, Inc.

Obligor: Ministry of Finance of Ghana

Guarantor(s): N/A

Description of Items Being Exported: Engineering and environmental services, replace fiber beds, construct intake structure & pumping facilities, construct staff accommodations and offices, supply aerators, clarifiers, filters, etc.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Kita L. Hall,

Program Specialist.

[FR Doc. 2020–24526 Filed 11–4–20; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: EIB–2020–0008]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP699603XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended, the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before November 30, 2020 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *www.regulations.gov*. To submit a comment, enter EIB–2020–0008 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2020–0008 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP699603XX.

Purpose and use:

Brief description of the purpose of the transaction: Weija Water Supply & Dam Rehabilitation (Weija water plant supplies 80% of Accra's potable water. Accra is Ghana's capital city).

Brief non-proprietary description of the anticipated use of the items being exported: Improve quantity and quality of potable water.

Project consists of pre-project design and analysis as well as refurbishment activities. Rehabilitation activities associated with this transaction include (i) increasing reservoir storage capacity by dredging and the construction of dredge spoil containment areas; (ii) repair and maintenance of the Dam and the intake structures, including an assessment of the structural integrity of the concrete spillway; (iii) major rehabilitation of the three existing water treatment plants to restore them to design capacity; (iv) rehabilitation of six waste stabilization ponds; and (v) rehabilitation and upgrade of the Weija Training School.

To the extent that EXIM is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: Ageiss, Inc.
Obligor: Ministry of Finance of Ghana
Guarantor(s): N/A

Description of Items Being Exported: Engineering and environmental services, replace fiber beds, construct intake structure & pumping facilities, construct staff accommodations and offices, supply aerators, clarifiers, filters, etc.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Kita L. Hall,

Program Specialist.

[FR Doc. 2020–24525 Filed 11–4–20; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0723; FRS 17213]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before January 4, 2021. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0723.

Title: 47 U.S.C. Section 276, Public Disclosure of Network Information by Bell Operating Companies (BOCs).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 3 respondents; 3 responses.

Estimated Time per Response: 20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 276 of the Telecommunications Act of 1996.

Total Annual Burden: 60 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: If the Commission requests respondents to submit information to the Commission or to USAC that the respondents believe is confidential, the respondents may request confidential treatment of such information pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three year clearance from OMB. Under 47 U.S.C. 276(b)(1)(C), the Bell Operating Companies (BOCs) are required to publicly disclose changes in their networks or new network services. Sections 276(b)(1)(C) directs the Commission to ''prescribe a set of nonstructural safeguards for BOC payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry–III (CC Docket No. 90–623) proceeding.'' The Computer Inquiry-III network information disclosure requirements specifically state that the disclosure would occur at two different points in time. First, disclosure would occur at the make/buy point: When a BOC decides to make for itself, or procure from an unaffiliated entity, any product whose design affects or relies on the network interface. Second, a BOC would publicly disclose technical information about a new service 12 months before it is introduced. If the BOC can introduce the service within 12 months of the make/buy point, it would make a public disclosure at the make/buy point. In no event, however, would the public disclosure occur less than six months before the introduction of the service. While the scope and applicability of the Computer III safeguards have changed with the Commission's 2015 decision regarding forbearance from enforcement of the Computer III requirements (Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. Section 160(c) from Enforcement of Obsolete ILEC Regulations that Inhibit Deployment of Next Generation Networks, Memorandum Opinion and Order, FCC 15–166 (2015)), these are minimum requirements under section 276(b)(1)(C) of the Act. Without information disclosures, the industry would be unable to ascertain whether the BOCs are designing new network services or changing network technical specifications to the advantage of their own payphones, or in a manner that might disadvantage BOC payphone competitors. These requirements ensure that BOCs comply with their obligations under the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–24510 Filed 11–4–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1116; FRS 17186]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 4, 2021. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1116.

Title: Submarine Cable Reporting.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents and Responses: 74 respondents; 74 responses.

Estimated Time per Response: 190 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 303(r) and 403.

Total Annual Burden: 14,060 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Information provided pursuant to this request will be viewed as presumptively confidential upon submission because the information would reflect reports on weaknesses in or damage to national communications infrastructure, and the release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. The submissions also may contain internal confidential information that constitutes trade secrets and commercial/financial information that the respondent does not routinely make public and public release of the submitted information could cause competitive harm by revealing information about the types and deployment of cable equipment and the traffic that flows across the system. For these reasons, the information requested in (b) (Terrestrial Route Map) and (c) (Undersea Location Spreadsheet) above is presumptively exempt from public disclosure under Freedom of Information Act (FOIA) Exemption 3, 5 U.S.C. 552(b)(3), and section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), as implemented in 47 CFR 0.457(c)(1)(i) (exempting disclosure of ''maps showing the exact location of submarine cables''). The information requested in (a) (System Status and Restoration Messages) and (d) (Restoration Capability) described above will be considered exempt under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). If a FOIA request is filed for information submitted in response to this request, the respondent whose records are the subject of the request will be notified of the FOIA request and given the opportunity to oppose release of the records. *See* 47 CFR 0.461(d)(3). We note that the information provided in response to this request will be shared with the Department of Homeland Security's National Communications System (NCS) and relevant Executive Branch agencies on a confidential basis. *See* 44 U.S.C. 3510.

Needs and Uses: This information is needed in order to support Federal government national security and emergency preparedness communications programs, for the purposes of providing situational awareness of submarine cable system performance as well as a greater understanding of potential physical threats to the submarine cable systems. This information will provide situational awareness regarding the operational status of submarine cable systems to the Federal government, and allow the Executive Branch to assess potential risks and threats to these critical communications systems in the context of other available information.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–23909 Filed 11–4–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1171; FRS 17209]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 4, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1171.

Title: Commercial Advertisement Loudness Mitigation (''CALM'') Act; 73.682(e) and 76.607(a).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,937 respondents and 4,868 responses.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Estimated Time per Response: 0.25–80 hours.

Total Annual Burden: 6,036 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i) and (j), 303(r) and 621.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission will use this information to determine compliance with the CALM Act. The CALM Act mandates that the Commission make the Advanced Television Systems Committee (''ATSC'') A/85 Recommended Practice mandatory for all commercial TV stations and cable/multichannel video programming distributors (MVPDs).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–24509 Filed 11–4–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10235	Towne Bank of Arizona	Mesa	AZ	11/01/2020
10237	New Liberty Bank	Plymouth	MI	11/01/2020
10238	Satilla Community Bank	Saint Marys	GA	11/01/2020

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 2, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–24597 Filed 11–4–20; 8:45 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, November 10, 2020 AT 10 a.m.

PLACE: 1050 First Street NE, Washington, DC (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2020–24768 Filed 11–3–20; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, November 19, 2020.

PLACE: This meeting will be conducted through a videoconference involving all Commissioners. Any person wishing to listen to the proceeding may call the number listed below.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *KC Transport, Inc.,* Docket No. WEVA 2019–0458 (Issues include whether the Judge erred in ruling that two trucks were subject to Mine Act jurisdiction.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson, (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Phone Number for Listening to Meeting: 1–(866) 236–7472.

Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: November 3, 2020.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2020–24717 Filed 11–3–20; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for its shared enforcement authority with the Consumer Financial Protection Bureau (''CFPB'') for the information collection requirements in the Privacy of Consumer Financial Information Rule (''Privacy Rule'' or ''Rule''). That clearance expires on November 30, 2020.

DATES: Comments must be submitted by December 7, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Lincicum, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–2773.

SUPPLEMENTARY INFORMATION:

Title: Privacy of Consumer Financial Information (Gramm-Leach-Bliley Act Privacy Rule), 16 CFR part 313.

OMB Control Number: 3084–0121.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Abstract: The Privacy Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the covered financial institutions with which they conduct business—namely, motor vehicle dealers that do not routinely extend credit to consumers directly without assigning the credit to unaffiliated third parties (hereafter, ''motor vehicle dealers''). As mandated by the Gramm-Leach-Bliley Act (''GLBA''), 15 U.S.C. 6801–6809, the Rule requires motor vehicle dealers to disclose to consumers: (1) Initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's nonpublic personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer;[1] and (4) notice of changes in the institution's practices on information sharing. These requirements are subject to the PRA. The Rule does not require recordkeeping. For PRA burden calculations, the FTC shares the PRA burden with the CFPB for financial institutions over which both agencies have enforcement authority under the CFPB's regulation corresponding to the Privacy Rule, titled Privacy of Consumer Financial Information (Regulation P), 12 CFR 1016, and attributes to itself the burden for all motor vehicle dealers. *See* 12 U.S.C. 5519.

Estimated Annual Burden Hours: 1,345,350.

Estimated Annual Labor Costs: $30,363,151.

Request for Comment: On April 30, 2020, the Commission sought comment on the information collection requirements associated with the Privacy Rule. 85 FR 23961 (April 30, 2020). No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the Rule's information collection requirements.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone'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, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices,

[1] On December 4, 2015, Congress amended the GLBA as part of the Fixing America's Surface Transportation Act (''FAST Act''). This amendment, titled Eliminate Privacy Notice Confusion (FAST Act, Pub. L. 114094, section 75001) added new GLBA section 503(f). This subsection provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers. Section 503(f) requires that to qualify for this exception, a financial institution must not share nonpublic personal information about customers except as described in certain statutory exceptions, under which sharing does not trigger a customer's statutory right to opt out of the sharing. In addition, section 503(f)(2) requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recent privacy notice the customer received.

manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2020–24585 Filed 11–4–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153; Docket No. 2020–0053; Sequence No. 15]

Information Collection; Alternatives to Government-Unique Standards

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and an extension concerning alternatives to Government-unique standards. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the 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 information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through February 28, 2021. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by January 4, 2021.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0153, Alternatives to Government-unique standards. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, Procurement Analyst, at telephone 202–969–7386, or *jennifer.hawes@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0153, Alternatives to Government-Unique Standards.

B. Need and Uses

This clearance covers the information that offerors must submit to comply with the provision at Federal Acquisition Regulation (FAR) 52.211–7, Alternatives to Government-Unique Standards. This solicitation provision permits offerors to propose alternatives to Government-unique standards in response to Government solicitations. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements. The information collected from offerors will be used by Federal agencies to determine if voluntary consensus standards will satisfy the Government's needs for a particular solicitation, in order to comply with OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, and Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 15 U.S.C. 272 note). This OMB Control Number was previously entitled "OMB Circular A–119," but has been updated to reflect the information collection requirement.

C. Annual Burden

Respondents: 100.

Total Annual Responses: 100.

Total Burden Hours: 100.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0153, Alternatives to Government-unique Standards.

William F. Clark,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–24499 Filed 11–4–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC, announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, limited only by the space available. The audio conference line has 150 ports for callers. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference (information below).

DATES: The meeting will be held on December 8, 2020, from 1:15 p.m. to 6:15 p.m., EST and December 9, 2020, from 1:15 p.m. to 6:15 p.m., EST. A public comment session will be held on December 8, 2020 at 5:15 p.m. and conclude at 6:15 p.m., EST or following the final call for public comment, whichever comes first. Written comments must be received on or before December 1, 2020.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone (513) 533–6800, Toll Free 1(800) CDC–INFO, Email *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The Advisory Board's charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2020, and will terminate on March 22, 2022.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Considered: The agenda will include discussions on the following: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Petitions Update; Updates on completed dose reconstruction reviews, the Y–12 SEC Petition #250 Addendum, Savannah River Site SEC Petition #103 (Aiken, South Carolina; October 1972–2007), Area IV Santa Susanna Field Laboratory SEC Petition #235 (Ventura County, California; 1991–1993), and Metals and Controls Corp. SEC Petition #236 (Attleboro, Massachusetts; 1968–1997, and a Board Work Session. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–24504 Filed 11–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 15–312, State Occupational Safety and Health Surveillance Program (U60); Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 15–312, State Occupational Safety and Health Surveillance Program (U60); January 25–27, 2021, 8:00 a.m.–5:00 p.m., EST., in the original FRN.

Virtual meeting, which was published in the **Federal Register** on October 26, 2020, Volume 85, Number 207, page 67744.

The meeting is being amended to change the Funding Opportunity Announcement (FOA) number to PAR 20–312, State Occupational Safety and Health Surveillance Program (U60). The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone (304) 285–5951; *MGoldcamp@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–24508 Filed 11–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 85 FR 30106–30708, dated May 20, 2020) is amended to reflect the reorganization of the National Center for Injury Prevention and Control, Deputy Director for Non-Infectious Diseases, Centers for Disease Control and Prevention.

I. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Office of Policy and Partnerships (CUH12)
- Office of Program Management and Operations (CUH13)
- Office of Communication (CUH14)
- Office of Science (CUH17)
- Office of Strategy and Innovation (CUH18)
- Office of Informatics (CUH19)

II. Under Part C, Section C–B, Organization and Functions, make the following change:

- Update the functional statements for the Office of the Director (CUH1)
- Establish the Office of the Deputy Director (CUH1B)
- Establish the Office of Science (CUH1B2)
- Establish the Office of Strategy and Innovation (CUH1B3)
- Establish the Office of Informatics (CUH1B4)
- Establish the Office of the Deputy Director for Management and Operations (CUH1C)

• Establish the Office of Policy and Partnerships (CUH1C2)
• Establish the Office of Program Management and Operations (CUH1C3)
• Establish the Office of Communications (CUH1C4)
• Update the functional statements for the Division of Violence Prevention (CUHC)
• Update the functional statements for the Office of the Director (CUHC1)
• Update the functional statements for the Surveillance Branch (CUHCB)
• Update the functional statements for the Office of the Director (CUHF1)
• Retitle the Applied Science Branch (CUHFB) to the Applied Sciences Branch (CUH)
• Update the functional statements for the Program Implementation and Evaluation Branch (CUHFC)
• Update the functional statement for the Data Analytics Branch (CUHFD)
• Update the functional statements for the Office of the Director (CUHG1)
• Establish the Drug-Free Communities Branch (CUHGE)
• Establish the Communications Branch (CUHGG)

III. Under Part C, Section C–B, Organization and Functions, insert the following:

• *Office of the Director (CUH1).* (1) Manages, directs, coordinates, and evaluates NCIPC activities; (2) provides administrative support, program management, and fiscal services to the Center; (3) provides overall guidance and support for Center-wide grant activities; (4) consults and coordinates activities with medical, engineering, and other scientific and professional organizations interested in injury prevention and control; (5) coordinates National Center for Injury Prevention and Control (NCIPC) program activities with other CDC components, other Public Health Service (PHS) agencies, PHS regional offices, other federal agencies, state and local health departments, community-based organizations, business and industry; (6) coordinates technical assistance to other nations and international organizations in establishing and implementing injury prevention and control programs; (7) develops goals and objectives and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (8) directs and coordinates information resources management activities, the production and distribution of technical and nontechnical injury prevention and control publications and information, and the conduct of health education and health promotion activities, (9) coordinates and provides guidance on information technology and informatics solutions, compliance, and governance, and; (10) supports the activities of the Secretary's Advisory Committee for Injury Prevention and Control.

• *Office of the Deputy Director (CUH1B).* (1) Provides overall leadership, oversees, directs, coordinates and evaluates science and health-related activities for NCIPC priority programs and research agenda; (2) provides leadership for implementing public health statutory responsibilities; (3) provides overall executive coordination for research programs and science policies for the Center; (4) maintains liaison with other Federal, State, and local agencies, institutions, and organizations; (5) coordinates program activities with other CDC components, other Federal, State and local Government agencies, the private sector; (6) coordinates Center public health science efforts to protect the public's health; (7) develops capacity within the states to integrate new and existing epidemiological and scientific principles into operational and programmatic expertise within NCIPC programs; (8) utilizes best practices to collect, analyze, and interpret data and disseminate scientific information to enable internal and external partners to make actionable decisions; (9) supervises and provides analytical and modeling expertise, develops new analytical tools, and integrates the use of science into public health activities; (10) integrates science, data analytics and visualization into science products; (11) identifies, develops, and promotes new tools through authoring manuscripts, reports, and community-facing products as well as leveraging new technologies in order to maintain and improve NCIPC's state of the art science practice; (12) ensures NCIPC compliance with various statutes, regulations, and policies governing the conduct of science by the federal government; (13) coordinates NCIPC involvement in CDC public health ethics activities; (14) oversees NCIPC involvement in CDC science awards activities (*e.g.,* the Shepard Awards); (15) oversees and sponsors select training opportunities (*e.g.,* Human Subjects/IRB, OMB/PRA, and eClearance Training for Authors and Reviewers); (16) represents NCIPC on various CDC/ATSDR scientific committees, work groups, and task forces; (17) develops, directs, and coordinates management policies related to Informatics; (18) provides leadership and guidance in the development and implementation of goals, objectives, priorities, policies and program planning for Informatics operations; (19) oversees and enables strategic coordination across a range of injury and violence priority topics; (20) enhances collaboration on the Center's priorities, especially when cross-cutting in nature; (21) facilitates the advancement of innovative approaches to collecting and using data to inform injury and violence prevention through close engagement with NCIPC leaders, subject matter experts, and external partners; and (22) generates new ideas, research and disseminate best practices, and constructs a Center-wide strategy that can actively enable collaboration.

• *Office of Science (CUH1B2).* (1) Provides scientific leadership for the Center, and informs and guides staff on scientific matters; (2) ensures NCIPC produces the highest quality, most useful, and most relevant science possible; (3) leads the development of research priorities for the Center in collaboration with Divisions and Offices; (4) provides staff training on scientific topics, science policy, and regulations; (5) mentors scientists and fellows; (6) manages scientific clearance for NCIPC; (7) oversees and directs Institutional Review Board, Office of Management Budget-Paperwork Reduction Act, and Confidentiality activities for the Center; (8) conducts peer review of intramural research and scientific programs; (9) directs the Center's Open Data Access policy and assures scientists follow CDC's policies on data release and sharing; (10) facilitates scientific collaborations between external and internal investigators; (11) leads, manages, and oversees NCIPC's external advisory board; (12) leads Healthy People Activities in partnership with Divisions and Offices and coordinates, tracks, and assesses progress toward Healthy People objectives; (13) manages and coordinates Epidemic Intelligence Service Officer program and activities; (14) provides scientific leadership in the areas of extramural research supported by NCIPC, NCEH, and ATSDR; (15) promotes and prepares initiatives to stimulate extramural research in relevant priority areas; (16) directs all activities of the extramural research program to address priorities for NCIPC, NCEH, and ATSDR in partnership with the Division programs; (17) coordinates and conducts pre-award activities for grant management, in-depth external primary and secondary peer review of extramural research applications, recommends award selections to Divisions and Center Directors, and manages post-award activities; (18)

ensures compliance with all regulations and policies governing extramural research programs, and; (19) disseminates and evaluates extramural research progress, findings, and impact.

- *Office of Strategy and Innovation (CUH1B3).* (1) Provides strategic leadership and coordination across a range of injury and violence topics with a focus on the NCIPC strategic priorities; (2) leads the advancement of innovative approaches to using data to inform injury and violence prevention; (3) develops, in collaboration with Divisions and Offices, the overall strategic goals and objectives for NCIPC and provides leadership to develop a plan of action to achieve these goals and objectives; (4) identifies strategic opportunities to collaborate with other Divisions/Offices in NCIPC, CDC CIOs, PHS Agencies, and other federal departments and Agencies, and governmental and private organizations to advance injury and violence prevention; (5) identifies emerging or cross-cutting injury and violence topics and works with other Divisions/Offices to support and advance action on them; (6) participates with Divisions and Offices in NCIPC to establish research priorities for the Center, and; (7) ensures NCIPC produces the highest quality, most useful, and most relevant science possible.
- *Office of Informatics (CUH1B4).* (1) Reports all IT project costs, schedules, performances, and risks; (2) provides expert consultation in application development, information science, and technology to affect the best use of resources; (3) performs technical evaluation and/or integrated baseline reviews of all information systems' products and services prior to procurement to ensure software purchases align with Center strategy; (4) coordinates all enterprise-wide IT security policies and procedures with the Office of the Chief Information Security Officer; (5) ensures operations are in accordance with CDC Capital Planning and Investment Control guidelines; (6) ensures adherence to CDC enterprise architecture policies, guidelines, and standards; (7) consults with Divisions and Offices to determine IT needs and to develop strategic and action plans; (8) participates in the evolution, identification, development, and/or adoption of appropriate informatics standards in conjunction with the Injury programs; (9) ensures coordination of data harmonization and systems interoperability within the Center and facilitates linkage to related CDC-wide strategies; (10) provides leadership in the Center's Information Resources Governance Council (IRGC) and coordination with CDC's IT and Data Governance (ITDG) Board; and (11) collaborates with other Divisions/Offices in NCIPC, CDC CIOs, PHS agencies, other federal departments and agencies, universities, NGOs, and private organizations as appropriate.
- *Office of the Deputy Director for Management and Operations (CUH1C).* (1) Provides leadership and guidance in the development and implementation of goals, objectives, priorities, policies, program planning, management and operations of all general activities within the Center; (2) oversees, manages, directs, coordinates, and evaluates all center management and operations activities; (3) coordinates with all Center offices and divisions in determining and interpreting operating policy and in ensuring their respective management input for specific program activity plans are included (4) provides leadership for implementing statutory and compliance responsibilities across the Center; (5) provides overall issue management, health policy and partnership development direction to the Center; (6) provides and directs overall internal and external communication strategies for the Center; (7) provides leadership for and assessment of all administrative management activities to assure coordination for all management and program matters, such as coordinating risk management and emergency response activities; (8) provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and general administrative support; (9) directs and coordinates activities in support of the Department's Equal Employment Opportunity program, diversity enhancement and employee professional development opportunities; (10) reviews the effectiveness and efficiency of all administration and operations of NCIPC programs; (11) develops and directs employee engagement programs for the Center such as employee recognition programs; and (12) analyzes NCIPC workforce, succession, strategic planning systems, and resources on an ongoing basis.
- *Office of Policy and Partnerships (CUH1C2).* (1) Advises NCIPC and CDC leadership and staff on policy and partnership issues relevant to NCIPC; (2) conducts monitoring and analysis of policy issues potentially affecting NCIPC and its constituents; (3) coordinates partnership activities across NCIPC; (4) engages in partnerships with external organizations to meet mutual goals; (5) identifies and defines emerging or cross-cutting long-term policy issues and develops action plans that support and advance action; (6) manages issues proactively in order to minimize their negative effects, maximize their potential opportunities, and avoid the need for crisis management; (7) oversees and coordinates performance-related activities for NCIPC; (8) provides information for the development of NCIPC's annual budget submission and supporting documents; (9) provides liaison with staff Offices and other officials of CDC; (10) reviews, prepares, and coordinates policy and briefing documents, and; (11) leads and coordinates the Congressional strategy and outreach as informed by NCIPC and Agency priorities.
- *Office of Program Management and Operations (CUH1C3).* (1) Coordinates NCIPC-wide program, administrative, and management support services in the areas of fiscal management, personnel, travel, performance, FOIA, workforce planning, space, and other administrative services; (2) coordinates NCIPC requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (3) manages annual budget formulation, budget justifications, and budget oversight; (4) develops and implements financial and administrative policies, procedures, and operations, as appropriate, for NCIPC, and prepares special reports and studies, as required; (5) maintains liaison with related Center staff and other officials of CDC, and; (6) plans, coordinates, and provides overall management support, advice, and guidance to NCIPC.
- *Office of Communications (CUH1C4).* (1) Coordinates and leads the implementation of CDC-wide communication initiatives and policies, including health literacy, plain language, and CDC branding; (2) executes web development for the NCIPC intranet and provides technical assistance and training to OD Offices in accessing and using NCIPC wiki for internal communication and information sharing; (3) facilitates cross-Division and cross-CIO coordination of health communication activities, sharing of lessons learned, and development of best practices; (4) in carrying out these functions, develops and manages relationships with a wide range of partners and customers, including other PHS agencies, federal and state departments and agencies, and private organizations; (5) leads and oversees news media strategy and evaluation, including news response, media monitoring, proactive media engagement, media training, and long lead pitching; (6) leads digital

communication and marketing strategies and manages digital channels; (7) leads strategic planning for communications and branding programs and projects for NCIPC and injury and violence issues; (8) manages and coordinates clearance of NCIPC print and non-print materials, ensuring adherence to and consistency with CDC and Department of Health and Human Services (DHHS) information and publication policies and guidelines; (9) oversees, manages, and executes CDC web and digital governance through matrix management and work group structures; (10) provides communication support to OD offices and technical assistance and training in accessing centralized communication systems available through OADC and other offices; (11) provides ongoing communication leadership and support to NCIPC's Office of the Director and Divisions in furthering the Center's mission to prevent violence and unintentional injury and to reduce their consequences; (12) provides oversight and approval for CDC logo licensing requests from external partner organizations and involving NCIPC Divisions and programs; (13) represents NCIPC on cross-CIO and external committees, workgroups, and at conferences relating to health communication activities; (14) serves as primary liaison between NCIPC and CDC's Office of the Associate Director for Communication (OADC), and; (15) through matrix management, provides strategic communication direction and technical assistance across NCIPC to ensure all health communication activities are evidence-based and demonstrate impact.

• *Division of Violence Prevention (CUHC).* (1) Provides leadership in developing and executing a national program for the prevention and control of violence and its consequences; (2) plans, establishes, and evaluates surveillance systems to monitor national trends in morbidity, mortality, disabilities, and cost of violence-related injuries and deaths, and facilitates the development of surveillance systems by state and local agencies; (3) plans, directs, conducts, and supports research focused on the causes of violence and the development and evaluation of strategies to prevent and control violence-related injuries and deaths; (4) produces new, evidence-based scientific knowledge that informs policies, practice, and programs in the violence field; (5) plans, conducts, supports, and evaluates demonstration projects and programs to prevent and control violence; (6) develops and disseminates policies, recommendations, and guidelines for the prevention of violence and its consequences; (7) proposes goals and objectives for linking health system and violence control activities with public health activities, including surveillance, prevention, health care, and rehabilitation of injury; (8) proposes goals and objectives for national violence prevention and control programs, monitors progress toward these goals and objectives, and recommends and develops guidelines for priority prevention and control activities; (9) provides expertise in public health practice, surveillance, evaluation, and research for violence prevention; (10) provides technical assistance, consultation, training, and epidemiological, statistical, educational, and other technical services to assist state and local health departments and community-based organizations in the planning, development, implementation, evaluation, and overall improvement of violence prevention programs; (11) facilitates the development and supports the dissemination of research findings and transfer of violence prevention and control technologies to federal, state, and local agencies, private organizations, and other national and international groups; (12) sustains a public health infrastructure for violence prevention at federal, state, local, and tribal levels; (13) facilitates similar strategic planning activities by other federal, state, and local agencies, academic institutions, and private and other public organizations, and; (14) in carrying out the above functions, collaborates with other Divisions of NCIPC, CDC Centers/Institutes/Offices, DHHS agencies, other federal, state, and local departments and agencies, academic institutions, and voluntary, private sector, and international organizations, as appropriate.

• *Office of the Director CUHC1).* (1) Plans, directs, coordinates, and evaluates the activities of the Division; (2) establishes and interprets policies and determines program priorities; (3) provides administrative, fiscal, and technical support for Division programs and units; (4) provides national leadership and guidance in violence prevention and control program planning, development, and evaluation; (5) provides leadership for developing research in etiologic, epidemiologic, and behavioral aspects of violence prevention and control to inform policies, practice, and programs; (6) prepares and tracks responses and coordinates provision of materials requested by Congress and the DHHS; (7) prepares, tracks, and coordinates controlled and general correspondence; (8) assures multi-disciplinary collaboration in violence prevention and control activities; (9) collaborates with subject matter experts, program and policy staff, develops and implements communication strategies, campaigns, and plans to meet the needs of Division programs and mission; (10) coordinates with the NCIPC Office of Communications to execute and support NCIPC- and CDC-wide communication initiatives and policies; (11) develops tailored messages and materials to promote dissemination of scientific findings, evidence-based prevention strategies, priority recommendations, and guidelines through traditional media outlets, social media, and other channels; (12) provides consultation on international violence prevention and control activities of the Division; (13) in coordination with NCIPC OC, prepares and monitors clearance of manuscripts for publication in scientific and technical journals and publications, including articles and guidelines published in the Morbidity and Mortality Weekly Report (MMWR) and other publications for the public, and; (14) in carrying out the above functions, establishes linkages and collaborates, as appropriate, with other Divisions and Offices in NCIPC, with other CIOs throughout CDC, non-governmental organizations; and with national level prevention partners that impact on violence prevention programs.

• *Surveillance Branch (CUHCB).* (1) Conducts national, state, and local surveillance and surveys to identify new and to monitor recognized forms of violence and its consequences, analyzes incidence and prevalence data, and monitors trends in violence and its trajectory across the lifespan; (2) advises the Office of the Director, in DVP and NCIPC, on the area of data and systems management and on surveillance and statistical analysis issues relevant to violence program planning and evaluation; (3) coordinates, manages, maintains and provides tabulations and maps from national surveillance systems and other data sources that contain national, state and local data on violence-related morbidity, mortality and economic costs; (4) develops and implements uniform definitions for public health surveillance of various forms of violence and related outcomes; (5) provides leadership for the development of surveillance research to inform policies, practice, and programs in the violence field; (6) provides expert consultation to federal, state, and local health agencies on surveillance system design, implementation, and evaluation, and use of surveillance data to describe the burden of violence; (7) provides information on violence surveillance to the scientific community and the general public through regular publication in peer-reviewed journals and CDC publications as well as through presentations to professional conferences and other stakeholder groups; (8) works with other branches to provide consultation, collaboration, and to ensure the use of surveillance data to inform research and prevention efforts; (9) develops, designs, implements, and evaluates innovative surveillance strategies or systems that address gaps in existing CDC surveillance systems in collaboration with colleagues in NCIPC and other CIOs for application to overdose surveillance, epidemiologic studies, program evaluation, and programmatic activities, and; (10) in carrying out the above functions, provides leadership and collaborates with other Divisions and Offices in NCIPC, other CIOs throughout CDC, and Federal, state, local, non-governmental, voluntary, and professional, organizations in all aspects of surveillance of violence and its consequences.

• *Office of the Director (CUHF1).* (1) Plans, directs, coordinates, and evaluates the activities of the Division; (2) provides administrative, fiscal, and technical support for Division programs and units; (3) leads Division strategic planning and priority setting; oversees overall program performance, ensures scientific quality of activities, and implements operational policies to advance the Center and Agency mission; (4) collaborates with subject matter experts, program, and policy staff to develop strategic communication plans that meet Agency, Center, and Division priorities; (5) develops, implements, and evaluates communication strategies, campaigns, and materials to disseminate data and scientific findings, evidence-based prevention strategies, priority recommendations, programmatic successes, and guidelines through traditional and emerging communication channels; (6) develops and manages collaborative relationships with professional, community, international, governmental, and other non-governmental agencies, and tribal nations to advance injury prevention and control; (7) coordinates with the NCIPC Office of Policy and Partnerships to identify and proactively manage emerging policy issues; (8) advises Division staff on policy issues and coordinates with staff to prepare briefing materials; (9) collaborates with other NCIPC Divisions and Offices and other CIOs throughout CDC to effectively partner on critical injury prevention programs; (10) in coordination with NCIPC OC, prepares and monitors clearance of manuscripts for publication in scientific and technical journals and publications, including articles and guidelines published in the Morbidity and Mortality Weekly Report (MMWR) and other publications for the public; (11) prepares, tracks, and coordinates responses to all inquiries from Congress, the public, and DHHS, and; (12) provides leadership for the development of research to inform policies, practice, and programs in the injury field.

• *Program Implementation and Evaluation Branch (CUHFC).* (1) Coordinates and conducts research to examine the context, processes, and factors that influence effective and efficient adoption, implementation, dissemination, and sustainability of injury prevention strategies, policies, and interventions; (2) provides technical assistance and project officer support in applying research and evaluation to the ongoing assessment and improvement of injury prevention and control programs; (3) supports training and outreach to increase the number and competence of personnel engaged in injury prevention and control research and practices; (4) works with local, state, territorial, and tribal public health programs to advance the use of surveillance, effective injury prevention strategies, and ongoing quality improvement activities for program planning and implementation to decrease the burden of injury; (5) collaborates with internal and external partners to disseminate effective injury prevention strategies; (6) develops and evaluates methodologies for conducting program evaluation; (7) works to generate practice-informed research and synthesize research findings for program application; (8) monitors and evaluates programs and policies and disseminates findings to promote program accountability and program improvement; (9) promotes an enhanced and sustained infrastructure for a public health approach to injury and violence prevention at state, local, territorial and tribal levels; (10) identifies and drives opportunities for streamlining, coordinating, and maximizing the effectiveness of project officer and technical assistance activities to improve Center-wide support to external partners and grantees; (11) translates relevant research, evaluation findings, and other evidence into practical tools, products, and guidance that enhances injury prevention programs, strategies, and activities, and; (12) publishes the findings of programmatic evaluations in the peer-reviewed literature and other reports and participate in scientific and professional conferences.

• *Data Analytics Branch (CUHFD).* (1) Plans, establishes, and maintains surveillance systems to monitor national and state-level trends in morbidity, mortality, disabilities, and costs of injuries; (2) analyzes and translates data into information that is disseminated to stakeholders for program planning, evaluation, and decision-making; (3) collaborates with and advises other Divisions/Offices in NCIPC, CDC CIOs, and external partners on traditional and emerging statistical, economic, surveillance, and data science methods; (4) collaborates with the NCIPC Office of Strategy and Innovation and the Office of Informatics, NCIPC Divisions, and other CDC CIOs to increase efficiencies in collection, management, and usability of injury and violence data; (5) develops, maintains, and disseminates tabulations and maps from national, state, and local data on injury morbidity, mortality, economic costs, and risk and protective factors through CDC's WISQARS™ (Web-based Injury Statistics Query and Reporting system) and other NCIPC online tools; (6) develops, evaluates, and implements innovative statistical, economic, policy research, computer programming, and data science methods for application to injury surveillance, research studies, and program planning, and evaluation; (7) leads and collaborates with other scientists on epidemiologic studies and statistical and economic analyses and provides technical advice in the areas of study design, sampling, and the collection, management, analysis, and interpretation of injury and economic data; (8) produces high quality statistical, economic, and policy reports, publications, and presentations for dissemination, and; (9) leads and coordinates with the NCIPC Office of the Director and other Divisions on innovative pilot projects and scaling up promising strategies to utilize non-traditional datasets and novel methods for data collection and analysis in public health.

• *Office of the Director (CUHG1).* (1) Plans, directs, and evaluates the activities of the Division; (2) provides cross-cutting leadership and guidance in policy formation and program planning, development, implementation and evaluation for drug use and overdose prevention; (3) provides over-arching personnel, operational, administrative, fiscal, and technical support for Division programs and units; (4) assures multi-disciplinary collaboration in drug use and overdose prevention activities; (5) provides leadership for developing research in etiologic, epidemiologic, and behavioral aspects of drug use and overdose prevention, and for coordinating Division activities with others involved in related-work across NCIPC, CDC, DHHS, and other stakeholders; (6) in coordination with NCIPC OC, prepares and monitors clearance of manuscripts for publication in scientific and technical journals and publications, including articles and guidelines published in the Morbidity and Mortality Weekly Report (MMWR) and other publications for the public; (7) prepares, tracks, and coordinates controlled and general correspondence; (8) prepares responses and coordinates provision of materials requested by Center and Agency, leadership, Congress, and DHHS; (9) plans, develops, conducts, and evaluates cross-cutting communication projects and campaigns to inform the media, health professionals, the public, and others about drug use and overdose prevention; (10) provides media, communication, and marketing support to the Division; (11) serves as primary liaison between the Division and relevant NCIPC–OD Office, in the areas of communication, policy/partnership, science, administration/operations, informatics, and strategy/innovation; (12) designs, develops, and coordinates the publication of print and audiovisual materials such as fact sheets, newsletters, speeches and presentations, exhibits, social media messages, press releases, media advisories, and educational videos; (13) develops and evaluates messages, materials and health communication products to promote and disseminate scientific findings, evidence-based prevention strategies, priority recommendations, and guidelines through various platforms; (14) coordinates with NCIPC Office of Communications to execute and support NCIPC- and CDC-wide communication initiatives and policies related to overdose prevention; (15) coordinates with NCIPC Office of Policy and Partnerships to execute and support NCIPC- and CDC-wide policy and partner related initiatives related to overdose prevention; (16) collaborates with the Extramural Research Program Office on extramural research, policies, and procedures including peer review; (17) implements policies and procedures related to human subjects research protections, paperwork reduction act regulations, federal advisory committee act regulations, data sharing policies, and scientific authorship and misconduct; (18) supports scientific training opportunities, including the EIS training program; (19) collaborates, as appropriate, with non-governmental organizations, academic institutions, philanthropic foundations, and other stakeholders to achieve the mission of the Division, and; (20) coordinate and implement national prevention strategies, programs and policies in collaboration with state and local public health departments, community based organizations (CBOs) and other Branches, Centers/Institutes/Offices (CIOs), and Federal agencies.

• *Drug-Free Communities Branch (CUHGE).* (1) Provides programmatic leadership and support to communities/localities and community coalitions under the Drug-Free Communities (DFC) Support and the Comprehensive Addiction and Recovery Act Local Drug Crisis (CARA Local Drug Crisis) Grant Programs; (2) provides comprehensive technical assistance and project officer support to the grant award recipients and serves as a resource and collaborator to implement community-based youth substance use prevention interventions capable of effecting and sustaining community-level change and addressing local youth opioid, methamphetamine, and/or prescription medication abuse; (3) works with the grant award recipients to promote the seven Strategies for Community-Level Change (Provide Information, Enhance Skills, Provide Support, Enhance Access or Reduce Barriers, Change Consequences, Change Physical Design, Modify/Change Policies); (4) collaborates with staff across the Division, Center, and Agency to maximize opportunities and the subject matter expertise available for the implementation of the DFC Support and CARA Local Drug Crisis Grant Programs; (5) monitors and evaluates the outcomes of Division investments in communities/localities and community coalitions in concert with ONDCP using rigorous evaluation methods and widely disseminating findings to improve future programmatic activities; (6) synthesizes relevant research, evaluation findings, evidence, and trends to develop practical guidance and resources that enhance community-based youth substance use prevention programs, strategies, and activities and present this work at relevant scientific and professional conferences; (7) uses research findings to develop new strategies, policies, and interventions or to improve the impact of existing strategies, policies, and interventions to prevent and reduce youth substance use and associated risk factors and consequences, and; (8) provides direct support—as needed—to communities/localities and community coalitions to prevent youth substance use.

• *Communications Branch (CUHGG).* (1) Responsible for communication and marketing science, research, practice, and public affairs; (2) leads division strategic planning for communication and marketing science and public affairs programs and projects; (3) analyzes context, situation, and environment to inform division-wide communication and marketing programs and projects; (4) ensures use of scientifically sound research for marketing and communication programs and projects; (5) ensures accurate, accessible, timely, and effective translation of science for use by multiple audiences; (6) leads identification and implementation of information dissemination channels; (7) provides communication and marketing project management expertise; (8) collaborates with external organizations and the news, public service, and entertainment and other media to ensure that scientific findings and their implications for public health reach the intended audiences; (9) Collaborates closely with divisions to produce materials tailored to meet the requirements of news and other media channels, including press releases, letters to the editor, public service announcements, television programming, video news releases, and other electronic and printed materials; (10) coordinates the development and maintenance of accessible public information through the internet, social media and other applicable channels; (11) provides training and technical assistance in the areas of health communication, risk communication, social marketing, and public affairs; (12) manages or coordinates communication services such as internet/Intranet, application development, social media, video production, graphics, photography, CDC name/logo use and other brand management; (13) provides editorial services, including writing, editing, and technical editing; (14) facilitates internal communication to center staff and allied audiences; (15) supervises and manages Office of Communications activities, programs, and staff; (16) serves as liaison to internal and external groups to advance the center's mission; (17) collaborates with the CDC Office of the Associate Director for Communication on media relations, electronic communication, health media production, and brand management activities; (18) collaborates with the Office of Public Health Preparedness and Response and other

NCEH & ATSDR entities to fulfill communication responsibilities in emergency response situations; (19) collaborates with other CDC Centers/ Institute/Offices in the development of marketing communications targeted to populations that would benefit from a cross-functional approach, and; (20) ensures NCEH & ATSDR materials meet CDC and Department of Health and Human Services standards.

IV. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Dated: October 8, 2020.

Alex M. Azar II,

Secretary.

[FR Doc. 2020–24602 Filed 11–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0116]

Advisory Council for the Elimination of Tuberculosis Meeting (ACET)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), announces the following meeting of Advisory Council for the Elimination of Tuberculosis (ACET). This meeting is open to the public, limited only by audio and web conference lines (1,000 audio and web conference lines are available). The public may join by accessing the meeting information below. Time will be available for oral public comment.

DATES: The meeting will be held on December 8, 2020 from 10:00 a.m. to 4:00 p.m., EST, and December 9, 2020 from 10:00 a.m. to 12:00 p.m., EST.

Written comments must be received on or before December 6, 2020, EST.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0116 by either of the following methods. CDC does not accept comment by email.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Staci Morris, CDC, 1600 Clifton Road NE, Mailstop US8–6, Atlanta, Georgia 30329–4027, Attn: ACET Meeting.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Written public comments submitted by December 6, 2020, EST will be included in the official record of the meeting.

Meeting information: The teleconference access is noted as follows. Please note the access information is different for each meeting date.

December 8, 2020, 10:00 a.m.–4:00 p.m., EST (US and Canada)

Please click the link below to join the webinar: https://cdc.zoomgov.com/j/1610532751?pwd=TUlQRElrdXI5QVMzdjJGSzN6eXluUT09.

Passcode: A6d&BRMn.

Or iPhone one-tap: US: +16692545252,,1610532751#,,,,,0#,,38868739# or +16468287666,,1610532751#,,,,,0#,,38868739#.

Or Telephone: Dial (for higher quality, dial a number based on your current location): US: +1 669 254 5252 or +1 646 828 7666.

Webinar ID: 161 053 2751.

Passcode: 38868739.

International numbers available: https://cdc.zoomgov.com/u/abU0Q7Xcvi.

Or an H.323/SIP room system: H.323: 161.199.138.10 (US West) or 161.199.136.10 (US East).

Meeting ID: 161 053 2751.

Passcode: 38868739.

SIP: 1610532751@sip.zoomgov.com.

Passcode: 38868739.

December 9, 2020, 10:00 a.m.–12:00 p.m., EST (US and Canada)

Please click the link below to join the webinar: https://cdc.zoomgov.com/j/1601429901?pwd=M1dtb1dtVkFYUitrYXFvM0hodk1mUT09.

Passcode: 8TS16+u$.

Or iPhone one-tap: US: +16692545252,,1601429901#,,,,,0#,,46612157 or +16468287666,,1601429901#,,,,,0#,,46612157#.

Or Telephone: Dial (for higher quality, dial a number based on your current location): US: +1 669 254 5252 or +1 646 828 7666.

Webinar ID: 160 142 9901.

Passcode: 46612157.

International numbers available: https://cdc.zoomgov.com/u/abqzxBE5mL.

Or an H.323/SIP room system: H.323: 161.199.138.10 (US West) or 161.199.136.10 (US East).

Meeting ID: 160 142 9901.

Passcode: 46612157.

SIP: 1601429901@sip.zoomgov.com.

Passcode: 46612157.

FOR FURTHER INFORMATION CONTACT: Staci Morris, Committee Management Specialist, CDC, 1600 Clifton Road, NE, Mailstop US8–6, Atlanta, Georgia 30329–4027; Telephone: 404–718–7479; Email: *SMorris4@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This Council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis (TB). Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket. CDC does not accept comment by email.

Procedure for Public Comment: Time will be available for public comment. Persons who desire to make an oral statement, may request it at the time of the public comment period on December 9, 2020 at 11:55 a.m., EST.

Written Public Comment: The public is welcome to submit written comments in advance of the meeting. Comments should be submitted in writing according to the instructions provided. The deadline for receipt of written public comment is December 6, 2020, EST. All requests must contain the name, address, and organizational affiliation of the speaker, as well as the topic being addressed. Written comments received in advance of the meeting will be included in the official record of the meeting.

Matters to be Considered: The agenda will include discussions and updates on: (1) TBTC Study 31: Rifapentine-containing Tuberculosis Treatment Shortening Regimens; (2) Latent Tuberculosis Infection (LTBI) Community Engagement; (3) Bedaquiline + Pretomanid + Linezolid (BPal) Clinical Guidance; (4) Nitrosamine Impurities in Rifamycins; and (5) Electronic Directly Observed Therapy (eDOT). Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–24505 Filed 11–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR); Correction

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR); October 26, 2020, 12:30 p.m. to 3:30 p.m., EDT; which was published in the **Federal Register** on September 14, 2020 Volume 85, Number 178, page 56618.

The meeting time, matters to be considered and contact information should read as follows:

DATES: The webinar meeting will be held on October 26, 2020, from 12:30 p.m. to 1:30 p.m., EDT.

SUPPLEMENTARY INFORMATION:

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Center for Preparedness and Response (CPR), concerning strategies and goals for the programs and research within CPR, monitoring the overall strategic direction and focus of the CPR Divisions and Offices, and administration and oversight of peer review for CPR scientific programs. For additional information about the Board, please visit: *https://www.cdc.gov/cpr/bsc/index.htm.*

Matters to be Considered: The agenda will include: (1) CPR Updates from the Director; and (2) BSC, CPR Polio Containment Workgroup (PCWG) Update.

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Office of Science and Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–6, Atlanta, Georgia 30329, Telephone: (404) 639–7450; Email: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit,Office of the Chief Operating Officer,Centers for Disease Control and Prevention.

[FR Doc. 2020–24506 Filed 11–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Lead Exposure and Prevention Advisory Committee (LEPAC); Correction

Notice is hereby given of a change in the date for the solicitation of nominations for appointment to the Lead Exposure and Prevention Advisory Committee (LEPAC); December 15, 2021 which was published in the **Federal Register** on October 28, 2020 Volume 85, Number 209, pages 68328–68329.

The notice should read as follows:

DATES: Nominations for membership on the LEPAC must be received no later than November 27, 2020. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to *LEPAC@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Perri Ruckart, M.P.H., Designated Federal Officer, National Center for Environmental Health, CDC, 4770 Buford Highway, Atlanta, GA 30341, 770–488–3300, *PRuckart@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–24507 Filed 11–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR

69296, October 20, 1980, as amended most recently at 98 FR 30106–30708, dated May 20, 2020) is amended to reflect the reorganization of the Center for Global Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the titles and the mission and function statements for the *Division of Global Health Protection (CBBE),* and insert the following:

Division of Global Health Protection (CBBE). The Division of Global Health Protection (DGHP) protects the health and well-being of Americans and populations around the world. DGHP builds public health capacity in countries and international settings to prevent disease, disability, and death from communicable and noncommunicable diseases (NCDs). DGHP helps to ensure global health protection and security through supporting the implementation of the International Health Regulations (IHR); developing and supporting in-country programs including Global Health Security (GHS) programs, Global Disease Detection Centers, Field Epidemiology Training Programs, and National Public Health Institutes (NPHIs); detecting emerging health threats; advancing NCD prevention and control; and by preparing for and responding to public health emergencies. DGHP works with partners to build strong, transparent, sustained public health systems through training, consultation, capacity building, and technical assistance in applied epidemiology, public health surveillance, policy development, informatics and health information systems, evaluation, operational and implementation research, and laboratory systems. Specifically, it: (1) Provides country-based and international coordination for disease detection, IHR implementation and public health emergency response; (2) leads the agency's global efforts to address the public health emergency continuum from prevention to detection to response through post-emergency health systems recovery; (3) provides epidemic intelligence and response capacity for early warning about international disease threats, and coordinates with partners throughout the U.S. government (USG) as well as international partners to provide rapid response; (4) provides resources and assists in developing country-level epidemiology, laboratory and other capacity to ensure country emergency preparedness and response to outbreaks and incidents of local and international importance; (5) in coordination and communication with other CDC Centers, Institute, or Offices (CIOs), leads CDC activities on global NCDs; and (6) collaborates with other divisions in CDC, Federal agencies, international agencies, partner countries and non-governmental organizations assisting Ministries of Health (MoHs) to build public health capacity for addressing communicable diseases and NCDs.

Office of the Director (CBBE1). The DGHP Office of the Director (OD) provides leadership, management, and oversight for all division activities. Specifically, it: (1) Develops the division's overall strategy and division policies on planning, evaluation, management and operations; (2) provides coordination of budgeting and liaison with the Center for Global Health (CGH) and the Office of Financial Resources (OFR) on budget development and execution; (3) ensures that CGH strategies are executed by the division and aligned with overall CDC goals; (4) develops and implements risk management framework and identifies, analyzes, and develops strategies to manage, control, and respond to risks in the division including financial, legal, political, physical, and security; (5) ensures division activities in the field are well coordinated with the CDC Country Office and supports a ''one-CDC'' approach at the country level; (6) ensures scientific quality, ethics and regulatory compliance; (7) evaluates strategies, focus, and prioritization of branch research, program and budget activities; (8) coordinates division policy and communication activities; (9) develops and promotes partnerships with both national and international organizations, including other USG agencies, in support of division activities; (10) ensures coordination of the division's overall activities within the division as well as with subject matter experts across CDC; (11) fosters an integrated and collaborative approach to research, program, and policy activities; (12) provides scientific leadership within the division on the evaluation of high impact global health protection strategies and the dissemination of data on these strategies; (13) facilitates CDC headquarters and international human resources activities including recruitment, hiring, orienting, deploying, and assisting with relocation of qualified staff; (14) provides workforce management and career development services for headquarters and international staff; (15) facilitates and supports response to international outbreaks through our branches, including engagement with cross-CDC subject matter experts, deployment of staff from across the agency, and 24/7 global event-based monitoring; (16) develops and implements in coordination with other CDC CIOs and USG partners, information technology solutions for emergency preparedness information management, surveillance, and executive decision support to enhance the effectiveness of public health emergency detection and response around the globe; (17) coordinates international aspects of CDC's public health preparedness and emergency response activities in collaboration with the Center for Preparedness and Response (CPR) and other CDC organizational units involved in chemical, biological, radiological and nuclear hazard preparedness and emergency response activities; (18) provides early warning on disease threats via CDC's event based surveillance and other epidemic intelligence activities conducted in partnership with USG agencies, the World Health Organization (WHO), MoHs, and other international and public health and security partners to assure IHR compliance; (19) serves as the WHO Collaborating Center for Implementation of National IHR Surveillance and Response Capacities; (20) in the context of IHR, assesses, coordinates, implements, and measures the effectiveness of international public health preparedness activities in partnership with WHO, MoHs, and USG security, development, and disaster response agencies; (21) guides the implementation of CDC's GHS program across the division and countries and ensures that CDC's activities align with interagency goals and partner country priorities; (22) in collaboration with CGH OD, manages CDC's relationships and develops partnerships with USG security (*e.g.,* National Security Council, Department of Defense, Department of State) and development agencies (*e.g.,* USAID) engaged in GHS activities; (23) collaborates with partners to provide vision and direction to prevent premature deaths and disabilities due to NCDs, injuries, and environmental health hazards; (24) strengthens surveillance, monitoring, evaluation, and information systems to prevent and control global NCDs, injuries, and environmental health hazards; (25) expands the evidence base, and develops and disseminates technical packages, about effective prevention and control interventions; (26) enhances workforce capacity for integrated, systematic training and technical exchange on global NCDs, injuries, and environmental health hazards; (27) leverages external partnerships and resources; (28) liaises and coordinates with other CDC CIOs engaged in global NCD activities and supports CDC's technical expertise to advance global NCD priorities; and (29) increases NCD awareness and support through strategic communication outreach.

Emergency Response and Recovery Branch (CBBEB). The Emergency Response and Recovery Branch applies public health and epidemiologic science to mitigate the impact of disasters, complex humanitarian emergencies, and other emergencies on populations and to support the recovery of health systems in these settings. Specifically, it: (1) Coordinates, supervises, and monitors CDC's work in international emergency settings and in refugee or displaced populations in collaboration with other USG agencies (*e.g.,* Office of Foreign Disaster Assistance and Department of State), United Nations agencies, and non-governmental organizations; (2) provides direct technical assistance to refugees, internally displaced persons, and emergency-affected populations in the field, focusing on rapid health and nutrition assessments, public health surveillance, assessment of public health threats and prioritization of public health interventions, epidemic investigations, communicable disease prevention and control, program implementation, and program evaluation; (3) develops and implements operational research projects aimed at developing the most effective public health interventions for populations in emergency settings; (4) plans, implements, and evaluates training courses and workshops to help strengthen CDC technical capacity in emergency and post-emergency public health, as well as that of other USG agencies, international, non-governmental and other organizations, and schools of public health; (5) develops technical guidelines on public health issues associated with international complex humanitarian emergencies; (6) serves as the CDC liaison to maintain strong working relationships with other international, bilateral, and non-governmental relief organizations involved with humanitarian emergencies; (7) aids in health systems recovery after acute or protracted emergencies; (8) maintains a Global Rapid Response Team to enhance CDC's emergency response capacity and strengthen the global emergency workforce; (9) leads CGH's global water, sanitation and hygiene programs; and (10) coordinates and serves as the lead for emergency preparedness activities related to development of emergency operations centers with subject matter expertise from CPR.

Workforce and Institute Development Branch (CBBEC). The Workforce and Institute Development Branch collaborates with MoHs and other partners to strengthen public health systems through human and institutional capacity development. Specifically, it: (1) Leads the agency in working with MoHs to determine institutional and manpower needs for capacity in field epidemiology, surveillance, public health management, and other essential public health functions, operations and services; (2) designs, implements, and evaluates long-term career development programs in field epidemiology, public health management, and related disciplines for district, regional, and national health agencies; (3) plans, implements, coordinates, supports, and evaluates the FETP and Improving Public Health Management for Actions (IMPACT) program in partnership with MoHs and CDC Country Offices; (4) plans, supports, implements and coordinates the training and capacity building needs for specific programs such as high-impact diseases (HIV, TB, malaria), NCDs, one health, and laboratory capacity building; (5) sustains international, regional, and global networks of FETP and IMPACT programs and graduates; (6) provides CDC leadership on the establishment and strengthening of NPHIs worldwide; (7) engages subject matter experts to provide technical assistance targeted to NPHI priorities; and (8) develops tools to measure NPHI needs and assess progress in NPHI development.

Global Epidemiology, Laboratory, and Surveillance Branch (CBBED). The Global Epidemiology, Laboratory, and Surveillance Branch provides scientific leadership in epidemiology, informatics and information systems, surveillance, and laboratory capacity. Specifically, it: (1) Provides leadership, guidance, and technical assistance support and resources for global infectious disease surveillance, applied epidemiology, informatics and information systems, and laboratory research; (2) assists in the development and implementation of country-level epidemiologic, informatics, data management and analysis, surveillance, laboratory, and other capacity to ensure country emergency preparedness and response to outbreaks and incidents of local and international interest; (3) provides program support, resources, and technical assistance to DGHP country offices, CDC regional offices, and other programs; (4) coordinates and supports research and other scientific projects to estimate disease burden, characterize sources and causes of illness, and assess system effectiveness or impact and disease prevention interventions; (5) in collaboration and coordination with CIO partners, supports surveillance and laboratory systems, facilitates emerging infectious disease detection and response, pandemic influenza preparedness, zoonotic disease investigation, biosafety, and other global health protection activities; (6) in collaboration with subject matter experts and with public and private sector laboratory organizations, provides technical assistance, consultation and training to CDC country offices and other international partners to develop and maintain international public health laboratories and surveillance systems; (7) in collaboration with other divisions and CIOs, defines and promotes public health laboratory quality standards and practices; (8) develops and conducts training to facilitate timely transfer of newly emerging laboratory, informatics and other technology; (9) coordinates CDC's support to WHO's Integrated Disease Surveillance and Response strategy; (10) conducts surveillance activities in overseas sites to serve as early warning detection platforms for disease outbreaks; and (11) serves as a principal point of coordination for USG interagency partners involved in international disease surveillance and situational awareness activities.

Global Operations and Strategic Management Branch (CBBEE). The Global Operations and Strategic Management Branch provides oversight, standardization, accountability, and coordination of support for cross-cutting management and operations and program planning functions for DGHP at HQ and in-country. Specifically, it: (1) Coordinates the DGHP integrated program planning process and provides program planning, management, & technical assistance for HQ and country offices; (2) liaises and collaborates with other DGHP branches, CDC financial and procurement-related units and offices, other CDC and Department of Health and Human Services (HHS) programs and offices, USG agencies, and national and international organizations on overseas management and operations priorities; (3) implements risk management activities in collaboration with DGHP OD for HQ and in-country; (4) provides budget formulation, management, monitoring, and technical assistance for the division including spend planning, budget management support, and annual close-out processes; (5) provides financial reporting oversight and support for the division, including partnerships and interagency agreements; (6) provides funding and budgetary data for regular reports including HHS and Office of Management and Budget reports, GAO and IG audits, country program reviews, and other requests; (7) facilitates and manages the development, clearance, and award of DGHP grants, cooperative agreements, and contracts, including assisting country offices and DGHP branches in determining the appropriate funding mechanism to support DGHP activities; (8) provides oversight, monitoring, and facilitates reporting for all DGHP grants, cooperative agreements, and contracts; (9) provides oversight, support, and coordination of training and development activities for project officers and CORs; (10) provides overall coordination of management, operations, and administrative support and technical assistance to DGHP country offices including support that cannot otherwise be provided in-country; (11) serves as a key linkage between DGHP headquarters and DGHP country offices coordinating calls and liaising with interagency and intra-agency partners; (12) provides oversight of in-country purchasing, property management, facilities, motor pool, and records management; (13) provides training and tools the technical skills and problem-solving abilities of country program managers and locally employed staff who work in management, operations, budget and extramural areas; and (14) liaises and collaborates with other DGHP branches, CDC financial and procurement-related units and offices, other CDC and HHS programs and offices, USG agencies, and national and international organizations on overseas management and operations priorities.

Sherri Berger,

Chief Operating Officer, Center for Disease Control and Prevention.

[FR Doc. 2020–24603 Filed 11–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10114]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by December 7, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* National Provider Identifier (NPI) Application and Update Form and Supporting Regulations in 45 CFR 142.408, 45 CFR 162.406, 45 CFR 162.408; *Use:* The National Provider Identifier Application and Update Form is used by health care providers to apply for NPIs and furnish updates to the information they supplied on their initial applications. The form is also used to deactivate their NPIs if necessary. The form is available on paper or can be completed via a web-based process. Health care providers can mail a paper application, complete the application via the web-based process via the National Plan and Provider Enumeration System (NPPES), or have a trusted organization submit the application on their behalf via the Electronic File Interchange (EFI) process. The Enumerator uses the NPPES to process the application and generate the NPI. NPPES is the Medicare contractor tasked with issuing NPIs, and maintaining and storing NPI data. *Form Number:* CMS–10114 (OMB Control Number: 0938–0931); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal government; *Number of Respondents:* 996,042; *Total Annual Responses:* 996,042; *Total Annual Hours:* 169,327. (For policy questions regarding this collection contact Da'Vona Boyd at 410–786–7483.)

Dated: November 2, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–24611 Filed 11–4–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; OCSE Stafford Act Flexibilities Request Form (New Collection)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), seeks approval of a standardized request form to collect information from state and tribal title IV–D child support agencies requesting administrative flexibilities under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the ''Stafford Act''), due to the COVID–19 pandemic.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Due to the exceptional impact of the COVID–19 pandemic, state and tribal agencies operating child support programs under title IV–D of the Social Security Act have faced significant operational and other challenges in providing critical child support services to families. Section 301 of the Stafford Act, 42 U.S.C. 5141, provides that ''Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State [or Indian tribal government] or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.'' To communicate that child support agencies may request relief under the Stafford Act, on May 28, 2020, OCSE published Dear Colleague Letter 20–04: Flexibilities for State and Tribal Child Support Agencies during COVID–19 Pandemic. OCSE seeks approval of a standardized request form to collect information from state and tribal IV–D agencies requesting Stafford Act administrative flexibilities, due to the COVID–19 pandemic and according to OCSE Dear Colleague Letter 20–04.

Respondents: State and tribal agencies administering a child support program under title IV–D of the Social Security Act.

Annual Burden Estimates

Instrument	Total Number of respondents	Total Number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
OCSE Stafford Act Flexibilities Request Form	114	3	1	342	114

Estimated Total Annual Burden Hours: 114

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 5141.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–24592 Filed 11–4–20; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5569]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for the tracking of medical devices.

DATES: Submit either electronic or written comments on the collection of information by January 4, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 4, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 4, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–5569 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Device Tracking.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Device Tracking—21 CFR Part 821

OMB Control Number 0910–0442—Extension

Section 519(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i(e)(1)), as amended by Food and Drug Administration Modernization Act (Pub. L. 105–115), provides that FDA may require by order that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''), or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s–l/s device'') and is used outside a device user facility.

Tracked device information is collected to facilitate identifying the current location of medical devices and patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary) use the data to: (1) Expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, the regulations include provisions for: (1) Exemptions and variances; (2) system and content requirements for tracking; (3) obligations of persons other than device manufacturers, *e.g.,* distributors; (4) records and inspection requirements; (5) confidentiality; and (6) record retention requirements.

Respondents for this collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s–l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

The annual hourly burden for respondents involved with medical device tracking is estimated to be 615,380 hours per year. The burden estimates cited in tables 1 through 3 are based on the approximate number of device tracking orders, 12 annually. FDA estimates that approximately 22,000 respondents may be subject to tracking reporting requirements.

Under § 821.25(a) (21 CFR 821.25(a)), device manufacturers subject to FDA tracking orders must adopt a tracking method that can provide certain device, patient, and distributor information to FDA within 3 to 10 working days. Assuming one occurrence per year, FDA estimates it would take a firm 20 hours to provide FDA with location data for all tracked devices and 56 hours to identify all patients and/or multiple distributors possessing tracked devices.

Under § 821.25(d) manufacturers must notify FDA of distributor noncompliance with reporting requirements. Based on the number of audits manufacturers conduct annually, FDA estimates it would receive no more than one notice in any year, and that it would take 1 hour per incident.

Under § 821.30(c)(2) (21 CFR 821.30(c)(2)), multiple distributors must provide data on current users of tracked devices, current device locations, and other information, upon request from a manufacturer or FDA. FDA has not made such a request and is not aware of any manufacturer making a request. Assuming one multiple distributor receives one request in a year from either a manufacturer or FDA, and that lists may be generated electronically, the Agency estimates a burden of 1 hour to comply.

Under § 821.30(d) distributors must verify data or make required records available for auditing, if a manufacturer provides a written request. FDA's estimate of the burden for distributor audit responses assumes that manufacturers audit database entries for 5 percent of tracked devices distributed. Each audited database entry prompts one distributor audit response. Because lists may be generated electronically, FDA estimates a burden of 1 hour to comply.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Discontinuation of business—821.1(d)	1	1	1	1	1
Exemption or variance—821.2 and 821.30(e)	1	1	1	1	1
Notification of failure to comply—821.25(d)	1	1	1	1	1
Multiple distributor data—821.30(c)(2)	1	1	1	1	1
Total					4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity; 21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Tracking information—821.25(a)	12	1	12	76	912
Record of tracking data—821.25(b)	12	46,260	555,120	1	555,120
Standard operating procedures—821.25(c) [2]	12	1	12	63	756
Manufacturer data audit—821.25(c)(3)	12	1,124	13,488	1	13,488
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	22,000	1	22,000	1	22,000
Total					592,276

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One-time burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity; 21 CFR part	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Acquisition of tracked devices and final distributor data—821.30(a) and (b)	22,000	1	22,000	1	22,000
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	1,100	1	1,100	1	1,100
Total					23,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this information collection has not changed since the last OMB approval.

Dated: October 30, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–24541 Filed 11–4–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1561]

Evaluating the Effect of the Opioid Analgesics Risk Evaluation and Mitigation Strategy Education Program on Prescribing Behaviors and Patient Outcomes—Exploring the Path Forward for Assessment; Public Workshop; Issues Paper; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: As part of the work by the Federal Government to address the opioid crisis, the Food and Drug Administration (FDA or the Agency) is announcing the following public workshop entitled ''Evaluating the Effect of the Opioid Analgesics Risk Evaluation and Mitigation Strategy Education Program on Prescribing Behaviors and Patient Outcomes—Exploring the Path Forward for Assessment.'' The purpose of the public workshop is to obtain scientific input on methods to evaluate the Opioid Analgesics Risk Evaluation and Mitigation Strategy (OA REMS) education program. To assist in the workshop discussion, FDA is making available an issues paper that provides a brief overview of the REMS background and challenges with evaluating the REMS education intervention.

DATES: The public workshop will be held virtually and broadcast via webcast only on December 11, 2020, from 9 a.m. to 5 p.m., Eastern Time. Submit either electronic or written comments on this public workshop by February 11, 2021. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this public workshop via an online teleconferencing platform.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 11, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 11, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1561 for ''Evaluating the Effect of the Opioid Analgesics Risk Evaluation and Mitigation Strategy Education Program on Prescribing Behaviors and Patient Outcomes—Exploring the Path Forward for Assessment; Public Workshop; Issues Paper; Request for Comments.'' Received comments, those filed in a timely manner (see *ADDRESSES*), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Paul Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4462, Silver Spring, MD 20993–0002, 301–796–9029, *OAREMS@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, FDA approved a REMS for extended-release and long-acting (ER/LA) opioid analgesic medications (ER/LA REMS). The ER/LA REMS required that prescriber training in the form of accredited continuing education (CE) be made available to health care providers who prescribe ER/LA opioid analgesics.

On May 3 and 4, 2016, FDA convened a joint meeting of the Drug Safety and Risk Management (DSaRM) Advisory Committee and the Anesthetic and Analgesic Drug Products (AADP) Advisory Committee to discuss whether the ER/LA REMS assured safe use of these products, whether it was not unduly burdensome to patient access to the drugs, and whether it (to the extent practicable) minimized the burden to the health care delivery system (see the **Federal Register** of March 14, 2016 (81 FR 13372)). FDA also sought input from the committees on effective short- and long-term approaches for measuring the success of the ER/LA REMS in reducing serious outcomes resulting from inappropriate prescribing, misuse, and abuse of ER/LA opioid analgesics. Committee members suggested that a study to assess specific prescribing behaviors and patient outcomes before and after prescriber completion of a REMS-compliant CE, or a study comparing prescriber behavior and patient outcomes for prescribers who completed an educational activity with prescriber behavior and patient outcomes for those who did not, would be useful to evaluate the effect of the ER/LA REMS. The DSaRM and AADP Advisory Committees, however, struggled with how to define appropriateness of prescribing.

Based on recommendations from the 2016 joint advisory committee public meeting, FDA required a modification to the ER/LA REMS to: (1) Include all opioid analgesics (immediate-release, ER, and LA) intended for outpatient use that were not included in another REMS; (2) expand the educational blueprint to encompass broad pain management concepts; and (3) train other members of the health care delivery team involved in the management of patients with pain. The current REMS, the OA REMS, was approved on September 18, 2018 (*https://www.accessdata.fda.gov/scripts/cder/rems/index.cfm?event=RemsDetails.page&REMS=17*).

The central component of the OA REMS is a voluntary CE program for all health care providers, including nurses and pharmacists, who are involved in the management of patients with pain (in addition to doctors and others who prescribe these products). Under the OA REMS, the application holders of affected products are meeting this requirement by providing educational grants to accredited CE providers who develop and offer the training. A variety of formats (*e.g.,* didactic, case-based, interactive, multimedia, adaptive) and settings (live, webinar, internet) have been used to provide these educational activities (*https://opioidanalgesicrems.com/RpcUI/home.u*). The OA REMS also includes a patient counseling guide to assist prescribers in properly counseling patients on their responsibilities for using these medicines safely and to provide patients with additional written instructions as needed (see *https://www.accessdata.fda.gov/drugsatfda_docs/rems/Opioid_Analgesic_2019_11_14_Patient_Counseling_Guide.pdf*). The labeling for opioid analgesics includes a product-specific one-page Medication Guide to be given to patients each time they are dispensed their opioid analgesic medicine.

The goal of the OA REMS is to educate prescribers and other health care providers (including pharmacists and nurses) on the treatment and monitoring of patients with pain. The education provided through the REMS program is based on the FDA Blueprint (*https://www.accessdata.fda.gov/drugsatfda_docs/rems/Opioid_Analgesic_2019_11_14_FDA_Blueprint.pdf*). Through better education, the health care team will have an improved understanding of how to manage pain and the role of opioid analgesics, as well as nonpharmacologic and non-opioid analgesics, in pain management. The education will also provide information about the risks of opioids and use of other therapies. This information is intended to assist health care providers in reducing adverse outcomes of addiction; unintentional overdose; and death resulting from inappropriate prescribing, abuse, and misuse. The REMS aims to accomplish this goal by:

1. Ensuring that training based on the FDA Blueprint is effective in educating prescribers and other health care providers involved in the treatment and monitoring of patients in pain (including pharmacists and nurses) about recommended pain management practices and the appropriate use of opioid analgesics.
2. Informing patients about their roles and responsibilities regarding their pain treatment plan, including the risks of opioid analgesics and how to use and store them safely, as outlined in the Medication Guides and Patient Counseling Guide for opioid analgesics (see Opioid Analgesic REMS page on the Approved Risk Evaluation and Mitigation Strategies (REMS) website, available at *https://www.accessdata.fda.gov/scripts/cder/rems/index.cfm?event=RemsDetails.page&REMS=17*).

The REMS-compliant CE content, based on the FDA Blueprint, includes information on the following:

- The fundamental concepts of pain management, including definitions and mechanisms of pain;
- how to assess patients in pain and identify risk factors for abuse and addiction;
- the range of therapeutic options for managing pain, including nonpharmacologic approaches and pharmacologic (non-opioid and opioid analgesics) therapies;
- how to integrate opioid analgesics into a pain treatment plan tailored to the needs of the patient;
- how to safely and effectively manage patients on opioid analgesics in the acute and chronic pain settings, including initiating therapy, titrating, and discontinuing the use of opioid analgesics;
- how to counsel patients and caregivers about the safe use of opioid analgesics, including proper storage and disposal;
- how to counsel patients and caregivers about the use of naloxone for opioid overdose;
- when referral to a pain specialist is appropriate;
- the fundamental elements of addiction medicine; and
- how to identify and manage patients with opioid use disorder.

The workshop will focus primarily on the evaluation of the effect of REMS CE on prescriber behavior and patient outcomes, which is one component of the OA REMS assessment plan. The OA REMS assessment plan also includes:

- Evaluations of the distribution of letters to health care providers, professional societies, and licensing boards;
- the status of grants and descriptions of CE programs awarded;
- the number of CE activity completers;
- audits of activities;
- the overall pain/opioid CE landscape;
- surveillance and monitoring related to opioid analgesic use, misuse, abuse, overdose, addiction, and death;
- an evaluation of drug utilization patterns;
- an evaluation of CE completers' knowledge; and

• an evaluation of patient experiences around pain management and an evaluation of patient knowledge.

The OA REMS assessment plan also includes an evaluation of the effect of REMS-compliant CE on prescriber behavior and patient outcomes. FDA has been in discussion with the application holders on possible study designs and approaches to measure the effect of the OA REMS-compliant CE on prescriber behaviors and patient outcomes, and a number of challenges have been identified, including but not limited to:

• how to define and measure good pain management practices and key patient outcomes related to pain management and opioid safety and

• How to isolate an effect of REMS-compliant CE given all of the other drivers of prescribing behavior and patient outcomes (*e.g.,* widespread availability of other education programs, opioid analgesic prescribing limits, required checks of prescription drug monitoring programs)

II. Topics for Discussion at the Public Workshop

On December 11, 2020, FDA will hold a public scientific workshop entitled ''Evaluating the Effect of the Opioid Analgesics Risk Evaluation and Mitigation Strategy Education Program on Prescribing Behaviors and Patient Outcomes—Exploring the Path Forward for Assessment.'' The main objective of the workshop is to discuss three major topics. The three major topics are as follows:

1. Specific, measurable outcomes that might demonstrate that the REMS training based on the FDA Blueprint is effective in educating prescribers and other health care providers (including pharmacists and nurses) involved in the treatment and monitoring of patients in pain about recommended pain management practices and the appropriate use of opioid analgesics.

2. The feasibility of conducting a study to specifically evaluate the effect of OA REMS-compliant CE on prescriber behavior and patient outcomes amidst the numerous concomitant strategies to combat the opioid crisis at the Federal, State, and local levels. This discussion will include, for example, what effect size might be reasonable to expect to result from a one-time completion of a CE program and whether there are methods (*e.g.,* study design, data sources, metrics) that could isolate and identify the effect that REMS-compliant CE has on prescriber behavior and patient outcomes. Participants may also be asked to discuss:

• Whether a pilot study would be informative and, if so, what features of the pilot study would be key;

• which types of stakeholders might be well-positioned to conduct such a study;

• how a single study might evaluate the varying formats of CE activity; and

• reasonable timing for outcome evaluation relative to completion of a CE activity.

3. Whether there might be suitable alternative study approaches to better understand the influence of CE, more broadly, on pain management practice and patient outcomes, if a study to directly measure the impact of REMS-compliant CE is thought to be infeasible.

FDA has developed an issues paper entitled ''Methods for Evaluating the Opioid Analgesic Risk Evaluation and Mitigation Strategy (REMS).'' This issues paper provides a brief overview of the REMS background and challenges with evaluating the REMS education. The issues paper can be found on the internet at *https://www.fda.gov/drugs/news-events-human-drugs/opioid-analgesics-rems-study-workshop-12112020.*

Panelists are expected to include individuals with expertise in dissemination and implementation science, public health, health services research, pharmacoepidemiology, program evaluation, and CE. Public participation and comment are encouraged.

III. Participating in the Public Workshop

Registration: To register for the public workshop, send an email to *OAREMS@fda.hhs.gov* by 11:59 p.m. Eastern Time on November 30, 2020. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Registration is free.

Requests for Oral Presentations: During online registration you may indicate if you wish to present during a public comment session and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and request time for a joint presentation. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by December 2, 2020. All requests to make oral presentations must be received by the close of registration on November 30, 2020. If selected for presentation, any presentation materials must be emailed to Paul Tran (see **FOR FURTHER INFORMATION CONTACT**) no later than December 4, 2020. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the Public Workshop: This public workshop will be webcast. Additional information will be made available regarding accessing the webcast 2 days before the public workshop at *https://www.fda.gov/drugs/news-events-human-drugs/opioid-analgesics-rems-study-workshop-12112020.*

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/drugs/news-events-human-drugs/opioid-analgesics-rems-study-workshop-12112020.*

Dated: October 30, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–24542 Filed 11–4–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1845]

Risk Evaluation and Mitigation Strategy Assessment Summary for Web Posting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the establishment of a docket to solicit public comment on a proposal to publish a summary of FDA's review of Risk Evaluation and Mitigation Strategy (REMS) assessments. The purpose of the docket establishment is to increase Agency transparency and promote exchange of information regarding the assessment of REMS programs.

DATES: Submit either electronic or written comments by January 4, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 4, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 4, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1845 for ''Risk Evaluation and Mitigation Strategy Assessment Summary for Web Posting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:
Claudia Manzo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2418, Silver Spring, MD 20993, 301–796–0182, *Claudia.Manzo@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 505–1(g)(3) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355–1) specifies that a REMS assessment shall include, with respect to each goal included in the strategy, an assessment of the extent to which the approved strategy, including each element, is meeting the goal or whether one or more of the goals or elements should be modified. Information from a REMS assessment can be used to understand whether certain REMS requirements or specific tools are effective in mitigating a serious risk.

Every proposed REMS for a new drug application (NDA) and biologics license application (BLA) must have a timetable for submission of REMS assessments that fulfills the two parameters below:

• Includes assessments submitted to FDA by the dates that are: (1) 18 months after the strategy is initially approved; (2) 3 years after the strategy is initially approved; and (3) in the seventh year after the strategy is so approved, and

• Submitted at a frequency specified in the strategy and can be increased or reduced in frequency under certain circumstances and eliminated under certain circumstances.

REMS assessments are also required under the following conditions:

• When the applicant [1] is submitting a supplemental application for a new indication for use

• When required by the strategy

• Whenever FDA determines that an assessment is needed to evaluate whether the strategy should be modified (to ensure the benefits of the drug outweigh the risks or to minimize the burden on the healthcare delivery system when complying with the strategy)

Additionally, assessments of approved REMS may be submitted voluntarily by the applicant at any time.

All approved REMS for NDA and BLA products are required to include a timetable for submission of assessments of the REMS and applicants must submit their REMS Assessment Reports according to this timetable. The applicant's REMS Assessment Report is the document that contains information generated from the analysis of the metrics outlined in the REMS Assessment Plan. The REMS Assessment Plan is a specific plan for how the applicant intends to assess the performance of the REMS in meeting its risk mitigation goals and objectives. The REMS Assessment Plan is outlined in

[1] For the purpose of this notice, applicant includes any person that holds an application approved under section 505–1 of the FD&C Act or a license issued under section 351 of the Public Health Service Act (42 U.S.C. 262) for such product, or who submits an NDA, an abbreviated new drug application (ANDA), a BLA, or an amendment or supplement to an NDA, an ANDA, or a BLA, to obtain FDA approval.

the REMS approval letter for NDAs and BLAs and described in detail in the REMS Supporting Document.[2]

FDA conducts a review of the applicant's REMS Assessment Report to determine if the REMS is meeting its goals. These FDA reviews are archived in the Agency's electronic archival record system. Some of FDA's reviews of applicants' REMS Assessment Reports have been shared publicly at FDA advisory committee meetings. An applicant's REMS Assessment Report and FDA's review of this report may also be requested under the Freedom of Information Act (FOIA); these requests are reviewed by FDA staff, and any information exempt from disclosure must be redacted prior to fulfilling the FOIA request. An applicant's confidential commercial information (CCI), including specific information on stakeholder participation in REMS (*e.g.,* number of certified prescribers, healthcare settings, or the number of enrolled patients), may be redacted from FOIA-released documents following FDA's determination that such information is non-public sales and usage information. Specific information on stakeholder participation in shared system REMS,[3] however, may be released following FDA's determination that such information is aggregate for all the applicants in the shared system REMS and is not considered CCI.

FDA has received feedback from healthcare providers, healthcare systems, industry members, researchers, professional organizations, and other Federal Agencies, indicating that it would be beneficial to make both the applicant's REMS Assessment Report and FDA's review of this report available in the public domain for a number of purposes.[4 5 6 7 8] For example, industry members may consider the effectiveness of a particular strategy as they develop a new REMS; healthcare providers may have an interest in the assessment of a REMS that they participate in; and academics can use the information for research purposes.

In response to this feedback, FDA is proposing to post to the Approved REMS web page (*https://www.accessdata.fda.gov/scripts/cder/rems/index.cfm*) a summary of FDA's review of the applicant's REMS Assessment Report (hereafter referred to as Summary of the REMS Assessment) submitted according to the timetable specified in the approved REMS. The Summary of the REMS Assessment is intended to provide a general understanding of what has been learned from specific REMS programs. The Summary of the REMS Assessment will include a high-level summary of the data included in the applicant's REMS Assessment Report and will include a summary of the FDA review of whether the REMS is meeting its risk mitigation goals. FDA will notify the applicant prior to posting the Summary of the REMS Assessment to the web page. Although the Agency acknowledges that information on specific stakeholder participation in REMS might be useful, this information would not be provided in the summaries of individual REMS[9] because, as mentioned above, it is considered CCI. Information on participation in shared system REMS would be provided in aggregate (*e.g.,* number of prescribers, pharmacies, and/or patients enrolled in the shared system program).

II. Summary of the REMS Assessment for Web Posting

This **Federal Register** notice provides an example of a Summary of the REMS Assessment that would be publicly available. The Summary of the REMS Assessment would include the following sections: A. Introduction; B. Background; C. Key Findings; D. Conclusions; and E. Next Steps. Section A. Introduction will include a brief paragraph that includes the reporting time point (*e.g.,* 2-Year Drug X REMS Assessment Report), the reporting period (*e.g.,* November 28, 2017, through November 27, 2018), and the FDA submission date. Section B. Background will include a summary of the approved indication, the safety issue warranting a REMS, the date the REMS was approved, the goals and objectives of the REMS, the REMS requirements, and the timetable for submission of assessments. Section C. Key Findings will include the brief summary of the results of data used to inform each objective. Section D. Conclusions will include both the applicant's and FDA's conclusion about whether the REMS is meeting its goals. Section E. Next Steps will include whether modifications to the REMS program or to the REMS Assessment Plan is warranted.

III. Example of the Summary of the REMS Assessment for Web Posting

For the purpose of this example, we are using a fictitious product referred to as ''Drug X.''

A. Introduction

This is a summary of the FDA evaluation of the 2-Year REMS Assessment Report (Third Assessment Report) of the Drug X REMS from the reporting period of November 28, 2017, through November 27, 2018, submitted to FDA on January 27, 2019.

B. Background

Drug X is approved to treat the symptoms of a genetic, progressive, neurodegenerative disorder for which there are limited approved therapies. Drug X is an injectable medication given at a dose of 500 milligrams (mg) intravenously over 60 minutes weekly for 4 weeks, and monthly thereafter. A REMS was required at initial approval to mitigate the risk of anaphylaxis, which occurred in clinical trials in approximately 10 percent of patients within 30 minutes of receiving a dose of Drug X. The risk of anaphylaxis occurred with any dose and patients appeared to be at higher risk if they experienced a prior event (*e.g.,* hypersensitivity, allergic events). The Drug X REMS was approved on January 28, 2016.

The goal of the Drug X REMS is to mitigate the risk of negative outcomes associated with Drug X-induced-anaphylaxis. Objectives of the REMS include:

(1) Ensuring prescribers are educated on the risk of anaphylaxis associated with the use of Drug X, that the risk may occur with any dose, and that all

[2] The REMS Supporting Document provides additional information about the REMS, such as the rationale for, and supporting information about, the design, implementation, and assessment of the REMS.

[3] A shared system REMS encompasses multiple prescription drug products and is developed and implemented jointly by two or more applicants.

[4] See The Pink Sheet, After REMS: An Interview With Amgen's Paul Seligman; posted July 7, 2014, and available at *https://pink.pharmaintelligence.informa.com/PS056230/After-REMS-An-Interview-With-Amgens-Paul-Seligman.*

[5] Fain, K., K. Nachman, and L. Rutkow, 2015, ''An Analysis of FDA's Drug Safety Authorities: Challenges and Opportunities Under a New Regulatory Framework,'' *Legislation and Public Policy,* 17:1–36.

[6] See International Society of Pharmacoepidemiology comments (Docket No. FDA–2018–D–4628–0006) on the 2019 draft guidance for industry ''Risk Evaluation and Mitigation Strategies Assessment: Planning and Reporting,'' (84 FR 1153, February 1, 2019) (Docket No. FDA–2018–D–4628), available at *https://www.fda.gov/media/119790/download.* When finalized, this guidance will represent the FDA's current thinking on these issues.

[7] Id., see Pfizer comments (Docket No. FDA–2018–D–4628–0011).

[8] Comments of Tracy Rupp, PharmD, MPH, RD, Senior Fellow at the National Center for Health Research, (Docket No. FDA–2013–N–0502–0069) submitted for Docket No. FDA–2013–N–0502, ''Risk Evaluation and Mitigation Strategies: Understanding and Evaluating Their Impact on the Health Care Delivery System and Patient Access,'' available at *http://www.center4research.org/nchr-statement-fda-meeting-risk-evaluation-mitigation-strategies-rems/.*

[9] An individual REMS encompasses one or more prescription drug products and is developed and implemented by one applicant.

patients need be observed for 30 minutes following each dose.

(2) Ensuring that Drug X is dispensed only in certified healthcare settings that have immediate access onsite to equipment, emergency medication, and personnel trained to manage anaphylaxis.

(3) Ensuring that healthcare providers observe patients for at least 30 minutes after each injection.

(4) Informing patients about the risk of anaphylaxis associated with Drug X and the importance of remaining at the healthcare setting for 30 minutes after each injection.

The Drug X REMS includes the following key requirements: (1) The sponsor must implement a communication plan including sending a REMS letter to all potential prescribers of Drug X outlining the risks and REMS requirements (communication plan completed January 2019); (2) healthcare providers that prescribe Drug X must become certified, which includes completing REMS training, successfully completing a knowledge assessment, and enrolling in the Drug X REMS; (3) certified prescribers must counsel patients prior to administration of the first dose; (4) healthcare settings that order and dispense Drug X must become certified, which includes completing REMS training, successfully completing a knowledge assessment, enrolling in the Drug X REMS, and attesting to having immediate access onsite to equipment, emergency medication, and personnel trained to manage anaphylaxis; and (5) certified healthcare setting must observe patients for a minimum of 30 minutes after each injection and complete and submit a completed post-injection form to the Drug X REMS.

The Drug X REMS assessment reporting frequency is 6 months, 12 months, and annually after initial approval of the REMS.

C. Key Findings Informing REMS Goals and Objectives

Goal: To mitigate the risk of negative outcomes associated with Drug X-induced anaphylaxis.

Objective 1: Ensuring that prescribers are educated on the risk of anaphylaxis associated with the use of Drug X, that the risk may occur with any dose, and that all patients need be observed for 30 minutes following each dose.

Data evaluated: Number and recipients of REMS letter; successful completion of prescriber knowledge assessment, surveys of prescribers' knowledge.

Key findings:

- REMS letters were distributed to likely prescribers of Drug X during the reporting period; about 75 percent of the letters were emailed to neurologists with an email open rate of 14 percent, which is consistent with the email open rate of other REMS programs.
- All enrolled prescribers completed the knowledge assessment with a score of 100 percent; only 15 percent of prescribers required two attempts to achieve this score.
- Prescriber survey respondents demonstrated knowledge of the risks and safe use conditions with a mean knowledge rate of 88 percent.[10]

Conclusion: FDA concluded that this objective is being met because the applicant notified the appropriate prescriber population with information about the Drug X REMS and certified prescribers successfully completed the training program and the knowledge assessment prior to enrollment. In addition, prescriber survey respondents demonstrated knowledge of the risks and the safe use conditions necessary for Drug X.

Objective 2: Ensuring that Drug X is dispensed only in certified healthcare settings that have immediate access onsite to equipment, emergency medication, and personnel trained to manage anaphylaxis.

Data evaluated: Shipment of Drug X only to certified healthcare settings; surveys of healthcare settings, audits of healthcare settings.

Key findings: No shipments of Drug X were sent to non-certified healthcare settings during the reporting period. Audits of 10 percent of certified healthcare settings found that all were in compliance with the requirement to have immediate access onsite to equipment, emergency medication, and personnel trained to manage anaphylaxis after receiving Drug X.

Conclusion: FDA concluded that this objective is being met because Drug X is being dispensed in certified healthcare settings.

Objective 3: Ensuring that healthcare settings observe patients for at least 30 minutes following Drug X dosing.

Data evaluated: Completed post-injection forms, surveys of healthcare settings, and audits of healthcare settings.

Key Findings:

- Certified healthcare facility personnel survey respondents demonstrated knowledge of the risk of anaphylaxis following Drug X infusion with a knowledge rate of 87 percent. When asked about their facilities' compliance with post-injection observation, 90 percent reported that patients are observed for 30 minutes following each injection at their facility.
- Audits of 10 percent of healthcare settings found that 75 percent of healthcare settings had policies and procedures in place to ensure that patients were observed for 30 minutes following each injection.
- Of the post-injection forms that were received:

—Less than 0.1 percent of the forms noted that the patient did not stay for 30 minutes; each facility reporting this was sent a warning letter; future non-compliance may result in decertification as outlined in the non-compliance action plan.

—Less than 0.1 percent of the forms documented anaphylaxis; no events occurred more than once in a given patient.

▪ The majority of patients who experienced anaphylaxis, were treated and observed at the healthcare facility and discharged once stable.

▪ A small number were transported to a hospital for additional monitoring; outcome for these three patients is outstanding and will be reported in the next assessment report.

Conclusion: FDA concluded that this objective is being partially met. While survey findings were acceptable (exceeding the prespecified acceptable knowledge rate of >80 percent) and healthcare setting personnel indicated by survey that patients were being observed for 30 minutes, 25 percent of healthcare settings audited did not have policies and procedures to ensure patient observation.

Objective 4: Informing patients about the risk of anaphylaxis associated with Drug X and the importance of remaining at the healthcare setting for 30 minutes after each injection.

Data evaluated: Surveys of patients.

Key Findings: Patient survey respondents showed high knowledge of the risk of anaphylaxis (92 percent) and the need to remain at the facility for 30 minutes after each injection of Drug X (95 percent).

Conclusion: FDA determined that this objective is being met because the patient knowledge rate exceeded the prespecified acceptable knowledge rate of >80 percent.

D. Conclusions About Whether the REMS Goals and Objectives Are Being Met

Sponsor conclusion: The Drug X sponsor concluded that the goal and

[10] The knowledge rate is the proportion of subjects who know the key message out of all subjects; the target knowledge rate for this prescriber survey was 80 percent.

objectives of the Drug X REMS were being met and did not propose any changes to the REMS as a result of the REMS assessment findings.

FDA conclusion: FDA concluded that while not all objectives are fully met, the overall goals of the program are being met. Appropriate outreach to likely prescribers was completed via REMS letters and the open rate for email letters is consistent with communications for other REMS. Surveys of a sample of enrolled prescribers showed that they understood the risks of Drug X, the need to monitor following dosing, and how to treat anaphylaxis. Patients surveyed were also aware of the risk and the need to be observed for 30 minutes following each dose. No Drug X was shipped to facilities that were not enrolled. Audits of facilities were in compliance with the need to have access onsite to equipment, emergency medication, and personnel trained to manage anaphylaxis; however, findings did reveal that 25 percent did not have specific policies and procedures in place to ensure that patients are observed 30 minutes following each injection of Drug X. Certified healthcare facility personnel surveyed were also aware of the risk and stated that they ensure all patients are observed for 30 minutes following each injection. Facilities reporting patient non-compliance with the 30-minute observation period were warned and will be followed in subsequent assessment reports. Although patients experiencing anaphylaxis were treated appropriately, three did require transport to a hospital and their outcome was not provided in this report.

E. Next Steps

Based on our review of the findings in the third REMS Assessment Report, modifications to the Drug X REMS are not warranted.

On May 1, 2019, FDA sent a letter to the applicant to acknowledge our completion of the third REMS assessment report review. In the letter the applicant was instructed to ensure that the audited healthcare settings that were out of compliance are fully compliant within 3 months of the date of issuance of the letter and that the outcome for the three patients that were transferred to a hospital must be provided to FDA as soon as possible. The applicant was also encouraged to use probability random sampling and recruit a larger sample of prescribers in subsequent prescriber surveys.

IV. Additional Issues for Consideration

FDA is soliciting comment from stakeholders regarding the information that would be posted in the Summary of the REMS Assessment. In addition to any other aspects of or issues concerning FDA's proposal to publicly post a Summary of the REMS Assessment, FDA is interested in comments on the following topics:

(1) Whether the information contained in the Summary of the REMS Assessment example would be beneficial to the public, and if so, why it would be beneficial
(2) whether the Summary of the REMS Assessment would be useful to a wide range of stakeholders, including healthcare providers, patients, the pharmaceutical industry, and academics, and if so, why it would be beneficial
(3) whether any additional information should be included in the Summary of the REMS Assessment
(4) possible negative impacts of posting the Summary of the REMS Assessment

Dated: October 30, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–24540 Filed 11–4–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS or Department) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting will be open to the public. Preregistration is required for the public to attend the meeting, provide comments, and/or distribute printed material(s) to ACMH members. Information about the meeting is available from the designated contact person and will be posted on the HHS Office of Minority Health (OMH) website: *www.minorityhealth.hhs.gov.* Information about ACMH activities can be found on the OMH website under the heading *About OMH, Committees and Workgroups.*

DATES: The ACMH meeting will be held on Friday, November 20, 2020, from 3 p.m. to 5:30 p.m. ET. If the Committee completes its work before 5:30 p.m., the meeting will end early.

ADDRESSES: The meeting will be held virtually and will be accessible by webcast. Participants must register for the meeting by 5 p.m. ET on November 18, 2020. Registered participants will receive webcast access information prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Samuel Wu, Designated Federal Officer, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852. Phone: 240–453–6173; email: *OMH-ACMH@hhs.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health on improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the OMH.

The purpose of the November 2020 ACMH meeting is to finalize recommendations for improving access to and utilization of clinical preventive services among racial and ethnic minority populations. The recommendations will be given to the Deputy Assistant Secretary for Minority Health to inform efforts for removing barriers to achieving health equity.

The meeting is open to the public. Any individual who wishes to attend the meeting must register by sending an email to *OMH-ACMH@hhs.gov* by 5 p.m. ET on November 18, 2020. Each registrant should provide name, affiliation, phone number, and email address. Registrants will receive webcast access information via email. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact *OMH-ACMH@hhs.gov* and reference this meeting. Requests for special accommodations should be made at least ten (10) business days prior to the meeting.

Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to two minutes per speaker during the time allotted. Individuals who would like to submit written statements should email *OMH-ACMH@hhs.gov* at least five (5) business days prior to the meeting.

Any members of the public who wish to distribute electronic or printed material(s) related to this meeting's topic to ACMH members should email the Designated Federal Officer at *OMH-ACMH@hhs.gov.* The material should be received by the Designated Federal Officer at least five (5) business days prior to the meeting.

Dated: November 2, 2020.

Samuel Wu,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2020–24580 Filed 11–4–20; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications 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; America's Startups and Small Businesses Build Technologies to Stop the Opioid Epidemic (R41/R42/R43/R44—Clinical Trial Optional).

Date: December 2–3, 2020.

Time: 9:00 a.m. to 6:00 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: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5819, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; National Institute on Drug Abuse R25s.

Date: December 9, 2020.

Time: 12:00 p.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: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@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 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24534 Filed 11–4–20; 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 Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: December 11–14, 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 #3G42, Rockville, MD 20892, (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room #3G42, Rockville, MD 20852, *sandip.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24532 Filed 11–4–20; 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 Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: December 8, 2020.

Time: 10:00 a.m. to 6:00 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: Jennifer H. Meyers, 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, 301–761–6602, *jennifer.meyers@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 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24531 Filed 11–4–20; 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 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: Center for Scientific Review Special Emphasis Panel Member Conflict: Respiratory Sciences.

Date: December 2–3, 2020.

Time: 9:00 a.m. to 4:00 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: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Neuro/Psychopathology, Lifespan Development, and STEM Education.

Date: December 3, 2020.

Time: 9:30 a.m. to 4:30 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: Elia K Ortenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7816, Bethesda, MD 20892, (301) 827–7189, *femiaee@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship: AIDS and AIDS-Related Applications.

Date: December 3, 2020.

Time: 9:30 a.m. to 6:30 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: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, Bethesda, MD 20892, 301–451–5953, *tuoj@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship: AIDS and AIDS-Related Applications.

Date: December 3, 2020.

Time: 9:30 a.m. to 6:00 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: Shalanda A Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Topics in Virology.

Date: December 3, 2020.

Time: 10:00 a.m. to 7:00 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: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Genes, Genomes, and Genetics.

Date: December 3, 2020.

Time: 11:00 a.m. to 3:00 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: Michael L Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Neuronal Development and Synapses.

Date: December 3, 2020.

Time: 11:00 a.m. to 3:00 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: Mary Custer, Ph.D.. Scientific Review Officer. Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Topics in Hepatology, Pharmacology, and Environmental Toxicology.

Date: December 3, 2020.

Time: 1:00 p.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: Aiping Zhao, MD, Scientific Review Officer ,Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cellular and Molecular Mechanisms of Neurodegeneration.

Date: December 3, 2020.

Time: 2:00 p.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: Christine A Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, 301–435–0657, *christine.piggee@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 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24530 Filed 11–4–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0036; OMB No. 1660–0105]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Disaster Preparedness Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: 60 day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 the charge to FEMA and DHS to meet FEMA strategic priorities, and FEMA's program management to improve the public's knowledge and actions for preparedness and resilience. Information from this collection will be used to track changes in knowledge, attitudes, and behaviors related to preparedness in the general public. The Individual and Community Preparedness Division analyzes and uses data collected in FEMA Form 008–0–15, National Disaster Preparedness Survey to identify progress and gaps in individual and community preparedness to better understand the motivators and barriers to preparedness in general and about specific hazards. The survey measures the public's knowledge, attitudes, and behaviors relative to preparing for a wide range of hazards.

DATES: Comments must be submitted on or before January 4, 2021.

ADDRESSES: Please submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0036. 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: Joseph Faulk, Preparedness Data Lead, Individual and Community Preparedness Division, *joseph.faulk@fema.dhs.gov,* 202–212–7723. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Stafford Act, Title VI, Emergency Preparedness (42 U.S.C. 5195–5195(a)) identifies the purpose of emergency preparedness ''for the protection of life and property in the United States from hazards.'' It directs that the Federal Government ''provide necessary direction, coordination, and guidance'' as authorized for a comprehensive emergency preparedness system for all hazards. Emergency preparedness is defined as all ''activities and measures designed or undertaken to prepare or minimize the effects of a hazard upon the civilian population. . .'' The ''conduct of research'' is among the measures to be undertaken in preparation for hazards.

The DHS Strategic Plan 2020–2024 includes Goal 5, to ''strengthen preparedness and resiliency.'' The first objective of this goal is to ''build a national culture of preparedness'' with a sub-objective to ''improve awareness initiatives to encourage public action to increase preparedness.

Similarly, in FEMA's Strategic Plan 2018–2022, Strategic Goal 1 is to ''build a culture of preparedness'' with objective 1.3 to ''help people prepare for disasters.'' The performance measures for objective 1.3 include increasing the percentage of people with savings set aside for an emergency and increasing the percentage of people who have taken preparedness actions.

Presidential Policy Directive-8 (PPD–8) directs the Secretary of Homeland Security to ''coordinate a comprehensive campaign to build and sustain national preparedness, including public outreach and community-based and private sector programs to enhance national resilience, the provision of Federal financial assistance, preparedness efforts by the Federal Government, and national research and development efforts.''

In response to FEMA's responsibilities above, the information from this collection will be used to track changes in knowledge, attitudes, and behaviors related to preparedness in the general public.

Collection of Information

Title: National Disaster Preparedness Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0105.

FEMA Forms: FEMA Form 008–0–15.

Abstract: In accordance with the Paperwork Reduction Act of 1995, this collection assists FEMA's Individual and Community Preparedness Division to identify progress and gaps in citizen and community preparedness.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 7,000.

Estimated Number of Responses: 7,000.

Estimated Total Annual Burden Hours: 1,250.

Estimated Total Annual Respondent Cost: $46,938.

Estimated Respondents' Operation and Maintenance Costs: There are no respondents' Operation and Maintenance costs associated with this information collection.

Estimated Respondents' Capital and Start-Up Costs: There are no recordkeeping, capital and start-up costs associated with this information collection.

Estimated Total Annual Cost to the Federal Government: $281,200.

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. 2020–24605 Filed 11–4–20; 8:45 am]

BILLING CODE 9111–27–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0037; OMB No. 1660–0137]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emergency Notification System (ENS)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: 60 day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 the Emergency Notification System (ENS).

DATES: Comments must be submitted on or before January 4, 2021.

ADDRESSES: To avoid duplicate submissions to the docket, please use the following means to submit comments: Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0037. 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: Melton Roland, ENS Program Manager, FEMA/ORR, *Melton.Roland@fema.dhs.gov,* or telephone 540–665–6152. 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: FEMA's Office of Response & Recovery (ORR) owns and operates the Emergency Notification System (ENS). FEMA Directive 262–3, Emergency Notification System, designates ENS as the agency solution for all notification and alerts activities. The ENS sends electronic notifications and relays messages, whether critical in nature, routine, or for testing purposes with appropriate authorization, to DHS employees and contractors, as well as emergency response personnel. In accordance with Executive Order 12656, as amended, Presidential Policy Directive 40, and Federal Continuity Directive (FCD)-1, all DHS organizational components must have in place a viable Continuity of Operations Planning (COOP) capability and plan that ensures the performance of their essential functions during any emergency or situation that could disrupt normal operations. An effective ENS solution is a critical part of this plan.

Collection of Information

Title: Emergency Notification System (ENS).

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0137.

FEMA Forms: None.

Abstract: The Emergency Notification System has been deemed the standard notification tool for FEMA. The purpose of this notification tool is to activate teams and disseminate information. The respondents to this information are Mobile Operation Centers and Regions that use this information to make decisions on how to meet operational missions. This revision includes a new form for data gathering, which includes the Privacy Act Statement, Paperwork Reduction Act, and Retention Period information for members of the public that receive ENS Notifications.

Affected Public: State, Local or Tribal Government; Federal Government.

Estimated Number of Respondents: 700.

Estimated Number of Responses: 700.

Estimated Total Annual Burden Hours: 183.2.

Estimated Total Annual Respondent Cost: $6,247.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $214,651.

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. 2020–24588 Filed 11–4–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N014; FXES11140800000–189–FF08EVEN00]

Draft Habitat Conservation Plan and Draft Environmental Assessment for the California Department of Parks and Recreation, Oceano Dunes District, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan (HCP) and associated draft environmental assessment (EA) for California Department of Parks and Recreation (CDPR) activities at Pismo State Beach and Oceano Dunes State Vehicular Recreation Area, San Luis Obispo County, California. The CDPR developed the draft HCP as part of their application for an incidental take permit (ITP) under the Endangered Species Act. The Service prepared a draft EA in accordance with the National Environmental Policy Act to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to CDPR. We invite public comment on these documents.

DATES: Written comments should be received on or before December 21, 2020.

ADDRESSES:

Obtaining Documents for Review: You may download a copy of the draft habitat conservation plan and draft environmental assessment at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail (below) or by phone (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Comments: Please send us your written comments using one of the following methods:

- *U.S. mail:* Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *Email: fw8oceanoduneshcp@fws.gov.* Please include Oceano Dunes HCP in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Lena Chang, Senior Fish and Wildlife Biologist, by phone at 805–677–3305, via the Federal Relay Service at 1–800–877–8339 for TTY assistance, or at the Ventura address (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan (HCP) and the associated draft environmental assessment (EA) for California Department of Parks and Recreation's (CDPR's) public use, recreation management, natural resources management, and park and beach management activities on 5,005 acres of Pismo State Beach and Oceano Dunes State Vehicular Recreation Area, in San Luis Obispo County, California. The CDPR developed the draft HCP as part of its application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The Service prepared a draft EA in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to CDPR. We invite public comment on these documents.

Draft HCP Covered Species

The CDPR has developed a draft HCP that includes measures to mitigate and minimize impacts to the following 10 covered species:

Species	Listing information
Federally Listed as Endangered:	
California least tern (*Sterna antillarum browni*)	June 2, 1970 (35 FR 16047).
Tidewater goby (*Eucyclogobius newberryi*)	February 4, 1994 (59 FR 5494).
Gambel's watercress (*Rorippa gambelii*)	August 3, 1993 (58 FR 41378).
La Graciosa thistle (*Cirsium scariosum* var. *loncholepis*)	March 20, 2000 (65 FR 14888).
Marsh sandwort (*Arenaria paludicola*)	August 3, 1993 (58 FR 41378).
Nipomo Mesa lupine (*Lupinus nipomensis*)	March 20, 2000 (65 FR 14888).
Federally Listed as Threatened:	
Western snowy plover (*Charadrius nivosus nivosus*)	March 5, 1993 (58 FR 12864).
California red-legged frog (*Rana draytonii*)	May 23, 1996 (61 FR 25813).
State Listed as Threatened:	
Surf thistle (*Cirsium rhothophilum*)	1990.
Beach spectaclepod (*Dithyrea maritime*)	1990.

The ITP would authorize take of the four animal species (California least tern, tidewater goby, western snowy plover, and California red-legged frog) incidental to otherwise lawful activities associated with the HCP-covered activities.

Background

Section 9 of the ESA prohibits the take of fish or wildlife species listed as endangered; as applicable to the species affected by the proposed action, the ESA implementing regulations also prohibit take of fish or wildlife species listed as threatened. ''Take'' is defined under the ESA to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22, respectively. Under the ESA, protections for federally listed plants differ from the protections afforded to federally listed animals. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The permittees would receive assurances under our ''No Surprises'' regulations ((50 CFR 17.22(b)(5) and 17.32(b)(5)) regarding conservation activities for the covered species.

Proposed Activities

The CDPR has applied for an ITP that would authorize incidental take of the four covered animal species that could result from covered activities described in the HCP. The covered area comprises 5,005 acres of Pismo State Beach and Oceano Dunes State Vehicular Recreation Area. The covered area includes designated critical habitat for western snowy plover, tidewater goby, and La Graciosa thistle. The HCP describes measures CDPR will implement to avoid and minimize impacts and take of the covered species. Mitigation for unavoidable take would be accomplished through CDPR's existing conservation program and through meeting the biological goals and objectives outlined in the HCP. The conservation program is designed to protect and promote recovery of covered species, including managing habitat components to benefit covered species, minimizing human alteration or disturbance of native habitats, reducing conflicts between covered species and park users, restoring native habitats, and monitoring the success of these efforts.

Alternatives

We are considering four alternatives in the draft EA:

(1) The no action alternative, which would not result in issuance of an ITP for ongoing activities;

(2) The proposed action would be issuance of an ITP based on the activities described in draft HCP, including reduction of the existing protected area boundary (''southern exclosure'') for the California least tern and western snowy plover;

(3) Issuance of an ITP based on the draft HCP maintaining the existing ''southern exclosure boundary''; and

(4) Issuance of an ITP based on the draft HCP with year-round exclosures.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, 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 view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Stephen Henry,

Field Supervisor,Ventura Fish and Wildlife Office,Ventura, California.

[FR Doc. 2020–24587 Filed 11–4–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of the San Pasqual Band of Diegueno Mission Indians of California Business Site Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the San Pasqual Band of Diegueno Mission Indians of California Business Site Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

DATES: BIA issued the approval on October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharelene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the San Pasqual Band of Diegueno Mission Indians of California.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the San Pasqual Band of Diegueno Mission Indians of California.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–24518 Filed 11–4–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 212]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on December 7, 2020.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven 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 plat, in 3 sheets, incorporating the field notes of the dependent resurvey in fractional Township 43 North, Range 12 East, New Mexico Principal Meridian, Colorado, was accepted on August 25, 2020.

The plat, in 3 sheets, incorporating the field notes of the dependent resurvey and subdivision of section 32 in Township 49 North, Range 8 East, New Mexico Principal Meridian, Colorado, was accepted on October 1, 2020.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey in Township 46 North, Range 9 East, New Mexico Principal Meridian, Colorado, was accepted on October 16, 2020.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, 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: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2020–24607 Filed 11–4–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 212]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the official filing of the amended protraction diagram listed below. The diagram, which was executed at the request of the U.S. Forest Service and the BLM, is necessary for the management of these lands. The plat is available for viewing in the BLM Colorado State Office.

DATES: The plat described in this notice was filed on August 21, 2017.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven 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 plat of Amended Protraction Diagram No. 24D in unsurveyed Township 41 North, Range 7 West, New Mexico Principal Meridian, Colorado, was accepted on August 21, 2017, and filed on August 21, 2017.

A person or party who wishes to protest the above plat must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, 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: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2020–24606 Filed 11–4–20; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1462 (Final)]

Glass Containers From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is not materially injured or threatened with material injury by reason of imports of glass containers from China, provided for in subheading 7010.90.50 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission instituted this investigation effective September 25, 2019, following receipt of antidumping and countervailing duty petitions filed with the Commission and Commerce by the American Glass Packaging Coalition, Tampa, Florida, and Chicago, Illinois. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of glass containers from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigation 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 notice in the **Federal Register** of March 6, 2020 (85 FR 13183). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through a series of written questions and responses, written testimony, and video conference on May 6, 2020. All persons who requested the opportunity were permitted to participate. On June 26, 2020, the Commission issued a final negative determination in its countervailing duty investigation on glass containers from China.[3] Following notification of a final determination by Commerce that imports of glass containers from China were being sold at LTFV within the meaning of 735(a) of the Act (19 U.S.C. 1673d(a)), notice of the supplemental scheduling of the final phase of the Commission's antidumping duty investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 28, 2020 (85 FR 60829).

The Commission made this determination pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on November 2, 2020. The views of the Commission are contained in USITC Publication 5132 (November 2020), entitled *Glass Containers from China: Investigation No. 731–TA–1462 (Final).*

By order of the Commission.

Issued: November 2, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–24594 Filed 11–4–20; 8:45 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Delivery of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2021

AGENCY: Legal Services Corporation.

ACTION: Announcement of the Legal Services Corporation's intent to make FY2021 Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants to provide effective and efficient delivery of high-quality civil legal services to eligible low-income clients, starting January 1, 2021.

DATES: All comments and recommendations must be received on or before the close of business on December 7, 2020.

ADDRESSES: Grant Awards, Legal Services Corporation, 3333 K Street NW, Third Floor, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Judith Lee, Grants Program Analyst, Office of Program Performance, at (202) 295–1518 or *leej@lsc.gov.*

SUPPLEMENTARY INFORMATION: Under LSC's Notice Of Funds Available published on April 7, 2020 (85 FR 19506) and LSC's Grant application process beginning on May 13, 2020, LSC intends to award funds to organizations that provide civil legal services in the indicated service areas. Applicants for each service area are listed below. The grant award amounts below are estimates based on the FY2020 grant awards to each service area. The funding estimates may change based on the final FY2021 appropriation.

LSC will post all updates and changes to this notice at *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-notice-intent-award-2021-grant.* Interested parties are asked to visit *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant* regularly for updates on the LSC grants process.

Name of applicant organization	State	Service area	Estimated Annualized 2021 Funding
Alaska Legal Services Corporation	AK	AK–1	$922,188
Alaska Legal Services Corporation	AK	NAK–1	636,221
Legal Services Alabama, Inc	AL	AL–4	6,906,563
Legal Aid of Arkansas, Inc	AR	AR–6	1,564,261
Center for Arkansas Legal Services	AR	AR–7	2,487,766
American Samoa Legal Aid	AS	AS–1	280,626
DNA-Peoples Legal Services, Inc	AZ	AZ–2	495,865
Community Legal Services, Inc	AZ	AZ–3	5,782,576
Southern Arizona Legal Aid, Inc	AZ	AZ–5	2,444,864
Community Legal Services, Inc	AZ	MAZ	265,981

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 58333 (September 18, 2020).

[3] 85 FR 39932 (July 2, 2020).

Name of applicant organization	State	Service area	Estimated Annualized 2021 Funding
DNA-Peoples Legal Services, Inc	AZ	NAZ–5	3,069,799
Southern Arizona Legal Aid, Inc	AZ	NAZ–6	749,864
California Indian Legal Services, Inc	CA	CA–1	15,068
Inland Counties Legal Services, Inc	CA	CA–12	5,291,744
Legal Aid Society of San Diego, Inc	CA	CA–14	3,149,078
Community Legal Aid SoCal	CA	CA–19	4,249,790
Greater Bakersfield Legal Assistance, Inc	CA	CA–2	1,339,959
Central California Legal Services	CA	CA–26	3,389,841
Legal Services of Northern California, Inc	CA	CA–27	4,369,885
Bay Area Legal Aid	CA	CA–28	4,517,741
Legal Aid Foundation of Los Angeles	CA	CA–29	6,460,385
Neighborhood Legal Services of Los Angeles County	CA	CA–30	4,446,740
California Rural Legal Assistance, Inc	CA	CA–31	5,027,724
California Rural Legal Assistance, Inc	CA	MCA	3,266,551
California Indian Legal Services, Inc	CA	NCA–1	1,039,347
Colorado Legal Services	CO	CO–6	4,707,931
Colorado Legal Services	CO	MCO	270,545
Colorado Legal Services	CO	NCO–1	112,978
Statewide Legal Services of Connecticut, Inc	CT	CT–1	2,874,735
Pine Tree Legal Assistance, Inc	CT	NCT–1	18,418
Neighborhood Legal Services Program of the District of Columbia	DC	DC–1	969,740
Legal Services Corporation of Delaware, Inc	DE	DE–1	1,103,527
Maryland Legal Aid	DE	MDE	16,765
Legal Services of North Florida, Inc	FL	FL–13	1,821,768
Three Rivers Legal Services, Inc	FL	FL–14	2,580,131
Community Legal Services of Mid-Florida, Inc	FL	FL–15	5,540,901
Bay Area Legal Services, Inc	FL	FL–16	4,060,516
Florida Rural Legal Services, Inc	FL	FL–17	4,310,042
Coast to Coast Legal Aid of South Florida, Inc	FL	FL–18	2,530,920
Legal Services of Greater Miami, Inc	FL	FL–5	3,949,696
Florida Rural Legal Services, Inc	FL	MFL	697,923
Atlanta Legal Aid Society, Inc	GA	GA–1	3,961,668
Georgia Legal Services Program	GA	GA–2	9,081,041
Georgia Legal Services Program	GA	MGA	346,800
Micronesian Legal Services Corporation	GU	GU–1	316,260
Legal Aid Society of Hawaii	HI	HI–1	1,337,054
Legal Aid Society of Hawaii	HI	NHI–1	269,479
Iowa Legal Aid	IA	IA–3	2,462,317
Iowa Legal Aid	IA	MIA	419,334
Idaho Legal Aid Services, Inc	ID	ID–1	1,587,149
Idaho Legal Aid Services, Inc	ID	MID	321,189
Idaho Legal Aid Services, Inc	ID	NID–1	76,429
Land of Lincoln Legal Aid, Inc	IL	IL–3	3,038,356
Legal Aid Chicago	IL	IL–6	6,377,812
Prairie State Legal Services, Inc	IL	IL–7	4,109,460
Legal Aid Chicago	IL	MIL	323,122
Indiana Legal Services, Inc	IN	IN–5	7,448,875
Indiana Legal Services, Inc	IN	MIN	237,455
Kansas Legal Services, Inc	KS	KS–1	2,968,550
Legal Aid of the Bluegrass	KY	KY–10	1,704,486
Legal Aid Society	KY	KY–2	1,349,310
Appalachian Research and Defense Fund of Kentucky	KY	KY–5	1,887,665
Kentucky Legal Aid	KY	KY–9	1,387,706
Southeast Louisiana Legal Services Corporation	LA	LA–13	3,804,863
Acadiana Legal Service Corporation	LA	LA–15	3,933,894
Community Legal Aid, Inc	MA	MA–10	1,684,918
Volunteer Lawyers Project of the Boston Bar Association	MA	MA–11	2,333,105
South Coastal Counties Legal Services	MA	MA–12	979,557
Northeast Legal Aid, Inc	MA	MA–4	1,035,425
Maryland Legal Aid	MD	MD–1	4,781,258
Maryland Legal Aid	MD	MMD	63,650
Pine Tree Legal Assistance, Inc	ME	ME–1	1,168,982
Pine Tree Legal Assistance, Inc	ME	MMX–1	327,921
Pine Tree Legal Assistance, Inc	ME	NME–1	75,825
Michigan Advocacy Program	MI	MI–12	1,902,835
Lakeshore Legal Aid	MI	MI–13	4,979,833
Legal Services of Eastern Michigan	MI	MI–14	1,812,263
Legal Aid of Western Michigan	MI	MI–15	2,147,872
Legal Services of Northern Michigan, Inc	MI	MI–9	901,890
Michigan Advocacy Program	MI	MMI	410,232
Michigan Indian Legal Services, Inc	MI	NMI–1	193,657
Southern Minnesota Regional Legal Services, Inc	MN	MMN	362,222

Name of applicant organization	State	Service area	Estimated Annualized 2021 Funding
Legal Aid Service of Northeastern Minnesota	MN	MN–1	446,927
Legal Services of Northwest Minnesota Corporation	MN	MN–4	391,046
Southern Minnesota Regional Legal Services, Inc	MN	MN–5	1,668,474
Central Minnesota Legal Services, Inc	MN	MN–6	1,696,618
Anishinabe Legal Services, Inc	MN	NMN–1	281,141
Legal Aid of Western Missouri	MO	MMO	250,816
Legal Aid of Western Missouri	MO	MO–3	2,090,051
Legal Services of Eastern Missouri, Inc	MO	MO–4	2,184,990
Mid-Missouri Legal Services Corporation	MO	MO–5	490,771
Legal Services of Southern Missouri	MO	MO–7	2,003,535
Micronesian Legal Services Corporation	MP	MP–1	1,586,053
Mississippi Center for Legal Services	MS	MS–10	3,005,230
North Mississippi Rural Legal Services, Inc	MS	MS–9	1,861,862
Mississippi Center for Legal Services	MS	NMS–1	97,789
Montana Legal Services Association	MT	MMT	136,584
Montana Legal Services Association	MT	MT–1	990,677
Montana Legal Services Association	MT	NMT–1	187,317
Legal Aid of North Carolina, Inc	NC	MNC	488,943
Legal Aid of North Carolina, Inc	NC	NC–5	12,491,567
Legal Aid of North Carolina, Inc	NC	NNC–1	256,747
Southern Minnesota Regional Legal Services, Inc	ND	MND	153,657
Legal Services of North Dakota	ND	ND–3	510,481
Legal Services of North Dakota	ND	NND–3	316,894
Legal Aid of Nebraska	NE	MNE	287,165
Legal Aid of Nebraska	NE	NE–4	1,485,311
Legal Aid of Nebraska	NE	NNE–1	38,886
Legal Advice & Referral Center, Inc	NH	NH–1	850,456
South Jersey Legal Services, Inc	NJ	MNJ	90,044
Legal Services of Northwest Jersey	NJ	NJ–15	520,467
Central Jersey Legal Services, Inc	NJ	NJ–17	1,416,993
Northeast New Jersey Legal Services Corporation	NJ	NJ–18	2,108,463
South Jersey Legal Services, Inc	NJ	NJ–20	2,566,667
Essex-Newark Legal Services Project, Inc	NJ	NJ–8	1,084,491
New Mexico Legal Aid	NM	MNM	123,778
DNA-Peoples Legal Services, Inc	NM	NM–1	263,342
New Mexico Legal Aid	NM	NM–5	3,157,257
DNA-Peoples Legal Services, Inc	NM	NNM–2	26,728
New Mexico Legal Aid	NM	NNM–4	546,608
Nevada Legal Services, Inc	NV	NNV–1	156,432
Nevada Legal Services, Inc	NV	NV–1	3,388,798
Legal Aid Society of Mid-New York, Inc	NY	MNY	314,689
Legal Services of the Hudson Valley	NY	NY–20	1,989,075
Legal Aid Society of Northeastern New York, Inc	NY	NY–21	1,476,951
Legal Aid Society of Mid-New York, Inc	NY	NY–22	1,895,435
Legal Assistance of Western New York, Inc	NY	NY–23	2,003,267
Neighborhood Legal Services, Inc	NY	NY–24	1,510,558
Nassau/Suffolk Law Services Committee, Inc	NY	NY–7	1,566,542
Legal Services NYC	NY	NY–9	13,259,862
Legal Aid of Western Ohio, Inc	OH	MOH	290,602
Legal Aid Society of Greater Cincinnati	OH	OH–18	1,875,063
Community Legal Aid Services, Inc	OH	OH–20	2,177,934
The Legal Aid Society of Cleveland	OH	OH–21	2,650,122
Legal Aid of Western Ohio, Inc	OH	OH–23	3,105,423
Ohio State Legal Services	OH	OH–24	3,865,840
Legal Aid Services of Oklahoma, Inc	OK	MOK	179,020
Oklahoma Indian Legal Services, Inc	OK	NOK–1	963,234
Legal Aid Services of Oklahoma, Inc	OK	OK–3	5,148,420
Legal Aid Services of Oregon	OR	MOR	573,233
Legal Aid Services of Oregon	OR	NOR–1	217,167
Legal Aid Services of Oregon	OR	OR–6	4,172,910
Philadelphia Legal Assistance Center	PA	MPA	230,050
Philadelphia Legal Assistance Center	PA	PA–1	3,431,877
Southwestern Pennsylvania Legal Services, Inc	PA	PA–11	455,022
Legal Aid of Southeastern Pennsylvania	PA	PA–23	1,462,515
North Penn Legal Services, Inc	PA	PA–24	2,182,692
MidPenn Legal Services, Inc	PA	PA–25	2,832,308
Northwestern Legal Services	PA	PA–26	800,062
Laurel Legal Services, Inc	PA	PA–5	733,231
Neighborhood Legal Services Association	PA	PA–8	1,535,374
Puerto Rico Legal Services, Inc	PR	MPR	69,281
Puerto Rico Legal Services, Inc	PR	PR–1	12,657,509
Community Law Office, Inc	PR	PR–2	231,267

Name of applicant organization	State	Service area	Estimated Annualized 2021 Funding
Rhode Island Legal Services, Inc	RI	RI–1	1,036,191
South Carolina Legal Services, Inc	SC	MSC	166,572
South Carolina Legal Services, Inc	SC	SC–8	6,466,912
Dakota Plains Legal Services, Inc	SD	NSD–1	1,098,419
East River Legal Services	SD	SD–2	461,315
Dakota Plains Legal Services, Inc	SD	SD–4	501,191
Legal Aid Society of Middle Tennessee and the Cumberlands	TN	TN–10	3,347,711
Memphis Area Legal Services, Inc	TN	TN–4	1,661,056
West Tennessee Legal Services, Inc	TN	TN–7	765,560
Legal Aid of East Tennessee	TN	TN–9	2,703,092
Texas RioGrande Legal Aid, Inc	TX	MSX–2	2,081,141
Texas RioGrande Legal Aid, Inc	TX	NTX–1	36,819
Lone Star Legal Aid	TX	TX–13	12,888,876
Legal Aid of NorthWest Texas	TX	TX–14	9,794,740
Texas RioGrande Legal Aid, Inc	TX	TX–15	12,318,247
Utah Legal Services, Inc	UT	MUT	99,574
Utah Legal Services, Inc	UT	NUT–1	96,783
Utah Legal Services, Inc	UT	UT–1	2,516,704
Central Virginia Legal Aid Society, Inc	VA	MVA	200,938
Southwest Virginia Legal Aid Society, Inc	VA	VA–15	928,630
Legal Aid Society of Eastern Virginia	VA	VA–16	1,682,317
Virginia Legal Aid Society, Inc	VA	VA–17	865,389
Central Virginia Legal Aid Society, Inc	VA	VA–18	1,404,007
Blue Ridge Legal Services, Inc	VA	VA–19	922,443
Legal Services of Northern Virginia, Inc	VA	VA–20	1,711,145
Legal Services of the Virgin Islands, Inc	VI	VI–1	208,408
Legal Services Vermont	VT	VT–1	558,386
Northwest Justice Project	WA	MWA	757,981
Northwest Justice Project	WA	NWA–1	335,121
Northwest Justice Project	WA	WA–1	6,318,864
Legal Action of Wisconsin, Inc	WI	MWI	428,697
Wisconsin Judicare, Inc	WI	NWI–1	182,487
Wisconsin Judicare, Inc	WI	WI–2	1,081,437
Legal Action of Wisconsin, Inc	WI	WI–5	4,132,260
Legal Aid of West Virginia, Inc	WV	WV–5	2,966,918
Legal Aid of Wyoming, Inc	WY	NWY–1	203,288
Legal Aid of Wyoming, Inc	WY	WY–4	565,108

These grants will be awarded under the authority conferred on LSC by section 1006(a)(1) of the Legal Services Corporation Act, 42 U.S.C. 2996e(a)(l). Grant awards are made to ensure civil legal services are provided in every service area, although no listed organization is guaranteed a grant award. Grants will become effective, and grant funds will be distributed, on or about January 1, 2021.

LSC issues this notice pursuant to 42 U.S.C. 2996f(f). Comments and recommendations concerning potential grantees are invited and should be delivered to LSC within 30 days from the date of publication of this notice.

Dated: October 30, 2020.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2020–24513 Filed 11–4–20; 8:45 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2020–9]

Sovereign Immunity Study: Announcement of Public Roundtables

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of public roundtables.

SUMMARY: The U.S. Copyright Office is conducting a study to evaluate the degree to which copyright owners are experiencing infringement by state entities without adequate remedies under state law, as well as the extent to which such infringements appear to be based on intentional or reckless conduct. To aid its analysis, the Office is announcing public roundtables to provide the opportunity for members of the public to address the following topics: Evidence of actual or threatened copyright infringement by states; state policies and practices for minimizing copyright infringement and addressing infringement claims; and alternative remedies under state law for copyright infringement.

DATES: The roundtables will be held on Friday, December 11, 2020. Attendees will be able to join the event online starting at approximately 8:30 a.m., and the event will run until approximately 5:00 p.m.

ADDRESSES: The Office will conduct the roundtables remotely using the Zoom videoconferencing platform. Requests to participate as a panelist in a roundtable session should be submitted by 11:59 p.m. Eastern Time on November 16, 2020 using the form available at *https://www.copyright.gov/policy/state-sovereign-immunity/hearing-request.html.* Any person who is unable to send a request via the website should contact the Office using the contact information below to make an alternative arrangement for submission of a request to participate. Additional information will be made available at *https://www.copyright.gov/policy/state-sovereign-immunity/roundtable.*

FOR FURTHER INFORMATION CONTACT: Kevin R. Amer, Deputy General

Counsel, *kamer@copyright.gov;* Mark T. Gray, Attorney-Advisor, *mgray@copyright.gov;* or Jalyce E. Mangum, Attorney-Advisor, *jmang@copyright.gov.* They can be reached by telephone at 202–707–3000.

SUPPLEMENTARY INFORMATION: On June 3, 2020, the U.S. Copyright Office issued a notice of inquiry (''NOI'') commencing a policy study on state sovereign immunity from copyright infringement suits.[1] Congress has requested that the Office ''research this issue to determine whether there is sufficient basis for federal legislation abrogating State sovereign immunity when States infringe copyrights.'' [2] To assist Congress in making that assessment, the Office solicited public comment on several issues concerning the degree to which copyright owners face infringement from state actors today, whether such infringement is based on intentional or reckless conduct, and what remedies, if any, are available to copyright owners under state law. Initial comments were due on September 2, 2020, and reply comments and empirical studies were due on October 22, 2020. Information about the study, including the NOI and public comments, may be accessed on the Copyright Office website at *https://www.copyright.gov/policy/state-sovereign-immunity/.*

The Office is now announcing that it will hold roundtable discussions on December 11, 2020, to allow interested members of the public to discuss and provide additional information on the topics of the study. The roundtables will be held virtually over Zoom to allow maximum participation and avoid the need for participants to travel. Each roundtable session will cover a topic relevant to the study, as discussed below. Depending on the level of interest, the Office may hold multiple sessions on the same topic to accommodate a greater number of participants and provide additional time for discussion.

Members of the public who seek to participate in a roundtable should complete and submit the form available on the Office website at *https://www.copyright.gov/policy/state-sovereign-immunity/hearing-request.html* no later than November 16, 2020. Shortly thereafter, the Office will notify participants of their selection and panel assignments. In order to accommodate the expected level of interest, the Office plans to assign no more than one representative per organization to each session.

The Office will post a tentative agenda for the roundtables on its website on or about December 4, 2020. The Office also will provide sign-up information for members of the public who wish to observe, but not participate in, one or more of the roundtable sessions. The sessions will be video recorded and transcribed, and copies of the recording and transcript will be made available on the Copyright Office website

Roundtable Subjects of Inquiry

The roundtables will consist of sessions on the following topics: (1) Evidence of actual or threatened copyright infringement by states; (2) state policies and practices for minimizing copyright infringement and addressing infringement claims; and (3) alternative remedies under state law for copyright infringement.

Evidence of Actual or Threatened Copyright Infringement by States

Congress has asked the Office to ''study the extent to which copyright owners are experiencing infringements by state entities without adequate remedies under state law.'' [3] To this end, the Office seeks evidence concerning actual or threatened copyright infringement by states, including both specific instances of infringing conduct and empirical information relating to broader trends. Relevant issues include, but are not limited to, the prevalence and outcomes of infringement suits brought against state actors; whether the frequency of infringement by states has changed over time and whether it is likely to increase or decrease in the future; and the extent to which state immunity affects sales and licensing practices in transactions involving state entities. In addition, in light of the Supreme Court's articulation of the standard of intent required to establish unconstitutional infringement,[4] the Office is particularly interested in information that would allow it to assess the extent to which state infringements have involved intentional or reckless conduct.

State Policies and Practices for Minimizing Copyright Infringement and Addressing Infringement Claims

The Office is interested in whether or to what extent states have adopted policies to address complaints of copyright infringement and/or to decrease the likelihood of inadvertent infringement by state employees and institutions. The Office is particularly interested in testimony by state officials about their own practices, but the Office also invites participation by organizations or individuals who have navigated the relevant processes or otherwise have experience with this topic.

Alternative Remedies Under State Law for Copyright Infringement

The Supreme Court's decision in *Allen* v. *Cooper* requires Congress to consider whether states ''fail[] to offer an adequate remedy for an infringement.'' [5] The Office accordingly is interested in hearing from members of the public about what remedies states provide for infringement of copyright, as well as whether those remedies are adequate for enforcement purposes. The Office would be particularly interested in hearing from those who have asserted alternative state-law remedies in court and how such cases were resolved. Discussion of these issues should include consideration of the relationship of any state-law cause of action to the preemption provisions under section 301 of the Copyright Act.[6]

Dated: November 2, 2020.

Regan A. Smith,

General Counsel andAssociate Register of Copyrights.

[FR Doc. 2020–24577 Filed 11–4–20; 8:45 am]

BILLING CODE 1410–30–P

[1] 85 FR 34252 (June 3, 2020).

[2] Letter from Sens. Thom Tillis & Patrick Leahy to Maria Strong, Acting Register of Copyrights, U.S. Copyright Office at 1 (Apr. 28, 2020), *https://www.copyright.gov/policy/state-sovereign-immunity/letter.pdf.*

[3] *Id.*

[4] *See Allen* v. *Cooper,* 140 S. Ct. 994, 1004 (2020).

[5] *Id.*

[6] 17 U.S.C. 301.

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 10 a.m. to 12 p.m. (MST), Friday, November 20, 2020.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting will be open to the public. Due to COVID–19, visitors are currently prohibited from entering the Udall Foundation offices. Members of the public who would like to attend this meeting should contact Elizabeth Monroe at *monroe@udall.gov* prior to November 20 to request the teleconference connection information.

MATTERS TO BE CONSIDERED: (1) Call to Order and Chair's Remarks; (2) Executive Director's Remarks; (3) Remarks from Senator Tom Udall; (4)

Consent Agenda Approval (Minutes of the April 15, 2020, Board of Trustees Meeting; Board Reports submitted for Education Programs; Finance and Management; John S. McCain III National Center for Environmental Conflict Resolution; Native Nations Institute for Leadership, Management, and Policy and their Work Plan; Udall Archives; and Udall Center for Studies in Public Policy and their Work Plan; and resolutions regarding Allocation of Funds to the Udall Center for Studies in Public Policy and Funds Set Aside for the Native Nations Institute for Leadership, Management, and Policy; and Board takes notice of any new and updated personnel policies and internal control methodologies); (5) Discuss and Act on Amendments to the Operating Procedures of the Board of Trustees of the Morris K. Udall and Stewart L. Udall Foundation and a resolution to adopt the amendments; (6) Trustee Ethics Training Instructions; (7) Discussion of 2022–2026 Strategic Plan Process and Timeline; (8) Finance & Internal Controls Update; and (9) Education Programs.

CONTACT PERSON FOR MORE INFORMATION: David P. Brown, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: November 3, 2020.

David P. Brown,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2020–24773 Filed 11–3–20; 4:15 pm]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. These meetings will primarily take place at NSF's headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF website: *https://www.nsf.gov/events/advisory.jsp.* This information may also be requested by telephoning, 703/292–8687.

Dated: November 2, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–24556 Filed 11–4–20; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Audit Committee Meeting

TIME & DATE: 11 a.m., Thursday, November 12, 2020.

PLACE: Via Conference Call.

STATUS: Open (with the exception of Executive Session).

MATTERS TO BE CONSIDERED: The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

AGENDA:

I. Call to Order
II. Executive Session: Introduction to BDO External Auditors
III. Executive Session: BDO
IV. Executive Session: Chief Audit Executive
V. Internal Audit Report
VI. Action Item: Review of the Charters
VII. Action Item: Modification of FY2020 Internal Audit Work Plan
VIII. Action Item: Internal Audit Reports with Management's Response
IX. Internal Audit Status Reports
X. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2020–24648 Filed 11–3–20; 11:15 am]

BILLING CODE 7570–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–24 and CP2021–25]

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:* November 9, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505

(Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2021–24 and CP2021–25; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 177 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 30, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* November 9, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–24583 Filed 11–4–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m. on Tuesday, November 10, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic: Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings; Resolution of litigation claims; and Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: November 3, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–24772 Filed 11–3–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90276; File No. S7–13–12]

Proposed Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With the Portfolio Margining of Swaps and Security-Based Swaps That Are Credit Default Swaps

October 28, 2020.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission")

ACTION: Notice of proposed exemptive order; request for comment.

SUMMARY: The Commission is proposing to grant exemptive relief, subject to certain conditions, from compliance with certain provisions of the Securities Exchange Act of 1934 in connection with a program to portfolio margin cleared swaps customer and affiliate positions in cleared credit default swaps that are swaps and security-based swaps in a segregated account established and maintained in accordance with Section 4d(f) of the Commodity Exchange Act (in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate). This proposed exemptive relief would supersede and replace the Commission's *Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-based Swaps* issued in December 2012.

DATES: Comments must be received on or before December 7, 2020.

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–13–12 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–13–12. This file number should be included on the subject line if email is used. To help us 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/other.shtml*). Comments are also 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.

All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522;

[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).

Raymond Lombardo, Assistant Director, at 202–551–5755; or Sheila Dombal Swartz, Senior Special Counsel, at (202) 551–5545, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is proposing to issue an order granting conditional exemptive relief to SEC-registered clearing agencies also registered with the Commodity Futures Trading Commission ("CFTC") as derivative clearing organizations ("clearing agency/DCOs") and SEC-registered broker-dealers also registered with the CFTC as futures commission merchants ("BD/FCMs"). The proposed order would exempt these entities from compliance with certain provisions of the Securities Exchange Act of 1934 ("Exchange Act") in connection with a program to portfolio margin cleared swaps customer and affiliate positions in cleared security-based swaps and swaps that are credit default swaps ("CDS") in a segregated account established and maintained in accordance with Section 4d(f) of the Commodity Exchange Act ("CEA") in the case of a cleared swaps customer ("CFTC cleared swaps customer account") or a cleared swaps proprietary account in the case of an affiliate ("CFTC cleared swaps proprietary account") (each a "CFTC cleared swaps account"), and to calculate margin requirements on a portfolio basis.[1]

The proposed order would supersede and replace the Commission's December 2012 order providing similar relief ("2012 Order"), and modify certain of its conditions, as discussed in more detail below.[2] In particular, it would eliminate conditions (a)(1) and (a)(2) in the 2012 Order pertaining to the exemptions for clearing agency/DCOs.[3] The requirements to adhere to these conditions are triggered on the compliance date for the final capital, margin, and segregation requirements for SBSDs: October 6, 2021. The Commission is seeking comment at this time on whether these and other conditions in the 2012 Order should be modified to provide time to consider comments and, if appropriate, issue a new order in advance of conditions (a)(1) and (a)(2) in the 2012 Order being triggered.

Conditions (a)(1) and (a)(2) in the 2012 Order are intended to provide an option for security-based swap customers to portfolio margin cleared security-based swaps and swaps that are CDS ("cleared CDS") in a security-based swap account in accordance with Section 3E of the Exchange Act ("SEC SBS account") as an alternative to a CFTC cleared swaps account.[4] The proposed order also would modify the conditions in paragraphs (b)(1)(ii) and (2)(ii) requiring subordination agreements to provide greater clarity that the scope of the subordination does not extend to the claims of general creditors. In addition, the proposed order would eliminate condition (b)(3) in the 2012 Order, which requires approval of a BD/FCM's margin methodology by the Commission or Commission staff. Instead, as a condition of the proposed order, a BD/FCM would need to have an internal risk management program that has been approved in advance by the Commission or the Commission staff. Further, as a condition of the proposed order, the internal risk management program would need to have certain standards drawn from the letters the staff of the Division of Trading and Markets ("Division staff") issued to BD/FCMs to approve their margin methodologies.[5] These staff letters would be withdrawn and the proposed order would provide that any BD/FCM that received a staff letter approving its margin methodology prior to the issuance of the order would be deemed to have an approved internal risk management program for the purposes of the proposed order.

II. Background

A. 2012 Order

On December 14, 2012, in response to a request from ICE Clear Credit LLC,[6] the Commission issued the 2012 Order to provide relief so that clearing agency/DCOs and BD/FCMs could offer customers portfolio margining of cleared CDS in a CFTC cleared swaps account ("CDS portfolio margin program").[7] The 2012 Order exempts a clearing agency/DCO from Sections 3E(b), 3E(d) and 3E(e) of the Exchange Act and any rules thereunder, solely to perform the functions of a clearing agency/DCO under the CDS portfolio margin program, subject to five conditions.[8] It further exempts a BD/FCM from Sections 3E(b), 3E(d), 3E(e), and 15(c)(3) of the Exchange Act, and Rule 15c3–3, as well as from any requirement to treat an affiliate (as defined in association with the "cleared swaps proprietary account" definition in CFTC Rule 22.1) as a customer for purposes of Rules 8c–1 and 15c2–1, subject to six conditions.[9] The conditions applicable to clearing agency/DCOs and BD/FCMs are designed to: (1) Protect money, securities, and property of security-based swap customers; (2) address certain differences in the statutory requirements of the Exchange Act and the CEA; and (3) promote appropriate risk management and disclosure.[10] The 2012 Order also sought comment on all aspects of the exemptions it provided.[11]

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[1] The text of the proposed order is set forth in an appendix to this release and cited herein as the "Proposed Order."

[2] *Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-based Swaps,* Exchange Act Release No. 68433 (Dec. 12, 2012) 77 FR 75211 (Dec. 19, 2012).

[3] *See* 2012 Order, 77 FR at 75219–20.

[4] The Commission has adopted capital, margin, and segregation requirements under the Exchange Act for security-based swaps dealers ("SBSDs"). *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers,* Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43956–57 (Aug. 22, 2019) ("Capital, Margin, and Segregation Adopting Release").

[5] The staff letters are available at *https://www.sec.gov/rules/exorders/exordersarchive/exorders2012.shtml.*

[6] ICE Clear Credit formally petitioned the Commission to grant exemptive relief from the application of Section 15(c)(3) of the Exchange Act, Rule 15c3–3 and, related rules under the Exchange Act. *See* Letter from Michael M. Phillip, Partner, Winston & Strawn LLP (Nov. 7, 2011) (the petition 4–641 and comments received on the petition are available at *https://www.sec.gov/rules/petitions.shtml*).

[7] The CFTC also issued a companion exemptive order on January 13, 2013 permitting ICE Clear Credit and its BD/FCM clearing members to provide for the portfolio margining of cleared swaps and security-based swaps that are CDS. *See* CFTC, *Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps* (Jan. 13, 2013)("2013 CFTC Portfolio Margin Order"), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/icecreditclearorder011413.pdf. See also* CFTC, *Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Europe of Credit Default Swaps* (Apr. 9, 2013), *available at https://www.cftc.gov/sites/default/files/stellent/groups/public/@requestsandactions/documents/ifdocs/icecleareurope4dfcds040913.pdf.*

[8] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43954; *Cross-Border Application of Certain Security-Based Swap Requirements,* Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270 (Feb. 4, 2020).

[9] *See* 2012 Order, 77 FR at 75213–14 (discussing these sections of the Exchange Act and the rules), 75216–19 (discussing the conditions), and 75220–21 (setting forth the conditions). *See also Order Extending Temporary Exemptions from Exchange Act Section 8 and Exchange Act Rules 8c-1, 10b-16, 15a-1, 15c2–1 and 15c2–5 in Connection with the Revision of the Definition of "Security" to Encompass Security-Based Swaps,* Exchange Act Release No. 87943 (Jan. 10, 2020), 85 FR 2763 (Jan. 16, 2020) (providing a temporary exemption from certain rules including Rules 8c-1 and 15c-1 in connection with the revision of the Exchange Act definition of "security" to encompass security-based swaps until Nov. 5, 2020).

[10] *See* 2012 Order, 77 FR at 75214.

[11] 77 FR at 75219. Letters responding to this request for comment are available at *https://www.sec.gov/comments/s7-13-12/s71312.shtml.*

B. Division Staff Letters

On March 8, 2013, the Division staff issued temporary conditional approval letters to seven BD/FCMs pursuant to condition (b)(3) in the 2012 Order [12] permitting them to participate in the CDS portfolio margin program, subject to certain conditions (the ''March 8, 2013 letters'').[13] The conditions included a requirement to collect initial margin based on a multiplier of the clearing agency/DCO margin requirement or to take a 100% capital charge for the difference.

On June 7, 2013, the Division staff issued updated temporary conditional letters to the seven BD/FCMs that received the March 8, 2013 letters, and to one additional BD/FCM, setting forth revised conditions for participation in the CDS portfolio margin program (''the June 7, 2013 letters''). The June 7, 2013 letters required the BD/FCMs to implement a required margin regime and establish minimum risk management standards by December 7, 2013. On December 6, 2013, the Division staff issued letters to the BD/FCMs extending the December 7, 2013 date to January 31, 2014. On January 31, 2014, the Division staff issued letters to the eight BD/FCMs permanently approving their margin methodologies, subject to the conditions in the June 7, 2013 letters (''January 31, 2014 letters''). Subsequent to the issuance of the January 31, 2014 letters, the Division staff approved the margin methodologies of two additional BD/FCMs, subject to the conditions in the June 7, 2013 letters.[14]

[12] *See* Proposed Order, ¶ (b)(3) (providing that BD/FCM must require minimum margin levels with respect to any customer transaction in a program to commingle and portfolio margin CDS at least equal to the amount determined using a margin methodology established and maintained by the BD/FCM that has been approved by the Commission or the Commission staff).

[13] The March 8, 2013 letters and other staff letters to the BD/FCMs discussed below are available at: *https://www.sec.gov/rules/exorders/exordersarchive/exorders2012.shtml.* The temporary staff letters were responsive to a comment raising concerns about the first CFTC compliance date for mandatory swaps clearing (March 13, 2013). *See* Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, Managed Funds Association (Feb. 11, 2013) (''MFA 2/11/13 Letter'') (comment to the 2012 Order), *available at https://www.sec.gov/comments/s7-13-12/s71312.shtml.*

[14] The Division staff also issued an additional letter relating to the transfer of a CDS portfolio margin program using the same internal risk model and same internal risk management system from one broker-dealer affiliate to another. The June 7, 2013 letters and subsequent staff letters are collectively referred to below as the ''BD/FCM staff letters.''

III. Discussion of Proposed Relief

Since the issuance of the 2012 Order, the SEC staff has monitored the operations of the BD/FCMs participating in the CDS portfolio margin program as well as the market for cleared CDS. The Commission believes it may be appropriate to issue a new portfolio margin order with modified conditions in light of: (1) The experience gained from this monitoring; and (2) comment letters addressing portfolio margining received in response to the 2012 Order and in the context of the SEC's recently finalized rulemaking adopting capital, margin and segregation requirements for security-based swap dealers (''SBSDs'').[15] A modified order also may be appropriate because the CFTC has initiated the mandatory clearing of certain swaps, including broad-based index CDS.[16] The following discussion describes the conditions of the proposed order—many of which would be largely consistent with conditions in the 2012 Order. Proposed modifications to the conditions in the 2012 Order are noted and discussed.

A. Conditions for Clearing Agency/DCOs

1. Elimination of Conditions Relating to Expanding the CDS Portfolio Margin Program to Securities Accounts

The conditions in paragraphs (a)(1) and (a)(2) of the 2012 Order are intended to provide customers the option to portfolio margin cleared CDS in an SEC SBS account once the SEC's margin and segregation rules for SBSDs are in place.[17] In particular, paragraph (a)(1) requires that the clearing agency/DCO, by the later of six months after the adoption date of the final margin and segregation rules for security-based swaps or the compliance date of such rules, to take all necessary action within its control to *obtain any relief needed* to permit its BD/FCM clearing members to maintain customer money, securities, and property received by the BD/FCM to margin, guarantee, or secure customer positions in cleared CDS in an SEC SBS account for the purpose of the CDS portfolio margin program. Paragraph (a)(2) requires the clearing agency/DCO, within the same timeframe, to take all necessary action within its control, to *establish rules and operational practices* to permit its BD/FCM clearing members to maintain customer money, securities, and property received by the BD/FCM to margin, guarantee, or secure customer positions in cleared CDS in an SEC SBS account for the purpose of the CDS portfolio margin program. Thus, the requirements to adhere to conditions in paragraphs (a)(1) and (2) of the 2012 Order are triggered on the compliance date for the final capital, margin, and segregation requirements for SBSDs: October 6, 2021.

In the 2012 Order, the Commission stated that it was important to ultimately provide market participants with the ability to select an account structure to manage their individual risks by taking into account the different regulatory provisions that may apply to different account types and any costs incurred.[18] Market participants have been clearing CDS under the CDS portfolio margin program since the initial BD/FCM staff letters were issued in 2013. The CDS portfolio margining program has allowed greater efficiencies in clearing, allowing the offset of positions and the ability to margin cleared CDS in a single account. Portfolio margining facilitates margin requirements that better reflect the overall risks presented by a CDS portfolio, which may result in decreased margin costs. Because of these greater efficiencies and potential cost reductions available under the current CDS portfolio margin program in a CFTC cleared swaps account, market participants have not expressed a desire to portfolio margin cleared CDS in an SEC SBS account. This lack of market interest in a securities account alternative also is consistent with: (1) The comments of ICE Clear Credit in 2011 that it received no indication in its discussions with market participants that they desired a securities account option with respect to its petition for rulemaking to portfolio margin cleared CDS; and (2) the Division staff's experience in monitoring the CDS portfolio margin program.[19]

While portfolio margining cleared CDS in an SEC SBS account also would provide greater efficiencies and cost reductions, given the success of the current CDS portfolio margin program

[15] The comment letters received with respect to this rulemaking are available at *https://www.sec.gov/comments/s7-08-12/s70812.shtml.*

[16] *See, e.g., CFTC Announces that Mandatory Clearing Begins Today,* CFTC Press Release No. 6529–13 (Mar. 11, 2013) (announcing that swap dealers, major swap participants and private funds active in the swaps market are required to begin clearing certain index CDS); *CFTC Announces that Mandatory Clearing for Category 2 Entities Begins Today,* CFTC Press Release No. 6607–13 (June 13, 2013) (announcing the second phase of required clearing for certain CDS and interest rate swaps).

[17] *See* 2012 Order, 77 FR at 75215–16 (discussing the conditions) and 75219–20 (setting forth the conditions).

[18] *See* 2012 Order, 77 FR at 75216.

[19] *See* Letter from Christopher S. Edmonds, President, ICE Clear Credit LLC (Dec. 22, 2011) (''ICE Letter'') (comment to the ICE Clear Credit petition for rulemaking 4–641 (Nov. 7, 2011)), *available at https://www.sec.gov/comments/4-641/4-641.shtml.*

and the lack of market interest in a securities account alternative, the Commission preliminarily believes that it may be appropriate to eliminate these conditions. Removing them would avoid potentially unnecessary costs [20] to clearing agency/DCOs to implement systems and processes to accommodate SEC SBS accounts that may never be utilized. Moreover, their removal would not prohibit a clearing agency/DCO from offering an SEC SBS account option in the future, if market conditions change and the demand arises, subject to applicable regulatory approvals and relief.

2. Proposed Conditions

The three clearing agency/DCO conditions in the proposed order are largely consistent with the conditions in paragraphs (a)(3), (4), and (5) of the 2012 Order, respectively.[21] The first condition would require the clearing agency/DCO to *obtain any other relief* needed to permit a BD/FCM to maintain cleared swaps customer or affiliate money, securities, and property received to margin, guarantee, or secure cleared swaps customer or affiliate positions in cleared CDS in a CFTC cleared swaps customer account or a CFTC cleared swaps proprietary account, respectively, for the purpose of clearing such cleared swaps customer or affiliate positions under the CDS portfolio margin program.[22] This condition is designed to help ensure that the exemption would apply only in circumstances where the regulatory framework under the CEA and the CFTC's rules is applicable.

The second clearing agency/DCO condition would require the organization to have appropriate *rules and operational practices* to permit a BD/FCM to maintain cleared swaps customer or affiliate money, securities, and property received to margin, guarantee, or secure cleared swaps customer or affiliate positions in cleared CDS in a CFTC cleared swaps customer account or a cleared swaps proprietary account, respectively, for the purpose of clearing such cleared swaps customer or affiliate positions under the CDS portfolio margin program.[23] This condition also is designed to help ensure the exemption would apply only in circumstances where the regulatory framework under the CEA and the CFTC's rules is applicable. The third clearing agency/DCO condition would require the organization to have rules mandating that each cleared swaps customer and affiliate of the BD/FCM participating in the CDS portfolio margin program must be an ''eligible contract participant'' as defined in Section 1a(18) of the CEA.[24] Given that Congress determined it is appropriate to include these limitations in the Dodd-Frank Act with respect to eligible contract participants, the Commission preliminarily believes it is appropriate to limit the exemptions in this proposed order to cleared CDS entered into with eligible contract participants.[25]

B. Conditions for BD/FCMs

The first, second, fourth, fifth, and sixth BD/FCM conditions in the proposed order are largely consistent with the conditions in paragraphs (b)(1), (2), (4), (5) and (6) of the 2012 Order, respectively.[26] The first BD/FCM condition would consist of two requirements and apply with respect to transactions involving persons that *are not affiliates* of the BD/FCM (*i.e.,* cleared swaps customers).[27] Under the first requirement, the BD/FCM would need to maintain cleared swaps customer money, securities, and property received to margin, guarantee or secure cleared swaps customer positions consisting of cleared CDS in a CFTC cleared swaps customer account established and maintained for the purpose of the CDS portfolio margin program.[28] This condition is designed to help ensure that—in the absence of the security-based swap and securities customer protections afforded by the securities laws—collateral in the account is subject to the protections afforded by an alternative regulatory scheme (*i.e.,* the CEA and the CFTC's rules). The intent is to avoid having the assets in the account fall into a regulatory gap in which neither the federal securities laws nor the federal commodity futures laws apply. The condition also is designed to limit the relief to accounts that are established and maintained specifically for the purpose of the CDS portfolio margin program.

Under the second requirement, the BD/FCM would need to enter into a non-conforming subordination agreement with each non-affiliated cleared swaps customer that covers the customer's money, securities, or property held in a segregated account.[29] The non-conforming subordination agreement would need to contain: (1) A specific acknowledgment by the cleared swaps customer that such money, securities or property will not receive customer treatment under the Exchange Act or Securities Investor Protection Act of 1970 (''SIPA'') or be treated as ''customer property'' as defined in 11 U.S.C. 741 in a liquidation of the BD/

[20] These costs may involve changes to trade processing systems (to designate account type), risk management processes (to capture and relate positions and margin held in multiple account types), and to treasury and banking processes, systems, and accounts. *See, e.g.,* ICE Letter.

[21] *See* 2012 Order, 77 FR at 75216 (discussing the conditions) and 75220 (setting forth the conditions); Proposed Order, ¶¶ (a)(1), (2), and (3). The Commission made some technical changes to the DCO/clearing agency conditions in the proposed order to account for the elimination of conditions (a)(1) and (2) from the 2012 Order. These proposed changes include re-numbering the remaining clearing agency/DCO conditions and moving the definition of ''BD/FCM'' from condition (a)(1) in the 2012 Order (which would be eliminated) to condition (a)(1) in the proposed order (which parallels condition (a)(3) in the 2012 Order). Finally, the Commission is proposing to replace the term ''shall'' in two places with the term ''will'' and ''must,'' respectively.

[22] *See* Proposed Order, ¶ (a)(1). The proposed order also would eliminate use of the generic term ''customer'' in the 2012 Order and instead use the more specific terms ''cleared swaps customer,'' ''affiliate,'' ''security-based swap customer,'' and ''securities customer''. In addition, the proposed order would add specific language to clarify that cleared CDS positions of cleared swaps customers are held in CFTC cleared swaps customer accounts and affiliate positions are held in CFTC cleared swaps proprietary accounts. These proposed changes reflect the different treatment each type of person and account would receive under the CEA and rules thereunder, and applicable bankruptcy laws.

[23] *See* Proposed Order, ¶ (a)(2). *See also* supra note 22.

[24] *See* Proposed Order, ¶ (a)(3). The 2012 order provided that each ''customer'' must be an eligible contract participant. 77 FR 75220. *See also* supra note 22.

[25] The Dodd-Frank Act limits the swaps and security-based swaps transactions that may be entered into by parties that are not eligible contract participants. For example, under Section 6(l) of the Exchange Act, only an eligible contract participant may enter into security-based swaps that are not effected on a national securities exchange. 15 U.S.C. 78f(l). In addition, security-based swaps that are not registered pursuant to the Securities Act of 1933 (''Securities Act'') can only be sold to eligible contract participants. 15 U.S.C. 77e(e). Section 5(e) of the Securities Act specifically provides that it shall be unlawful to for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant, unless the transaction is registered under the Securities Act. *Id.*

[26] *See* 2012 Order, 77 FR at 75216–19 (discussing the conditions) and 75220–21 (setting forth the conditions); Proposed Order, ¶¶ (b)(1), (2), (4), (5), and (6). The Commission made some technical and stylistic changes to these conditions, including replacing the term ''shall'' with ''must'' and capitalizing the first letter in each of the conditions (and their subparagraphs). Finally, the Commission inserted the phrase ''Section 8 of the Exchange Act and'' before ''Exchange Act Rules 8c–1 and 15c2–1'' in paragraph (b) of the proposed order to be consistent with the other rule references in the order, which refer to the relevant statute. *See* Proposed Order, ¶ (b).

[27] *See* Proposed Order, ¶ (b)(1).

[28] *See* Proposed Order, ¶ (b)(1)(i). *See also* supra note 22 (discussing proposed change from the use of the generic term ''customer'' in the 2012 Order to ''cleared swaps customer'' in the proposed order).

[29] *See* condition (b)(1)(ii) of 2012 Order.

FCM (''stockbroker liquidation''), and that such money, securities or property will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder (''commodity broker liquidation provisions''); and (2) an affirmation by the cleared swaps customer that claims to ''customer property'' as defined in SIPA or 11 U.S.C. 741 against the BD/FCM will be subordinated to the claims of securities customers and security-based swap customers.

The 2012 Order required an affirmation by the customer that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and security-based swap customers not participating in the CDS portfolio margin program.[30] To better clarify that the cleared swaps customer is not subordinating claims to general creditors, the Commission is proposing to modify condition (b)(1)(ii) of the 2012 Order, as stated above, to provide that the cleared swaps customer must affirm that claims to ''customer property'' as defined in SIPA or the stockbroker liquidation provisions against the BD/FCM will be subordinated to the claims of securities customers and security-based swap customers. This modification is designed to more narrowly tailor the subordination to the portion of the debtor BD/FCM's estate that comprises ''customer property'' under SIPA and the stockbroker liquidation schemes.[31]

This proposed condition is designed to remove portfolio margin cleared swaps customers from the definitions of ''customer'' under Rule 15c3–3, SIPA, and the stockbroker liquidation provisions with respect to securities or cash held in CFTC cleared swaps accounts that otherwise would be subject to the segregation requirements of Rule 15c3–3 and the bankruptcy protections afforded by SIPA and the stockbroker liquidation provisions. The objective is to avoid a situation where the portfolio margin cleared swaps customers would be entitled to a ratable share of ''customer property'' and other protections afforded by SIPA or the stockbroker liquidation provisions even though their assets were held in CFTC cleared swaps customer accounts that were not subject to the segregation requirements of Rule 15c3–3. Assets held in a CFTC cleared swaps customer account would instead be afforded the protections of the rules of the CFTC governing the treatment of customer margin held by BD/FCMS and DCOs as well as the protections of the CEA and commodity broker liquidation provisions. The proposed condition is not intended to undermine these protections.

The proposed condition also is not intended to require portfolio margin cleared swaps customers to subordinate their claims, in the event that their claims as cleared swaps customers are not fully satisfied by the distribution of assets held in CFTC cleared swaps customer accounts, to assets that may be included in the debtor's general estate. In summary, this condition, along with the proposed disclosure conditions discussed below, is intended to help ensure that cleared swaps customers clearly understand that any security-based swap or securities customer protection treatment otherwise available with respect to securities transactions under the Exchange Act, SIPA, or the stockbroker liquidation provisions will not be available for cleared CDS held in a CFTC cleared swaps customer account.

The second BD/FCM condition in the proposed order would apply with respect to transactions involving *affiliates* of the BD/FCM and would consist of three requirements.[32] Under the first requirement, the BD/FCM would need to maintain money, securities, and property of affiliates received to margin, guarantee, or secure positions consisting of cleared CDS in a ''cleared swaps proprietary account'' as defined in CFTC Rule 22.1 for the purpose of clearing such positions under the CDS portfolio margin program.[33] The purpose of this requirement is that under the CFTC regulatory framework certain affiliates are not treated as cleared swaps customers and their assets are held in proprietary accounts as distinct from CFTC cleared swaps customer accounts.[34]

Under the second requirement, the BD/FCM would need to enter into a non-conforming subordination agreement with an affiliate.[35] The non-conforming subordination agreement would need to contain: (1) A specific acknowledgment by the affiliate that such money, securities or property will not receive customer treatment under the Exchange Act or SIPA or be treated as customer property in a stockbroker liquidation of the BD/FCM, and that such money, securities or property will be held in a proprietary account in accordance with the CFTC requirements and will be subject to any applicable protections under the commodity broker liquidation provisions; and (2) an affirmation by the affiliate that claims to ''customer property'' as defined in SIPA or 11 U.S.C. 741 against the BD/FCM will be subordinated to the claims of securities customers and security-based swap customers.

For the reasons discussed above, the Commission is proposing to modify the text of the affirmation by an affiliate from the 2012 Order to more narrowly tailor the subordination to the portion of the debtor BD/FCM's estate that comprises ''customer property'' under SIPA and the stockbroker liquidation schemes.[36] This requirement is designed to help ensure that affiliates clearly understand that any customer protection treatment otherwise available with respect to securities transactions under the Exchange Act, SIPA, or the stockbroker liquidation provisions will not be available and the account would be treated as a proprietary account (and not a CFTC cleared swaps customer account) under the CEA. Consistent with the proposed condition above with respect to cleared swaps customers that are not affiliates, this condition is intended to remove affiliates from the definitions of ''customer'' under Rule 15c3–3, SIPA, and the stockbroker liquidation provisions with respect to securities or cash held in cleared swaps proprietary accounts that otherwise would be subject to the segregation requirements of Rule 15c3–3 and the bankruptcy protections afforded by SIPA and the stockbroker liquidation provisions.

Under the third requirement, the BD/FCM would need to obtain from the affiliate an opinion of counsel that the affiliate is legally authorized to subordinate all of its claims against the

[30] *See* 2012 Order, 77 FR at 75220.

[31] *See supra* note 22.

[32] *See* Proposed Order, ¶ (b)(2).

[33] *See* Proposed Order, ¶ (b)(2)(i).

[34] *See* 17 CFR 22.1. The Commission preliminarily believes that this condition is appropriate because affiliates of a BD/FCM that are not otherwise excluded from the definition of ''customer'' in Exchange Act Rules 8c–1 and 15c2–1 are customers whose securities positions cannot be commingled with the broker-dealer's own proprietary securities positions and therefore could not be held in a cleared swaps account.

[35] *See* Proposed Order, ¶ (b)(2)(ii).

[36] *See* Proposed Order, ¶ (b)(2)(ii). The 2012 Order required an affirmation by the affiliate that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and security-based swap customers not operating under a program to commingle and portfolio margin CDS. 77 FR at 75220. *See also supra* note 22. The modification would require the affiliate to affirm that that all of its claims to ''customer property'' as defined in SIPA or 11 U.S.C. 741 against the BD/FCM will be subordinated to the claims of securities customers and security-based swap customers.

BD/FCM to those of securities customers and security-based swap customers.[37] This condition is designed to help ensure that affiliates of the BD/FCM do not place any assets in the proprietary account that the affiliate is not legally authorized to subordinate.

The condition in paragraph (b)(3) of the 2012 Order provides that the BD/FCM must require minimum margin levels with respect to any customer transaction in the CDS portfolio margin program at least equal to the amount determined using a margin methodology established and maintained by the BD/FCM that has been approved by the Commission or the Commission staff.[38] A commenter responding to the issuance of the 2012 Order supported the requirement for a BD/FCM to assess the credit risk of counterparties based on the BD/FCM's own risk management standards, but argued that requiring a unique margin model beyond the BD/FCM's own credit risk assessment is unwarranted.[39] This commenter also stated that this condition ''deters'' efficiency, capital formation, and competition.[40] Another commenter responding to the issuance of the 2012 Order argued that the condition undermines a fundamental benefit of central clearing: the ability of market participants to rely on clearing agency/DCO margin requirements.[41] This commenter believes that this condition reduces transparency and the ability to anticipate and verify margin calls, and that it discourages entities from entering the cleared CDS market.[42]

In the context of the SEC's capital, margin and segregation rulemaking for SBSDs, another commenter expressed concern that the conditions in the 2012 Order have proven too restrictive to support a robust market for cleared CDS.[43] More specifically, this commenter recommended that both the CFTC and SEC recognize a harmonized portfolio margin approach for cleared CDS that defers to the clearing agency/DCO margin methodologies.[44] Finally, a commenter expressed concern that the margin requirements imposed by the Commission have delayed voluntary buy-side clearing of single-name CDS, with resulting adverse effects on trading volume and liquidity.[45]

The vast majority of the BD/FCM clearing members of ICE Clear Credit have obtained approval of their margin methodologies from Commission staff.[46] Furthermore, each BD/FCM that has received approval of its margin methodology already had existing margin models in place prior to applying to the Commission. Therefore, the firms needed to make some adjustments to their models in order to meet the minimum qualitative and quantitative standards set forth in the BD/FCM staff letters, but did not need to develop new margin models. To date, all BD/FCMs that have submitted applications to Commission staff to approve their internal margin methodologies have received approval.

The Commission preliminarily believes that it would not be prudent for a BD/FCM to simply defer to the margin methodology of the clearing agency/DCO in terms of measuring and managing the risk of cleared CDS in a portfolio margin account, as requested by commenters. Prudent firms establish and maintain integrated internal risk management programs that include management policies and procedures designed to help ensure an awareness of, and accountability for, the risks taken throughout the firm and to develop tools to address those risks. For example, there may be idiosyncratic risk factors with respect to a cleared swaps customer, an affiliate, or the BD/FCM's financial condition that are not covered by the margin methodology of the clearing agency/DCO.

At the same time, the Commission also preliminarily believes that it can promote the prudent operation of the BD/FCMs through a process of approving their internal risk management programs (rather than their internal margin methodologies), as discussed below. This may increase transparency for market participants in terms of being able to anticipate margin requirements generated by their cleared CDS portfolios, as the clearing agency/DCO margin methodology will generate the regulatory margin requirement across all the BD/FCMs.[47] Accordingly, the Commission is proposing to modify the condition in paragraph (b)(3) of the 2012 Order to eliminate the requirement that the Commission or Commission staff approve the BD/FCM's margin methodology. Instead, the proposed order would require the BD/FCM to adopt an internal risk management program that is reasonably designed to identify, measure, and manage the risks arising from its participation in the CDS portfolio margin program that has been approved in advance by the Commission or the Commission staff and that meets the standards described below (''internal risk management program'').[48]

[37] *See* Proposed Order, ¶ (b)(2)(iii). The 2012 Order required that the BD/FCM obtain from the affiliate an opinion of counsel that the affiliate is legally authorized to subordinate all of its claims against the BD/FCM to those of customers. 77 FR at 75220. *See also supra* note 22.

[38] *See* condition (b)(3) of 2012 Order.

[39] *See* Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association; Carl B. Wilkerson, Vice President & Chief Counsel, Securities & Litigation, American Council of Life Insurers; and Jiří Krol, Director of Government and Regulatory Affairs, Alternative Investment Management Association (Dec. 27, 2013) (''MFA/ACLI/AIMA 12/27/2013 Letter'') (comment to the 2012 Order), *available at https://www.sec.gov/comments/s7-13-12/s71312.shtml; see also* Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association; Carl B. Wilkerson, Vice President & Chief Counsel, Securities & Litigation, American Council of Life Insurers; and Jiří Krol, Director of Government and Regulatory Affairs, Alternative Investment Management Association (May 10, 2013) (comment to the 2012 Order), *available at https://www.sec.gov/comments/s7-13-12/s71312.shtml.*

[40] MFA/ACLI/AIMA 12/27/2013 Letter.

[41] *See* Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel LLC (Feb. 2, 2016) (''Citadel 2/2/16 Letter'') (comment to the 2012 Order), *available at https://www.sec.gov/comments/s7-13-12/s71312.shtml.*

[42] Citadel 2/2/16 Letter; Letter from Laura Harper Powell, Associate General Counsel, Managed Funds Association, and Adam Jacobs-Dean, Managing Director, Global Head of Markets Regulation, Alternative Investment Management Association (Nov. 19, 2018) (comment to the Commission's capital, margin, and segregation rulemaking for SBSDs), *available at https://www.sec.gov/comments/s7-08-12/s70812.shtml.*

[43] *See* Letter from Walt L. Lukken, President and Chief Executive Office, Futures Industry Association (Nov. 29, 2018) (''FIA 11/29/18 Letter'') (comment to the Commission's capital, margin, and segregation rulemaking for SBSDs), *available at https://www.sec.gov/comments/s7-08-12/s70812.shtml.*

[44] Letter from Walt L. Lukken, President and Chief Executive Office, Futures Industry Association (Nov. 19, 2018) (comment to the Commission's capital, margin, and segregation rulemaking for SBSDs), *available at https://www.sec.gov/comments/s7-08-12/s70812.shtml;* FIA 11/29/18 Letter.

[45] *See* Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association (May 18, 2017) (comment to the Commission's capital, margin, and segregation rulemaking for SBSDs), *available at https://www.sec.gov/comments/s7-08-12/s70812.shtml.*

[46] *See* ICC membership, *available at https://www.theice.com/clear-credit/participants.* Based on Division staff experience in monitoring the CDS portfolio margin program, the vast majority of positions are being cleared through ICE Clear Credit, and to a lesser extent, ICE Clear Europe.

[47] Nothing in the proposed order would preclude a BD/FCM from setting higher ''house'' margin requirements for some or all of its customers. *See* 17 CFR 39.13(g)(8).

[48] *See* Proposed Order, ¶ (b)(3). The proposed order would contain a provision finding that the BD/FCMs that have received previous approval of their internal margin methodology from the Division staff would be deemed to have approved internal risk management programs for purposes of paragraph (b)(3) of the proposed order. These BD/FCMs would no longer be required to have minimum margin levels with respect to any customer transaction in a CDS portfolio margin program at least equal to the amount determined

An internal risk management program would facilitate the identification, measurement, and management of a broader range of risks than those covered by the clearing agency/DCO margin methodology and, consequently, help ensure that the BD/FCMs operate in a prudent manner with respect to the CDS portfolio margin program. Further, an internal risk management program entails a more comprehensive set of measures to mitigate risk than a margin methodology.[49] Consequently, based on the Commission staff's experience gained in monitoring the CDS portfolio margin program, approving a firm's internal risk management program (rather than its internal margin methodology) may foster a more robust approach to managing risk by BD/FCMs. This approach to managing risk also will promote consistency with the Commission's final capital, margin, and segregation rules for SBSDs, which require such firms to be subject to a risk management rule, as well as with the regulatory approach adopted by the CFTC with respect to the portfolio margining of cleared CDS.[50] The proposed requirement to have an internal risk management program also is a condition in the BD/FCM staff letters and all the firms operating under the 2012 Order have implemented such programs.

The requirement that a BD/FCM independently measure risk by developing and using its own internal model is not designed to impose a margin collection requirement (or capital charge) or diminish the role of the clearing agency/DCO margin methodology. Rather, it is intended to require the BD/FCM to independently measure the potential future credit risk to cleared swaps customers and affiliates participating in the CDS portfolio margin program under a different stress scenario in order to better understand risks and address them as the firm deems appropriate (*e.g.,* through risk limits, threshold triggers, house margin, heightened monitoring, or other controls).

Under this proposed condition, a BD/FCM seeking approval of its internal risk management program would need to submit sufficient information for the Commission or Commission staff to be able to make a determination whether its program meets the proposed standards described below.[51] In reviewing this information, the Commission or the Commission staff would be guided by these standards. If a BD/FCM's internal risk management program is approved for purposes of this proposed order, the program would be subject to ongoing supervision and monitoring by the Commission.[52]

The first standard for the internal risk management program is that the BD/FCM would need to calculate a future credit exposure for each cleared swaps customer and affiliate (sometimes each a "counterparty") using a proprietary methodology that meets specified minimum quantitative and qualitative model standards ("internal risk model").[53] The quantitative standards would be that the internal risk model:

- Estimates a potential future exposure over a minimum 10-day horizon and 99% confidence level and captures all material risk factors, including but not limited to general movements in credit spread term structure, basis risk between index and single name positions, and interest rate risk;
- Includes a concentration/liquidity requirement; and
- Includes a jump-to-default requirement for the sale of CDS protection equal to the largest loss of a single name exposure assuming a conservative recovery rate that may not exceed 40%.

The qualitative standards would require that:

- The internal risk model must be adequately documented and the model documentation must provide a description of the model assumptions, data inputs, parameters, and methodologies employed to measure risk;
- The internal risk model must be subject to an annual model review by a model group that is independent of the business function;
- The internal risk model must be subject to at least quarterly backtesting by counterparty or account; and
- The BD/FCM must provide written notice to the Commission or Commission staff prior to implementing any material change to its internal risk model.

These quantitative and qualitative requirements generally are consistent with the quantitative and qualitative requirements for internal risk models under Appendix E to Rule 15c3–1 and under new Rule 18a–1. These rules permit certain broker-dealers and SBSDs, respectively, to compute capital charges using internal models.[54] For example, the standards in the proposed order generally would require that the model cover a 10-day horizon, 99% confidence level, and material risks, and that the BD/FCM backtest the model and subject it to review.[55]

The second standard for the internal risk management program is that it would need to have the following minimum risk management system standards:

- The BD/FCM would need standards to measure and manage risk exposure arising from counterparties' CDS portfolios that are independent of any central counterparty margin methodology;
- The BD/FCM would need to have an internal credit risk rating model that assesses the credit risk of each individual counterparty;
- The BD/FCM's monitoring of credit risk would need to include the prudent setting of an exposure limit for each individual counterparty, and the exposure limit would need to be reviewed if the counterparty's credit risk profile changes and at least quarterly;
- The BD/FCM would need to have the ability to limit or reduce the exposure to a counterparty through the collection of additional margin;
- The BD/FCM would need to have documented procedures to value positions conservatively in view of current market prices and the amount that might be realized upon liquidation; and
- The BD/FCM would need to have well-defined procedures and systems in place for the daily collection and payment of initial and variation margin.[56]

This proposed standards requirement is a condition in the BD/FCM staff letters. These proposed risk

using a margin methodology approved by the Commission or the Commission staff, as required by the 2012 Order. They would instead comply the internal risk management program standards under condition (b)(3) of the proposed order.

[49] *See, e.g.,* 17 CFR 240.15c3–1e(d)(1) ("The VaR model used to calculate market and credit risk for a position must be integrated into the daily internal risk management system of the broker or dealer[.]").

[50] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43905 ("The Commission proposed that nonbank SBSDs be required to comply with Rule 15c3–4 to promote the establishment of effective risk management control systems by these firms."); and 2013 CFTC Portfolio Margin Order (requiring participants to "take appropriate measures to identify, measure, and monitor financial risk associated with carrying the Security-Based CDS in a cleared swaps account and implement risk management procedures to address those financial risks").

[51] *See generally* 17 CFR 240.15c3–1e(a)(1). A BD/FCM would only need to submit information to the extent it is relevant to the portfolio margining of cleared CDS. The BD/FCM may seek confidential treatment for information submitted as part of such application.

[52] *See* Proposed Order, ¶ (c)(1)(ii)(D).

[53] *See* Proposed Order, ¶ (c)(1).

[54] *See* 17 CFR 240.15c3–1e and 18a–1; and Capital, Margin, and Segregation Adopting Release.

[55] *See* 17 CFR 15c3–1e(d).

[56] *See* Proposed Order, ¶ (c)(2).

management standards are designed to require a BD/FCM to take prudent measures to protect the firm from losses that can result from failing to account for and control risk with respect to its CDS portfolio margin program. Requiring a BD/FCM to incorporate these proposed standards is designed to promote the establishment of effective internal risk management programs to address the risks of portfolio margining cleared CDS.

The third standard for the internal risk management program is that the BD/FCM would need to report to the Commission and FINRA staffs on a monthly basis within 5 business days after month end or as otherwise requested details of its top 25 counterparties' portfolios as measured by net credit exposure as well as the top 25 counterparties' portfolios as measured by gross notional amount.[57] This proposed requirement is a condition in the BD/FCM staff letters. Based on Commission staff's experience with the BD/FCM staff letter requirements, the Commission preliminarily believes that it would be appropriate to require this monthly reporting as it will assist Commission staff in monitoring the risk to the BD/FCM arising from its portfolio margining of cleared CDS. Understanding the magnitude of this risk will assist the Commission staff in evaluating the appropriateness of a given firm's internal risk management program in terms of its procedures and controls to mitigate risk.

The proposed order would not include other conditions in the BD/FCM staff letters, including the capital concentration charge. Based on Commission staff experience monitoring the BD/FCMs participating in the CDS portfolio margin program, the Commission preliminarily believes that the capital concentration charge and other conditions in the BD/FCM staff letters may not be necessary in light of the requirement to have a reasonably designed internal risk management program. A reasonably designed internal risk management program will provide a BD/FCM the tools to better understand the risks that arise from its portfolio margining of cleared CDS and address them as the firm deems appropriate (*e.g.,* through risk limits, threshold triggers, house margin, heightened monitoring, or other controls). Therefore, the Commission is proposing not to incorporate these conditions into the proposed order.

The fourth BD/FCM condition in the proposed order would require that the BD/FCM be in compliance with applicable laws and regulations relating to risk management, capital, and liquidity, and be in compliance with applicable clearing agency/DCO rules and CFTC requirements (including margin, segregation, and related books and records provisions) with respect to CFTC cleared swaps customer accounts and cleared swaps proprietary accounts subject to the CDS portfolio margin program.[58] The purpose of this condition is to help ensure that the exemption is available only when the BD/FCM is in compliance with applicable regulatory requirements. The fifth BD/FCM condition in the proposed order would require that each cleared swaps customer and affiliate of the BD/FCM participating in the CDS portfolio margin program be an ''eligible contract participant.'' [59] As with the third condition in the proposed order for clearing agency/DCOs, the Commission preliminarily believes it would be appropriate to limit the availability of this exemption to eligible contract participants. Eligible contract participants should have the expertise or resources to effectively determine the risks associated with engaging in these types of transactions.

The sixth BD/FCM condition in the proposed order would require that, before receiving any money, securities, or property of a cleared swaps customer or affiliate to margin, guarantee, or secure positions consisting of cleared CDS, the BD/FCM would need to furnish to the cleared swaps customer or affiliate a disclosure document containing: (1) A statement indicating that the cleared swaps customer's or affiliate's money, securities, and property will be held in a CFTC cleared swaps account, and that the cleared swaps customer or affiliate has elected to seek protections under the commodity broker liquidation provisions with respect to such money, securities, and property; and (2) a statement that the broker-dealer segregation requirements of Sections 15(c)(3) and 3E of the Exchange Act and the rules thereunder, and any customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such cleared swaps customer or affiliate money, securities, and property.[60] The disclosure document would need to be provided to the cleared swaps customer or affiliate at or prior to the time that the cleared swaps customer or affiliate opens the CFTC cleared swaps account and, in all cases, prior to the BD/FCM receiving any money, securities or property into the CFTC cleared swaps account of the cleared swaps customer or affiliate. This condition is designed to provide market participants that elect to participate in the CDS portfolio margin program with important disclosures regarding the legal framework that will govern their transactions.

Accordingly, pursuant to its authority under Sections 3E(c)(2) [61] and 36 [62] of the Exchange Act, the Commission preliminarily believes that the proposed order, under the terms and conditions described above, would be necessary or appropriate in the public interest and consistent with the protection of investors.

IV. Request for Comments

The Commission is seeking comment on all aspects of the proposed exemption. In particular, the Commission requests comment on the following questions. When responding to the request for comment, please explain your reasoning.

1. Should any of the proposed exemptions or conditions be eliminated or modified?

2. Are there other or different conditions that should apply to the proposed exemption?

3. Are there any specific written disclosures to cleared swaps customers or affiliates that a BD/FCM should be required to provide in addition to those that are a condition to the proposed exemption?

4. At what stage during the account opening process does the cleared swaps

[57] *See* Proposed Order, ¶ (c)(3).

[58] *See* Proposed Order, ¶ (b)(4). *See also* supra note 22.

[59] *See* Proposed Order, ¶ (b)(5). The 2012 Order requires that each customer of the BD/FCM participating in a program to commingle and portfolio margin CDS be an ''eligible contract participant'' as defined in Section 1a(18) of the CEA. 77 FR at 75220. *See also supra* note 22.

[60] *See* Proposed Order, ¶ (b)(6). *See also* supra note 22.

[61] 15 U.S.C. 78c-5(c)(2). Section 3E(c)(2) of the Exchange Act provides that the Commission may, notwithstanding Section 3E(b) of the Exchange Act, by rule, regulation, or order prescribe terms and conditions under which any money, securities, or property of a customer with respect to cleared security-based swaps may be commingled and deposited with any other money, securities, or property received by the broker-dealer or SBSD and required by the Commission to be separately accounted for and treated and dealt with as belonging to the security-based swap customer of the broker-dealer or SBSD.

[62] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order any person, security, or transaction (or any class or classes of persons, securities, or transactions) from any provision of the Exchange Act or any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

customer or affiliate enter into a non-conforming subordination agreement as required by the 2012 Order? Is it before, at the same time, or after the cleared swaps customer or affiliate receives the required written disclosures from the BD/FCM? Should the proposed condition related to the written disclosure document be modified to require that the BD/FCM furnish it to the cleared swaps customer or affiliate before the customer enters into the non-conforming subordination agreement with the BD/FCM (and before the BD/FCM receives any money, securities, or property to margin the CDS positions)?

5. Does the proposed modified text required in the non-conforming subordination agreements achieve the objectives of: (1) Removing portfolio margin cleared swaps customers and affiliates from the definitions of ''customer'' under Rule 15c3–3, SIPA, and the stockbroker liquidation provisions with respect to securities or cash held in CFTC cleared swaps accounts; (2) not undermining the protections afforded to the portfolio margin cleared swaps customers and affiliates under the rules of the CFTC, the CEA, and commodity broker liquidation provisions; and (3) not requiring portfolio margin cleared swaps customers or affiliates to subordinate their claims, in the event that their cleared swaps customer or affiliate claims are not fully satisfied by the distribution of assets held in their CFTC cleared swaps accounts, to assets that may be included in the debtor's general estate? Is there alternative language that would better achieve these objectives? Does the text in the 2012 Order achieve these objectives? If this modification or some other modification were made to the order, would it require BD/FCMs to amend all their existing agreements with cleared swaps customers and affiliates participating in the portfolio margin program? If so, would this be a significant burden?

6. Should clearing agencies/DCOs be required to provide market participants with the ability to select an SEC SBS account as an alternative to a CFTC cleared swaps account?

7. Have market participants expressed an interest in portfolio margining cleared CDS in an SEC SBS account? If so, how has this interest changed since 2012?

8. Would there be interest by BD/FCMs in offering market participants the option to portfolio margin cleared CDS in an SEC SBS account after the October 6, 2021 compliance date for the SEC's final capital, margin, and segregation rules for security-based swaps, when the customer protection framework for security-based swaps is in place?

9. If there was no regulatory requirement to provide market participants with the ability to select an SEC SBS account as an alternative to a CFTC cleared swaps account, would clearing agencies/DCOs be incentivized to offer such an alternative in the future, if market conditions changed and demand rose for an SEC SBS account alternative?

10. Are the proposed standards for the BD/FCM's internal risk management program appropriate?

11. Is it appropriate for the proposed order to deem a BD/FCM to have an internal risk management program that has been approved by the Commission or the Commission staff as required by paragraph (b)(3) of the proposed order if it has received prior approval of its margin methodology?

12. Would the proposed exemption have a competitive impact—either positive or negative—on market participants in the context of CDS clearing? What would be the potential benefits and costs of the proposed exemption? Would the proposed modifications to the 2012 Order impact investor protection? If so, what would those impacts be?

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

Appendix—Text of Proposed Order

It is hereby ordered that any broker-dealer also registered as a futures commission merchant that has received approval of its margin methodology by the Commission or Commission staff prior to the date of this order is deemed to have an internal risk management program that has been approved by the Commission or the Commission staff as required by paragraph (b)(3) of this order.

It is hereby further ordered, pursuant to Section 3E(c)(2) and Section 36 of the Securities Exchange Act of 1934 (''Exchange Act''), that the following exemptions from Exchange Act requirements will apply:

(a) *Exemption for dually-registered clearing agencies/derivatives clearing organizations.*

A clearing agency registered pursuant to Section 17A of the Exchange Act and registered as a derivatives clearing organization pursuant to Section 5b of the CEA (a ''clearing agency/DCO'') will be exempt from Sections 3E(b), (d), and (e) of the Exchange Act and any rules thereunder, solely to perform the functions of a clearing agency for credit default swaps (''CDS'') under a program to commingle and portfolio margin cleared CDS for cleared swaps customer and affiliate positions, subject to the following conditions:

(1) The clearing agency/DCO has obtained any other relief needed to permit its clearing members that are registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) and also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the CEA (a ''BD/FCM'') (at the BD/FCM's election), to maintain cleared swaps customer or affiliate money, securities, and property received by the BD/FCM to margin, guarantee, or secure cleared swaps customer or affiliate positions in cleared CDS, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder (in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate) for the purpose of clearing (as a clearing member of the clearing agency/DCO) such cleared swaps customer or affiliate positions under a program to commingle and portfolio margin CDS.

(2) The clearing agency/DCO has appropriate rules and operational practices to permit a BD/FCM that is a clearing member (at the BD/FCM's election) to maintain cleared swaps customer or affiliate money, securities, and property received by the BD/FCM to margin, guarantee, or secure cleared swaps customer or affiliate positions in cleared CDS, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder (in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate) for the purpose of clearing (as a clearing member of the clearing agency/DCO) such cleared swaps customer or affiliate positions under a program to commingle and portfolio margin CDS.

(3) The rules of the clearing agency/DCO require that each cleared swaps customer and affiliate of the BD/FCM participating in a program to commingle and portfolio margin CDS must be an ''eligible contract participant'' as defined in Section 1a(18) of the CEA.

(b) *Exemption for certain BD/FCMs that elect to offer a program to commingle and portfolio margin cleared swaps customer and affiliate positions in cleared CDS.* Solely to perform the functions of a BD/FCM for cleared CDS, with respect to any cleared swaps customer or affiliate money, securities, and property received by the BD/FCM to margin, guarantee, or secure cleared swaps customer or affiliate positions in security-based swaps included in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder (in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate) under a program to commingle and portfolio margin cleared swaps customer or affiliate positions in CDS, a BD/FCM will be exempt from Exchange Act Sections 3E(b), (d), and (e), and Section 15(c)(3) and Rule 15c3–3 thereunder and any requirement to treat an affiliate (as defined in association with the definition of ''cleared swaps proprietary account'' pursuant to CFTC Rule 22.1) as a customer for purposes of Section 8 of the Exchange Act and Exchange Act Rules 8c-1 and 15c2–1 thereunder, subject to the following conditions:

(1) With respect to cleared swaps customers that are not affiliates of the BD/FCM,

(i) The BD/FCM must maintain cleared swaps customer money, securities, and property received to margin, guarantee or secure cleared swaps customer positions consisting of cleared CDS, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder for the purpose of clearing (as a clearing member or through a clearing member of a clearing agency/DCO operating pursuant to the exemption in paragraph (a) above) such cleared swaps customer positions under a program to commingle and portfolio margin CDS; and

(ii) The BD/FCM must enter into a non-conforming subordination agreement with each cleared swaps customer. The agreement must contain a specific acknowledgment by the cleared swaps customer that such money, securities or property will not receive customer treatment under the Exchange Act or SIPA or be treated as ''customer property'' as defined in 11 U.S.C. 741 in a liquidation of the BD/FCM and that such money, securities or property will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; as well as an affirmation by the cleared swaps customer that claims to ''customer property'' as defined in SIPA or 11 U.S.C. 741 against the BD/FCM will be subordinated to the claims of securities customers and security-based swap customers.

(2) With respect to affiliates of the BD/FCM,

(i) The BD/FCM maintains money, securities, and property of affiliates received to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, in a cleared swaps proprietary account for the purpose of clearing (as a clearing member of a clearing agency/DCO operating pursuant to the exemption in paragraph (a) above) such positions under a program to commingle and portfolio margin CDS;

(ii) The BD/FCM enters into a non-conforming subordination agreement with each affiliate. The agreement must contain a specific acknowledgment by the affiliate that such money, securities or property will not receive customer treatment under the Exchange Act or SIPA or be treated as ''customer property'' as defined in 11 U.S.C. 741 in a liquidation of the BD/FCM, and that such money, securities or property will be held in a proprietary account in accordance with the CFTC requirements and will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; as well as an affirmation by the affiliate that claims to ''customer property'' as defined in SIPA or 11 U.S.C. 741 against the BD/FCM will be subordinated to the claims of securities customers and security-based swap customers; and

(iii) The BD/FCM obtains from the affiliate an opinion of counsel that the affiliate is legally authorized to subordinate all of its claims against the BD/FCM to those of securities customers and security-based swap customers.

(3) The BD/FCM has adopted an internal risk management program that is reasonably designed to identify, measure, and manage the risks arising from its program to allow cleared swaps customers and affiliates to commingle and portfolio margin CDS that has been approved in advance by the Commission or the Commission staff and meets the standards in section (c) below.

(4) The BD/FCM must be in compliance with applicable laws and regulations relating to risk management, capital, and liquidity, and must be in compliance with applicable clearing agency/DCO rules and CFTC requirements (including segregation and related books and records provisions) for accounts established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder (in the case of cleared swaps customers) and for cleared swaps proprietary accounts (in the case of affiliates), and subject to a program to commingle and portfolio margin CDS.

(5) Each cleared swaps customer and affiliate of the BD/FCM participating in a program to commingle and portfolio margin CDS is an ''eligible contract participant'' as defined in Section 1a(18) of the CEA.

(6) Before receiving any money, securities, or property of a cleared swaps customer or affiliate to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, under a program to commingle and portfolio margin CDS, the BD/FCM must furnish to the cleared swaps customer or affiliate a disclosure document containing the following information:

(i) A statement indicating that the cleared swaps customer's or affiliate's money, securities, and property will be held in an account maintained in accordance with the segregation requirements of Section 4d(f) of the CEA (in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate), and that the cleared swaps customer or affiliate has elected to seek protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder with respect to such money, securities, and property; and

(ii) A statement that the broker-dealer segregation requirements of Section 15(c)(3) and Section 3E of the Exchange Act and the rules thereunder, and any customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such cleared swaps customer or affiliate money, securities, and property.

(c) *Standards for internal risk management program.* The internal risk management program required pursuant to condition (b)(3) of this order must have the following standards in place:

(1) *Internal Risk Model.* The BD/FCM must calculate a future credit exposure for each cleared swaps customer and affiliate (each a ''counterparty'') using its own proprietary methodology (''internal risk model'') subject to the following minimum quantitative and qualitative model standards:

(i) *Quantitative Requirements.* (A) The internal risk model must estimate a potential future exposure over a minimum 10-day horizon and 99% confidence level and capture all material risk factors, including but not limited to general movements in credit spread term structure, basis risk between index and single name positions, and interest rate risk;

(B) The internal risk model must include a concentration/liquidity requirement; and

(C) The internal risk model must include a jump-to-default requirement for the sale of CDS protection equal to the largest loss of a single name exposure assuming a conservative recovery rate that may not exceed 40%.

(ii) *Qualitative Requirements.* (A) The internal risk model must be adequately documented and the documentation must provide a description of the model assumptions, data inputs, parameters, and methodologies employed to measure risk;

(B) The internal risk model must be subject to an annual model review by a model group that is independent of the business function;

(C) The internal risk model must be subject to at least quarterly backtesting by counterparty or account; and

(D) The BD/FCM must provide written notice to the Commission or Commission staff prior to implementing any material change to its internal risk model.

(2) *Minimum Risk Management System Standards.* (A) The BD/FCM must maintain risk management system standards to measure and manage risk exposure arising from counterparties' CDS portfolios that are independent of any central counterparty margin methodology;

(B) The BD/FCM must have an internal credit risk rating model that assesses the credit risk of each individual counterparty;

(C) The BD/FCM's monitoring of credit risk must include the prudent setting of an exposure limit for each individual counterparty and the exposure limit must be reviewed if the counterparty's credit risk profile changes and at least quarterly;

(D) The BD/FCM must have the ability to limit or reduce the exposure to a counterparty through the collection of additional margin;

(E) The BD/FCM must have documented procedures to value positions conservatively in view of current market prices and the amount that might be realized upon liquidation; and

(F) The BD/FCM must have well-defined procedures and systems in place for the daily collection and payment of initial and variation margin.

(3) *Monthly Reporting.* The BD/FCM must report to the Commission and FINRA staffs on a monthly basis within 5 business days after month end or as otherwise requested details of its top 25 counterparties' portfolios as measured by net credit exposure as well as the top 25 counterparties' portfolios as measured by gross notional amount.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90308; File Nos. S7–27–11 and S7–24–11]

Order Granting Exemptions From Sections 8 and 15(a)(1) of the Securities Exchange Act of 1934 and Rules 3b–13(b)(2), 8c–1, 10b–10, 15a–1(c), 15a–1(d) and 15c2–1 Thereunder in Connection With the Revision of the Definition of "Security" To Encompass Security-Based Swaps and Determining the Expiration Date for a Temporary Exemption From Section 29(b) of the Securities Exchange Act of 1934 in Connection With Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

November 2, 2020.

I. Exemptions in Connection With the Revision of the Definition of ''Security'' To Encompass Security-Based Swaps

A. Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] amended the definition of ''security'' under the Exchange Act to expressly encompass security-based swaps. The expansion of the definition of the term ''security'' to include security-based swaps had the effect of changing the scope of the Exchange Act regulatory provisions that apply to security-based swaps and, in doing so, raised certain complex questions that required further consideration. In July 2011, the Commission issued an order, granting temporary exemptions from compliance with certain provisions of the Exchange Act, and the rules and regulations thereunder.[2] The overall approach of that order was directed toward maintaining the *status quo* during the implementation process for the Dodd-Frank Act.[3]

The Commission in 2011 set the temporary exemptions to expire on the compliance date for final rules defining the terms ''security-based swap'' and ''eligible contract participant,'' [4] and since that time periodically has extended this deadline.[5] Notably, in 2014, the Commission extended the expiration date for the temporary exemptions, distinguishing between: (1) The temporary exemptions related to pending security-based swap rulemakings (''Linked Temporary Exemptions''), the expiration dates for which were extended to the compliance dates for the specific rulemakings to which they were ''linked''; and (2) the temporary exemptions that generally were not directly related to a specific security-based swap rulemaking (''Unlinked Temporary Exemptions'').[6]

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (''Dodd-Frank Act'').

[2] *See* Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011) (''2011 Exchange Act Exemptive Order''). The 2011 Exchange Act Exemptive Order included two relevant exemptions. First, the Commission granted to any person who meets the definition of ''eligible contract participant'' set forth in Section 1a(12) of the Commodity Exchange Act as in effect on July 20, 2010 (*i.e.,* the day prior to the date the Dodd-Frank Act was signed into law) and who is not a registered broker or dealer or a self-regulatory organization a temporary exemption from certain provisions of the Exchange Act, and the rules and regulations thereunder, solely in connection with the person's activities involving security-based swaps. This temporary exemption was made available to a broker or dealer registered under Exchange Act Section 15(b)(11) and to a self-regulatory organization in limited circumstances. Second, the Commission granted to a broker or dealer registered under Section 15(b) of the Exchange Act (other than a broker or dealer registered under Section 15(b)(11) of the Exchange Act), a temporary exemption from certain provisions of the Exchange Act, and the rules and regulations thereunder, solely with respect to security-based swaps. *See* 2011 Exchange Act Exemptive Order, 76 FR at 39938–39. The 2011 Exchange Act Exemptive Order did not provide exemptive relief for any provisions or rules prohibiting fraud, manipulation, or insider trading (other than prophylactic reporting or recordkeeping requirements such as the confirmation requirements of Exchange Act Rule 10b–10). In addition, the 2011 Exchange Act Exemptive Order did not affect the Commission's investigative, enforcement, and procedural authority related to those provisions and rules. *See* 2011 Exchange Act Exemptive Order, 76 FR at 39931 n.34. The 2011 Exchange Act Exemptive Order also did not address Sections 12, 13, 14, 15(d), 16, and 17A of the Exchange Act and the rules and regulations thereunder.

[3] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39929. Under the 2011 Exchange Act Exemptive Order, instruments that were security-based swap agreements before July 16, 2011 (360 days after the enactment of the Dodd-Frank Act) (''Effective Date'') and constituted security-based swaps after the Effective Date were still subject to the application of those Exchange Act provisions. *See* 2011 Exchange Act Exemptive Order, 76 FR at 39930 nn.24–25.

[4] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39938.

[5] *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48208 (Aug. 13, 2012) (''Product Definitions Adopting Release'') (extending the expiration date of the temporary exemptions to February 11, 2013); Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 68864 (Feb. 7, 2013), 78 FR 10218 (Feb. 13, 2013) (''2013 Extension Order'') (extending the expiration date of the temporary exemptions to February 11, 2014); Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 71485 (Feb. 5, 2014), 79 FR 7731 (Feb. 10, 2014) (''2014 Extension Order'') (extending the expiration dates (i) for certain ''linked'' temporary exemptions related to then-pending security-based swap rulemakings to the compliance dates for the related rulemakings and (ii) for certain other ''unlinked'' temporary exemptions not related to then-pending rulemakings to February 5, 2017); Order Extending Certain Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' To Encompass Security-Based Swaps and Request for Comment, Exchange Act Release No. 79833 (Jan. 18, 2017), 82 FR 8467 (Jan. 25, 2017) (''2017 Extension Order'') (extending the expiration date for the unlinked temporary exemptions to February 5, 2018); Order Extending Until February 5, 2019 Certain Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps and Request for Comment, Exchange Act Release No. 82626 (Feb. 2, 2018), 83 FR 5665 (Feb. 18, 2018) (''2018 Extension Order'') (extending the expiration date for the unlinked temporary exemptions to February 5, 2019); Order Granting a Limited Exemption from the Exchange Act Definition of ''Penny Stock'' for Security-Based Swap Transactions between Eligible Contract Participants; Granting a Limited Exemption from the Exchange Act Definition of ''Municipal Securities'' for Security-Based Swaps; and Extending Certain Temporary Exemptions under the Exchange Act in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 84991 (Jan. 25, 2019), 84 FR 863 (Jan. 31, 2019) (''2019 Extension Order'') (extending the expiration date for the unlinked temporary exemptions to February 5, 2020); Order Extending Temporary Exemptions from Exchange Act Section 8 and Exchange Act Rules 8c–1, 10b–16, 15a–1, 15c2–1 and 15c2–5 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 87943 (Jan. 10, 2020), 85 FR 2763 (Jan. 16, 2020) (''January 2020 Extension Order'') (extending the expiration date for the unlinked temporary exemptions to November 5, 2020).

[6] *See* 2014 Extension Order, 79 FR at 7732–35. The 2014 Extension Order identified the Linked Temporary Exemptions as those Expiring Temporary Exemptions related to: (1) Capital and margin requirements applicable to a broker or dealer (Exchange Act Sections 7 and 15(c)(3), Regulation T, and Exchange Act Rules 15c3–1, 15c3–3, and 15c3–4); (2) recordkeeping requirements applicable to a broker or dealer (Exchange Act Sections 17(a) and 17(b) and Exchange Act Rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13); (3) registration requirements under Exchange Act Section 15(a)(1), and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a ''broker'' or ''dealer'' that is not registered with the Commission; (4) Exchange Act Rule 10b–10; and (5) Regulation ATS. The remaining Expiring Temporary Exemptions are the Unlinked Temporary Exemptions. The Commission extended the Linked Temporary Exemptions until the compliance date for pending rulemakings concerning, as applicable: Capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants; recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants; security-based swap trade acknowledgement and verification requirements; and registration requirements for security-based swap execution facilities. The Linked Temporary Exemptions linked to registration requirements for security-based swap execution facilities are not addressed in

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The approach to the Linked Temporary Exemptions was designed to facilitate timely, phased-in application of the relevant provisions of the Exchange Act to security-based swaps based on the Commission's finalization of the relevant rules mandated by the Dodd-Frank Act.[7] The approach to the Unlinked Temporary Exemptions provided the Commission with flexibility, while its relevant rulemaking was still in progress, to determine whether continuing relief should be provided for any of the Exchange Act provisions subject to the Unlinked Temporary Exemptions.[8] In January 2020, the Commission issued an order extending until November 5, 2020, the temporary exemptions related to three commenter requests discussed below.[9] The remainder of the Unlinked Temporary Exemptions expired on February 5, 2020.[10]

The Commission has requested comment on the initial issuance and subsequent extensions of these temporary exemptions several times during consideration of the various exemptive orders.[11] In response, some commenters requested that the Commission make permanent some of the Linked Temporary Exemptions and Unlinked Temporary Exemptions.[12] The Commission has addressed some aspects of these requests in two previous orders.[13] Some of the requests for permanent exemptions have been withdrawn [14] or superseded.[15]

On January 8, 2020, the Commission received a letter from SIFMA supplementing its requests regarding the Unlinked Temporary Exemptions.[16] The commenter requested that the Commission make permanent three aspects [17] of the Unlinked Temporary Exemptions: (1) A limited exemption from the hypothecation requirements of Exchange Act Section 8 and in Exchange Act Rules 8c–1 and 15c2–1 for certain securities carried for the account of a customer with respect to a security-based swap transaction,[18] (2) exemptions from broker and dealer disclosure requirements relating to extensions of credit in Exchange Act Rules 10b–16 and 15c2–5 as applied to security-based swaps,[19] and (3) exemptions for security-based swaps from certain limitations on an OTC derivatives dealer's activities in Exchange Act Rule 15a–1.[20] On September 10, 2020, the Commission received a letter supplementing the commenter's requests regarding those three aspects of the Unlinked Temporary Exemptions, as well as three additional aspects of the Linked Temporary Exemptions.[21] In that letter, the commenter requested that the Commission make permanent three aspects of the Linked Temporary Exemptions: (1) an exemption from the broker and dealer registration requirement in Exchange Act Section 15(a)(1) [22] for a foreign broker or dealer, otherwise operating in compliance with Exchange Act Rule 15a–6, solely in connection with security-based swap dealing with or for an eligible contract participant,[23] (2) an exemption from the broker registration requirement in Section 15(a)(1) for a registered security-

this Order and will be separately considered in connection with the rulemaking concerning those requirements. The Commission already has addressed other Linked Temporary Exemptions in the related security-based swap rulemakings. *See, e.g.,* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872, 43955–56 (Aug. 22, 2019) (''Capital, Margin and Segregation Adopting Release''); Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, Exchange Act Release No. 87005 (Sept. 19 2019), 84 FR 68550, 68601–02 (Dec. 16, 2019) (''Recordkeeping and Reporting Adopting Release''); Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR 39807, 39824–25 n.189 (Jun. 17, 2016) (''Trade Acknowledgment and Verification Adopting Release'').

[7] *See* 2014 Extension Order, 79 FR at 7731.

[8] *See* 2014 Extension Order, 79 FR at 7731.

[9] *See* January 2020 Extension Order, 85 FR at 2766.

[10] *See* January 2020 Extension Order, 85 FR at 2766.

[11] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39938; 2013 Extension Order, 78 FR at 10219–20 (discussion of comments on 2011 Exchange Act Exemptive Order and additional request for comment); 2014 Extension Order, 79 FR at 7734 (additional request for comment); 2017 Extension Order, 82 FR at 8469 (additional request for comment); 2018 Extension Order, 83 FR at 5667–68 (discussion of comments on 2017 Extension Order and additional request for comment). In response to its 2018 request for comment, the Commission received four letters from two different commenters. *See* letter from Kyle Brandon, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), dated Nov. 8, 2018 (''SIFMA November 2018 Letter'') (requesting that the Commission further extend the Unlinked Temporary Exemptions, and also requesting certain permanent exemptive and other relief); letter from Kyle Brandon, Managing Director, SIFMA, dated Dec. 20, 2018 (''SIFMA December 2018 Letter'') (supplementing the SIFMA November 2018 Letter with additional detail regarding the Unlinked Temporary Exemptions and recommending a twelve-month transition period before expiration of any Unlinked Temporary Exemptions); letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry Association, dated Nov. 14, 2018 (''FIA November 2018 Letter I'') (expressing support for the permanent exemptions requested in the SIFMA November 2018 Letter); letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry Association, dated Nov. 29, 2018 (''FIA November 2018 Letter II'') (same). All comments received are available at *https://www.sec.gov/comments/s7-27-11/s72711.shtml.*

[12] *See* SIFMA November 2018 Letter at 1–4; SIFMA December 2018 Letter at 1–7; *see also* FIA November 2018 Letter I at 10; FIA November 2018 Letter II at 10–11.

[13] In 2019, the Commission provided limited exemptions from the definition of ''penny stock'' in Exchange Act Section 3(a)(51) and Exchange Act Rule 3a51–1 for transactions in security-based swaps between eligible contract participants and from the definition of ''municipal securities'' in Exchange Act Section 3(a)(29) for security-based swaps. *See* 2019 Extension Order, 84 FR at 867. In response to the commenter's request for guidance regarding the definition of ''government securities,'' the Commission noted that the Unlinked Temporary Exemptions did not include an exemption from the definition of ''government securities'' in Section 3(a)(42) of the Exchange Act and noted that the Exchange Act does not permit the Commission to provide such relief. *See* 2019 Extension Order, 84 FR at 866 & n.40. In response to the commenter's request for exemptions for security-based swap execution facilities, the Commission noted that it would consider the request in connection with the Commission's finalization of rules for security-based swap execution facilities. *See* 2019 Extension Order, 84 FR at 864 n.10. In January 2020, the Commission allowed all of the Unlinked Temporary Exemptions except for those related to three of the commenter's requests to expire on February 5, 2020. *See* January 2020 Extension Order, 85 FR at 2766.

[14] *See* letter from Kyle Brandon, Managing Director, SIFMA, dated Jan. 8, 2020 (''SIFMA January 2020 Letter''), at 5; letter from Kyle L. Brandon, Managing Director, Head of Derivatives Policy, SIFMA, dated September 10, 2020 (''SIFMA September 2020 Letter''), at 8. All comments received are available at *https://www.sec.gov/comments/s7-27-11/s72711.shtml.*

[15] *See* SIFMA September 2020 Letter at 5–6.

[16] *See* SIFMA January 2020 Letter.

[17] The commenter confirmed that it was no longer requesting additional extensions for any Unlinked Temporary Exemptions other than for the three issues cited in the letter. *See* SIFMA January 2020 Letter at 5.

[18] *See* SIFMA January 2020 Letter at 3–4; SIFMA December 2018 Letter at 5; SIFMA November 2018 Letter at 3; Exchange Act Section 8, 15 U.S.C. 78h; Exchange Act Rule 8c–1, 17 CFR 240.8c–1; Exchange Act Rule 15c2–1, 17 CFR 240.15c2–1. Section 8 of the Exchange Act and Exchange Act Rules 8c–1 and 15c2–1 limit a broker or dealer's ability to hypothecate securities carried for the account of a customer.

[19] *See* SIFMA January 2020 Letter at 4; SIFMA December 2018 Letter at 5–6; SIFMA November 2018 Letter at 3; Exchange Act Rule 10b–16, 17 CFR 240.10b–16; Exchange Act Rule 15c2–5, 17 CFR 240.15c2–5. Exchange Act Rules 10b–16 and 15c2–5 govern the disclosures that a broker or dealer must provide to customers to whom they extend credit.

[20] *See* SIFMA January 2020 Letter at 4–5; SIFMA December 2018 Letter at 6–7; SIFMA November 2018 Letter at 4; Exchange Act Rule 15a–1, 17 CFR 240.15a–1. Exchange Act Rule 15a–1 limits an OTC derivatives dealer's ability to engage in dealer activities in listed instruments and in fungible instruments that are standardized as to their material economic terms.

[21] *See* SIFMA September 2020 Letter.

[22] 15 U.S.C. 78o(a)(1).

[23] *See* SIFMA September 2020 Letter at 3–4; Exchange Act Section 15(a)(1), 15 U.S.C. 78o(a)(1); Exchange Act Rule 15a–6, 17 CFR 240.15a–6. This request updated the commenter's 2018 request for exemption from registration as a broker or dealer for Rule 15a–6-reliant foreign brokers and dealers that induce or attempt to purchase or sell a security-based swap with or for an eligible contract participant. *See* SIFMA November 2018 Letter at 2.

based swap dealer that arranges, negotiates or executes a security-based swap with or for an eligible contract participant on behalf of a majority-owned affiliate that is a registered security-based swap dealer,[24] and (3) an exemption from certain confirmation requirements under Exchange Act Rule 10b–10 for a broker or dealer that arranges, negotiates or executes a security-based swap with or for an eligible contract participant on behalf of a majority-owned affiliate that is a registered security-based swap dealer.[25]

The Commission has finalized a majority of the rulemakings under Title VII of the Dodd-Frank Act, including rules regarding the registration and regulation of SBS Entities. The Commission also has set the compliance date for rules regarding registration and regulation of SBS Entities,[26] which will be October 6, 2021. Market participants will be required to assess whether their activities meet the definitions of ''security-based swap dealer'' or ''major security-based swap participant'' beginning two months before this compliance date, or August 6, 2021.[27] This Order addresses the commenter's current requests regarding the Linked Temporary Exemptions and the Unlinked Temporary Exemptions in light of those finalized rules and dates. The remainder of the Unlinked Temporary Exemptions extended in January 2020, and not extended in this Order, will expire on November 5, 2020.[28]

B. Requests for Exemptions

The Commission has considered the commenter's six current requests and is providing exemptions in response to five of those requests. Each of the requests is discussed in turn below.

1. Request for an Exemption From Broker and Dealer Registration for a Rule 15a–6-Reliant Foreign Broker or Dealer, Solely in Connection With Security-Based Swap Dealing With or for an Eligible Contract Participant

Exchange Act Section 15(a)(1) requires a person to register as a broker or dealer if the person is a ''broker'' as defined in Exchange Act Section 3(a)(4) [29] or a ''dealer'' as defined in Exchange Act Section 3(a)(5) [30] and engages in certain activities in a ''security'' as defined in Exchange Act Section 3(a)(10),[31] a term that includes security-based swaps. Section 15(a)(1) currently is subject to Linked Temporary Exemptions that exempt from the registration requirement brokerage activities and dealing activities involving security-based swaps with eligible contract participants.[32] These Linked Temporary Exemptions will expire on October 6, 2021.[33]

Dealing in security-based swaps with or for an eligible contract participant is excluded from the definition of the term ''dealer,'' [34] and that will remain true after the Linked Temporary Exemptions expire. Similarly, market participants that conduct other activities meeting the definitions of ''broker'' and/or ''dealer'' may nevertheless avoid registration as a broker or dealer by availing themselves of the exemption from registration in Exchange Act Rule 15a–6. Yet, the commenter expressed concern that if a person combines these types of securities activities—that is, dealing in a security-based swap with or for an eligible contract participant (which is excluded from the definition of the term ''dealer'') and Rule 15a–6-compliant securities activities (which cause the person to meet the definition of ''broker'' and/or ''dealer'' but that do not require registration as such)—Section 15(a)(1) may require the person to register as a broker and/or dealer. The commenter's concern is that this result may follow from Section 15(a)(1)'s requirement for any person that meets the definition of ''broker'' or ''dealer'' [35]—a category that includes foreign brokers and dealers relying on Rule 15a–6—to register with the Commission if it makes use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security,[36] including security-based swaps. The commenter requested that foreign brokers and dealers relying on Exchange Act Rule 15a–6 be exempted from Section 15(a)(1)'s broker and dealer registration requirement in connection with any security-based swap dealing with or for an eligible contract participant that is excluded from the definition of ''dealer.'' [37] The commenter also provided an example unrelated to Rule 15a–6, expressing concern that if a non-U.S. person combines dealing in a security-based swap in the United States with or for an eligible contract participant, on the one hand, with brokerage activity outside the United States, on the other hand, Section 15(a)(1) would require the person to register as a broker and/or dealer.[38]

The Commission agrees that broker-dealer registration should not be required in the circumstances described by the commenter. To provide certainty about this result, the Commission is providing an exemption from Section 15(a)(1) for security-based swap dealing with or for eligible contract participants, available to foreign brokers and dealers whose activities in securities other than security-based swaps with or for an eligible contract participant comply with Rule 15a–6. The Commission believes this exemption would further the purpose of the exclusion of that type of security-based swap dealing from the definition of ''dealer.'' Similarly, the Commission believes that a limited exemption from Section 15(a)(1) for security-based swap dealing with or for eligible contract participants, available to foreign brokers and dealers whose activities in securities other than security-based swaps with or for an eligible contract participant lack a U.S. jurisdictional nexus, also would further the purpose of the exclusion of that type of security-based swap dealing from the definition of ''dealer.'' This exemption addresses the commenter's concern that, without this limited exemptive relief from the registration requirement of

[24] *See* SIFMA September 2020 Letter at 4; Exchange Act Section 15(a)(1), 15 U.S.C. 78o(a)(1).

[25] *See* SIFMA September 2020 Letter at 4–5; Exchange Act Rule 10b–10, 17 CFR 240.10b–10. This request updated the commenter's 2018 request for exemption from broker and dealer confirmation requirements. *See* SIFMA November Letter at 2.

[26] *See* Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270, 6345 (Feb. 4, 2020) (''Cross-Border Adopting Release'').

[27] *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48963, 48988 (Aug. 14, 2015) (''SBS Entity Registration Adopting Release'').

[28] *See* January 2020 Extension Order, 85 FR at 2766.

[29] 15 U.S.C. 78c(a)(4).

[30] 15 U.S.C. 78c(a)(5).

[31] 15 U.S.C. 78c(a)(10).

[32] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39938–39; 2014 Extension Order, 79 FR at 7734–35.

[33] *See* 2014 Extension Order, 79 FR at 7734–35; Recordkeeping and Reporting Adopting Release, 84 FR at 68600; Cross-Border Adopting Release, 85 FR at 6345.

[34] *See* Exchange Act Section 3(a)(5)(A).

[35] This registration requirement does not apply to a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange. *See* Exchange Act Section 15(a)(1).

[36] This registration requirement does not apply to activities in an exempted security or commercial paper, bankers' acceptances or commercial bills. *See* Exchange Act Section 15(a)(1).

[37] *See* SIFMA September 2020 Letter at 3–4; SIFMA November 2018 Letter at 2.

[38] *See* SIFMA September 2020 Letter at 3–4.

Section 15(a)(1), the exclusion of security-based swaps with or for eligible contract participants from the definition of ''dealer'' might effectively become unavailable to foreign brokers and dealers whose other securities activities either comply with Rule 15a–6 or lack any U.S. jurisdictional nexus. Requiring registration in this circumstance could undermine the market structure for security-based swaps by making it more costly and complex to engage in that type of security-based swap dealing with eligible contract participants in the United States, to the detriment of investors. Accordingly, pursuant to its authority under Exchange Act Section 15(a)(2), the Commission finds that it is consistent with the public interest and the protection of investors to exempt a ''foreign broker or dealer,'' as such term is defined in Rule 15a–6(b)(3) under the Exchange Act, whose activities in securities other than security-based swaps with or for an eligible contract participant are conducted either in compliance with Rule 15a–6 under the Exchange Act or without the jurisdiction of the United States, from the registration requirement of Exchange Act Section 15(a)(1) solely in connection with the foreign broker or dealer's security-based swap dealing with or for an eligible contract participant. Consistent with the commenter's request, this exemption would not extend to foreign brokers' and dealers' security-based swap brokerage activity.

2. Request for Exemption From Broker Registration for a Registered Security-Based Swap Dealer That Arranges, Negotiates or Executes a Security-Based Swap With or for an Eligible Contract Participant on Behalf of a Majority-Owned Affiliate That Is a Registered Security-Based Swap Dealer

As described above, Exchange Act Section 15(a)(1) requires a person to register as a broker if the person is a ''broker'' as defined in Exchange Act Section 3(a)(4) and engages in certain activities in a ''security'' as defined in Exchange Act Section 3(a)(10), a term that includes security-based swaps. Though dealing in security-based swaps with or for an eligible contract participant is excluded from the definition of the term ''dealer,'' [39] the statutory definition of the term ''broker'' contains no such exclusion.[40] Section 15(a)(1) currently is subject to Linked Temporary Exemptions that exempt from the registration requirement brokerage activities involving security-based swaps with eligible contract participants.[41] These Linked Temporary Exemptions will expire on October 6, 2021.[42]

As part of its consideration of cross-border issues in the registration of security-based swap dealers, the Commission recently determined that a limited exemption from the broker registration requirement was appropriate for a registered security-based swap dealer and its associated persons who conduct certain security-based swap ''arranging, negotiating or executing'' activity (''ANE activity'') with or for a non-U.S. person eligible contract participant on behalf of a non-U.S. majority-owned affiliate that is relying on an exception to the *de minimis* thresholds for registration as a security-based swap dealer.[43] The commenter requested that this limited exemption from the broker registration requirement be extended to situations in which the majority-owned affiliate is not relying on the *de minimis* exception but, rather, is a registered security-based swap dealer.[44] When adopting this limited exemption in the context of the *de minimis* exception, the Commission noted that a security-based swap dealer not dually registered as a broker or dealer and approved to use models to compute deductions for market or credit risk is subject to a minimum net capital requirement of $20 million and a minimum tentative net capital requirement of $100 million, versus minimum requirements of $1 billion and $5 billion, respectively, for a broker or dealer approved to use models.[45] The Commission adopted that exemption to avoid a situation in which ''applying the heightened broker-dealer capital requirements to all security-based swap dealers approved to use models who serve as the registered entity for purposes of the [*de minimis*] exception could limit the usefulness of the exception.'' [46] The commenter argued that extending the limited exemption would be appropriate because the same concerns also apply when the majority-owned affiliate is a registered, rather than unregistered, security-based swap dealer.[47]

The Commission continues to believe that ANE activity generally would constitute activity of a ''broker'' as that term is defined in Exchange Act Section 3(a)(4).[48] The Commission acknowledges the concerns regarding the heightened capital requirements for brokers approved to use models as applied to the security-based swap ANE activity described in the commenter's request. At the same time, the statutory definition of ''broker'' does not contain an exclusion for this activity.[49] Moreover, the Commission also is concerned that an exemption for ANE activity from the broker registration requirement could prompt changes in market structure that make it more difficult for the Commission to oversee that activity. In the Commission's view, however, a temporary exemption should not encourage such market structure changes, but could provide the Commission an opportunity to consider these concerns in light of market conditions prevailing after registration of security-based swap dealers begins.[50] Accordingly, pursuant to its authority under Exchange Act Section 15(a)(2), the Commission finds that it is consistent with the public interest and the protection of investors to provide a conditional temporary exemption from the broker registration requirement of Section 15(a)(1) until November 1, 2022 (*i.e.,* one year after the earliest due date for applications for registration as a security-based swap dealer) for a registered security-based swap dealer and its associated persons solely in connection with such registered security-based swap dealer or associated person arranging, negotiating or executing a security-based swap transaction with or for a non-U.S. person eligible contract participant on behalf of a non-U.S. person qualified majority-owned affiliate. Consistent with the exemption from broker registration in the context of the *de minimis* exception, this exemption is limited to ANE activity with or for a non-U.S. person eligible contract participant. The Commission continues to believe that requiring broker registration with respect to ANE activity with or for a counterparty that is not an eligible contract participant is consistent with the heightened

[39] *See* Exchange Act Section 3(a)(5)(A).

[40] *See* Exchange Act Section 3(a)(4).

[41] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39938–39; 2014 Extension Order, 79 FR at 7734.

[42] *See* 2014 Extension Order, 79 FR at 7734–35; SBS Entity Registration Adopting Release, 80 FR at 48988; Cross-Border Adopting Release, 85 FR at 6345.

[43] *See* Exchange Act Rule 3a71–3(d)(4); Cross-Border Adopting Release, 85 FR at 6279–80.

[44] *See* SIFMA September 2020 Letter at 4.

[45] *See* Cross-Border Adopting Release, 85 FR at 6279.

[46] *See* Cross-Border Adopting Release, 85 FR at 6279.

[47] *See* SIFMA September 2020 Letter at 4.

[48] *See* Cross-Border Adopting Release, 85 FR at 6279 & n.104.

[49] *See* Exchange Act Section 3(a)(4).

[50] The Commission welcomes engagement with market participants to discuss developments that may occur in this market after security-based swap dealers begin to register.

protections that Congress applied to security-based swap transactions with or for non-eligible contract participants.[51] For purposes of this exemption, the term ''qualified majority-owned affiliate'' means a majority-owned affiliate (as such term is defined in Exchange Act Rule 3a71–3(a)(10)) of the registered security-based swap dealer that is itself also a registered security-based swap dealer.

To be eligible for the exemption, the registered security-based swap dealer must comply with two relevant conditions to the parallel exemption from broker registration in the context of the *de minimis* exception. First, the registered security-based swap dealer must create and maintain books and records relating to such ANE activity that are required by Exchange Act Rules 18a–5 and 18a–6. This condition differs slightly from the parallel condition in the context of the *de minimis* exception [52] in that the required books and records relate only to the ANE activity by the registered security-based swap dealer relying on the exemption, rather than to the entire security-based swap transaction subject to the *de minimis* exception. The Commission believes this difference is appropriate because the *de minimis* exception applies to transactions on behalf of an unregistered affiliate, whereas the exemption granted in this Order applies only to ANE activity on behalf of a registered security-based swap dealer affiliate. Because the affiliate also must maintain books and records relating to the transaction, the Commission believes that the exemption should require the registered security-based swap dealer relying on this exemption to create and maintain only those books and records that relate to its own ANE activity. Second, if Exchange Act Rule 10b–10 would apply to such ANE activity, the registered security-based swap dealer also must provide to the customer the disclosures required by Rule 10b–10(a)(2) (excluding Rule 10b–10(a)(2)(i) and (ii)) and Rule 10b–10(a)(8) in accordance with the time and form requirements set forth in Exchange Act Rule 15Fi–2(b) and (c) or, alternatively, promptly after discovery of any defect in such registered security-based swap dealer's good faith effort to comply with such requirements.[53]

3. Request for Exemption From Certain Confirmation Requirements for a Broker or Dealer That Arranges, Negotiates or Executes a Security-Based Swap With or for an Eligible Contract Participant on Behalf of a Majority-Owned Affiliate That Is a Registered Security-Based Swap Dealer

Exchange Act Rule 10b–10 [54] requires a broker or dealer to deliver to a customer certain disclosures about transactions in securities, including security-based swaps. Exchange Act Rule 15Fi–2 [55] requires an SBS Entity to deliver to a counterparty a trade acknowledgment containing certain terms of the security-based swap or to verify the trade acknowledgment received from the counterparty. Certain information required to be included in a Rule 10b–10 confirmation is not required in the Rule 15Fi-2 trade acknowledgment, such as a description of the broker or dealer's role as agent for the customer, agent for some other person, agent for both the customer and another person or principal for its own account in the transaction, as well as information about the source and/or amount of certain other remuneration received or to be received by the broker or dealer in connection with the transaction.[56] Rule 10b–10 currently is subject to a Linked Temporary Exemption that exempts brokers and dealers from these disclosure requirements with respect to security-based swaps.[57] This Linked Temporary Exemption will expire on October 6, 2021.[58]

A registered broker that conducts ANE activity pursuant to the *de minimis* exception in Exchange Act Rule 3a71–3(d) is exempt from providing the disclosures described in Rule 10b–10, except for those regarding the broker's role as agent or principal in the transaction and the broker or dealer's status as a member of SIPC.[59] In addition, a registered security-based swap dealer that conducts ANE activity pursuant to the *de minimis* exception is exempt from registration as a broker so long as it provides these same Rule 10b–10 disclosures.[60] Because Rule 10b–10 and Rule 15Fi–2 have different form and timing requirements,[61] the *de minimis* exception allows these Rule 10b–10 disclosures to be provided in accordance with the form and timing requirements in Rule 15Fi–2(b) and (c).[62]

The commenter requests that a parallel exemption from Rule 10b–10 apply to situations in which a registered broker or dealer conducts ANE activity not pursuant to the *de minimis* exception but, rather, on behalf of a majority-owned affiliate that is a registered security-based swap dealer.[63] Though Rule 10b–10 requires disclosures not duplicated in the trade acknowledgment required under Rule 15Fi–2, the commenter claims that some of these disclosures are ''irrelevant'' in the situations covered by its request because a broker or dealer would be ''solely compensated by its [security-based swap dealer] affiliate.'' [64] Rule 10b–10, however, contains no exemption for transactions in which compensation is paid by an affiliate. Moreover, compensation disclosure is not available through other means, as the trade acknowledgment required by Rule 15Fi–2 would disclose only the terms of the security-based swap transaction, which do not necessarily include compensation regarding the brokerage activity to which Rule 10b–10 applies. Security-based swap trade acknowledgments thus do not duplicate or replace Rule 10b–10 disclosures for brokerage activity.[65] In response to the commenter's previous request for exemption from Rule 10b–10 for

[51] *See* Cross-Border Adopting Release, 85 FR at 6279 & n.109 (citing Exchange Act Section 6(l), 15 U.S.C. 78f(*l*), and Exchange Act Section 3(a)(5), 15 U.S.C. 78c(a)(5)).

[52] *See* Exchange Act Rule 3a71–4(d)(1)(iii)(B)(*1*).

[53] The other conditions to the availability of the exemption from broker registration in the context of the *de minimis* exception are not applicable to ANE activity on behalf of a registered security-based swap dealer and thus are not included as conditions to the exemption granted in this Order. For example, registered security-based swap dealers already have to comply with the provisions listed in Exchange Act Rule 3a71–3(d)(1)(ii), provide the Commission with the access to books and records described in Rule 3a71–3(d)(1)(iii)(A) and maintain the books and records and consent to service of process described in Rule 3a71–3(d)(1)(iii)(B)(*3*)–(*4*). The conditions described in Rule 3a71–3(d)(1)(iii)(B)(*2*) and (d)(1)(iv)–(vii) are specific to the operation of the *de minimis* exception and are not relevant to the exemption granted in this Order.

[54] 17 CFR 240.10b–10.

[55] 17 CFR 240.15Fi–2.

[56] *See* Exchange Act Rule 10b–10(a).

[57] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39939; 2014 Extension Order, 79 FR at 7734.

[58] *See* 2014 Extension Order, 79 FR at 7734; Trade Acknowledgment and Verification Adopting Release, 81 FR at 39828; Recordkeeping and Reporting Adopting Release, 84 FR at 68600; Cross-Border Adopting Release, 85 FR at 6345.

[59] *See* Exchange Act Rule 3a71–(d)(5).

[60] *See* Exchange Act Rule 3a71–3(d)(4)(ii).

[61] Rule 10b–10(a) requires a broker or dealer to give or send a confirmation in the form of a ''written notification,'' whereas Rule 15Fi–2(c) requires a trade acknowledgment to be provided by ''electronic means that provide reasonable assurance of delivery and a record of transmittal.'' A broker or dealer must give or send a transaction confirmation under Rule 10b–10(a) ''at or before the completion of such transaction,'' whereas a trade acknowledgment pursuant to Rule 15Fi–2(b) must be provided ''promptly, but in any event by the end of the first business day following the day of execution.''

[62] *See* Exchange Act Rule 3a71–3(d)(4)(ii), (5)(ii).

[63] *See* SIFMA September 2020 Letter at 5.

[64] *See* SIFMA September 2020 Letter at 5.

[65] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39824–25 (''[Rule 15Fi–2] thus does not apply to brokerage or agency transactions, which are different in structure and involve different activity by a broker than principal transactions by [a security-based swap dealer].'').

security-based swap brokerage activity,[66] the Commission stated that, ''since Rule 15Fi–2 does not require a trade acknowledgment for an SBS Entity's brokerage or agency transactions, and therefore would not result in any duplication of efforts by the SBS Entity effecting the brokerage or agency transaction, the Commission does not believe that there is a need to provide an exemption from providing a confirmation under Rule 10b–10 for an SBS Entity's brokerage or agency transactions.'' [67] Indeed, the Commission believes that customers would benefit from disclosure about brokerage costs even when gross costs may be reflected in the transaction price reported in the trade acknowledgment. For these reasons, the Commission is not providing an exemption from Rule 10b–10's disclosure requirements in connection with a broker or dealer's security-based swap ANE activity.

In the context described by the commenter—that is, a broker or dealer's ANE activity on behalf of a majority-owned affiliate that is a registered security-based swap dealer—the broker or dealer may wish to deliver the Rule 10b–10 disclosures regarding the ANE activity in the same document or communication as the trade acknowledgment or verification that its affiliate delivers pursuant to Rule 15Fi–2. The Commission recognizes, however, the potential for the different time and form requirements in Rule 10b–10 and Rule 15Fi–2(b) and (c) to frustrate attempts to deliver a single document or communication and could, as a result, increase the costs and other burdens to investors of responding to multiple communications regarding the ANE activity. As a result, the Commission is granting the commenter's request for an exemption from Rule 10b–10's requirement to deliver disclosures to a customer at or before completion of the transaction, so as to allow disclosures related to ANE activity to be provided at the time and in the form of a trade acknowledgment as required by Rule 15Fi–2(b) and (c), except that disclosures requested by the customer as allowed by Rule 10b–10, which are not addressed in Rule 15Fi–2, must be delivered in accordance with the deadlines specified in Rule 10b–10(c).[68]

Consistent with the Rule 10b–10-related exemptions and requirements in the *de minimis* exception, the commenter requested that any relief from Rule 10b–10's timing requirements also include the ability to avoid violation of Rule 10b–10 so long as the broker or dealer provides the disclosures promptly after discovery of a defect in its good faith efforts to comply.[69] This ability to provide disclosures either at the time specified in the *de minimis* exception or promptly after discovery of a defect in good faith efforts to do so was necessary, in the context of the *de minimis* exception, to avoid a situation in which a ''foot fault'' in Rule 10b–10 compliance would make the exemption from broker registration unavailable.[70] Because no exemption from broker registration is at risk if the broker or dealer does not comply with the conditions of the Rule 10b–10 exemption in this Order, this ''foot fault'' relief is not necessary. Rather, the consequence of not complying with either Rule 10b–10's timing requirements, or Rule 15Fi–2(b) and (c)'s form and timing requirements (and Rule 10b–10(c)'s timing requirements as applicable) if the broker or dealer is relying on this exemption, is that a broker or dealer would find itself out of compliance with Rule 10b–10.

Accordingly, pursuant to its authority under Exchange Act Section 36, the Commission finds that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt a broker or dealer from the requirement to give or send to a customer the disclosures required by Rule 10b–10(a) at or before completion of the transaction solely in connection with such broker or dealer or its associated persons arranging, negotiating or executing a security-based swap transaction on behalf of a qualified majority-owned affiliate, provided that such broker or dealer gives or sends to the customer written notification containing the disclosures required by Rule 10b–10(a) in connection with such arranging, negotiating or executing in accordance with the time and form requirements for a trade acknowledgment set forth in Rule 15Fi–2(b) and (c) under the Exchange Act and, as applicable, Rule 10b–10(c) under the Exchange Act. For purposes of this exemption, the term ''qualified majority-owned affiliate'' means a majority-owned affiliate (as such term is defined in Rule 3a71–3(a)(10) under the Exchange Act) of such broker or dealer that is a registered security-based swap dealer.

4. Request for Relief From the Hypothecation Requirements With Respect to Security-Based Swap Accounts

Exchange Act Section 8 provides, in pertinent part, that it shall be unlawful for any broker or dealer, in contravention of such rules and regulations as the Commission shall prescribe for the protection of investors, to hypothecate or arrange for the hypothecation of any securities carried for the account of any customer under circumstances: (1) That will permit the commingling of the customer's securities without the customer's written consent with the securities of any other customer; (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer; or (3) that will permit such securities to be hypothecated, or subjected to any lien or claim of the pledgee, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.[71] Pursuant to this authority, the Commission adopted Exchange Act Rules 8c–1 and 15c2–1. Exchange Act Rule 8c–1 places limitations on the ability of a broker or dealer to hypothecate ''any securities carried for the account of any customer.'' [72] Exchange Act Rule 15c2–1 defines the phrase ''fraudulent, deceptive, or manipulative act or practice'' as used in Exchange Act Section 15(c)(2) to include the hypothecation of ''any securities carried for the account of any customer'' that would be inconsistent with the limitations imposed by Rule 8c–1.[73] The commenter made two requests related to these provisions.

First, the commenter asked the Commission to clarify how the phrase ''securities carried for the account of any customer'' as used in Exchange Act Rules 8c–1 and 15c2–1 applies to security-based swaps.[74] The commenter stated that, for the purposes of the possession or control requirements of Exchange Act Rule 15c3–3 as applied to security-based swaps, the Commission, among other amendments, added a definition of ''excess securities

[66] *See* letter from Securities Industry and Financial Markets Association, dated Dec. 5, 2011, available at *https://www.sec.gov/comments/s7-27-11/s72711.shtml.*

[67] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39825.

[68] Rule 10b–10(c) requires a broker or dealer to ''give or send to a customer information requested pursuant to [Rule 10b–10] within five business days of receipt of the request,'' except that ''in the case of information pertaining to a transaction effected more than 30 days prior to receipt of the request, the information shall be given or sent to the customer within 15 business days.''

[69] *See* SIFMA September 2020 Letter at 5.

[70] *See* Cross-Border Adopting Release, 85 FR at 6280 n.113.

[71] 15 U.S.C. 78h.

[72] *See* 17 CFR 240.8c–1.

[73] *See* 17 CFR 240.15c2–1.

[74] *See* SIFMA January 2020 Letter at 3–4.

collateral'' to the Rule 15c3–3.[75] Rule 15c3–3 was further amended to require a broker or dealer to promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the security-based swap accounts of security-based swap customers.[76] The commenter requested confirmation that, for the purposes of Exchange Act Rules 8c–1 and 15c2–1, the term ''securities carried for the account of any customer'' be interpreted in connection with security-based swaps to have the same meaning as ''excess securities collateral'' has for the purposes of Exchange Act Rule 15c3–3. For the reasons discussed below, the Commission is not issuing the interpretation suggested by the commenter and instead is issuing a conditional exemption from Rules 8c–1 and 15c2–1 for securities and money market instruments carried in a security-based swap account of a security-based swap customer.

The term ''excess securities collateral'' as used in Exchange Act Rules 15c3–3 and 18a–4 [77] with respect to security-based swaps is modelled on the terms ''fully paid securities'' and ''excess margin securities'' as used in Exchange Act Rule 15c3–3 with respect to securities that are not security-based swaps.[78] Exchange Act Rule 15c3–3 requires a broker or dealer to promptly obtain and thereafter maintain physical possession or control of all fully paid and excess margin securities carried for the account of customers.[79] Securities that have been hypothecated are not in the physical possession or control of the broker or dealer.[80] However, securities that meet the definition of ''margin securities'' in Exchange Act Rule 15c3–3 may be hypothecated, subject to the requirements of that rule. Similarly, with respect to security-based swaps, Exchange Act Rules 15c3–3 and 18a–4 require that a broker, dealer or security-based swap dealer promptly obtain and thereafter maintain physical possession or control of securities and money market instruments carried for the account of a security-based swap customer that meet the rules' definitions of ''excess securities collateral.'' [81] Securities or money market instruments carried in the accounts of security-based swap customers that do not meet the definition of ''excess securities collateral'' may be hypothecated subject to the requirements of Exchange Act Rules 15c3–3 and 18a–4. Consequently, while the respective limitations and anti-fraud provisions of Rules 8c–1 and 15c2–1 apply to ''any securities carried for the account of any customer,'' the possession or control requirements of Rules 15c3–3 and 18a–4 apply to fully paid and excess margin securities and excess securities collateral, respectively.

Because Exchange Act Rules 8c–1 and 15c2–1 apply to any securities carried for the account of any customer, interpreting the term ''any securities carried for the account of any customer'' in those rules to mean ''excess securities collateral'' as defined in Rules 15c3–3 and 18a–4 for the purposes of a security-based swap would not be appropriate. Doing so could imply that the hypothecation rules do not apply to certain securities carried for the accounts of customers when the rules, in fact, apply to ''any securities carried for the account of any customer.'' However, a limited exemption from Rules 8c–1 and 15c2–1 with respect to securities and money market instruments carried in the security-based swap accounts of security-based swap customers would be appropriate for the following reasons.

When adopting the segregation requirements for security-based swaps, the Commission did not contemplate imposing the respective limitations and anti-fraud provisions of Exchange Act Rules 8c–1 and 15c2–1 to securities and money market instruments carried in security-based swap accounts of security-based swap customers. Moreover, the Dodd-Frank Act did not mandate that the Commission implement requirements with respect to security-based swaps that are analogous to Rules 8c–1 and 15c2–1. Further, Rules 8c–1 and 15c2–1 were adopted in 1940 and were not designed to address security-based swaps.[82] Exchange Act Rule 15c3–3 was adopted in 1972 to provide comprehensive protection to customer funds and securities held by brokers and dealers.[83] The Commission addressed the protection of securities and money market instruments carried in security-based swap accounts of security-based swap customers through the recent amendments to Exchange Act Rule 15c3–3 and the adoption of new Exchange Act Rule 18a–4.[84] The amendments and new rule addressing security-based swaps were modelled on the requirements and limitations in Exchange Rule 15c3–3 applicable to securities that are not security-based swaps. They were not modelled on Exchange Act Rules 8c–1 and 15c2–1. Finally, Rules 8c–1 and 15c2–1 provide OTC derivatives dealers exemptions from their requirements. Therefore, it is not necessary to impose the limitations and anti-fraud provisions of Exchange Act Rules 8c–1 and 15c2–1 to securities and money market instruments carried in security-based swap accounts of security-based swap customers.[85] This approach will achieve the objective sought by the commenter in proposing the interpretation discussed above: That Rules 8c–1 and 15c2–1 not apply to securities and money market instruments carried in a security-based swap account of a security-based swap customer.

However, Rules 8c–1 and 15c2–1 continue to apply to any securities carried for all other customers. For example, as discussed above, the requirement to promptly obtain and thereafter maintain physical possession or control of securities (other than security-based swaps) carried for the account of customers in Exchange Act Rule 15c3–3 does not apply to ''margin

[75] *Id.; see also* Capital, Margin and Segregation Adopting Release, 84 FR at 43935–38; 17 CFR 240.15c3–3(p)(1)(ii). Exchange Act Rule 18a–4 imposes segregation requirements on security-based swap dealers that are not brokers or dealers (other than OTC derivatives dealers). 17 CFR 240.18a–4. Exchange Act Rule 18a–4 has a parallel definition of ''excess securities collateral.'' *See* 17 CFR 240.18a–4(a)(2).

[76] *See* 17 CFR 240.15c3–3(p)(2). Exchange Act Rule 18a–4 has a parallel requirement that the security-based swap dealer promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the security-based swap accounts of security-based swap customers. *See* 17 CFR 240.18a–4(b).

[77] 17 CFR 240.18a–4.

[78] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43935; 17 CFR 240.15c3–3(a)(3), (a)(5) and (p)(1)(ii).

[79] *See* 17 CFR 240.15c3–3(b).

[80] *See* 17 CFR 240.15c3–3(c) and (d); *see also* 17 CFR 240.15c3–3(p)(2); 17 CFR 240.18a–4(b).

[81] *See* 17 CFR 240.15c3–3(p)(2); 17 CFR 240.18a–4(b).

[82] Hypothecation of Customers' Securities, 5 FR 4530 (Nov. 19, 1940) (adopting Exchange Act Rule 8c–1); Hypothecation of Customers' Securities, 5 FR 4531 (Nov. 19, 1940) (adopting Exchange Act Rule 15c2–1).

[83] *See* Broker-Dealers; Maintenance of Certain Basic Reserves, Exchange Act Release No. 9856 (Nov. 17, 1972), 37 FR 25224 (Nov. 29, 1972) (''Rule 15c3–3 as adopted herein is well fashioned to furnish the protection for the integrity of customer funds and securities as envisioned by Congress when it amended section 15(c) (3) of the [Exchange] Act by adopting section 7(d) of the Securities Investor Protection Act of 1970 . . .''); *see also* Pub. L. 91–598 (Dec. 30, 1970). The hypothecation rules (Rules 8c–1 and 15c2–1) require that a broker-dealer segregate customer securities from its own proprietary securities and prescribe limits on a broker-dealer's ability to hypothecate customer securities.

[84] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43930–43, 17 CFR 240.15c3–3(p); 17 CFR 240.18a–4.

[85] A security-based swap dealer that is not also registered as a broker or dealer is not subject to Exchange Act Rules 8c–1 and 15c2–1. Moreover, a security-based swap dealer that is also registered as an OTC derivatives dealer can provide notifications to its counterparties to remove them from the definitions of ''customer'' in Exchange Act Rules 8c–1 and 15c2–1 and, thereby, avoid the requirement to comply with those rules. *See* 17 CFR 8c–1(b); 17 CFR 240.15c2–1(b).

securities'' as defined in the rule.[86] The commenter did not request that ''margin securities,'' as defined in Rule 15c3–3, should be exempt from Exchange Act Rules 8c–1 and 15c2–1 or that the Commission interpret the term in a manner that removes them from the requirements of those rules.

For these reasons, the Commission finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors to exempt securities and money market instruments carried in a security-based swap account of a security-based swap customer from the requirements of Exchange Act Rules 8c–1 and 15c2–1; provided the account does not hold ''margin securities'' as defined in Exchange Act Rule 15c3–3.[87] Further, this exemption does not modify the requirement that a broker, dealer or security-based swap dealer promptly obtain and thereafter maintain physical possession or control of securities or money market instruments carried for the accounts of security-based swap customers that meet the definition of ''excess securities collateral'' as required by Exchange Act Rules 15c3–3 and 18a–4, as applicable.

Second, the commenter asked the Commission to extend most, but not all, of the Unlinked Temporary Exemptions from the hypothecation requirements for security-based swaps. The current Unlinked Temporary Exemptions from the hypothecation requirements apply without regard to whether these requirements applied to the broker or dealer's security-based swap positions or activities as of July 15, 2011 (*i.e.,* the day before relevant provisions of the Dodd-Frank Act became effective),[88] and are set to expire on November 5, 2020.[89] By contrast, the Linked Temporary Exemptions from related customer protection requirements in Exchange Act Rule 15c3–3 are limited to security-based swap positions and activities not subject to that rule as of July 15, 2011, and are set to expire on October 6, 2021, which is the compliance date for the Commission's security-based swap-related amendments to Rule 15c3–3.[90] The commenter asked the Commission to extend the Unlinked Temporary Exemptions from the hypothecation requirements so that they would expire on the compliance date for these security-based swap-related amendments to Rule 15c3–3.[91] The commenter asked the Commission to extend these exemptions consistent with the scope of the Linked Temporary Exemptions from Rule 15c3–3—that is, only to the extent that the hypothecation requirements did not apply to the broker or dealer's security-based swap positions or activities as of July 15, 2011.[92] The commenter stated that the policies, procedures, processes, systems and controls that brokers and dealers use to comply with Rules 8c–1 and 15c2–1 are integrated with the policies, procedures, processes, systems and controls that they use to comply with Rule 15c3–3. Therefore, the commenter requested that the Unlinked Temporary Exemptions from Rules 8c–1 and 15c2–1 be extended to align with the expiration date for the Linked Temporary Exemptions from Rule 15c3–3.[93]

For the reasons provided by the commenter, the Commission believes that it would be appropriate to extend the Unlinked Temporary Exemptions from Rules 8c–1 and 15c2–1 so that they expire at the same time as the Linked Temporary Exemptions from Rule 15c3–3. This extension would provide brokers and dealers time to implement a single set of policies, procedures, and controls to comply with Rules 8c–1, 15c2–1 and 15c3–3 as they apply to security-based swap positions. Accordingly, pursuant to its authority under Exchange Act Section 36, the Commission finds that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to extend the Unlinked Temporary Exemptions from Exchange Act Section 8 and Exchange Act Rules 8c–1 and 15c2–1 until October 6, 2021.

5. Request for Exemptions From Broker and Dealer Disclosure Requirements Relating to Extensions of Credit

Exchange Act Rule 15c2–5(a)(1) imposes disclosure requirements, and Rule 15c2–5(a)(2) imposes suitability requirements, on brokers and dealers that that directly or indirectly offer to extend credit to or arrange any loan for, or extend to or participate in any loan for, any person in connection with the offer or sale of any security to, or the attempt to induce the purchase of any security by, such person, subject to certain exceptions. Exchange Act Rule 10b–16 imposes additional requirements on brokers and dealers that directly or indirectly extend credit to any customer in connection with any securities transaction. Subject to certain exceptions, these brokers and dealers must establish procedures to assure that each customer receives certain lending disclosures.[94] Citing the Commission's 2002 guidance on the application of certain securities laws to security futures products,[95] the commenter expressed the view that security-based swaps ''should not in and of themselves constitute extensions of credit'' subject to these suitability and disclosure requirements.[96] The commenter asked the Commission to confirm this view or, in the alternative, exempt security-based swap activity from these extension of credit requirements.[97]

The Commission believes that, based on the facts and circumstances of a particular transaction, an extension of credit subject to the suitability and disclosure requirements of Rules 15c2–5 and 10b–16 may or may not be made in connection with a security-based swap transaction. This belief is consistent with both the Commission's 2002 guidance [98] on the application of

[86] *See* 17 CFR 240.15c3–3(a)(3), (a)(4), (a)(5) and (b).

[87] As indicated, the relief does not extend to accounts that hold ''margin securities'' as that term is defined in Exchange Act Rule 15c3–3. Therefore, the exemption would not apply if the account holds securities positions, other than security-based swaps, that trigger the margin requirements of Regulation T of the Board of Governors of the Federal Reserve System and/or the margin requirements of the self-regulatory organizations applicable to securities that are not security-based swaps (*e.g.,* long securities positions (other than security-based swaps) that have been financed by the broker or dealer, short securities positions (other than security-based swaps), or listed options). However, as discussed above, the exemption applies to securities and money market instruments held in a security-based swap account of a security-based swap customer; provided they are not ''margin securities'' as defined in Rule 15c3–3. For the purposes of this exemption, a broker or dealer need not treat fully paid securities and money market instruments in a security-based swap account of a security-based swap customer that serve as collateral for security-based swap positions and/or to meet the margin requirements of Exchange Act Rule 18a–3 as ''margin securities'' as that term is defined in Rule 15c3–3.

[88] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39939.

[89] *See* January 2020 Extension Order, 85 FR at 2766.

[90] *See* 2014 Extension Order, 79 FR at 7734.

[91] *See* SIFMA January 2020 Letter at 3–4; SIFMA December 2018 Letter at 5.

[92] *See* SIFMA January 2020 Letter at 3–4.

[93] *See id.*

[94] *See* Exchange Act Rule 10b–16(a).

[95] Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules Thereunder to Trading in Security Futures Products, Exchange Act Release No. 46101 (Jun. 21, 2002), 67 FR 43234 (Jun. 27, 2002) (''Security Futures Release'').

[96] *See* SIFMA January 2020 Letter at 4.

[97] *See* SIFMA September 2020 Letter at 6–7; SIFMA January 2020 Letter at 4; SIFMA December 2018 Letter at 5–6; SIFMA November 2018 Letter at 3.

[98] This guidance noted that ''Rule 10b–16 applies to all extensions of credit, directly or indirectly, to any customer in connection with any securities transaction, including a security future. Investors in security futures, including those extended credit in connection with margining, should benefit from the transparency of credit terms fostered by this Rule.''

extension of credit requirements to security futures products and the Commission and the Commodity Futures Trading Commission's 2012 joint release [99] on the definition of ''security-based swap.'' The relationship between an extension of credit and a security-based swap thus does not shield the extension of credit from application of Rules 15c2–5 and 10b–16. When an extension of credit is made in connection with a security-based swap transaction, however, brokers and dealers may as appropriate to the facts and circumstances devise a single suitability assessment to satisfy applicable provisions of Rule 15c2–5(a)(2) and Exchange Act Rule 15Fh–3(f),[100] as well as a single set of disclosures to satisfy applicable provisions of Rules 10b–16 and 15c2–5(a)(1) and Exchange Act Rule 15Fh–3(b).[101]

Because an extension of credit may or may not be made in connection with a security-based swap transaction, the Commission believes that a permanent exemption from Rules 10b–16 and 15c2–5 for security-based swap activity is not warranted. The Commission thus is not further extending the Unlinked Temporary Exemptions from Exchange Act Rules 10b–16 and 15c2–5.

6. Request for Exemptions From Certain Limitations on an OTC Derivatives Dealer's Activities

Exchange Act Rule 15a–1 limits the securities activities of an OTC derivatives dealer. The commenter made three requests related to these limitations. First, Rule 15a–1(a)–(b) permits OTC derivatives dealers to engage in dealer activities when the security is an eligible OTC derivatives instrument. Eligible OTC derivatives instruments are defined to exclude any contract, agreement or transaction that is ''one of a class of fungible instruments that are standardized as to their material economic terms.'' [102] The commenter noted that centrally cleared security-based swaps might not qualify as eligible OTC derivatives instruments and thus Rule 15a–1 might not permit OTC derivatives dealers to deal in them.[103] Based on this specific concern, the commenter requested a permanent exemption for all security-based swaps with or for eligible contract participants from all provisions of Rule 15a–1.[104]

Because centrally cleared security-based swaps typically contain standardized terms, they might be fungible instruments standardized as to their material economic terms and thus might not qualify as eligible OTC derivatives instruments. Though not raised in the commenter's request, the same also is true of security-based swaps that are eligible for central clearing even if they are not in fact centrally cleared. As a result, dealing in these types of security-based swaps could eliminate a market participant's OTC derivatives dealer status and require full registration as a dealer, even if that security-based swap dealing is with an eligible contract participant and thus excluded from the statutory definition of ''dealer.'' [105] Because Exchange Act Section 3(a)(5) excludes security-based swap dealing with or for an eligible contract participant from the definition of ''dealer,'' the Commission believes that this same dealing activity should not cause an OTC derivatives dealer to lose its eligibility for Rule 15a–1's exemption from full dealer registration. Such a result could be avoided if eligible OTC derivative instruments included security-based swaps with or for an eligible contract participant whose terms are standardized to be eligible for central clearing. Because including these security-based swaps within the scope of eligible OTC derivative instruments would address the commenter's concern about OTC derivatives dealers' ability to deal in centrally cleared security-based swaps (and also allows OTC derivatives dealers to deal in security-based swaps whose terms are standardized to be eligible for central clearing but that are not in fact centrally cleared), the Commission does not believe that an exemption for these security-based swaps from all provisions of Rule 15a–1 is necessary. Accordingly, pursuant to its authority under Exchange Act Section 15(a)(2) and Exchange Act Rule 15a–1(b)(2), the Commission finds that it is consistent with the public interest and the protection of investors to determine that security-based swaps with or for an eligible contract participant whose terms are standardized to be eligible for central clearing are within the scope of an ''eligible OTC derivative instrument'' as defined in Rule 3b–13(b)(2).

Second, Rule 15a–1(c) generally requires that all securities transactions of an OTC derivatives dealer, including OTC derivatives transactions, be effected through a full-purpose broker or dealer or full-purpose broker or dealer affiliate.[106] Further, Rule 15a–1(d) requires OTC derivatives dealers to conduct certain customer-facing contacts through registered representatives of a full-purpose broker or full-purpose broker or dealer affiliate. These requirements do not apply to transactions with a registered broker or dealer, a bank acting in a dealer capacity, a foreign broker or dealer, or any affiliate of the OTC derivatives dealer.[107] The commenter requested that

See Security Futures Release, 67 FR at 43246. An extension of credit could be part of a transaction involving a security future.

[99] The Commissions noted that, depending on the facts and circumstances, a loan participation may be a security but not a ''security-based swap,'' the definition of which excludes certain agreements, contracts and transactions that provide for the purchase or sale of 1 or more securities on a fixed or contingent basis and that are subject to the Securities Act of 1933 and the Exchange Act. *See* Product Definitions Adopting Release, 77 FR at 48251; Exchange Act Section 3(a)(68)(A)(i) (a security-based swap must be a ''swap'' as defined in certain provisions of Section 1a of the Commodity Exchange Act); Commodity Exchange Act Section 1a(47)(B)(v)–(vi) (exclusion of these agreements, contracts and transactions from the definition of ''swap''). Alternatively, a loan participation could be a security-based swap if the grantor of the loan participation extends financing to the participant. *See* Product Definitions Adopting Release, 77 FR at 48251. This ''leverage could be indicative of an instrument that is merely an exchange of payments and not a transfer of the ownership of the underlying loan or commitment, such as may be the case with a . . . security-based swap.'' Product Definitions Adopting Release, 77 FR at 48251. An extension of financing could be part of a transaction classified as a security-based swap.

[100] 17 CFR 240.15Fh–3(f).

[101] 17 CFR 240.15Fh–3(b).

[102] *See* Exchange Act Rule 3b–13(b)(2), 17 CFR 240.3b–13(b)(2).

[103] *See* SIFMA September 2020 Letter at 7; SIFMA January 2020 Letter at 4–5. In earlier requests, the commenter also noted that ''some [security-based swaps] might, in the future, be listed or traded on an exchange.'' *See* SIFMA December 2018 Letter at 6–7; SIFMA November 2018 Letter at 4. Because eligible OTC derivatives also exclude any contract, agreement or transaction that is listed or traded on a national securities exchange or registered national securities association or facility or market thereof, in earlier letters the commenter also requested an exemption from Rule 15a–1 to allow OTC derivatives dealers to deal in those instruments. *See* Exchange Act Rule 3b13(b)(2); SIFMA December 2018 Letter at 6–7; SIFMA November 2018 Letter at 4. The Commission is not providing an exemption or guidance regarding the application of Rule 15a–1 to those security-based swaps because at this time no security-based swap is listed or traded on a national securities exchange or registered national securities association or facility or market thereof. If a security-based swap becomes so listed or traded in the future, the Commission would consider a request for exemption from or guidance regarding Rule 15a–1 for those instruments based on the facts and circumstances at that time.

[104] *See* SIFMA January 2020 Letter at 4–5.

[105] *See* Exchange Act Rule 15a–1(a)(1)(i) (securities activities of an OTC derivatives dealer must be limited, in relevant part, to engaging in dealer activities in eligible OTC derivatives instruments that are securities). Rule 15a–1's requirement that OTC derivatives dealers limit their securities dealing to eligible OTC derivatives instruments does not contain an exception for security-based swaps with an eligible contract participant that are not eligible OTC derivatives instruments.

[106] *See* Exchange Act Rule 15a–1(c).

[107] *See* Exchange Act Rule 15a–1(c)–(d).

the Commission exempt OTC derivatives dealers from the requirement in Rule 15a–1(d) because standalone and bank-affiliated SBS Entities are not required to employ registered representatives for customer-facing SBS transactions.[108] The commenter also requested a permanent exemption for all security-based swaps with or for eligible contract participants from all provisions of Rule 15a–1.[109]

SBS Entities are subject to the Title VII regulatory framework, while standalone OTC derivatives dealers are not. The Commission thus does not believe that it is necessary or appropriate to exempt standalone OTC derivatives dealers from Rule 15a–1 simply because its requirements do not apply to other market participants that are subject to a separate, comprehensive regulatory framework. By contrast, however, a dually-registered OTC derivatives dealer and SBS Entity would be subject to the Title VII regulatory framework in relation to its security-based swap transactions. Such a dually-registered entity could find that Rule 15a–1 requires it either to effect security-based swap transactions through a registered broker or dealer (in the case of Rule 15a–1(c)) or utilize registered representatives for certain customer-facing security-based swap transactions (in the case of Rule 15a–1(d)), on the one hand, or to register as a full-purpose dealer, on the other hand, even if the security-based swap is with or for an eligible contract participant and thus excluded from the definition of ''dealer.'' To avoid this result, the Commission believes that a dually-registered OTC derivatives dealer and SBS Entity's security-based swap transactions with or for an eligible contract participant, and its communications and contacts with an eligible contract participant concerning a security-based swap transaction, should be exempt from Rules 15a–1(c) and (d), respectively.

Accordingly, pursuant to its authority under Exchange Act Section 15(a)(2), the Commission finds that it is consistent with the public interest and the protection of investors to exempt a registered OTC derivatives dealer that is also a registered SBS Entity from Rule 15a–1(c) solely in connection with security-based swap transactions with or for an eligible contract participant, and from Rule 15a–1(d) solely in connection with communications and contacts with an eligible contract participant concerning a security-based swap transaction.

Third, the commenter asked the Commission to extend the Unlinked Temporary Exemptions from Rule 15a–1 until the compliance date for the Commission's SBS Entity registration requirements,[110] which is October 6, 2021.[111] The current Unlinked Temporary Exemptions from Rule 15a-1 are set to expire on November 5, 2020.[112]

As discussed above, the Commission is exempting a registered OTC derivatives dealer that is also a registered SBS Entity from Rules 15a–1(c) and (d) for certain security-based swap-related communications and contacts. OTC derivatives dealers will not, however, begin counting transactions towards the SBS Entity registration thresholds until August 6, 2021. The Commission believes that requiring OTC derivatives dealers to implement policies, procedures and controls to comply with Rules 15a–1(c) and (d) for the short period until they begin to register as SBS Entities potentially could impose undue cost and resource burdens and cause unnecessary market disruption. Rather, extending the Unlinked Temporary Exemptions from Rule 15a–1(c) and (d) until October 6, 2021, would allow market participants to implement policies, procedures and controls that take into account this new limited exemptive relief from Rule 15a–1(c) and (d) at the time when that relief can be utilized. Accordingly, pursuant to its authority under Exchange Act Section 36, the Commission finds that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to extend the Unlinked Temporary Exemptions from Rules 15a–1(c) and (d) until October 6, 2021. This limited temporary exemption addresses the commenter's concern about OTC derivatives dealers' ability to conduct customer-facing contacts without a registered representative until they can begin to register as SBS Entities.

7. Exchange Act Section 29(b)

Exchange Act Section 29(b) [113] generally provides that contracts made in violation of any provision of the Exchange Act or the rules or regulations thereunder shall be void ''(1) as regards the rights of any person who, in violation of any such provision . . . shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contracts, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contracts in violation of any such provision.'' In 2011, the Commission provided temporary exemptive relief from Section 29(b) in connection with the temporary exemptions that include the Linked Temporary Exemptions and Unlinked Temporary Exemptions discussed in this Order. By its terms, that exemption from Section 29(b) will expire on November 5, 2020 (for the Unlinked Temporary Exemptions discussed but not extended in this Order) or October 6, 2021 (for the remaining Linked Temporary Exemptions and Unlinked Temporary Exemptions discussed in this Order).[114] The Commission made clear that it did not believe that Section 29(b) would apply to provisions subject to those temporary exemptions, and that it provided the exemption from Section 29(b) only to make that view clear to market participants and ''to eliminate any possible legal uncertainty or market disruption.'' [115] Likewise, the Commission believes that Section 29(b) would not apply to circumstances in which a market participant complies with the permanent exemptive relief provided in this Order, and therefore, for the reasons discussed above, is not providing further exemptive relief from Section 29(b).

II. Exemption in Connection With Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

Also in 2011, the Commission issued an order providing separate temporary exemptive relief from Section 29(b) in connection with the portion of the Dodd-Frank Act's security-based swap-related amendments to the Exchange Act for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission provided an exception or exemptive relief.[116] By its terms, most of

[108] *See* SIFMA January 2020 Letter at 5.

[109] *See* SIFMA January 2020 Letter at 4–5.

[110] *See* SIFMA December 2020 Letter at 6.

[111] *See* Cross-Border Adopting Release, 85 FR at 6345.

[112] *See* January 2020 Extension Order, 85 FR at 2766.

[113] 15 U.S.C. 78cc(b).

[114] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39940 (Section 29(b) exemptive relief in connection with temporary exemptive relief from other Exchange Act provisions expires at ''such time as the underlying exemptive relief expires'').

[115] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39926.

[116] *See* Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (Jun. 15, 2011), 76 FR 36287, 36307 (''2011 Compliance Date Order'').

this exemptive relief expires on such date as the Commission specifies.[117]

The Commission made clear then that it did not believe that Section 29(b) would apply to the Dodd-Frank Act's security-based swap-related amendments to the Exchange Act for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission provided an exception or exemptive relief, and that it provided the exemption from Section 29(b) only ''to avoid possible legal uncertainty or market disruption.'' [118] The Commission granted this temporary exemptive relief, however, ''to avoid possible legal uncertainty or market disruption.'' [119] The Commission believes now, more than nine years after the relevant amendments to the Dodd-Frank Act took effect, that the opportunity for possible legal uncertainty or market disruption related to the effective date of these amendments has passed. To provide market participants with certainty about when this separate temporary exemptive relief from Section 29(b) will expire, the Commission now believes that all of this exemptive relief from Section 29(b) should expire on the same date. Because some of this relief is already scheduled to expire on the compliance date for rules regarding registration and regulation of SBS Entities,[120] which will be October 6, 2021, the Commission thus believes that it is appropriate for all of this Section 29(b) relief to expire on that date. Accordingly, the Commission has determined that this exemption from Section 29(b) shall expire on October 6, 2021.

III. Conclusion

It is hereby ordered, pursuant to Section 15(a)(2) of the Exchange Act, that a ''foreign broker or dealer,'' as such term is defined in Rule 15a–6(b)(3) under the Exchange Act, whose activities in securities other than security-based swaps with or for an eligible contract participant are conducted either in compliance with Rule 15a–6 under the Exchange Act or without the jurisdiction of the United States, shall be exempt from the registration requirement of Section 15(a)(1) of the Exchange Act solely in connection with the foreign broker or dealer's security-based swap dealing with or for an eligible contract participant.

It is hereby ordered, pursuant to Section 15(a)(2) of the Exchange Act, that until November 1, 2022, a registered security-based swap dealer and its associated persons shall be exempt from the broker registration requirement of Section 15(a)(1) of the Exchange Act solely in connection with such registered security-based swap dealer or associated person arranging, negotiating or executing a security-based swap transaction with or for a non-U.S. person eligible contract participant on behalf of a non-U.S. person qualified majority-owned affiliate; provided that (A) such registered security-based swap dealer creates and maintains books and records relating to such arranging, negotiating or executing activity that are required by Rules 18a–5 and 18a–6 under the Exchange Act and (B) if Rule 10b–10 under the Exchange Act would apply to such arranging, negotiating or executing activity, such registered security-based swap dealer provides to the customer the disclosures required by Rule 10b–10(a)(2) (excluding Rule 10b–10(a)(2)(i) and (ii)) and Rule 10b–10(a)(8) in accordance with the time and form requirements set forth in Rule 15Fi-2(b) and (c) under the Exchange Act or, alternatively, promptly after discovery of any defect in such registered security-based swap dealer's good faith effort to comply with such requirements. For purposes of this exemption, the term ''qualified majority-owned affiliate'' means a majority-owned affiliate (as such term is defined in Rule 3a71–3(a)(10) under the Exchange Act) of such registered security-based swap dealer that is itself also a registered security-based swap dealer.

It is hereby further ordered, pursuant to Section 36 of the Exchange Act, that a broker or dealer shall be exempt from the requirement to give or send to a customer the disclosures required by Rule 10b–10(a) under the Exchange Act at or before completion of the transaction solely in connection with such broker or dealer or its associated persons arranging, negotiating or executing a security-based swap transaction on behalf of a qualified majority-owned affiliate; provided that such broker or dealer gives or sends to the customer written notification containing the disclosures required by Rule 10b–10(a) under the Exchange Act in connection with such arranging, negotiating or executing in accordance with the time and form requirements for a trade acknowledgment set forth in Rule 15Fi–2(b) and (c) under the Exchange Act and, as applicable, Rule 10b–10(c) under the Exchange Act. For purposes of this exemption, the term ''qualified majority-owned affiliate'' means a majority-owned affiliate (as such term is defined in Rule 3a71–3(a)(10) under the Exchange Act) of such broker or dealer that is a registered security-based swap dealer.

It is hereby further ordered, pursuant to Section 36 of the Exchange Act, that brokers and dealers are exempt from the requirements of Rules 8c–1 and 15c2–1 under the Exchange Act with respect to securities and money market instruments carried in a security-based swap account of a security-based swap customer; provided the account does not hold ''margin securities'' as defined in Rule 15c3–3 under the Exchange Act.

It is hereby further ordered, pursuant to Section 15(a)(2) of the Exchange Act and Rule 15a–1(b)(2) under the Exchange Act, that a security-based swap with or for an eligible contract participant whose terms are standardized to make the security-based swap eligible for central clearing shall be within the scope of an ''eligible OTC derivative instrument'' as defined in Rule 3b–13 under the Exchange Act.

It is hereby further ordered, pursuant to Section 15(a)(2) of the Exchange Act, that a registered OTC derivatives dealer also registered with the Commission as a security-based swap dealer or major security-based swap participant shall be exempt from Rule 15a–1(c) under the

[117] *See* 2011 Compliance Date Order, 76 FR at 36307. The Section 29(b) exemption related to exemptions from Exchange Act Sections 3E(f) and 15F(b)(6) provided in the 2011 Compliance Date Order expire on the compliance date for rules governing the registration of SBS Entities, which will be October 6, 2021. *See* Order Pursuant to Sections 15F(b)(6) and 36 of the Securities Exchange Act of 1934 Extending Certain Temporary Exemptions and a Temporary and Limited Exception Related to Security-Based Swaps, Exchange Act Release No. 75919 (Sep. 15, 2015), 80 FR 56519 (Sep. 18, 2015). The exemption from Exchange Act Section 6(l) provided in the 2011 Compliance Date Order expired 60 days after the August 13, 2012, publication of the Product Definitions Adopting Release in the **Federal Register**. *See* Order Extending Temporary Conditional Exemption in Connection with the Effectiveness of the Definition of Eligible Contract Participant, Exchange Act Release No. 67480 (Jul. 20, 2012), 77 FR 43878, 43879 (Jul. 26, 2012). In a later release, the Commission implied that the 2011 Compliance Date Order had specified that the Section 29(b) exemption related to this exemption from Section 6(l) would expire at the same time as the exemption from Section 6(l). *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596, 30700 n.1248 (May 23, 2012). Rather, the 2011 Compliance Date Order specified that this Section 29(b) exemption would expire on such date as the Commission specifies. *See* 2011 Compliance Date Order, 76 FR at 36307. Market participants thus may be uncertain whether this portion of the 29(b) exemption has expired.

[118] *See* 2011 Compliance Date Order, 76 FR at 36305.

[119] *See id.*

[120] *See* Cross-Border Adopting Release, 85 FR at 6345.

Exchange Act solely in connection with security-based swap transactions with or for an eligible contract participant and Rule 15a–1(d) under the Exchange Act solely in connection with communications and contacts with an eligible contract participant concerning a security-based swap transaction.

It is hereby further ordered, pursuant to Section 36 of the Exchange Act, that the Unlinked Temporary Exemptions from Section 8 of the Exchange Act and from Rules 8c–1, 15c2–1, 15a–1(c) and 15a–1(d) under the Exchange Act in connection with the revision of the Exchange Act definition of ''security'' to encompass security-based swaps, in each case contained in the 2011 Exchange Act Exemptive Order and extended in the January 2020 Extension Order, are extended until October 6, 2021.

It is hereby further ordered, pursuant to Section 36 of the Exchange Act, that the exemption from Section 29(b) of the Exchange Act contained in the 2011 Compliance Date Order shall expire on October 6, 2021.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–24598 Filed 11–4–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 69375, November 2, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, November 2, 2020 at 2 p.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, November 4, 2020 at 2 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: November 2, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–24665 Filed 11–3–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90292; File No. SR–CboeBZX–2020–070]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the –1x Short VIX Futures ETF, a Series of VS Trust, Under BZX Rule 14.11(f)(4) (Trust Issued Receipts)

October 30, 2020.

On September 4, 2020, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the –1x Short VIX Futures ETF, a series of VS Trust, under BZX Rule 14.11(f)(4) (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on September 23, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 7, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates December 22, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2020–070).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–24501 Filed 11–4–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89901 (September 17, 2020), 85 FR 59836.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90288; File No. SR–CboeBYX–2020–021]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Introduce Periodic Auctions for the Trading of U.S. Equity Securities

October 30, 2020.

On July 17, 2020, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce periodic auctions in U.S. equity securities. The proposed rule change was published for comment in the **Federal Register** on August 4, 2020.[3]

On September 10, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On October 27, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, and on October 28, 2020 the Exchange filed Amendment No. 2 to the proposed rule change, which replaced in its entirety the proposed rule change as modified by Amendment No. 1.[6] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89424 (July 29, 2020), 85 FR 47262 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 89820, 85 FR 57891 (September 16, 2020). The Commission designated November 2, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Comments on the proposal, including Amendments No. 1 and No. 2, can be found on the Commission's website at: *https://www.sec.gov/*

Commission has received two comment letters on the proposed rule change.[7] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, for interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce periodic auctions for the trading of U.S. equity securities. 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/byx/*), 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

This Amendment No. 2 to SR–CboeBYX–2020–021 amends and replaces in its entirety the proposal as originally submitted on July 17, 2020 and amended pursuant to Amendment No. 1 on October 27, 2020. The purpose of the proposed rule change is to introduce periodic auctions for the trading of U.S. equity securities (''Periodic Auctions'').[9] As proposed, Periodic Auctions of one hundred milliseconds would be conducted throughout the course of the trading day when there are matching buy and sell Periodic Auction Orders, as defined below, that are available to trade in such an auction. Periodic Auctions would not interrupt trading in the continuous market, and would be price forming auctions that are executed at the price level that maximizes the total number of shares in both the auction book and the continuous market that are executed in the auction. The Exchange's parent company, Cboe Global Markets, Inc. (''Cboe''), has been a global leader in the implementation of periodic auctions, and currently runs the largest periodic auction book for the trading of European equities. The proposed Periodic Auctions that the Exchange would implement are based on the model that Cboe offers to clients in Europe, with targeted changes to adapt this model for the U.S. equities market. The Exchange believes that its implementation of Periodic Auctions would enhance the ability for investors to source liquidity in all equity securities traded on the Exchange. As discussed below, this includes both equity securities that trade in lower volume (*i.e.,* ''thinly-traded securities'') where liquidity is naturally more scarce, but also more actively traded securities, including where available liquidity may be diminished due to increased volatility or other market conditions.[10]

Today, U.S. equities market participants are largely limited to two significant liquidity events where orders are pooled and executed at a single point in time—*i.e.,* the opening and closing auctions. During the rest of the trading day, liquidity may be more limited, particularly for market participants that are seeking to trade larger orders. As proposed, Periodic Auctions would offer a new price forming auction that could be utilized by investors seeking liquidity, including block-size liquidity, during the course of the trading day. The Exchange believes that concentrating available liquidity in Periodic Auctions that would take place when the Exchange has received matching auctionable buy and sell orders would assist investors in obtaining needed liquidity, particularly in the case of investors seeking to execute larger orders that would be difficult to execute without market impact in the continuous market. In addition, since the proposed Periodic Auctions would be price forming, these auctions would perform a valuable price discovery function, which may be particularly helpful for investors when trading securities that typically trade with wider spreads, including thinly-traded securities.

i. Commission Statement on Thinly-Traded Securities

On October 17, 2019, the Commission issued a Statement on Market Structure Innovation for Thinly Traded Securities (''Statement'').[11] The Statement requested comment on potential innovations that could improve market quality in thinly-traded securities, and sought further feedback on the regulatory changes that may be needed to facilitate such innovation. Cboe submitted a comment letter in response to the Statement on December 20, 2019.[12] As expressed in that comment letter, Cboe shares the Commission's interest in improving market quality in this segment of the U.S. equities market, and believes that the best way to accomplish this goal is through innovation and targeted approaches that invite investor choice.[13] At that time, Cboe suggested a handful of different approaches that national securities exchanges could take to improve market quality in thinly-traded securities, without requiring anti-competitive and ultimately harmful changes to U.S. equities market structure.[14] Following the submission of that comment letter, Cboe has continued to work on the design of potential market structure innovations that it could implement to improve market quality in thinly-traded and other securities that suffer from diminished market quality, consistent with the Commission's request. As a result of those efforts, the Exchange is now proposing to implement Periodic Auctions.

As discussed above, Periodic Auctions would be available in all securities traded on the Exchange, where it may benefit market participants and investors by providing a deeper

comments/sr-cboebyx-2020-021/srcboebyx2020021.htm.

[7] *See supra* note 6.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] The term ''Periodic Auction'' shall mean an auction conducted pursuant to Proposed Rule 11.25. *See* Proposed Rule 11.25(a)(4).

[10] As discussed in the following section, while Periodic Auctions would be available in all securities traded on the Exchange, the Exchange believes that this trading mechanism would be particularly valuable for securities that trade in lower volume and consequently suffer from wider spreads and less liquidity displayed in the public markets.

[11] *See* Securities Exchange Act Release No. 87327 (October 17, 2019), 84 FR 56956 (October 24, 2019) (File No. S7–18–19).

[12] *See* Letter from Adrian Griffiths, Assistant General Counsel, Cboe to Vanessa Countryman, Secretary, Commission dated December 20, 2019, *available at https://www.sec.gov/comments/s7-18-19/s71819-6574727-201085.pdf.*

[13] *Id.*

[14] *Id.*

pool of liquidity with which to trade, as well as providing important price discovery and other benefits. At the same time, the Exchange believes that the proposed introduction of Periodic Auctions would be particularly valuable in thinly-traded securities that currently suffer from diminished market quality compared to their more actively-traded counterparts. As expressed in Cboe's comment letter on the Commission's Statement, Cboe continues to believe that a successful approach to improving market quality in thinly-traded securities should focus on the difficulties that market participants face in trading these securities in the public markets today. In that letter, Cboe discussed three difficulties that market participants currently face in trading thinly traded securities: (1) Sourcing liquidity, (2) the availability of price improvement opportunities, and (3) the potential for significant market impact in securities that are less liquid and trade infrequently. As discussed later in this proposed rule change, the Exchange believes that Periodic Auctions would provide an effective means of addressing each of these issues, and may therefore serve to improve market quality in this currently underserved segment of the U.S. equities market. Further, the Exchange believes that Periodic Auctions, as designed, would provide a competitive mechanism for the execution of orders in thinly-traded securities, and may therefore bring order flow in such securities back into the public market, subject to fair access and pursuant to transparent exchange rules.

ii. Order Entry and Cancellation

The Exchange would offer Periodic Auction Only Orders and Periodic Auction Eligible Orders,[15] both of which indicate a member's desire to initiate a Periodic Auction, if possible, as well as Continuous Book Orders that would not initiate a Periodic Auction but would be eligible to participate in such an auction when it is executed.[16] Thus, as provided in Proposed Rule 11.25(b), Users may enter Periodic Auction Orders, *i.e.,* Periodic Auction Only Orders or Periodic Auction Eligible Orders,[17] that are eligible to initiate Periodic Auctions pursuant to Proposed Rule 11.25(c), as discussed later in this proposed rule change, and Continuous Book Orders that may participate in such Periodic Auctions if present on the Continuous Book at the time a Periodic Auction is executed. As explained in more detail below, the ability to choose between Periodic Auction Only Orders, Periodic Auction Eligible Orders, and Continuous Book Orders would allow members to control how their orders are handled in Periodic Auctions—*e.g.,* whether the order is able to initiate a Periodic Auction, or not, and whether the order participates on the Continuous Book, or not. The choice of different methods of participating in Periodic Auctions would therefore provide flexibility to members based on their individual business needs, or the needs of their customers. Regardless of the type of order submitted, orders entered on the Exchange that are present when a Periodic Auction is executed would generally be eligible to participate in that execution. The proposed introduction of Periodic Auctions would therefore benefit both Users explicitly seeking to use this functionality, as well as other Users that may benefit from any increased liquidity routed to the Exchange in order to participate in such Periodic Auctions.

General Requirements for Order Entry and Cancellation. Periodic Auction Orders and Continuous Book Orders may be modified and/or cancelled at any time, including during the Periodic Auction Period,[18] at the discretion of the User. Periodic Auctions are designed to allow seamless participation in a price forming auction process without impacting continuous trading, and market participants would therefore remain able to manage orders that they have entered to participate in such auctions during the course of the trading day. Since some Users may not wish to cancel Periodic Auction Orders inadvertently during the course of an ongoing Periodic Auction, however, the Exchange would provide an optional instruction that would allow such Users to instruct the Exchange not to cancel a Periodic Auction Order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price.[19]

Given that Periodic Auctions are designed, in part, to facilitate the sourcing of larger blocks of liquidity that may not be available in continuous trading, the Exchange would also implement certain size restrictions that would be applicable to Periodic Auction Orders. Specifically, Periodic Auction Orders would have to be for a size of 100 shares or more in securities priced below $500 based on the consolidated last sale price, *i.e.,* the last sale price that is disseminated by the securities information processor, or if no consolidated last sale price is available, the previous day's closing price.[20] There would be no similar size restrictions for higher-priced securities, where such a size requirement would require a higher notional value to participate in a Periodic Auction.[21]

Periodic Auction Only Orders. A ''Periodic Auction Only Order'' would be defined in proposed Rule 11.25(b)(1) as a Non-Displayed Limit Order entered with an instruction to participate solely in Periodic Auctions pursuant to Proposed Rule 11.25. The Periodic Auction Only Order is an optional order type that is designed for market participants that want to access liquidity that is available in one or more Periodic Auctions and do not wish to participate in the continuous market. As such, a Periodic Auction Only Order would not be eligible for execution on the Continuous Book. Instead, such orders would remain on the Periodic Auction Book for participation in Periodic Auctions until executed or cancelled.

Periodic Auction Only Orders would only be accepted with a time-in-force of Regular Hours Only (''RHO'') or

[15] A ''Periodic Auction Only Order'' is a Non-Displayed Limit Order entered with an instruction to participate solely in Periodic Auctions pursuant to Proposed Rule 11.25. A ''Periodic Auction Eligible Order'' is a Non-Displayed Limit Order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to Proposed Rule 11.25. *See* Proposed Rule 11.25(b)(1)–(2).

[16] The term ''Continuous Book Order'' shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term ''Continuous Book'' shall mean System's electronic file of such Continuous Book Orders. *See* Proposed Rule 11.25(a)(2).

[17] The term ''Periodic Auction Order'' shall mean a ''Periodic Auction Only Order'' or ''Periodic Auction Eligible Order'' as those terms are defined in Proposed Rules 11.25(b)(1)–(2), and the term ''Periodic Auction Book'' shall mean the System's electronic file of such Periodic Auction Orders. *See* Proposed Rule 11.25(a)(6).

[18] The term ''Periodic Auction Period'' would be defined in Proposed Rule 11.25(a)(8) as the fixed time period of 100 milliseconds for conducting a Periodic Auction.

[19] The Periodic Auction Book Price is an indicative price that is designed to provide information about the price where a Periodic Auction may ultimately be executed. *See infra* note 34. The instruction to ''lock-in'' a Periodic Auction Order would be included as a port setting that a User can use to flag any orders entered through a particular port. Users that wish to use this feature must use the port setting and would not be able to flag individual orders on an order-by-order basis.

[20] Periodic Auction Only Orders that do not meet applicable size requirements would be rejected. Periodic Auction Eligible Orders would be converted to Continuous Book Orders, and would be eligible to trade on the Continuous Book based on User instructions.

[21] For example, *Amazon.com,* Inc. (''AMZN'') closed at $3,531.45 on September 2, 2020. Requiring that a Periodic Auction Order in AMZN be for at least 100 shares would require that the User be willing to trade a notional value of $353,450. Given the large notional associated with such high-priced securities, the Exchange would not apply the proposed size requirement to securities priced at or above $500.

immediate-or-cancel (''IOC''). Specifically, Periodic Auction Only Orders entered outside of Regular Trading Hours must include a time-in-force of Regular Hours Only (''RHO'') as the Exchange would conduct Periodic Auctions only during Regular Trading Hours,[22] and not during the Early Trading,[23] Pre-Opening,[24] or After Hours Trading Sessions.[25] Periodic Auction Only Orders entered during Regular Trading Hours may be either RHO or immediate-or-cancel (''IOC''). If entered with a time-in-force of IOC, the order must include an instruction pursuant to Proposed Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price.[26] As previously discussed, with the inclusion of this instruction, an order that initiates a Periodic Auction would be considered ''locked-in'' and would not be cancellable by the entering User during the course of an ongoing Periodic Auction Period unless it is not marketable at the Periodic Auction Book Price. An IOC order entered with this instruction would therefore be able to immediately initiate a Periodic Auction on entry. And, if it does so, it would not be cancelled for the duration of the Periodic Auction Period, except in circumstances where the Periodic Auction Book Price indicates that the order might not be executable, thereby ensuring that Periodic Auction Only Orders entered with these attributes would ordinarily be eligible to participate in Periodic Auctions that they initiate.

The Exchange believes that the Periodic Auction Only Order may be particularly valuable for market participants that are seeking to execute larger orders that they may not be willing expose for trading on the Continuous Book. Thus, the Exchange would permit Users to specify a minimum execution quantity for their Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity would be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book Orders. The Exchange offers Minimum Quantity Orders to Users that trade on the Continuous Book today.[27] The proposed instruction that could be attached to a Periodic Auction Only Order is similar to the current Minimum Quantity Orders used for trading on the Continuous Book but would only permit the default handling of that order type, and would not allow a member to alternatively specify that the minimum quantity condition be satisfied by each individual contra-side order. Periodic Auction Eligible Orders and Continuous Book Orders entered as Minimum Quantity Orders would be subject to similar restrictions.

In addition, the Exchange believes that some Users may wish to use Periodic Auctions to seek liquidity at or better than a pegged price that is based on the applicable national best bid and offer (''NBBO''). The Exchange would therefore allow a User to optionally include an instruction on its Periodic Auction Only Orders to peg such orders to either the midpoint of the NBBO (''midpoint peg''), or the same side of the NBBO (''primary peg''). Similar to pegging instructions offered for Continuous Book Orders today,[28] Periodic Auction Only Orders entered with a primary peg instruction could be pegged to the NBB or NBO, or a certain amount above the NBB or below the NBO (''offset'').[29] The inclusion of a pegging instruction for Periodic Auction Only Orders would ensure that Users have the opportunity to specify that these orders are only executed at prices defined in relation to the market for the particular security, including midpoint executions that offer price improvement compared to the applicable NBBO.

Periodic Auction Eligible Orders. A ''Periodic Auction Eligible Order'' would be defined in Proposed Rule 11.25(b)(2) as a Non-Displayed Limit Order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to Proposed Rule 11.25. The Periodic Auction Eligible Order would allow market participants to trade in the continuous market during the course of the trading day, with the ability to also initiate Periodic Auctions when there is contra-side liquidity available to trade. The Exchange notes that there may be situations where an incoming Periodic Auction Eligible Order would be able to either initiate a Periodic Auction, or alternatively trade immediately with one or more orders resting on the Continuous Book. In such instances the Periodic Auction Eligible Order would trade immediately with the Continuous Book, thereby securing a guaranteed execution for the order. However, since Periodic Auction Eligible Orders are geared towards participation in Periodic Auctions, with attendant price discovery benefits and potential price improvement opportunities, such orders would not trade on the Continuous Book during a Periodic Auction Period in the security. Although the Exchange would not halt or otherwise suspend trading on the Continuous Book while conducting a Periodic Auction, the Exchange believes that Periodic Auction Eligible Orders that are designed for use in Periodic Auctions should generally preference trading in ongoing auctions over trading on the Continuous Book.

The time-in-force included on a Periodic Auction Eligible Order would also need to allow the order to be entered and remain on the Periodic Auction Book during the course of a Periodic Auction. As a result, there would be certain limitations on the entry of Periodic Auction Eligible Orders with a time-in-IOC or fill-or-kill (''FOK''). An IOC order is defined in BYX Rule 11.9(b)(1) as a limit order that is to be executed in whole or in part as soon as such order is received. Thus, under the ordinary terms of an IOC order, if such an order were to initiate a Periodic Auction, it would generally not be available for later execution at the end of any Periodic Auction Period. To ensure that IOC orders that initiate a Periodic Auction are eligible to participate in the auction's eventual execution, the Exchange therefore proposes that Periodic Auction Eligible Orders entered with a time-in-force of IOC must include an instruction pursuant to Proposed Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price.[30] Such Periodic Auction Eligible Orders would be handled in a manner consistent with that described above with respect to Periodic Auction Only Orders. Similarly, an FOK order is defined in BYX Rule 11.9(b)(6) as a limit order that

[22] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BYX Rule 1.5(w).

[23] The term ''Early Trading Session'' means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. *See* BYX Rule 1.5(ee).

[24] The term ''Pre-Opening Session'' means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* BYX Rule 1.5(r).

[25] The term ''After Hours Trading Session'' means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. *See* BYX Rule 1.5(c).

[26] Periodic Auction Only Orders will be rejected if they are entered with a time-in-force of IOC but do not contain an ''lock-in'' instruction pursuant to Proposed Rule 11.25(b).

[27] *See* BYX Rule 11.9(c)(5).

[28] *See* BYX Rule 11.9(c)(8)(A).

[29] Since Periodic Auctions are restricted from trading outside of the applicable Protected NBBO, the offset included on such orders would have to result in the order being more aggressive than the NBBO—*i.e.,* priced higher for buy orders or lower for sell orders.

[30] Periodic Auction Eligible Orders will be rejected if they are entered with a time-in-force of IOC but do not contain an ''lock-in'' instruction pursuant to Proposed Rule 11.25(b).

is to be executed in its entirety as soon as it is received and, if not so executed, cancelled. The Exchange is not proposing to support the use of FOK orders in Periodic Auctions, and therefore Periodic Auction Eligible Orders would not be able to be entered with a time-in-force of FOK.[31]

As previously explained, the Exchange believes that Users seeking liquidity in Periodic Auctions may wish to use such auctions to receive an execution at prices at or better than the midpoint of the NBBO. The Exchange currently offers functionality that allows members entering Mid-Point Peg Orders on the Continuous Book to forgo an execution in situations where the NBBO is locked.[32] However, in order to avoid a Periodic Auction from being initiated that may not ultimately result in an execution during a locked market, Mid-Point Peg Orders that are entered with an instruction to not execute when the NBBO is locked would not be eligible to be entered as Periodic Auction Eligible Orders.[33] This handling would mirror the handling of Periodic Auction Orders, which as proposed could be entered with a midpoint peg instruction, but would not include any further instructions that would allow the User to elect not to trade during a locked market.

Since the Exchange believes that Periodic Auctions may be beneficial to market participants trading larger orders that they may not want to be executed unless a specified minimum size can be satisfied, the Exchange would also allow for Minimum Quantity Orders to be entered as Periodic Auction Eligible Orders. As previously discussed, the Exchange currently offers two variants of this order type. By default, a Minimum Quantity Order would execute upon entry against a single order or multiple aggregated orders simultaneously. Alternatively, such orders may be entered with an instruction that the order not trade with multiple aggregated orders simultaneously, and that the minimum quantity condition instead be satisfied by each individual order resting on the Continuous Book. As proposed, Minimum Quantity Orders, as defined in Rule 11.9(c)(5), may be entered as Periodic Auction Eligible Orders only if the order includes the default instruction that allows the minimum size specified to be executed against one or more contra-side orders—*i.e.,* similar to the proposed handling of Periodic Auction Only Orders entered with a minimum execution quantity instruction. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order would not be eligible to be entered as Periodic Auction Eligible Orders. As discussed later in this proposed rule change, similar restrictions would also apply to Continuous Book Orders, which would not participate in Periodic Auctions if entered with this alternative instruction.

Finally, similar to the opening process used to begin trading in a security pursuant to BYX Rule 11.23: (1) Discretionary Orders, as defined in rule 11.9(c)(10), would be eligible to participate only up to their ranked price for buy orders or down to their ranked price for sell orders;[34] and (2) all Pegged Orders and Mid-Point Peg Orders, as defined in BYX Rule 11.9(c)(8) and (9), would be eligible for execution in Periodic Auctions based on their pegged prices. The Exchange believes that this proposed handling is equally relevant to Periodic Auctions, and would ensure, where appropriate, that the order handling experienced in such Periodic Auctions is familiar to members and investors.

Continuous Book Orders. A ''Continuous Book Order'' would be defined in Proposed Rule 11.25(a)(2) as an order on the BYX Book that is not a Periodic Auction Order. Continuous Book Orders, which may participate in the eventual execution of a Periodic Auction but would not be able to initiate such an auction, would be handled in the same manner as Periodic Auction Eligible Orders solely with respect to handling of (1) Discretionary Orders, and (2) Pegged Orders and Mid-Point Peg Orders, each as discussed in the preceding paragraph. Continuous Book Orders would also be subject to the handling discussed for Periodic Auction Eligible Orders entered as Minimum Quantity Orders, with the caveat that this handling would only apply to Continuous Book Orders entered with the default instruction that permits the execution of such orders against one or more contra-side orders. As proposed, similar to the treatment of Periodic Auction Orders—including both Periodic Auction Only Orders and Periodic Auction Eligible Orders—Continuous Book Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order would not be included in Periodic Auctions. However, rather than prohibiting Users from entering Minimum Quantity Orders with this instruction on the Continuous Book, where this instruction may still be valuable for investors, the Exchange would simply prohibit any orders entered with that instruction from participating in the execution of any Periodic Auctions. Finally, Continuous Book Orders that are entered as Reserve Orders, as defined in Rule 11.9(c)(1), would be eligible to participate in Periodic Auctions to the full extent of their displayed size and Reserve Quantity.[35]

iii. Initiation and Publication of Periodic Auction Information

The Exchange would conduct Periodic Auctions during Regular Trading Hours to give market participants an opportunity to obtain liquidity during the course of the trading day. Instead of initiating such auctions on a set schedule, the Exchange would wait until it has executable interest that is eligible to initiate a Periodic Auction, thereby ensuring that Periodic Auctions are only performed when it may be possible for interested market participants to obtain an execution at the end of the Periodic Auction Period. Specifically, as provided in Proposed Rule 11.25(c), a Periodic Auction would be initiated in a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to Proposed Rule 11.25.[36] This would begin a Periodic Auction Period of 100 milliseconds

[31] Although the Exchange is not proposing any special handling for IOC or FOK orders that are entered as Continuous Book Orders, the Exchange notes that such orders would not participate in Periodic Auctions as they would never be posted to the Continuous Book.

[32] *See* BYX Rule 11.9(c)(9).

[33] This restriction would not apply to Continuous Book Orders. Since Continuous Book Orders do not initiate Periodic Auctions, a Continuous Book Order entered with these instructions would be able to participate in the eventual execution of Periodic Auctions if such execution can take place in accordance with the terms of the order.

[34] The discretionary range of such orders would not be considered in Periodic Auctions.

[35] There are no similar requirements applicable to Periodic Auction Eligible Orders since Reserve Orders include a displayed portion and therefore would not be eligible for entry as Periodic Auction Eligible Orders. As discussed, Periodic Auction Eligible Orders, as defined, would include only Non-Displayed Limit Orders.

[36] As proposed, Periodic Auctions would operate alongside trading on the Continuous Book. The Exchange has therefore developed its system for processing Periodic Auctions with the goal of minimizing interference with trading in the continuous market. Thus, in rare circumstances where a number of Periodic Auctions could potentially be triggered at or around the same time, the Exchange may throttle the initiation of such Periodic Auctions if needed to maintain appropriate system performance and latency.

where the Exchange would match buy and sell orders for potential execution.[37]

Once the Periodic Auction Period has begun, the Exchange would consolidate any additional Periodic Auction Orders that it receives, which would be used to calculate the information disseminated at a randomized time thereafter in a Periodic Auction Message.[38] Specifically, at a randomized time in one millisecond intervals after a Periodic Auction has been initiated and before the end of the Periodic Auction,[39] the Exchange would disseminate via electronic means a Periodic Auction Message that includes two important pieces of information about the Periodic Auction: (1) The Periodic Auction Book Price,[40] and (2) and the total number of shares of Periodic Auction Orders that are matched at the Periodic Auction Book Price.[41] With these two pieces of information, market participants would be informed of both the price at which Periodic Auction Orders would match based on current market conditions, and the number of shares of such orders that would be matched. The calculation of the Periodic Auction Book Price would exclude Continuous Book Orders. Although Continuous Book Orders are eligible to trade in a Periodic Auction at the end of the Periodic Auction Period, they are potentially subject to execution on the Continuous Book prior to the execution of the Periodic Auction. As a result, similar to certain information disseminated by other national securities exchanges in advance of their auctions,[42] Continuous Book Orders would not be used to calculate the data elements included in the Periodic Auction Message. After its initial dissemination, a revised Periodic Auction Message would be disseminated in one millisecond intervals for the remaining duration of the auction, thereby ensuring that market participants maintain a current view of the market with which to make appropriate trading decisions throughout the Periodic Auction Period.

iv. Determination of Periodic Auction Price

Periodic Auctions are designed to facilitate meaningful price discovery in securities traded on the Exchange throughout the course of the trading day. Similar to the operation of opening and closing auctions in securities listed on the Exchange's affiliate, Cboe BZX Exchange, Inc. (''BZX''),[43] as well as similar auctions conducted on other national securities exchanges, Periodic Auctions would therefore be executed at a price that maximizes the number of shares traded in the auction within designated auction collars (''Collar Price Range'').[44] Specifically, as provided in Proposed Rule 11.25(d), the Periodic Auction Price would be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Periodic Auction Book in the Periodic Auction.[45]

The Exchange would also implement certain ''tie-breakers'' that would be used to determine the applicable Periodic Auction Price if multiple price levels would satisfy the requirement to maximize the number of shares executed in the auction. These tie-breakers would be the same as the tie-breakers currently used for opening and closing auctions on BZX for that exchange's listed securities. Specifically, in the event of a volume-based tie at multiple price levels, the Periodic Auction Price would be the price that results in the minimum total imbalance—*i.e.,* the price at which the number of any executable shares to buy or sell that do not participate in the Periodic Auction is minimized.[46] In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Price would be the price closest to the Volume Based Tie Breaker, which would be defined in Proposed Rule 11.25(a)(9) as the midpoint of the NBBO for a particular security where the NBBO is a Valid NBBO.[47]

v. Determination of Collar Price Range

As discussed, the Periodic Auction Price would be constrained by auction collars that are designed to ensure that the execution of a Periodic Auction takes place at a price that is reasonably related to the market for the security and consistent with applicable regulatory requirements. While Periodic Auctions are designed to balance supply and demand through a competitive auction process, the Collar Price Range would restrict trading from occurring at prices that are far away from the market. Specifically, as proposed, the term ''Collar Price Range'' would be defined in Proposed Rule 11.25(a)(1) as the more restrictive of the Midpoint Collar Price

[37] One relevant exception to this would be for Periodic Auctions that would otherwise end after the Regular Trading Session. As previously discussed, Periodic Auctions would only be conducted during Regular Trading Hours. As a result, such Periodic Auctions would be performed at the end of the Regular Trading Session.

[38] The ''Periodic Auction Message'' would be defined in Proposed Rule 11.25(a)(7) as a message disseminated by electronic means that includes information about any matched Periodic Auction Orders on the Periodic Auction Book, as described in Rule 11.25(c).

[39] With the randomization of sending the message, the initial Periodic Auction Message would be disseminated between 0 and 99 milliseconds following the initiation of the Periodic Auction—*e.g.,* immediately upon initiation, at the one millisecond mark, two millisecond mark, three millisecond mark, and so forth until the 99 millisecond mark. The specific time chosen would be entirely random for each Periodic Auction.

[40] The ''Periodic Auction Book Price'' would be defined in Proposed Rule 11.25(a)(5) as the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tie at multiple price levels, the Periodic Auction Book Price would be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Book Price would be the price closest to the Volume Based Tie Breaker. As calculated, the Periodic Auction Book Price would be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Book Price.

[41] Similar to the auction information disseminated by the Exchange's affiliate, BZX, for its opening and closing auctions, the Periodic Auction Message would be disseminated to market participants over the Exchange's proprietary depth-of-book market data feeds.

[42] For example, the ''Current Reference Price'' disseminated ahead of Nasdaq's closing cross is defined as the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired, subject to certain tie-breakers. *See* Nasdaq Rule 4754(a)(7)(A). Nasdaq does not include ''Close Eligible Interest'' entered on its continuous book in determining the Current Reference Price pursuant to Nasdaq Rule 4754(a)(7)(A), nor does it include such orders in its dissemination of the number of shares represented by MOC, LOC, and IO orders that are paired at the Current Reference Price. *See* Nasdaq Rule 4754(a)(7)(B).

[43] *See* BZX Rule 11.23(b)(2)(B); (c)(2)(B).

[44] The term ''Collar Price Range'' shall mean the more restrictive of the Midpoint Collar Price Range, as defined in Proposed Rule 11.25(a)(1), and the Protected NBBO. *See* Proposed Rule 11.25(a)(1). Notwithstanding the foregoing, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the Limit Up-Limit Down Plan, the Collar Price Range will be capped at such Price Bands. *Id.*

[45] The calculation of Collar Price Range, as defined in the Proposed Rule, is described in more detail in Section V of this proposed rule change. As calculated, the Periodic Auction Price would be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Price.

[46] Selecting a price that would minimize the imbalance best reflects the value of the security based on the auction's price discovery process because it is the price level where the amount of buy and sell interest is closest to equal.

[47] As is the case on the Exchange's affiliate, BZX, for opening and closing auctions for BZX-listed securities, a NBBO would be considered a Valid NBBO where: (i) There is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO as determined by the Exchange and published in a circular distributed to Members with reasonable advance notice prior to initial implementation and any change thereto. *See* BZX Rule 11.23(b)(23). Where the NBBO is not a Valid NBBO, the consolidated last sale price would be used. *Id.*

Range and the Protected NBBO.[48] The Collar Price Range would be similar to the auction collars used today for BZX's opening and closing processes, with important differences to account for the fact that Periodic Auctions would be subject to the requirements of the Rule 611 of Regulation NMS (''Order Protection Rule'') and the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down'' or ''LULD'' Plan). Specifically, Periodic Auctions would be subject to a Collar Price Range that is the more restrictive of the Midpoint Collar Price Range (described below) and the Protected NBBO. This implementation would therefore ensure that such Periodic Auctions are executed at a price that is consistent with the requirements of the Order Protection Rule as well as the additional protections provided by auction collars that are similar to those currently used by the Exchanges' affiliate, BZX, for opening and closing auctions in that exchange's listed securities. For all Periodic Auctions, the Exchange would calculate a Midpoint Collar Price Range to establish an upper and lower bound for the execution of such auctions. The Midpoint Collar Price Range would mirror the collars currently established for use in BZX auctions, and would be defined in Proposed Rule 11.25(a)(3) as the range from a set percentage below the Collar Midpoint to above the Collar Midpoint,[49] such set percentage being dependent on the value of the Collar Midpoint at the time of the auction. Specifically, the Collar Price Range would be determined as follows: (1) Where the Collar Midpoint is $25.00 or less, the Collar Price Range would be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; (2) where the Collar Midpoint is greater than $25.00 but less than or equal to $50.00, the Collar Price Range would be the range from 5% below the Collar Midpoint to 5% above the Collar Midpoint; and (3) where the Collar Midpoint is greater than $50.00, the Collar Price Range would be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint.

Finally, all Periodic Auctions would be conducted during Regular Trading Hours and therefore would be subject to the requirements of the LULD Plan. Generally, the LULD Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands. Consistent with the requirements of the LULD Plan, the Exchange would not execute Periodic Auctions at a price that is outside of the applicable Price Bands. Thus, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the LULD Plan, the Collar Price Range would be capped at such Price Bands.

vi. Priority and Execution of Orders

As discussed, Periodic Auction Orders and Continuous Book Orders that are executable at the end of the Periodic Auction Period would be executed at the Periodic Auction Price determined pursuant to Proposed Rule 11.25(d). Such orders would be executed in accordance with Proposed Rule 11.25(e), which describes the allocation model for Periodic Auctions. Generally, the allocation model described in this rule is intended to encourage active participation of Periodic Auction Orders, including participation of larger orders, while ensuring that Continuous Book Orders are also able to participate in resulting executions, as appropriate, in order to encourage continued liquidity on the Continuous Book. First, any displayed Continuous Book Orders that are executable at the Periodic Auction Price would be executed in price/time priority, thereby encouraging the continued submission of displayed orders. Second, after any displayed Continuous Book Orders have been executed, the Exchange would execute any Periodic Auction Orders that are executable at the Periodic Auction Price. Since Periodic Auctions are designed, in part, to facilitate the execution of larger orders, such Periodic Auction Orders would be executed in size/time priority, beginning with the largest order. Finally, any non-displayed Continuous Book Orders that are executable at the Periodic Auction Price would be executed pursuant the normal price-time priority allocation used for the execution of orders on the Continuous Book, as provided in BYX Rule 11.9(a)(2)(B). All Match Trade Prevention modifiers, as defined in BYX Rule 11.9(f), would be ignored as it relates to executions occurring during a Periodic Auction.[50]

Finally, the Exchange notes that, in certain rare circumstances, the inclusion of a minimum execution quantity on one or more Periodic Auction Orders and/or Continuous Book Orders could potentially result in the Exchange being unable to process a Periodic Auction in a timely manner. Thus, as provided in Proposed Rule 11.25(f), to prevent potential capacity and/or performance issues that may impact both the execution of the auction, as well as trading on Continuous Book, in such an event the Exchange would cancel the auction after a specified number of attempts. Specifically, to prevent potential capacity and/or performance issues, the Exchange will cancel a Periodic Auction at the end of the Periodic Auction Period if it is unable to successfully process such Periodic Auction according to Rule 11.25 after a number of attempts determined by the Exchange and published in a circular distributed to members.

vii. Regulatory and Other Considerations

The Exchange would also adopt rule language in the Interpretations and Policies to the proposed rule that describes how Periodic Auctions would be processed consistent with certain other regulatory obligations, including obligations related to member conduct, or otherwise to ensure transparent handling in certain specified circumstances. These rules would provide additional clarity and transparency to members and investors with respect to how the Exchange would process Periodic Auctions consistent with relevant obligations under the Exchange Act, or as otherwise necessary or appropriate to maintain a fair and orderly market on the Exchange.

First, as explained in Interpretations and Policies .01 to Proposed Rule 11.25, the Exchange would not conduct Periodic Auctions during a trading halt when such trading is prohibited. If a symbol is halted prior to the execution of a Periodic Auction that has already been initiated pursuant to Proposed Rule 11.25(c), the Periodic Auction would be immediately cancelled without execution, consistent with applicable limitations on trading during a halt.

[48] The term ''Midpoint Collar Price Range'' shall mean the range from a set percentage below the Collar Midpoint (as defined below) to above the Collar Midpoint, such set percentage being dependent on the value of the Collar Midpoint at the time of the auction, as described below. *See* Proposed Rule 11.25(a)(3). The ''Protected NBBO'' is the national best bid or offer that is a Protected Quotation. *See* BYX Rule 1.5(s).

[49] The Collar Midpoint would be the Volume Based Tie Breaker for all Periodic Auctions. As discussed later in this proposed rule change, the Volume Based Tie Breaker would generally be the midpoint of the NBBO, except where there is no Valid NBBO.

[50] The Exchange notes that its Match Trade Prevention features are designed for use on the Continuous Book, and may complicate the execution of an auction that requires the pooling and matching of multiple orders against other orders at a market clearing price.

Second, as explained in Interpretations and Policies .02 to Proposed Rule 11.25, a Periodic Auction would not be initiated during a Crossed Market. If the market becomes crossed during a Periodic Auction that has already been initiated pursuant to Proposed Rule 11.25(c), and remains crossed at the end of the Periodic Auction Period, the Periodic Auction would be cancelled without execution.[51] If the market subsequently becomes uncrossed, resting Periodic Auction Orders may trigger a Periodic Auction pursuant to Rule 11.25(c).

Third, Interpretations and Policies .03 to Proposed Rule 11.25 would detail the proposed handling of orders consistent with Regulation SHO. As proposed, all short sale orders designated for participation in the Periodic Auction would have to be identified as ''short'' or ''short exempt'' pursuant to Rule 11.10(a)(5). Rules 201(b)(1)(i) and (ii) of Regulation SHO generally requires that trading centers such as the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to: (i) Prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price; and (ii) impose this price restriction for the remainder of the day and the following day. So as to maintain compliance with Rule 201 of Regulation SHO, the Exchange would only execute short sale orders (*i.e.,* those not marked short exempt) if the execution would take place at a permissible price pursuant to Regulation SHO. Specifically, if a security is in a short sale circuit breaker, orders marked short will only trade in a Periodic Auction if the Periodic Auction Price determined pursuant to Rule 11.25(d) is above the national best bid.[52]

Finally, Interpretations and Policies .04 to Proposed Rule 11.25 would describe member conduct obligations with respect to the entry of Periodic Auction Orders. As proposed, Periodic Auction Orders must be entered with the intent to participate in Periodic Auctions. A pattern or practice of submitting orders for the purpose of disrupting or manipulating Periodic Auctions, including entering and immediately cancelling Periodic Auction Orders, would be deemed conduct inconsistent with just and equitable principles of trade. The Exchange would conduct surveillance to ensure that Users do not inappropriately enter Periodic Auction Orders for impermissible purposes, such as to gain information about other Periodic Auction Orders that are resting on the Periodic Auction Book, or otherwise disrupting or manipulating Periodic Auctions.

viii. Examples

The following examples illustrate the proposed operation of Periodic Auctions:

Periodic Auction Initiation

Example 1

NBBO: $10.00 × $10.10
Order 1: Buy 100 shares @ $10.05 Midpoint Peg—Periodic Auction Only/Eligible
Order 2: Sell 100 shares @ $10.05 Midpoint Peg—Periodic Auction Only/Eligible

Periodic Auctions are initiated when one or more Periodic Auction Orders to buy are matched with one or more Periodic Auction Orders to sell. Therefore, a Periodic Auction is initiated when Order 2 matches with Order 1.

Example 2

NBBO: $10.00 × $10.10
Order 1: Buy 100 shares @ 10.05 Midpoint Peg—Continuous Book Order
Order 2: Sell 100 shares @ 10.05 Midpoint Peg—Periodic Auction Eligible

A Periodic Auction is not initiated as Order 1 is a Continuous Book Order. Instead, Order 2, which is a Periodic Auction Eligible Order, would trade immediately with the Continuous Book and execute 100 shares against Order 1 at $10.05.

Example 3

NBBO: $10.00 × $10.10
Order 1: Buy 100 shares @ 10.05 Midpoint Peg—Periodic Auction Only
Order 2: Buy 100 shares @ 10.05 Midpoint Peg—Continuous Book Order
Order 3: Sell 100 shares @ 10.05 Midpoint Peg—Periodic Auction Eligible

A Periodic Auction is not initiated. Instead, Order 3, which is a Periodic Auction Eligible Order, would trade immediately with the Continuous Book and execute 100 shares against Order 2 at $10.05. Although Order 1 is available to initiate a Periodic Auction, a Periodic Auction Eligible Order would trade immediately with Continuous Book Orders on entry if it can do so instead of initiating a Periodic Auction.

Periodic Auction Initiation and Execution

Example 4

NBBO: $10.00 × $10.10
Order 1: Buy 150 shares @ $10.05 Midpoint Peg—Periodic Auction Only
Order 2: Sell 100 shares @ $10.05 Midpoint Peg—Continuous Book Order
Order 3: Sell 100 shares @ $10.05 Midpoint Peg—Periodic Auction Eligible

Auction Initiation: Order 1 is a Periodic Auction Only Order and Order 2 is a Continuous Book Order. As a result, when Order 2 is entered into the Exchange, it will not initiate a Periodic Auction or trade with Order 1 immediately. Instead, a Periodic Auction is initiated when Order 3 matches with Order 1.

Execution: After 100 milliseconds the Periodic Auction would end, and orders would be executed in the auction at a price of $10.05, which is the price at which the maximum number of shares can be executed. Order 1 is the only order to buy and would trade its full size of 150 shares. Between the available sell orders, Order 3, which is a Periodic Auction Eligible Order, would have priority over Order 2, which is a Non-Displayed Continuous Book Order. As a result, Order 3 would trade its full size of 100 shares, and Order 2 would receive a partial execution for 50 shares.

Example 5

NBBO: $10.00 × $10.01
Order 1: Buy 5,000 shares @ $10.01—Periodic Auction Only
Order 2: Sell 1,000 shares @ $10.01—Displayed Continuous Book Order
Order 3: Sell 2,000 @ $10.01—Non-Displayed Continuous Book Order
Order 4: Sell 3,000 @ $10.01—Periodic Auction Eligible

Auction Initiation: Order 1 is a Periodic Auction Only Order and Orders 2 and 3 are Continuous Book Orders. As a result, when Order 2 and 3 are entered into the Exchange, those orders will not

[51] The Exchange would not immediately cancel the auction as crossed markets are typically short-lived and the market may no longer be crossed at the end of the Periodic Auction Period, in which case the Exchange could successfully execute the auction.

[52] This restriction would not apply to orders marked short exempt, which are exempted from these restrictions pursuant to Rule 201(b)(1)(iii)(B) of Regulation SHO. Rule 201(b)(1)(iii)(B) of Regulation SHO provides that the policies and procedures required by the rule must be reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a price that is less than or equal to the current national best bid.

initiate a Periodic Auction or trade with Order 1 immediately. Instead, a Periodic Auction would be initiated when Order 4 matches with Order 1.

Execution: After 100 milliseconds the Periodic Auction would end, and orders would be executed in the auction at a price of $10.01, which is the price at which the maximum number of shares can be executed. Order 1 is the only order to buy and would trade its full size of 5,000 shares. Between the available sell orders, Order 2, which is a Displayed Continuous Book Order, would have priority over Order 4, which is a Periodic Auction Eligible Order that in turn has priority over Order 3, which is a Non-Displayed Continuous Book Order. As a result, Order 2 and Order 4 would each trade their full size of 1,000 shares and 3,000 shares respectively, and Order 3 would receive a partial execution for 1,000 shares.

Periodic Auction Price Calculation

Example 6

NBBO: $10.00 × $10.10
Order 1: Buy 500 shares @ $10.05 Non-Displayed—Periodic Auction Only
Order 2: Buy 300 shares @ $10.04 Non-Displayed—Continuous Book Order
Order 3: Sell 100 shares @ $10.04 Non-Displayed—Periodic Auction Eligible
Order 4: Sell 200 shares @ $10.04 Non-Displayed—Periodic Auction Eligible

Auction Initiation: A Periodic Auction would be initiated when Order 3 is entered into the Exchange and matches with Order 1.

Execution: After 100 milliseconds the Periodic Auction would end, and orders would be executed in the auction at a price of $10.05. In this example, there are two prices at which the maximum number of shares can be executed, i.e., $10.04 or $10.05. However, an execution at $10.04 would leave a 500 share buy-side imbalance, whereas an execution at $10.05 would leave a smaller 200 share buy-side imbalance due to the fact that Order 2 cannot participate at that price. As a result, the Periodic Auction Price would be $10.05, i.e., the price that minimizes the imbalance. Orders 3 and 4 would trade their full size of 100 shares and 200 shares, respectively, with Order 1.

Example 7

NBBO: $10.00 × $10.10
Order 1: Buy 500 shares @ $10.05 Non-Displayed—Periodic Auction Only
Order 2: Sell 200 shares @ $10.04 Non-Displayed—Periodic Auction Only

Auction Initiation: A Periodic Auction would be initiated when Order 1 and Order 2, which are both Periodic Auction Only Orders, match with each other.

Execution: After 100 milliseconds the Periodic Auction would end, and orders would be executed in the auction at a price of $10.05. In this example, there are two prices at which the maximum number of shares can be executed, i.e., $10.04 or $10.05, and in both cases there would be a buy-side imbalance of 300 shares. As a result, the Periodic Auction Price would be the price closest to the Volume Based Tie Breaker, i.e., the midpoint price of $10.05. Order 1 would trade 200 shares with Order 2.

Periodic Auction Message

Example 8

NBBO: $10.00 × $10.10
Order 1: Buy 500 shares @ $10.05 Midpoint—Periodic Auction Only
Order 2: Buy 300 shares @ $10.06 Midpoint—Periodic Auction Eligible
Order 3: Sell 800 shares @ $10.05 Midpoint—Periodic Auction Eligible
New NBBO: $10.02 × $10.10

Auction Initiation: A Periodic Auction would be initiated when Order 3 matches with Orders 1 and 2.

Auction Message: A Periodic Auction Message would be disseminated at a randomized time after the initiation of the auction, showing 800 shares matched at a price of $10.05. After a new NBBO is established, the midpoint orders would be re-priced to the new midpoint of $10.06, subject to their limit prices. As a result, Orders 2 and 3 would be re-priced to $10.06, while Order 1 would remain priced at $10.05 due to its lower limit price. The next Auction Message would therefore indicate 300 shares matched at a price of $10.06 due to the exclusion of Order 1 at the new midpoint.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[53] in general, and Section 6(b)(5) of the Act,[54] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would facilitate improved price formation and provide additional execution opportunities for investors, particularly in securities that may suffer from limited liquidity, including thinly-traded securities.

Periodic Auctions would supplement existing opening and closing auctions by consolidating buy and sell interest in a price forming auction when investors seek liquidity during the course of the trading day. Although liquidity is frequently available in size around the open and close of trading, liquidity may be more limited intraday. Thus, investors looking to trade in size may have issues getting their orders filled during the trading day, or may receive inferior execution quality due to the market impact of trading larger blocks of equity securities in a market with limited liquidity. As proposed, Periodic Auctions would allow the Exchange to consolidate volume from market participants, thereby increasing the liquidity available to investors. By creating a deeper pool of liquidity for the intraday execution of orders, including block-sized liquidity, the Exchange believes that members and investors would be able to secure better quality executions. In addition, Periodic Auctions would perform an important price discovery function, which the Exchange believes may be particularly valuable in thinly-traded securities that often trade with significantly wider spreads that negatively impact the ability for investors to ascertain market value,[55] as well as high-priced or other securities that may also trade with wider spreads today. The proposed introduction of Periodic Auctions would therefore contribute to a fair and orderly market in equity securities traded on the Exchange.

i. Periodic Auctions in Europe

The Exchange's affiliate, Cboe Europe, has had a successful history with periodic auctions in the European equities market, and the proposed introduction of Periodic Auctions for the trading of U.S. equity securities is based, in part, on the successful implementation of a similar product offered by Cboe Europe. As illustrated

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(5).

[55] *See* Letter from Adrian Griffiths, supra note 6, which illustrates the wider spreads that often impact trading in thinly-traded securities. The Exchange believes that Periodic Auctions would improve price discovery in securities that tend to trade with wider spreads. As explained in that letter, volume in thinly-traded securities often migrates to off-exchange venues where market participants can trade without publicly displaying their orders and while potentially minimizing market impact.

in Chart A, Cboe Europe's periodic auction book has grown to about 2%—2.5% of notional value traded on European equities exchanges since its introduction in October 2015. Indeed, such periodic auctions now account for an average daily value traded ("ADVT") of about €1 billion, with two months in Q1 2020 actually exceeding this threshold, reflecting the value that this offering has provided to market participants that trade European equities.

Chart A: Average Daily Value Traded in Cboe Europe Periodic Auctions

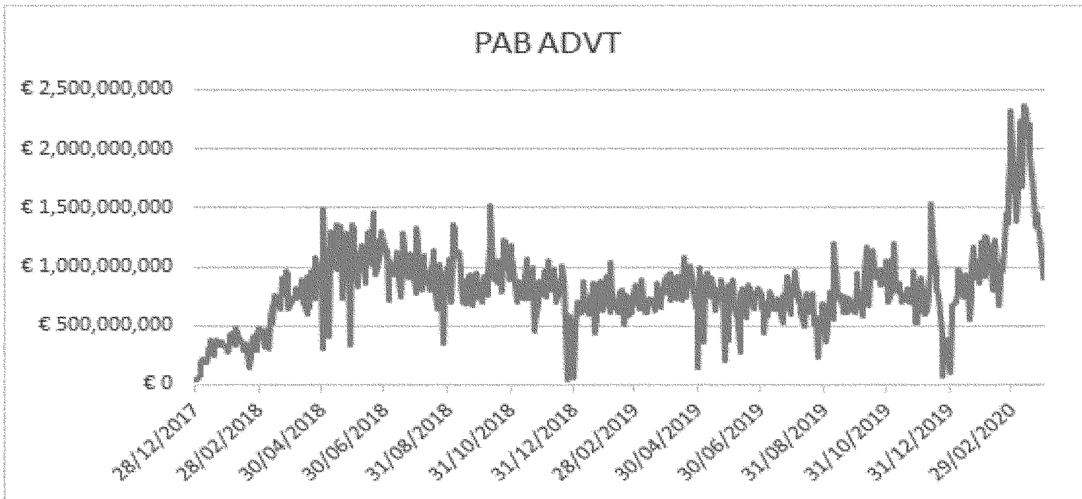

Chart B: Cboe Europe Periodic Auction Statistics

Month	Periodic Auction Value Traded		Periodic Auction Market Share % Notional Value Traded on Exchanges in EU
	Total Monthly	Average Daily	
Jan-20	€ 19,266,389,823	€ 875,883,628	2.42%
Feb-20	€ 24,377,313,487	€ 1,218,865,674	2.52%
Mar-20	€ 36,933,642,050	€ 1,678,801,911	2.46%
Apr-20	€ 18,370,457,305	€ 918,522,865	2.33%
May-20	€ 15,993,488,255	€ 761,594,679	2.13%
Jun-20	€ 18,221,339,811	€ 828,242,719	1.91%

This growth in Cboe Europe's periodic auction offering has promoted price improvement opportunities, with an analysis of periodic auctions conducted by Cboe Europe for Q1 2020 showing such periodic auctions trading about 85% of value traded at the midpoint. Although the Exchange recognizes that there are important differences in market structure between the U.S. and European equities markets, as well as relevant design differences between the two products, the Exchange believes that U.S. investors may receive similar benefits from its proposed introduction of Periodic Auctions. Moreover, the Exchange believes that such innovation should take preference over other regulatory approaches that may impede future innovation.

ii. Periodic Auction Proposal

As discussed in detail in the paragraphs that follow, Periodic Auctions are designed to improve the investor experience for market participants that trade U.S. equities, and the Exchange believes that this product may therefore contribute to a free and open market and national market system. Specifically, Periodic Auctions, as designed, would provide investors with an innovative mechanism with which to secure liquidity intraday, providing additional price improvement opportunities, and allowing market participants to reduce risks that may be associated with displaying orders on a traditional limit order book. As such, Periodic Auctions may improve market quality in U.S. equity securities traded on the Exchange, and these benefits may be even more pronounced in securities that currently trade with diminished market quality. The paragraphs that follow addresses each aspect of the Periodic Auction proposal in turn.

The Exchange believes that it is consistent with the protection of investors and the public interest to introduce Periodic Auction Only Orders and Periodic Auction Eligible Orders to facilitate trading in the Periodic Auctions. Use of these order types would be voluntary, and market participants would be able to determine whether and how to participate in Periodic Auctions using these order types. Specifically, while both forms of Periodic Auction Orders would be eligible to initiate Periodic Auctions, Periodic Auction Only Orders would allow firms to indicate that they are seeking liquidity solely in Periodic Auctions, while Periodic Auction Eligible Orders would allow firms to also seek liquidity on the Continuous Book before and after the execution of a Periodic Auction. The Exchange believes that it is appropriate to offer these two methods of initiating Periodic Auctions so that market participants can decide whether to use Periodic Auctions as the sole means of sourcing liquidity, or as an additional means of accessing liquidity if an order entered onto the Continuous Book has not been executed.

Periodic Auction Only Orders would provide a means for Users to indicate that they solely wish to have their order executed in a Periodic Auction. Since Periodic Auctions would only take place during the Regular Trading Session, Periodic Auction Only Orders would be accepted with a time-in-force of RHO (either during or outside of Regular Trading Hours), or IOC (solely during Regular Trading Hours). If entered with a time-in-force of IOC, a Periodic Auction Only Order would also have to be entered with an instruction to ''lock-in'' the order to avoid situations where a Periodic Auction Only Order initiates an auction and then is immediately cancelled prior to the execution of that auction. Periodic Auction Only Orders are not eligible to trade on the Continuous Book and therefore must include instructions that would allow the order to be executed in a Periodic Auction. The requirement to ''lock-in'' the order during the course of a Periodic Auction if the order is marketable at the Periodic Auction Book Price is designed to allow a User to specify that they are only interested in participating in a Periodic Auction if they can do so immediately, while ensuring that they are actually eligible to participate in the execution of that auction, if possible. Without this requirement, a Periodic Auction could be initiated even though the order responsible for initiating that auction, by its terms, would not be eligible to participate at the end of the Periodic Auction Period, which would potentially be to the detriment both of the User entering the order and any Users that submitted contra-side orders to trade with it under the assumption that such interest was available. The Exchange believes that the proposed requirements would benefit Users that are looking for a speedy execution in Periodic Auctions, while also ensuring that Periodic Auction Only Orders entered with a time-in-force of IOC can trade at the end of the Periodic Auction Period.

The Exchange would also allow Users to include certain specified instructions on their Periodic Auction Only Orders. Specifically, such orders would be accepted with minimum execution quantity and pegging instructions. The Exchange believes that the Periodic Auction Only Order may be particularly valuable for market participants that have larger orders to be executed in Periodic Auctions that they may not be willing expose for trading in the continuous market. As illustrated in Cboe's commenter letter in response to the Commission's statement on thinly-traded securities,[56] liquidity is often more limited in these securities, and as such market participants often look to off-exchange venues that may be able to meet their liquidity needs without displaying orders in the public market, thereby limiting the market impact of their trading activity. The Exchange believes that market participants that are looking for liquidity in size may find Periodic Auctions to be a valuable means of sourcing needing liquidity without the potential risks of displaying their orders for execution.

Given the potential benefits to larger orders, the Exchange would permit Users to specify a minimum execution quantity for their Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity would be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders. The Exchange offers a Minimum Quantity Order on the Continuous Book today. The proposed instruction that could be attached to a Periodic Auction Only Order is similar to the current Minimum Quantity Order but would only permit the default handling of that order type, and would not allow a member to alternatively specify that the minimum quantity condition be satisfied by each individual contra-side order. Periodic Auction Eligible Orders and Continuous Book Orders entered as Minimum Quantity Orders would be subject to a similar restriction.

In addition, in light of the fact that market participants often value midpoint executions, or may wish to receive executions at other prices based on the applicable national best bid or offer (''NBBO''), the Exchange would also allow Users to enter a pegging instruction for such orders. Periodic Auction Only Orders would therefore accommodate instructions that the order is to be pegged to either the midpoint or same side of the market. As is the case for orders entered for trading on the Continuous Book, Periodic Auction Only Orders entered with a primary peg instruction would be pegged to the NBBO, with or without an offset, provided that only aggressive offsets would be permitted given the fact that Periodic Auctions would be restricted to trading within the Protected NBBO and would not be eligible to trade at inferior prices. Although the Exchange would not generally offer special order handling instructions for Periodic Auction Only Orders, the Exchange believes that midpoint and primary peg instructions, as described, would allow Users to more accurately capture their trading intent, and may therefore promote more active use of Periodic Auctions as a means of sourcing liquidity for such orders.

With respect to Periodic Auction Eligible Orders, the Exchange would allow Users to include an instruction on non-displayed orders entered to trade on the Continuous Book that would allow such orders to initiate a Periodic Auction if executable against contra-side Periodic Auction Orders. The Exchange would not allow Users to enter displayed orders as Periodic Auction Eligible Orders as such Periodic Auction Eligible Orders would not be available for execution during an ongoing Periodic Auction. As a result, displayed orders, which are disseminated to the market and subject to firm quote requirements under Rule

[56] *See* Letter from Adrian Griffiths, supra note 6.

602(b)(2) of Regulation NMS,[57] would not be able to be entered as Periodic Auction Eligible Orders. However, such displayed orders could still participate in Periodic Auctions as Continuous Book Orders, and would receive execution priority when executed in that manner.

As discussed in the purpose section of the proposed rule change, the time-in-force included on a Periodic Auction Eligible Order would need to allow the order to remain executable during the course of a Periodic Auction. The Exchange has therefore proposed to: (1) Only allow IOC orders to be entered as Periodic Auction Eligible Orders if such orders include an instruction not to cancel the order during a Periodic Auction Period; and (2) disallow FOK orders from being entered as Periodic Auction Orders. The Exchange believes that both of these requirements are consistent with just and equitable principles of trade as they are designed to ensure that a Periodic Auction Eligible Order, which as discussed would be eligible for the initiation of a Periodic Auction, would not be prevented from participating in the eventual execution of such Periodic Auction due to a time-in-force that contemplates the order either being executed or cancelled immediately on entry. As discussed with respect to Periodic Auction Only Orders, without this requirement, a Periodic Auction could be initiated even though the order responsible for initiating that auction, by its terms, would not be eligible to participate at the end of the Periodic Auction Period, which would potentially be to the detriment both of the User entering the order and any Users that submitted contra-side orders to trade with it under the assumption that such interest was available.

Nevertheless, the Exchange believes that some Users may find it valuable to enter IOC orders as Periodic Auction Eligible Orders. Although such Users may be looking for a speedy execution, and would therefore generally prefer an execution on entry, or not at all, they may be willing to wait 100 milliseconds for a potential execution in a Periodic Auction, instead of having the order cancelled immediately. The Exchange would therefore allow Users to signal their intent to trade in this manner by entering the IOC order with an instruction that it should not be cancelled during a Periodic Auction. If entered in this manner, a Periodic Auction Eligible Order may trade immediately on entry on the Continuous Book, whether in full or in part, or may alternatively participate in a Periodic Auction, subject to cancellation no later than the end of any Periodic Auction Period. The Exchange does not anticipate the same use case for FOK orders, which contain an additional condition that requires the order to be executable in full, and would therefore restrict their ability to be entered as Periodic Auction Eligible Orders.

The Exchange would also not accept Mid-Point Peg Orders entered as Periodic Auction Eligible Orders if the Mid-Point Peg Order is entered with an instruction to not execute when the NBBO is locked. If the Exchange permitted Mid-Point Peg Orders with this instruction to be entered as Periodic Auction Eligible Orders, those orders could initiate a Periodic Auction but would not be available for the auction's eventual execution if the market subsequently becomes locked at that time. The Exchange believes that the proposed handling is consistent with just and equitable principles of trade as the Exchange wishes to avoid the potential for such orders to initiate a Periodic Auction that may ultimately not execute due to the inclusion of this condition. Periodic Auction Eligible Orders are designed to initiate Periodic Auctions and may encourage other Users to enter orders that could participate in the auction's execution. As a result, the Exchange believes that such orders should reflect trading interest that does not include unnecessary conditions. Users that wish to use Mid-Point Peg Orders with this instruction would still be eligible to participate in Periodic Auctions as Continuous Book Orders, which are able to participate in the eventual execution of a Periodic Auction, but would not initiate such auctions.

Similar to the proposed handling of Periodic Auction Only Orders, the Exchange would allow Periodic Auction Eligible Orders to be entered as Minimum Quantity Orders, but would only permit such orders to be entered with the default handling of that instruction. That is, Minimum Quantity Orders entered as Periodic Auction Eligible Orders would execute only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book Orders. Although the Exchange does offer an alternative instruction that permits the User to request that the Exchange only execute the order against a single contra-side order, such handling is designed primarily for use on the Continuous Book, and would complicate the execution of Periodic Auctions.[58] For similar reasons, Minimum Quantity Orders are excluded from the Exchange's opening process for securities traded pursuant to unlisted trading privileges. However, as discussed, the Exchange believes that Users participating in Periodic Auctions may value the ability to specify a minimum quantity, and the Exchange has therefore proposed to allow such functionality for Periodic Auction Eligible Orders so long as the User is willing for those orders to be executed against one or more contra-side orders. The Exchange believes that this strikes the right balance between allowing Users to ensure that they only trade in a Periodic Auction if their minimum quantity criteria can be met, while excluding instructions that could unnecessarily complicate the execution of Periodic Auctions.

In addition, the Exchange would specify handling for Discretionary Orders, Pegged Orders, and Mid-Point Pegged Orders that are entered as Periodic Auction Eligible Orders. Including this information in the rule would increase transparency around the operation of the Exchange and ensure that Users are properly informed about how orders with these instructions would be handled in Periodic Auctions. The same handling is currently applied to the Exchange's opening process for securities traded pursuant to unlisted trading privileges, and treating these orders in the same manner for purposes of Periodic Auctions would ensure a consistent and familiar experience for market participants that enter such orders on the Exchange. The Exchange therefore believes that these proposed rules are consistent the maintenance of a fair and orderly market.

The Exchange also believes that it is consistent with just and equitable principles of trade to allow Continuous Book Orders, *i.e.,* orders that are not entered as either Periodic Auction Only Orders or Periodic Auction Eligible Orders, to participate in any Periodic Auction that results in an execution. Although Continuous Book Orders would not initiate a Periodic Auction, such orders would be eligible to participate in the resulting execution, thereby facilitating additional liquidity for those orders without disrupting their ability to trade normally during the course of the auction. Continuous Book Orders would remain on the Continuous Book and subject to potential execution during a Periodic Auction Period, but would be included in the final determination of the Periodic Auction

[57] *See* 17 CFR 242.602(b)(2).

[58] *See* BYX Rule 11.23(a)(2).

Price, and participate in any resulting execution. Although the Exchange believes that a number of Users may wish to use Periodic Auction Orders that are specifically designed for participation in Periodic Auctions and have the ability to initiate those auctions, the Exchange also believes that Periodic Auctions would be valuable to Users that wish primarily to trade on the Continuous Book but may be able to secure an execution in a Periodic Auction if possible. As a result, Continuous Book Orders would generally be eligible to trade in Periodic Auctions at the end of the auction process, except in the case of Minimum Quantity Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order.[59]

Such Continuous Book Orders would be subject to similar handling to Periodic Auction Eligible Orders that may also trade on the Continuous Book in addition to Periodic Auctions, including the same handling discussed above with respect to Discretionary Orders, Pegged Orders, and Mid-Point Peg Orders. The Exchange believes that this handling is consistent with just and equitable principles of trade as it would ensure consistent treatment of similar orders traded in Periodic Auctions. In addition, Continuous Book Orders that are entered as Minimum Quantity Orders would be subject to similar but not identical handling to Periodic Auction Eligible Orders. Given the value of Minimum Quantity Orders that include the alternative instruction that allows a User to specify that the minimum size specified be satisfied by each individual contra-side order, Users would continue to be able to use this instruction for trading on the Continuous Book. However, such orders, which would not be permitted to be entered as Periodic Auction Orders, would similarly not be able to participate in Periodic Auctions as Continuous Book Orders. Users that wish to include a minimum quantity on their orders could participate in Periodic Auctions as either Periodic Auction Only Orders, Periodic Auction Eligible Orders, or Continuous Book Orders, provided that for each of these order types, the order must be willing to trade against one or more contra-side orders. As discussed, the Exchange believes that this treatment is necessary in order to offer a minimum quantity instruction in an auction that pools interest and executes such interest at a single price.

The Exchange also believes that the proposed handling of Continuous Book Orders entered as Reserve Orders is consistent with the maintenance of a fair and orderly market as it will ensure a familiar and consistent experience for market participants that trade on the Exchange. Although Periodic Auction Eligible Orders must be non-displayed and therefore cannot be entered as a Reserve Order that, by rule, includes both a displayed portion and non-displayed portion, the proposed handling for Continuous Book Orders is the same as the handling applied to the Exchange's opening process securities traded pursuant to unlisted trading privileges. Thus, similar to the treatment of Discretionary Orders, Pegged Orders, and Mid-Point Peg Orders, detailing the proposed handling of Reserve Orders would both increase operational transparency and ensure consistent and familiar treatment of similar orders on the Exchange.

Periodic Auctions would be initiated throughout Regular Trading Hours when Periodic Auction Orders entered by Users are executable against each other, thereby ensuring that the initiation of an auction is tied to demonstrated interest from both buyers and sellers in the security. Once the Exchange has matched two or more Periodic Auction Orders in this manner, a Periodic Auction Period of 100 milliseconds would begin to allow orders from additional market participants to participate in the execution of the Periodic Auction. The fixed 100-millisecond auction length is based on the maximum auction duration used for periodic auctions conducted by Cboe Europe today.[60] Based on the Exchange's affiliates experience operating auctions for the trading of European equities, the Exchange believes that the proposed auction length would facilitate the prompt processing and execution of Periodic Auctions, while continuing to provide time for interested market participants to enter orders to participate in the auction.

To facilitate the pooling of Periodic Auction Orders during this period, the Exchange would publish information about the auction, including (1) an indicative Periodic Auction Book Price that reflects price at which the Periodic Auction could be executed, counting only Periodic Auction Orders and excluding Continuous Book Orders that may be subject to execution prior to the end of the Periodic Auction Period; and (2) the total number of shares of Periodic Auction Orders that are matched at the Periodic Auction Book Price. This information would be published beginning at a randomized time in one millisecond intervals, and would be refreshed in one millisecond intervals thereafter as additional orders are entered or cancelled, or other changes to market conditions are made that could impact the Periodic Auction Book Price. The Exchange believes that it is consistent with the protection of investors and the public interest to publish this information as it may inform potential trading in periodic auctions and encourage additional order flow to be entered to participate in such auctions. The Exchange also believes that sending out the initial dissemination at a randomized time after Periodic Auction Orders have been matched would facilitate the operation of a fair and orderly market. This handling would allow additional Periodic Auction Orders received during this interim period to be pooled in the initial dissemination of auction information. In addition, since market participants would not know how much time is left in the Periodic Auction Period, firms would be incentivized to respond quickly with Periodic Auction Orders to participate in the Periodic Auction, rather than potentially waiting until the end of the auction, which may reduce the value of the information proposed to be disseminated to investors and may impact price discovery.

Once the 100 millisecond Periodic Auction Period has ended, the Exchange would calculate the execution price of the auction, *i.e.,* the Periodic Auction Price, and execute Periodic Auction Orders and Continuous Book Orders that are eligible to trade at that price. The Exchange believes that the proposed methodology for determining the Periodic Auction Price is consistent with just and equitable principles of trade. Generally, the proposed methodology for calculating the Periodic Auction Price is designed to allow Periodic Auctions to facilitate price discovery while maintaining important investor protections and assuring compliance with applicable regulations. Given the important price formation function of these auctions, the Exchange would use logic for pricing Periodic Auctions that largely mirrors the logic used by its affiliate, BZX, for

[59] As discussed in the following paragraph, such orders are not compatible with Periodic Auctions, and therefore would not participate in the execution of such auctions.

[60] Cboe Europe randomizes the length of the auction rather than its dissemination of the auction message. As a result, periodic auctions conducted by Cboe Europe would be for a maximum duration of 100 milliseconds, but could also be for a shorter duration.

opening and closing auctions in that exchange's listed securities.

Specifically, the Exchange would seek to execute Periodic Auctions at a price that maximizes the number of shares that can trade in the auction, subject to specified price collars that would limit executions at prices that are not reasonably related to the price of the security established by the market. The applicable price collars would also be based on the auction collars used for BZX opening and closing auctions, except that trading would be further limited by applicable LULD Price Bands and the Protected NBBO, as required pursuant to applicable regulatory requirements.[61] That is, the auction collars would generally be the same as those used for BZX auctions, but could be narrowed by applicable regulatory requirements.

Finally, the price calculation would be subject to tie-breakers that are consistent with those used for BZX opening and closing auctions in situations where there is a volume-based tie at multiple price levels. These tie-breakers would help ensure the selection of a meaningful Periodic Auction Price by selecting the price that would minimize the potential imbalance between supply and demand, and then favoring prices closer to a Volume Based Tie Breaker that is generally the midpoint of the NBBO. In sum, the proposed calculation of the Periodic Auction Price would allow the Exchange to appropriately balance supply and demand in Periodic Auctions and facilitate robust price formation similar to opening and closing auctions.

After the Exchange determines the Periodic Auction Price, any Periodic Auction Orders or Continuous Book Orders that are eligible for execution at that price would be executed based on a special allocation methodology designed for use in Periodic Auctions. First, in order to continue to incentivize the entry of displayed orders on the Exchange, Continuous Book Orders that are displayed on the Continuous Book would be executed first in price/time priority. Although the Exchange is proposing to introduce Periodic Auctions to incentivize additional liquidity, the Exchange believes that it is important to continue to encourage the entry of displayed orders on the Continuous Book. Displayed orders entered in the public market contribute to price formation, and are used as a reference price for the execution of orders on other venues. As a result, the Exchange's proposal to introduce Periodic Auctions is designed to continue to encourage the entry of displayed orders that would both trade on the Continuous Book and simultaneously benefit from priority when executed in a Periodic Auction.

Second, after Continuous Book Orders displayed on the Continuous Book have been executed, Periodic Auction Orders would be executed in size/time priority. As previously noted, the Exchange believes that Periodic Auctions may be valuable for investors that are seeking liquidity in size. As a result, the priority methodology employed by the Exchange for Periodic Auction Orders would preference larger orders, which the Exchange believes may contribute to greater depth in Periodic Auctions. In turn, the liquidity provided by these larger orders would contribute to the execution of smaller orders that may also participate in Periodic Auctions, thereby facilitating the execution of all orders, both large and small, that seek liquidity in such auctions, and furthering execution opportunities for investors that trade on the Exchange.

Finally, non-displayed Continuous Book Orders would be executed last in priority. Unlike displayed orders entered on the Continuous Book, or Periodic Auction Orders that contribute to important pricing information disseminated to market participants during the course of a Periodic Auction, non-displayed orders entered on the Continuous Book do not contribute to pre-execution price formation.[62] As a result, while these orders would be eligible to trade in Periodic Auctions, where they may benefit from additional execution opportunities, they would be subject to the lowest priority among Periodic Auction Orders and Continuous Book Orders. In addition, since these orders are not specifically seeking liquidity in Periodic Auctions, and would participate in Periodic Auctions solely as an additional source of liquidity, priority within this band would be determined based on the normal execution priority afforded to such orders on the Continuous Book. The Exchange believes that this approach is consistent with just and equitable principles of trade as it would ensure that non-displayed Continuous Book Orders receive the priority that they would normally be afforded for executions on the Continuous Book.

Similar to the Exchange's opening process for securities traded pursuant to unlisted trading privileges,[63] all Match Trade Prevention modifiers, as defined in BYX Rule 11.9(f), would be ignored as it relates to executions occurring during a Periodic Auction. The Exchange's Match Trade Prevention modifiers are designed to allow Users to better manage order flow and prevent certain undesirable executions on the Continuous Book. However, this functionality would complicate the processing of Periodic Auctions, where orders are pooled together and executed at a price that balances supply and demand in the auction. As a result, the Exchange believes that ignoring Match Trade Prevention modifiers in Periodic Auctions, similar to the handling currently used by the Exchange for its opening process, is consistent with the maintenance of a fair and orderly market in securities traded in such Periodic Auctions.

The Exchange also believes that it is consistent with the maintenance of a fair and orderly market to cancel a Periodic Auction that cannot be completed after a specified number of attempts communicated to members. As discussed in the purpose section of this proposed rule change, there may be rare circumstances where the inclusion of a minimum execution quantity on one or more Periodic Auction Orders and/or Continuous Book Orders may result in the Exchange being unable to process a Periodic Auction in a timely manner. To prevent potential capacity and/or performance issues that may impact both the execution of the auction, as well as trading on Continuous Book, the Exchange would cancel the auction after a specified number of attempts, as determined by the Exchange, rather than continuing to attempt to complete the auction *ad infinitum* when there may be no possibility for eventual execution, and no guarantee that such execution could be determined and processed in a timely fashion. While the Exchange believes that these situations are likely to be infrequent, the proposed handling would serve to eliminate certain potential performance issues, and including this language in the rule would add additional transparency around the operation of the Exchange.

Finally, the Exchange believes that the proposed language being codified in the Interpretations and Policies to the proposed rule is consistent with the

[61] As discussed in the purpose section of this proposed rule change, both the requirements of the LULD Plan and the Order Protection Rule apply to transactions executed during Regular Trading Hours. Although opening and closing auctions are generally exempt from these requirements, there are currently no exemptions that would apply to Periodic Auctions that perform a similar role in facilitating price discovery.

[62] Non-displayed orders would contribute to price formation at the end of a Periodic Auction as they would be considered in the determination of the Periodic Auction Price.

[63] *See* BYX Rule 11.23(b).

Exchange Act and the rules and regulations adopted thereunder. As proposed, these rules would include language that identifies how Periodic Auctions would be conducted during a crossed market, and consistent with applicable regulatory requirements related to handling of trading halts and Regulation SHO. Such rules would also describe appropriate standards of member conduct, consistent with the Exchange's obligations under the Act to regulate and surveil its market. The proposed rules included in Interpretations and Policies .01–.03 would ensure that: (1) Periodic Auctions do not take place when their execution may be complicated by the existence of a crossed market that could interfere with the auction's price discovery function, or when such execution would not be permissible due to a trading halt in a security; [64] and (2) the execution in Periodic Auctions of any short sale orders that are not marked ''short exempt'' would only take place at a permissible price when the security is in a short sale circuit breaker pursuant to Rule 201 of Regulation SHO. Further, the proposed rules included in Interpretations and Policies .04 would provide additional guidance to Users with respect to conduct that would be considered inconsistent with just and equitable principles of trade. The Exchange intends to conduct appropriate surveillance of its members to ensure that their participation in Periodic Auctions is done in a manner that is consistent with such rules. As a result, these rules would ensure that orders Periodic Auctions would be processed in a manner that is consistent with applicable regulatory obligations and the maintenance of a fair and orderly market in securities traded on the Exchange.

iii. Benefits for Thinly-Traded Securities

As mentioned in the purpose section of this proposed rule change, the Exchange believes that its proposed introduction of Periodic Auctions is responsive to the Statement that the Commission issued in October 2019 to address market quality concerns in thinly-traded securities.[65] Specifically, the Periodic Auction proposal is designed to improve liquidity and price formation in thinly-traded and other securities that suffer from diminished market quality, while also allowing the Exchange to better compete with off-exchange venues that currently offer features that investors may find beneficial for sourcing liquidity when displayed liquidity in the public markets is more scarce. Cboe offered its thoughts in response to the Statement in a comment letter submitted to the Commission on December 20, 2019. As stated in that comment letter, Cboe believes that innovation by national securities exchanges, rather than potentially harmful regulatory changes that favor a limited segment of the market, is what is ultimately needed to facilitate better market quality in thinly-traded securities. The Exchange believes that Periodic Auctions, as designed, are such an innovation, and would address the three main difficulties that market participants currently face in trading thinly traded securities: (1) Sourcing liquidity, (2) the availability of price improvement opportunities, and (3) the potential for significant market impact in securities that are less liquid and trade infrequently.

First, Periodic Auctions would assist investors in sourcing liquidity in the public markets by establishing meaningful liquidity events outside of the opening and closing auctions conducted by the primary listing exchanges. As proposed, Periodic Auctions would pool available interest from market participants and execute those orders in price forming auctions conducted at multiple points in time during the course of the trading day when there are matching Periodic Auctions to buy and sell. The Exchange therefore believes that Periodic Auctions would help investors to source liquidity, including block-size liquidity, that may be unavailable through continuous trading on a traditional limit order book. In addition, the Exchange has taken steps to encourage greater liquidity in Periodic Auctions, including prioritizing Periodic Auction Orders based on size, establishing minimum size requirements for auction participation, and supporting minimum execution size instructions in the auction. These features, in combination with other features that are designed to encourage participation in Periodic Auctions generally, may increase needed liquidity in thinly-traded securities.

Second, Periodic Auctions are designed to balance supply and demand and execute available interest at a single market clearing price that would benefit both buyers and sellers by providing potential price improvement opportunities. This price formation process is broadly beneficial, but would also be particularly beneficial in thinly-traded securities where spreads are typically wider and executing transactions at a market clearing price within the spread would allow for meaningful price improvement opportunities for investors that may otherwise have to seek those opportunities in the off-exchange market. Based on Cboe Europe's experience in operating periodic auctions for the European equities market, the Exchange believes that Periodic Auctions may facilitate significant price improvement, including midpoint executions, which as discussed account for about 85% of value traded in Cboe Europe's periodic auctions.

Third, Periodic Auctions are designed to minimize the risk of market impact of transacting in thinly-traded securities by providing a mechanism that allows market participants to trade, potentially in size, without the information leakage that may otherwise be associated with displaying orders to trade on a traditional limit order book. The Exchange believes that this may encourage additional participation in Periodic Auctions as market participants can avoid publicly showing their trading interest similar to their ability to do so in various off-exchange markets that currently trade significant volume in thinly-traded securities.

iv. Compliance With Other Regulatory Requirements

As discussed in more detail below, the Exchange also believes that the proposed rule change is consistent with other regulatory requirements, including the Order Protection Rule, the LULD Plan, and Rule 602 of Regulation NMS (*i.e.,* the ''Quote Rule'').

First, with respect to compliance with the Order Protection Rule, the Exchange's proposed auction collars would, as previously discussed, limit trades to prices that are within the Protected NBBO. As discussed in the purpose section of this proposed rule change, the Order Protection Rule applies to transactions executed during Regular Trading Hours. Although opening and closing auctions are generally exempt from these requirements,[66] there are currently no exceptions that would apply to Periodic Auctions that perform a similar role in facilitating price discovery. The Exchange would therefore not execute

[64] Although Rule 611(b)(4) of Regulation NMS provides an exception from the trade-through requirements of that rule for situations where a protected bid is crossed with a protected offer, the Exchange believes that market participants may not desire an execution in a Periodic Auction during periods when the market is crossed.

[65] *See* supra note 5.

[66] Rule 611(b)(3) of Regulation NMS provides an exception to the requirements of the Order Protection Rule where the transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center.

Periodic Auctions at prices that are inconsistent with the requirements of that rule. Generally, the Order Protection Rule requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks, unless an exception applies. A ''trade-through'' is defined in Rule 600(b)(81) of Regulation NMS as the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer. The proposed auction collars would be applied at the time of *execution,* and would therefore prevent trades from occurring at prices that would constitute a trade-through at the time the Periodic Auction is processed, consistent with the requirements of the Order Protection Rule.

Similarly, with respect to compliance with the LULD Plan, the Exchange's proposed auction collars would also limit trades to prices that are within the LULD Price Bands established pursuant to that national market system plan. As is the case with the Exchange's utilization of the Protected NBBO in setting applicable auction collars, the LULD Price Bands would be used as an additional collar on Periodic Auctions, and would ensure that all transactions that result from a Periodic Auction would be executed within the applicable LULD Price Bands at the time the Periodic Auction is processed. The Exchange would not execute Periodic Auctions at prices that are inconsistent with the LULD Plan.

The Exchange also believes that the proposed rule change is consistent with the Quote Rule. Generally, the firm quote provisions of the Quote Rule require each responsible broker or dealer to execute an order presented to it, other than an odd lot order, at a price at least as favorable as its published bid or published offer, in any amount up to its published quotation size. Periodic Auction Orders, including both Periodic Auction Only Orders that trade solely in Periodic Auctions and Periodic Auction Eligible Orders that may also trade on the Continuous Book, would at all times be non-displayed, and therefore would not trigger the firm quote requirements of the Quote Rule. That is, there would be no ''published bid'' or ''published offer'' displayed to market participants that would be required to be ''firm'' under the Quote Rule.

Similarly, the introduction of Periodic Auctions alongside trading on the Continuous Book would not result in violations of the Quote Rule. The Exchange would not halt or otherwise suspend trading on the Continuous Book while conducting a Periodic Auction. As a result, Continuous Book Orders entered to trade with the Exchange's published quotation would continue to be able to do so in the same manner that they do today, notwithstanding the introduction of Periodic Auctions to be conducted throughout the course of the trading day. The Exchange has designed its system for trading Periodic Auctions to minimize unnecessary latency, and therefore does not believe that the introduction of Periodic Auctions would impair the ability of the Exchange to execute incoming orders entered on the Continuous Book against its published bids or offers. The Exchange will continue to monitor system performance and latency after the introduction of Periodic Auctions to ensure that it is able to process both Periodic Auctions and Continuous Book Orders efficiently and without undue latency.

In addition, the Exchange would continue to handle events processed by the matching engine in sequence, and a Continuous Book Order that is included in the Exchange's published bid or offer would trade with incoming Continuous Book Orders unless the Periodic Auction is processed prior to the matching engine's receipt of the incoming Continuous Book Order. Such executions would not run afoul of the firm quote requirements of the Quote Rule as Rule 602(b)(3) of Regulation NMS contains an explicit exemption from these requirements for broker-dealers that are in the process of effecting a transaction in that security at the time the incoming order is ''presented'' to the broker-dealer for potential execution.

Finally, the Exchange's published quotations would continue to be considered ''automated quotations'' as defined in Rule 600(b)(4) of Regulation NMS. As discussed with respect to compliance with the Quote Rule, the Exchange has designed its system for trading Periodic Auctions to minimize unnecessary latency, and therefore does not believe that the introduction of Periodic Auctions would impair the ability of the Exchange to execute incoming orders entered on the Continuous Book against its published bids or offers. In this regard, the Exchange represents that any additional latency on the Continuous Book that may result from the proposed introduction of Periodic Auctions would not be material from the perspective of compliance with the Order Protection Rule. Under Regulation NMS, an ''automated'' quotation is one that, among other things, can be executed ''immediately and automatically'' against an incoming immediate-or-cancel order. Although the Commission's recent guidance related to automated quotations has focused on the introduction of intentional delay mechanisms or ''speed bumps,''[67] which present different and more complex issues under Regulation NMS, the Exchange believes that its proposed implementation of Periodic Auctions would not frustrate the purposes of the Order Protection Rule by ''impairing fair and efficient access'' to the Exchange's quotations. In this regard, the Exchange notes that it has engaged in substantial testing of its Periodic Auction product and, based on that testing, believes that any additional latency that may be experienced on the Continuous Book as a result of the introduction of its Periodic Auction product would be minimal and *de minis* from the perspective of the Order Protection Rule.[68]

v. Compliance With Section 11(a) of the Exchange Act

The proposed rule change is also consistent with Section 11(a)(1) of the Act[69] and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account with respect to which the member or a person associated with the member exercises investment discretion (collectively referred to as ''covered accounts''), unless a specific exemption is available. Rule 11a2–2(T) under the

[67] *See* Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785 (June 23, 2017) (File No. S7–03–16) (''Commission Interpretation'').

[68] Although the Commission refused to enumerate a numeric latency threshold for an intentional delay that is sufficiently *de minimis* for the purposes of the Order Protection Rule, the Staff of the Division of Trading and Markets has issued guidance stating the Staff's belief that delays of less than one millisecond would qualify as *de minimis. See* Staff Guidance on Automated Quotations under Regulation NMS (June 17, 2016), *available at https://www.sec.gov/divisions/marketreg/automated-quotations-under-regulation-nms.htm.* While the Exchange's proposal would not introduce an intentional delay, the Exchange's testing indicates that any additional latency that may result from the proposed introduction of Periodic Auctions would be well within this threshold.

[69] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

Act,[70] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition.

The ''Effect vs. Execute'' exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[71] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule. For the reasons set forth below, the Exchange believes that members entering orders into Periodic Auctions would satisfy the requirements of Rule 11a2–2(T), and that the proposal is therefore consistent with Section 11(a) of the Act and the rules thereunder.

The first condition of Rule 11a2–2(T) is that orders for covered accounts be transmitted from off the exchange floor. The Exchange's system, including the proposed system for processing Periodic Auctions pursuant Proposed Rule 11.25, would continue to receive orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if an order for a covered account is transmitted from a remote location directly to an exchange by electronic means.[72] Because the Exchange's system for handling Periodic Auctions would receive orders from members electronically through remote terminals or computer-to-computer interfaces, the Exchange believes that orders submitted to a Periodic Auction electronically would satisfy the off-floor transmission requirement.

The second condition of Rule 11a2–2(T) requires that neither a member nor an associated person of such member participate in the execution of its order. The Exchange represents that Periodic Auctions would be executed automatically pursuant to the rules set forth in Proposed Rule 11.25, which would govern the operation of Periodic Auctions. In particular, the execution of a member's orders in a Periodic Auction would depend not on the member entering the order, but rather on what other orders are present, the priority of those orders, and the remaining duration of any Periodic Auction in the security. Thus, at no time following the submission of an order is a member or associated person of such member able to acquire control or influence over the result or timing of order execution.[73] Once an orders has been transmitted, the member that transmitted the order will not participate in its eventual execution.

The third condition of Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[74] The Exchange represents that the Periodic Auctions are designed such that no member has any special or unique trading advantage in the handling of any orders that are processed in Periodic Auctions after transmitting such orders to the Exchange.

Finally, the fourth condition of Rule 11a2–2(T) requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[75] The Exchange recognizes that members relying on Rule 11a2–2(T) for transactions effected through a Periodic Auction must comply with this condition of the Rule, and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

vi. Conclusion

In conclusion, the Exchange believes that the proposed rule change would enhance the experience of investors looking to access liquidity in the public market and fill an important role in the U.S. equities market where liquidity may be more limited outside of the open and close of trading. By introducing a price forming auction for the aggregation and execution of buy and sell orders intraday, Periodic Auctions would increase execution opportunities available to investors. In turn, Periodic Auctions may improve trading outcomes for market participants that have trouble sourcing liquidity in the public markets today, including in thinly-traded securities where liquidity is often limited and trading often occurs on a number of off-exchange venues that can offer reduced market impact. As such, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market.

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. Rather, the proposed rule change is designed to increase competition by introducing an

[70] 17 CFR 240.11a2–2(T).

[71] The member may, however, participate in clearing and settling the transaction.

[72] *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[73] Users may modify and/or cancel their Periodic Auction Orders at any time unless the User has elected to use the proposed ''lock-in'' feature. *See* Proposed Rule 11.25(b). The Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the ''1978 Release'').

[74] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[75] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release, at 11548 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

additional mechanism for equities market participants to seek liquidity during the course of the trading day. Indeed, the proposed introduction of Periodic Auctions is a pro-competitive means of addressing the concerns that the Commission expressed in its Statement on thinly-traded securities. The proposal, which seeks to introduce innovative functionality on a non-primary listing exchange, would allow competition, rather than regulatory intervention designed to limit competition (*e.g.,* through the suspension or termination of unlisted trading privileges), to improve market quality in thinly-traded and other securities.

The introduction of Periodic Auctions is designed to improve execution quality for investors sourcing liquidity during the trading day, and, in particular, those that are looking to trade in size, or are looking to access liquidity in thinly-traded or other securities where liquidity may be more scarce. Providing an additional mechanism for price forming orders to be executed would promote competition between venues that seek to execute this order flow, and provide market participants and investors with greater choice with respect to how they choose to source liquidity. The equities industry is fiercely competitive as the Exchange must compete with other equities exchanges and off-exchange venues for order flow. The proposal is both evidence of this competition, and would further enable the Exchange to compete effectively in this market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received on the proposed rule change.

III. Comments on the Proposed Rule Change

The Commission received two comment letters regarding the proposal. One commenter opposes the proposed rule change. The commenter expressed concern that the contemplated intraday periodic auctions would (1) harm market quality, including execution quality, price discovery, and liquidity; (2) increase market fragility during volatile market conditions; and (3) contribute to market disruptions—all while adding unnecessary complexity to the market.According to the commenter, the proposed periodic auction would be a complex new mechanism for non-displayed, dark transactions. The commenter stated that the periodic auctions might harm the market ecosystem and decrease the quality of overall liquidity (*i.e.,* wider bid-ask spreads and decreased posted size), and asserted that it is necessary to conduct a comprehensive and quantitative analysis to understand the impact of the auctions before implementing them. More generally, the commenter stated that new matching protocols and order types impose costs because market participants are forced to analyze the impact these innovations.

Another commenter stated that it is awaiting clarification from the Exchange regarding the mechanics of the proposed auctions. In particular, the commenter said that it is waiting for the Exchange to issue a set of frequently asked questions and, once it is, the commenter will determine whether to comment on the proposal.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBYX–2020–021 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [76] to determine whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,[77] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of and input concerning the consistency of the proposed rule change, as modified by Amendment No. 2, with the Exchange Act and in particular: (1) Section 6(b)(1) of the Exchange Act, which requires (among other things) that a national securities exchange be organized and have the capacity to comply with the Exchange Act and the rules thereunder; (2) Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;'' [78] (3) Section 10(a) of the Exchange Act; [79] (4) Section 11A of the Exchange Act; [80] and (5) Regulation NMS under the Exchange Act.[81]

The proposed Periodic Auctions would operate simultaneously with the Continuous Book and could incorporate orders entered on the Continuous Book. The Exchange states that, based on testing it has conducted, it believes that the Periodic Auction would cause additional latency in the Continuous Book.[82] Do commenters believe that the Exchange has provided sufficient information regarding any additional latency in the Continuous Book that may be caused by the proposed Periodic Auctions or how the Exchange intends to address or otherwise minimize such latency? Is there additional information that commenters believe would be useful in assessing the impact that additional latency may have on trades executed either on the Continuous Book or in the proposed Periodic Auctions? If so, what additional information should the Exchange provide?

Has the Exchange provided sufficient information regarding how quotations subject to Regulation SHO under the Exchange Act would be treated in the proposed Periodic Auctions? Is there additional information the Exchange should provide regarding Regulation SHO requirements? [83]

Is there other information regarding the operation of the proposed Periodic Auctions that commenters believe would be useful for the Exchange to provide in support of its proposal?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [84] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis

[76] 15 U.S.C. 78s(b)(2)(B).

[77] *Id.*

[78] 15 U.S.C. 78f(b)(5).

[79] 15 U.S.C. 78j(a). *See also* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232, 11235 (March 10, 2010) (''Section 10(a) of the Exchange Act gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as necessary or appropriate in the public interest or for the protection of investors'').

[80] 15 U.S.C. 78k–1.

[81] 17 CFR 242.600–602.

[82] The Exchange states that any latency caused by the proposed Periodic Auctions would be ''well within'' one millisecond. *See* Amendment No. 2, *supra* note 6, at 56, n.62.

[83] 17 CFR 240.200–203.

[84] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[85]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[86]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 27, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 10, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 2, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

[85] *See id.*

[86] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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–CboeBYX–2020–021 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–CboeBYX–2020–021. 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–CboeBYX–2020–021 and should be submitted by November 27, 2020. Rebuttal comments should be submitted by December 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–24495 Filed 11–4–20; 8:45 am]

BILLING CODE 8011–01–P

[87] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90296; File No. SR–NYSEArca–2020–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend NYSE Arca Rule 8.601–E To Adopt Generic Listing Standards for Active Proxy Portfolio Shares

October 30, 2020.

On August 31, 2020, NYSE Arca, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rule 8.601–E to adopt generic listing standards for Active Proxy Portfolio Shares. The proposed rule change was published for comment in the **Federal Register** on September 21, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 5, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates December 20, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2020–77).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89874 (September 15, 2020), 85 FR 59338.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–24496 Filed 11–4–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90290; File No. SR–ICEEU–2020–013]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Investment Management Procedures

October 30, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2020, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

ICE Clear Europe proposes to amend its Investment Management Procedures (the ''Procedures'') to make certain clarifications and updates with respect to permissible investments, as further described herein. The revisions would not involve any changes to the ICE Clear Europe Clearing Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

ICE Clear Europe is proposing to adopt the amendments to the Procedures to clarify the requirements for investment of customer funds provided by FCM/BD Clearing Members, in light of the expansion of permitted investments to include qualifying Euro-denominated non-U.S. sovereign debt pursuant to an exemptive order issued by the Commodity Futures Trading Commission (the ''CFTC Order'').[4] The amendments would also remove certain credit rating requirements for government bonds, clarify certain matters relating to the use of central bank deposits and update certain portfolio concentration limits in light of market conditions.

ICE Clear Europe is proposing to amend the investment management objectives to clarify that the references to cash subject to investment under the Procedures are not intended to refer to ICE Clear Europe's corporate cash held for operating purposes and not for meeting skin-in-the-game contributions, regulatory capital or other purposes connected to treasury activities in connection with the management of Clearing Member margin or guaranty fund contributions. This is consistent with current practice.

In the discussion of overall investment considerations, the amendments would clarify that the overall goal that non-overnight investments should have a variety of maturity dates is not necessarily applicable in all cases (such as investments in bank deposits). Further, the description of how futures commission merchant (''FCM'') customer funds may be invested would be amended to permit investments in cash deposits, to clarify that direct purchases with U.S. dollar cash are limited to U.S. sovereign bonds and to provide that direct purchases with Euro cash may be made in French and German sovereign bonds as permitted in the CFTC Order. The requirement that no more than 5% of the investible funds should be held as unsecured cash would be clarified to state that the calculation would be made over an averaging period of one calendar month. Certain other typographical and similar corrections would be made to this section.

The table of authorised investments and concentration limits for cash from Clearing Members and Clearing House ''Skin In The Game'' would be amended such that: (i) Instead of stating that the maximum issuer/counterparty concentration limit is 15% of the total EUR balance in a single government issuer, there would be no limit for French/German government bonds and the 15% limit would apply for government bonds issued by Belgium and the Netherlands; and (ii) an additional concentration limit for EU government bonds would be imposed at 20% of the total EUR balance in a single issue for German or French government bonds and 10% of the total EUR balance in a single issue for Belgian or Dutch government bonds. For investments of FCM customer funds in EU government bonds, additional criteria would apply as set out in the CFTC Order. With respect to central bank deposits, the Federal Reserve and the European Central Bank (''ECB'') would be added to the list of allowed central banks. While ICE Clear Europe does not necessarily have access to deposits at such central banks at this time, the amendment is intended to allow for possible future developments.

The amendments would add an additional category to the table of authorised investments and concentration limits for regulatory capital for commercial bank deposits with unsecured cash limits to be set separately for financial service providers, the maximum portfolio concentration limit being no more than 5% of the total investible funds in unsecured cash on average each calendar month, the maximum maturity being overnight and the minimum credit ratings being A–1/P–1.

The acceptable collateral table for reverse repurchase agreements would be amended to add GBP and EUR agency bonds with AA-/Aa3 credit ratings and a 2% haircut. The credit rating requirement (currently (AA-/Aa3) would be removed for UK and US sovereign bonds. The amendments would also specify that for FCM customer funds invested in EUR reverse repo, only collateral meeting the requirements of the CFTC Order would be accepted.

The Glossary section would be updated such that central banks would be added to the definition of Permitted Depositories for FCM Customer Funds where the CFTC has provided the relevant exemption to ICE Clear Europe.

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[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

[4] Order Granting Exemption From Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and From Certain Related Commission Regulations, 83 FR 35241 (July 25, 2018).

A definition of Permitted Purchases of Euro denominated debt for FCM Customer Funds would be added to set forth the restrictions and conditions on investment of FCM customer funds in euro denominated sovereign debt issued by the French Republic and the Federal Republic of Germany under the CFTC Order.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are intended generally to clarify the Clearing House's criteria for investments of cash provided by Clearing Members and certain other cash held by the Clearing House, including to take advantage of the authorization under the CFTC to invest FCM customer funds in qualifying Euro-denominated sovereign debt. The amendments would also clarify the permitted use of commercial and central bank deposits margin, remove unnecessary rating requirements for UK and US sovereign debt under reverse repurchase agreements, and update certain concentration and similar limits. Overall, in ICE Clear Europe's view, the amendments would provide appropriate flexibility for investment of cash balances while remaining consistent with regulatory requirements. The amendments would thus facilitate ongoing investment risk management by the Clearing House and facilitate the Clearing House's ability to meet its short-term financial obligations in the event of clearing member defaults or other liquidity stress events. These amendments would therefore promote overall Clearing House risk management and facilitate the prompt and accurate clearing of cleared contracts and protect investors and the public interest in the sound operations of the Clearing House, consistent with the requirements of Section 17A(b)(3)(F).[7] In ICE Clear Europe's view, the amendments are also consistent with maintaining the value of, and access to, funds invested by the Clearing House, and therefore would enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, within the meaning of Section 17A(b)(3)(F).[8]

For similar reasons, the proposed amendments to the Procedures are also consistent with the risk management requirements of Rule 17Ad–22(e)(3)(i) [9] through enhancing ICE Clear Europe's investment management procedures and providing greater investment flexibility, including for FCM customer funds, in a manner consistent with applicable regulatory requirements.

The proposed amendments to the Procedures are also consistent with the provisions of Rule 17Ad–22(e)(7)(i) and (ii) and Rule 17Ad–22(a)(14) [10] which require ICE Clear Europe to maintain sufficient qualifying liquid resources. In compliance with this requirement, the proposed amendments would update investment concentration limits and criteria to better manage liquidity of ICE Clear Europe's Clearing Member customer funds and regulatory capital. The amendments would also allow greater flexibility to maintain liquid resources in the form of central bank and commercial bank deposits.

The amendments to the Procedures would be similarly compliant with Rule 17Ad–22(e)(16),[11] which requires assets of the Clearing House and Clearing Members be held in a manner that minimizes risk of loss and invested in assets with minimal credit, market and liquidity risk. The amendments to the acceptable collateral table permit the use of certain government agency collateral (subject to appropriate limitations), remove unnecessary rating requirements on US and UK government bonds and update concentration and similar requirements for EU government bonds. In ICE Clear Europe's view, these amendments update and clarify investment options in a manner that appropriately minimizes credit, market and liquidity risks from these investments, taking into consideration the benefits of sufficient flexibility to diversify investments.

Rules 17Ad–22(e)(7)(iii) and (e)(9) [12] require clearing agencies, where

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(3)(i)–(ii). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [m]aintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in are borne by the covered clearing agency, which: (i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually;''

[10] 17 CFR 240.17Ad–22(e)(7)(i)–(ii). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [e]ffectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following: (i) Maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions; (ii) Holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under paragraph (e)(7)(i) of this section in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members; 17 CFR 240.17Ad–22(a)(14) Qualifying liquid resources means, for any covered clearing agency, the following, in each relevant currency: (i) Cash held either at the central bank of issue or at creditworthy commercial banks; (ii) Assets that are readily available and convertible into cash through prearranged funding arrangements, such as: (A) Committed arrangements without material adverse change provisions, including: (1) Lines of credit; (2) Foreign exchange swaps; and (3) Repurchase agreements; or (B) Other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and (iii) Other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank in a jurisdiction that permits said pledges or other transactions by the covered clearing agency.

[11] 17 CFR 240.17Ad–22(e)(16). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [s]afeguard the covered clearing agency's own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.''

[12] 17 CFR 240.17Ad–22(e)(7)(iii). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [e]ffectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following: (iii) Using the access to accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(a)), or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, to enhance its management of liquidity risk; (9) [c]onduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimize and manage credit

possible, to access accounts and services at a central bank. The proposed addition of the Federal Reserve and the ECB to the allowed entities for central bank deposits in the table of authorized investments would provide greater flexibility for the Clearing House to use central bank deposits, consistent with these requirements, where permissible.

The amendments to the Procedures would also be compliant with Rule 17Ad–22(e)(15)(ii).[13] The proposed addition of commercial bank deposits to the table of authorized investments and concentration limits for investment of ICE Clear Europe's regulatory capital will be consistent with the treatment of such investments as liquid net assets for purposes of this rule and provide ICE Clear Europe with additional flexibility to meet this requirement.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments to the authorized investments would apply uniformly to all investments of Clearing Member customer funds made by the Clearing House, are being adopted to strengthen and clarify the Clearing House's investment management procedures and should not affect the rights or obligations of Clearing Members. The amendments also provide the Clearing House greater flexibility to hold its own regulatory capital in commercial bank deposits, which would not have any significant impact on Clearing Members. As a result, ICE Clear Europe does not believe the amendments would affect the cost of clearing for Clearing Members or other market participants, the market for cleared services generally or access to clearing by Clearing Members or other market participants, or otherwise affect competition among Clearing Members or market participants in a manner not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2020–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2020–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2020–013 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

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and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.''

[13] 17 CFR 240.17Ad–22(e)(15)(ii). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (15) Identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by: (ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which: (A) Shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraphs (e)(4)(i) through (iii) of this section, as applicable, and the liquidity risk standard in paragraphs (e)(7)(i) and (ii) of this section; and (B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions;''

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90299; File No. SR–ICC–2020–012]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ICC's Fee Schedule

October 30, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4,[2] notice is hereby given that on October 23, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to implement clearing fees for credit default index swaptions (''Index Swaptions'') in connection with the launch of the clearing of Index Swaptions.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The proposed changes are intended to implement clearing fees for Index Swaptions in connection with the launch of the clearing of Index Swaptions. ICC has previously filed with the Commission changes to certain other policies and procedures related to clearing Index Swaptions (the ''Swaption Rule Filings'').[5] As discussed in the Swaption Rule Filings, pursuant to an Index Swaption, one party (the ''Swaption Buyer'') has the right (but not the obligation) to cause the other party (the ''Swaption Seller'') to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Swaptions that would be cleared by ICC, the underlying index credit default swap would be limited to certain CDX and iTraxx Europe index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms.[6] The proposed changes are set forth in Exhibit 5 hereto [sic], and described in detail as follows.

ICC maintains a Clearing Participant (''CP'') fee schedule [7] and client fee schedule [8] (collectively, the ''fee schedule'') that are publicly available on its website, which ICC proposes to update in connection with the clearing of Index Swaptions. Specifically, ICC proposes to update the fee schedule to establish clearing fees for Index Swaptions, which are intended to come into effect upon the launch of clearing of Index Swaptions, subject to the completion of the ICC governance process surrounding the Index Swaptions product expansion and any regulatory review or approval process. Currently, clearing fees for single name and index credit default swap (''CDS'') contracts are due by CPs and clients in accordance with the product, amount and currency set out in the fee schedule. ICC proposes to incorporate clearing fees for Index Swaptions into the fee schedule, which would similarly be due by CPs and clients in accordance with the product, amount and currency set out in the fee schedule. Specifically, Index Swaption fees (per million) for CPs would be $3 for North American and Sovereign products and €3 for European products, and for clients would be $4 for USD denominated products and €4 for EUR denominated products.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act [9] and the regulations thereunder applicable to it. More specifically, the proposed rule change establishes or changes a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b-4(f)(2) [11] thereunder. ICC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(D),[12] which requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

ICC believes that the fees for Index Swaptions have been set at an appropriate level and provide market participants with the additional flexibility to have their Index Swaptions cleared as ICC continues to develop, maintain and provide safe and efficient clearing services to the market. In ICC's view, the fees are reasonable as they correspond with the costs and expenses to ICC in offering clearing of Index Swaptions, including the investment ICC has made with respect to clearing such products (*e.g.,* technology and development), and they consider current market activity as well as anticipated market activity with respect to clearing Index Swaptions at ICC. Namely, in determining the appropriate level, ICC discussed the proposed fees with market participants and its Board (who approved the fees) and took into account factors such as anticipated volume, revenue, expenses, and market participation in this clearing service, including based on different fee levels. More specifically, Index Swaption fees would be slightly less than index fees (per million) and are designed to encourage market participation in this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] As set out in the Swaption Rule Filings, ICC intends to implement the changes described in the Swaption Rule Filings following completion of the ICC governance process surrounding the Index Swaptions product expansion. SEC Release No. 34–87297 (October 15, 2019) (approval), 84 FR 56270 (October 21, 2019) (SR–ICC–2019–007); SEC Release No. 34–89142 (June 24, 2020) (approval), 85 FR 39226 (June 30, 2020) (SR–ICC–2020–002); SEC Release No. 34–89436 (July 31, 2020) (approval), 85 FR 47827 (August 6, 2020) (SR–ICC–2020–008); SEC Release No. 34–89948 (September 22, 2020) (approval), 85 FR 60845 (September 28, 2020) (SR–ICC–2020–010).

[6] Index Swaptions are also referred to herein and in the Swaption Rule Filings as ''index options'' or ''index CDS options'', or in similar terms.

[7] CP fee details available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf.*

[8] Client fee details available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees.pdf.* As specified, all fees are charged directly to a client's CP.

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78q–1(b)(3)(D).

clearing service while properly compensating ICC for the risks, costs and expenses of clearing Index Swaptions. Client fees would be higher than CP fees for Index Swaptions, which is in line with ICC's current single name and index fees, given the responsibilities and obligations of CPs to ICC as opposed to clients. Accordingly, the proposed fees appropriately balance the costs of clearing and expenses incurred by ICC and provide a reasonable fee structure for market participants.

Moreover, the fees for Index Swaptions will apply equally to all market participants clearing Index Swaptions and therefore the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among participants, within the meaning of Section 17A(b)(3)(D) of the Act.[13] ICC therefore believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [14] and the regulations thereunder applicable to it and is appropriately filed pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f)(2) of Rule 19b–4 [16] thereunder.

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. As discussed above, the proposed changes incorporate reasonable clearing fees for Index Swaptions into ICC's fee schedule and will apply uniformly across all market participants. The implementation of such changes does not preclude other market participants from offering such instruments for clearing. Moreover, ICC does not believe that the amendments would adversely affect the ability of market participants to access clearing services. Accordingly, ICC does not believe the amendments impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b-4 [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–ICC–2020–012 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2020–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2020–012 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–24498 Filed 11–4–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90297; File No. SR–NYSEArca–2020–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend NYSE Arca Rule 5.3–E To Exempt Registered Investment Companies that List Certain Categories of the Securities Defined as Derivative and Special Purpose Securities Under NYSE Arca Rules From Having To Obtain Shareholder Approval Prior to the Issuance of Securities in Connection With Certain Acquisitions of the Stock or Assets of an Affiliated Company

October 30, 2020.

On August 28, 2020, NYSE Arca, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rule 5.3–E (Corporate Governance and Disclosure Policies) to exempt certain categories of derivative and special purpose securities from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The

[13] *Id.*

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change was published for comment in the **Federal Register** on September 17, 2020.[3] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 1, 2020. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates December 16, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR–NYSEArca-2020–54).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–24497 Filed 11–4–20; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 89834 (September 11, 2020), 85 FR 58090.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

DEPARTMENT OF STATE

[Public Notice 11193]

60-Day Notice of Proposed Information Collection: Special Immigrant Visa Biodata Form

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to January 4, 2021.

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

• *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2020–0037'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: JonesJI2@state.gov.*

• *Regular Mail:* Send written comments to: Irving Jones, PRM/Admissions, 2025 E Street NW, SA–9, 8th Floor, Washington, DC 20522–0908.

• *Fax:* 202.453.9393.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Irving Jones, PRM/Admissions, 2025 E Street NW, SA–9, 8th Floor, Washington, DC 20522–0908, who may be reached on 202.453.9248 or at *JonesJI2@state.gov.*

SUPPLEMENTARY INFORMATION: • *Title of Information Collection:* Special Immigrant Visa Biodata Form.

• *OMB Control Number:* 1405–0203.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Office of Admissions, Bureau of Population, Refugees and Migration (PRM/A).

• *Form Number:* DS–0234.

• *Respondents:* Iraqi and Afghan Special Immigrant Visa recipients eligible for resettlement benefits.

• *Estimated Number of Respondents:* 14,000.

• *Estimated Number of Responses:* 14,000.

• *Average Time Per Response:* 30 minutes.

• *Total Estimated Burden Time:* 7,000 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Form DS–234 elicits information used to determine the eligibility of certain Iraqis and Afghan SIV recipients for refugee resettlement benefits.

Methodology

The SIV Biodata information form (DS–234) is submitted electronically by the applicant to the National Visa Center, which will forward the forms to the Refugee Processing Center of the Bureau of Population, Refugees and Migration.

Zachary Parker,

Director.

[FR Doc. 2020–24600 Filed 11–4–20; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice 11236]

Notice of Department of State Public Guidance for the Protecting Europe's Energy Security Act (PEESA)

ACTION: Notice.

SUMMARY: The Department of State is issuing public guidance for PEESA on October 20, 2020 to take an expansive interpretation of the available authorities under PEESA by issuing clarifying public guidance and FAQs on the term ''provided those vessels for the construction of such a project'' under Section 7503(a)(1)(B) of PEESA.

DATES: The public guidance for PEESA is effective on October 20, 2020.

ADDRESSES: The Department of State has published the public guidance for PEESA on its website.https://www.state.gov/protecting-europes-energy-security-act-peesa/

FOR FURTHER INFORMATION CONTACT: Stu Huffman at *PEESAEnergySanctions@state.gov* or (202)-647–7201.

SUPPLEMENTARY INFORMATION:

PEESA Public Guidance

The Department of State is committed to fully implementing sanctions authorities in the Protecting Europe's Energy Security Act of 2019 (''PEESA'' or ''the Act,'' Title LXXV, National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92). We continue to call on Russia to cease using its energy resources for coercive purposes. Russia uses its energy export pipelines to create national and regional dependencies on Russian energy supplies, leveraging these dependencies to expand its political, economic, and military influence, weaken European security, and undermine U.S. national security and foreign policy interests. These pipelines also reduce European energy diversification, and hence weaken European energy security.

PEESA provides the United States with the authority to advance U.S. national security and foreign policy objectives, in particular, to address Russian pipeline projects that create risks to U.S. national security, threaten Europe's energy security, and consequently, endanger Europe's political and economic welfare.

In accordance with PEESA Section 7503, the Secretary of State, in consultation with the Secretary of the Treasury, is to submit a report to Congress for the relevant period, identifying (A) vessels that engaged in pipe-laying at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project, the TurkStream pipeline project, or any project that is a successor to either such project; and (B) foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly sold, leased or provided those vessels for the construction of such a project; or facilitated deceptive or structured transactions to provide those vessels for the construction of such a project.

Frequently Asked Questions

1. How does the State Department interpret the term knowingly ''provide[d] those vessels for the construction of such a project'' in PEESA Section 7503(a)(1)(B)?

For the purposes of PEESA, which focuses on vessels engaged in pipe-laying at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project, the TurkStream pipeline project, or any project that is a successor to either such project (see Section 7503(a)(1)(A)), the phrase knowingly ''provide[d] those vessels for the construction of such a project'' in Section 7503(a)(1)(B) may cover foreign firms or persons who provide certain services or goods that are necessary or essential to the provision or operation of a vessel engaged in the process of pipe-laying for such projects. Such activities subject to sanctions pursuant to PEESA or other authorities may include, but are not limited to, providing services or facilities for upgrades or installation of equipment for those vessels, or funding for upgrades or installation of equipment for those vessels. The Department of State and the Department of the Treasury are prepared to use the full range of sanctions authorities to halt construction of these pipelines.

Pursuant to section 7503(e)(3) of PEESA, sanctions will not apply to persons providing provisions to a relevant vessel if such provisions are intended for the safety and care of the crew aboard the vessel, the protection of human life aboard the vessel, or the maintenance of the vessel to avoid any environmental or other significant damage.

Pursuant to section 7503(e)(4) of PEESA, sanctions will not apply to persons engaging in activities necessary for or related to the repair or maintenance of, or environmental remediation with respect to, Nord Stream 2, TurkStream, or any project that is a successor to either such project.

2. Will the United States impose sanctions on persons engaged in certain activities prior to the issuance of this clarification of the term ''provided?''

No, the United States will not impose sanctions on persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines, on or after October 20, 2020 meet the above criteria for having knowingly ''provided those vessels for the construction of such a project'' under Section 7503(a)(1)(B) of PEESA, if those persons immediately engage in, and complete within 30 days, a good-faith wind down of such activities upon the issuance of this clarification.

Melissa M. Simpson,

Deputy Assistant Secretary, Bureau of Energy Resources, Department of State.

[FR Doc. 2020–24579 Filed 11–4–20; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice:11252]

In the Matter of the Designation of the Eastern Turkistan Islamic Movement Also Known as ETIM as a ''Terrorist Organization'' Pursuant to Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act, as Amended

Acting under the authority of Section 212(a)(3)(B)(vi)(II) if the INA, as amended, I hereby revoke the designation of the Eastern Turkistan Islamic Movement, also known as ETIM, as a ''terrorist organization'' under Section 212(a)(3)(B)(vi)(II) if the INA. This determination shall be published in the **Federal Register**.

Dated: October 20, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–24620 Filed 11–4–20; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 11249]

60-Day Notice of Proposed Information Collection: Training/Internship Placement Plan

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *January 4, 2021.*

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2020–0047'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: JExchanges@State.gov.*
- *Regular Mail:* Send written comments to: U.S. Department of State, ECA/EC, SA–4E, Washington, DC 20522–0505, ATTN: **Federal Register** Notice Response.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to G. Kevin Saba, Director, Office of Policy and Program Support, Office of Private Sector Exchange, SA–4E, Washington, DC 20522–0505; the office may be reached by email at *JExchanges@state.gov* and by telephone at (202) 634–4710.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Training/Internship Placement Plan.

• *OMB Control Number:* 1405–0170.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange (ECA/EC).

• *Form Number:* Form DS–7002.

• *Respondents:* Entities designated by the Department of State as sponsors of exchange visitor programs in the trainee or intern categories and U.S. businesses that provide the training or internship opportunity.

• *Estimated Number of Respondents:* 120.

• *Estimated Number of Responses:* 30,000.

• *Average Time Per Response:* 1.5 hours.

• *Total Estimated Burden:* 45,000 hours.

• *Frequency:* On occasion depending on the number of exchange participants annually.

• *Obligation to Respond:* Required to Obtain or Retain Benefits.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J–NONIMMIGRANT) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961, as amended. Trainee/Internship Placement Plans are to be completed by designated program sponsors. A Training/Internship Placement Plan is required for each trainee or intern participant. It sets forth the training or internship program to be followed, methods of supervision, the skills the trainee or intern will obtain, and trainee or intern remuneration. The plan must be signed by the trainee or intern, sponsor, and the third party placement organization, if a third party organization is used in the conduct of the training or internship. Upon request, trainees or interns must present a fully executed Trainee/Internship Placement Plan on Form DS–7002 to any Consular Official interviewing them in connection with the issuance of J–1 visas.

Methodology

This collection does not employ statistical methods. Access to Form DS–7002 is made available to Department designated sponsors electronically.

Zachary Parker,

Director.

[FR Doc. 2020–24289 Filed 11–4–20; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Approval for Information Collections: Joint Notice of Intent To Arbitrate and Notice of Availability for Arbitrator Roster

AGENCY: Surface Transportation Board.

ACTION: Notice and Request for Comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for the existing collections without OMB control numbers of the Joint Notice of Intent to Arbitrate and Notice of Availability for Arbitrator Roster, as described separately below. The Board previously published a notice about these collections in the **Federal Register**. That notice allowed for a 60-day public review and comment period. No comments were received.

DATES: The comment period for the notice published September 2, 2020, at 85 FR 54615, is extended. Comments on these information collections should be submitted by December 7, 2020.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Joint Notice of Arbitration and Arbitration Roster.'' These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: by email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503. Please also direct comments to Chris Oehrle, PRA Officer, Surface Transportation Board, at *PRA@stb.gov.* For further information regarding these collections, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0284 and at *Michael.Higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collections of information are necessary for the proper performance of the functions of the Board, including whether the collections have practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections

Information Collection 1

Title: Joint Notice of Intent to Arbitrate.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: Existing collection without an OMB control number.

Respondents: Parties seeking to submit to arbitration certain matters before the Board.

Number of Respondents: One.

Estimated Time Per Response: One hour.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): One.

Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: As an alternative to filing a written complaint, parties may submit a joint notice to the Board, indicating the consent of both parties to submit an issue in dispute to the Board's arbitration program. In the joint notice, parties state the issue(s) that they are willing to submit to arbitration. The notice must contain a statement that would indicate that all relevant parties are participants in the Board's arbitration program pursuant to § 1108.3(a), or that the relevant parties are willing to arbitrate voluntarily a matter pursuant to the Board's arbitration procedures, and the relief requested. The notice must also indicate whether parties have agreed to a three-member arbitration panel or a single arbitrator and must indicate whether the parties have mutually agreed to a lower amount of potential liability in lieu of the monetary award cap that would otherwise be applicable. The joint notice encourages greater use of arbitration to resolve disputes at the Board.

Information Collection 2

Title: Notice of Availability for Arbitrator Roster.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: Existing collection without an OMB control number.

Respondents: Potential arbitrators.

Number of Respondents: 14.

Estimated Time Per Response: One hour.

Frequency: Annually.

Total Burden Hours (annually including all respondents): 14.

Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 49 CFR 1108.6(b), an arbitration roster is compiled by the Board's Chairman. Qualified persons who wish to be placed on the Board's arbitration roster must submit notice of their availability to be added to the roster. The Chairman may augment the roster at any time to include eligible arbitrators and may remove from the roster any arbitrators who are no longer available or eligible. Potential arbitrators must also update their availability and information annually if they wish to remain available for the arbitration roster. The arbitration rosters are available to the public on the Board's website at *https://prod.stb.gov/resources/litigation-alternatives/arbitration/* (look under ''Resources,'' and click on ''Roster of Arbitrators'').

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: November 2, 2020.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020–24604 Filed 11–4–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. SAB–2020–02]

Petition for Exemption; Summary of Petition Received; Viking Air Limited

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 25, 2020.

ADDRESSES: Send comments identified by docket number FAA–2017–1016 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, AIR–691, Federal Aviation Administration, Policy and Innovation Division, Small Airplane Standards Branch, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106, email *paul.pellicano@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Kansas City, MO, on October 30, 2020.

Patrick R. Mullen,

Manager, Small Airplane Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

Petition for Exemption

Docket No.: FAA–2017–1016.

Petitioner: Viking Air Limited.

Section(s) of 14 CFR Affected: Special Federal Aviation Regulation Number 23–1.

Description of Relief Sought: Viking Air Limited (VAL) is seeking a 24-month extension to Exemption No. 17626 that exempts VAL, for a limited time, from installing autopilot low-speed awareness on certain DHC–6–400 airplanes. VAL states technical and logistical challenges, including increased safety concerns and travel restrictions, in connection with the novel coronavirus disease 2019 (COVID–19), have delayed design and approval of the low-speed awareness system.

[FR Doc. 2020–24494 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Safety Oversight and Certification Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Safety Oversight and Certification Advisory Committee (SOCAC) meeting.

SUMMARY: This notice announces a meeting of the SOCAC.

DATES: The meeting will be held on December 1, 2020, from 1:00 p.m. to 3:00 p.m. Eastern Standard Time.

Requests to attend the meeting must be received by November 18, 2020.

Requests for accommodations to a disability must be received by November 21, 2020.

Requests to submit written materials to be reviewed during the meeting must be received no later than November 18, 2020.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the meeting must RSVP by emailing *9-awa-arm-socac@faa.gov.* Information on the committee and copies of the meeting minutes will be available on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.*

FOR FURTHER INFORMATION CONTACT: Thuy H. Cooper, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–4715; email *9-awa-arm-socac@faa.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The SOCAC was created under the Federal Advisory Committee Act (FACA), in accordance with the FAA Reauthorization Act of 2018 (Pub. L. 115–254) to provide advice to the Secretary on policy-level issues facing the aviation community that are related to FAA safety oversight and certification programs and activities.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Review and Acceptance of September 2020 Minutes
- Update on Tasking
- FAA Updates

Detailed agenda information will be posted on the committee's website listed in the **ADDRESSES** section at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public on a first-come, first served basis. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Please provide the following information: full legal name, country of citizenship, and name of your industry association or applicable affiliation. The FAA will email registrants the meeting access information at least 48 hours prior to the meeting.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Any member of the public may present a written statement to the committee at any time by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on October 30, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2020–24557 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0084]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated September 11, 2020, CSX Transportation (CSXT) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2020–0084.

Applicant: CSX Transportation, Mr. Carl A. Walker, Chief Engineer Communications & Signals, 500 Water Street, Speed Code J–350, Jacksonville, Florida 32202.

Specifically, CSXT requests permission to discontinue the use of the automatic train control (ATC) segment of the cab signal systems (CSS) onboard equipped CSXT locomotives that operate on the RF&P subdivision, located between Richmond, Virginia, and Washington, DC.

CSXT states that discontinuing the use of ATC when operating on the RF&P will provide a standardized operation across all CSS-equipped CSXT locomotives, enhancing reliability and safety. This standardization will enhance safety by reducing maintenance due to failures, train crew cutouts, and line of road equipment failure.

CSS with the ATC segment removed will still stop the train if the locomotive operator does not acknowledge any signal downgrade, even if the positive train control (PTC) system is cutout. CSXT implemented the I–ETMS PTC system on the RF&P in October 2018. Wayside signal cab generators, locomotive cab signal equipment, and automatic train stop will remain.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave., SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 21, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–24558 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2005–21014]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 1, 2020, Maine Narrow Gauge Railroad Company and Museum (MNGR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230, Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2005–21014.

Specifically, MNGR, a 2-foot gage tourist and museum railroad, seeks a renewal of a waiver of compliance from the requirements of 49 CFR 230.51, *Water glasses and gage cocks, number and location.* MNGR operates two steam locomotives, No. 3 and No. 4, built in 1913 and 1918, respectively, by Vulcan Iron Works. The locomotives pull tourist trains on approximately two miles of track located within the waterfront district of Portland, Maine. MNGR specifically requests that the minimum reading for the water glasses on these two locomotives be retained at inches above the highest part of the crown sheet as originally designed, constructed, and operated since the early 1900s. Modifying the locomotives to comply with the regulatory requirement of a minimum water reading of 3 inches would result in the top or full reading of the water glasses being of equal height with the top of the boiler. Thus, when the water glass indicates full, there is very little remaining volume for steam to accumulate, and water may carry over into the dry pipe, creating an unsafe condition. In addition, the boilers on these two locomotives are 37–1/8 inches in diameter, which is significantly smaller than that found on standard gage locomotives. MNGR states that due to the difference in boiler diameters, an equivalent level of safety exists.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 21, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–24559 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0127]

Deepwater Port License Application: Blue Marlin Offshore Port, LLC (BMOP)

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of intent; Notice of virtual public meeting; Request for comments.

SUMMARY: The U.S. Coast Guard (USCG), in coordination with the Maritime Administration (MARAD), will prepare an environmental impact statement (EIS) as part of the environmental review of the Blue Marlin Offshore Port, LLC (BMOP) Deepwater port license application. The application proposes the ownership, construction, operation and eventual decommissioning of an offshore oil export deepwater port that would be located within and adjacent to the Outer Continental Shelf (OCS) in West Cameron Lease Blocks (WC) 509 and 508 and East Cameron (EC) Block 263. Following the existing Stingray pipeline, the deepwater port will be approximately 99 statute miles off the coast of Cameron Parish, Louisiana, with an approximate water depth of 162 feet. The deepwater port would allow for the loading of Very Large Crude Carriers (VLCCs) and other sized crude oil cargo carriers via a Catenary Anchor Leg Mooring (CALM). This Notice of Intent (NOI) requests public participation in the scoping process, provides information on how to participate, and announces an informational (virtual) open house and two public meetings for the communities of Cameron Parish, Louisiana and Jefferson and Orange County, Texas. Pursuant to the criteria provided in the Deepwater Port Act of 1974 (the Act), Louisiana and Texas are

the designated Adjacent Coastal States for this application.

DATES: There will be two public scoping meetings virtually held in connection with the BMOP deepwater port application. The meetings will be held virtually for the communities of Cameron Parish, Louisiana, and Jefferson and Orange County, Texas, on December 2, 2020, and December 3, 2020, from 6:00 p.m. to 8:00 p.m. central standard time (CST). The virtual public meetings will be preceded by an informational open house via the website at *www.BlueMarlinNEPAProcess.com,* which will be maintained throughout the NEPA process.

The virtual public meetings may end later than the stated time, depending on the number of persons wishing to speak. Additionally, materials submitted in response to this request for comments on the BMOP deepwater port license application must reach the Federal Docket Management Facility as detailed below by December 3, 2020.

ADDRESSES: Virtual Public Meeting-to register to attend and/or be a speaker at one of the virtual scoping meetings, visit *www.BlueMarlinNEPAProcess.com* or call 833–201–3773. Attendees may attend online or via telephone. Details will be relayed to you upon registering for the virtual meeting(s). Registration to be a speaker will end at 4:00 p.m. CST on December 2, 2020. Attendees that did not register to speak will be given the opportunity to comment at the end of the virtual meeting(s) after all registered speakers have been given the opportunity to comment.

The public docket for the BMOP deepwater port license application is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The license application is available for viewing at the *Regulations.gov* website: *http://www.regulations.gov* under docket number MARAD–2020–0127.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* If you submit your comments electronically, it is not necessary to also submit a hard copy. If you cannot submit material using *http://www.regulations.gov,* please contact either Mr. William Nabach, USCG, or Dr. Efrain Lopez, MARAD, as listed in the following ''**FOR FURTHER INFORMATION CONTACT**'' section of this document, which also provides alternate instructions for submitting written comments. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted. Anonymous comments will be accepted. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. The Federal Docket Management Facility's telephone number is 202–366–9317 or 202–366–9826, the fax number is 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. William Nabach, U.S. Coast Guard, telephone: 202–372–1437, email: *William.A.Nabach2@uscg.mil,* or Dr. Efrain Lopez, Maritime Administration, telephone: 202–366–9761, email: *Efrain.Lopez@dot.gov.* For questions regarding viewing the Docket, call Docket Operations, telephone: 202–366–9317 or 202–366–9826.

SUPPLEMENTARY INFORMATION:

Virtual Public Meeting and Virtual Open House

We encourage you to visit the informational virtual open house website and attend one of the virtual public meetings to learn about, and comment on, the proposed BMOP deepwater port. You will have the opportunity to verbally submit comments during the virtual public meetings on the scope and significance of the issues related to the proposed deepwater port that should be addressed in the EIS.

Speaker registration is available online at *www.BlueMarlinNEPAProcess.com* or by calling 833–201–3773. Speakers at the virtual public scoping meetings will be recognized in the following order: elected officials, public agencies, individuals or groups in the sign-up order and then anyone else who wishes to speak.

In order to allow everyone a chance to speak at any of the virtual public meetings, we may limit speaker time, extend the meeting hours, or both. You must identify yourself, and any organization you represent by name. Your remarks will be recorded and/or transcribed for inclusion in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management Facility website (*www.regulations.gov*).

If you plan to attend one of the virtual public meetings and need special assistance such as sign language interpretation, non-English language translator services or other reasonable accommodation, please notify the USCG or MARAD (see **FOR FURTHER INFORMATION CONTACT**) at least 7 business days in advance of the virtual public meeting. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comment on this proposal. The comments may relate to, but are not limited to, the environmental impact of the proposed action. All comments will be accepted. The virtual public meetings are not the only opportunity you have to comment on the BMOP deepwater port license application. In addition to, or in place of, attending one of the virtual meetings, you may submit comments directly to the Federal Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the 30-day scoping period.

The license application, comments and associated documentation, as well as the draft and final EISs (when published), are available for viewing at the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2020–0127.

Public comment submissions should include:

- Docket number MARAD–2020–0127.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronically (preferred for processing) to the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2020–0127.
- By mail to the Federal Docket Management Facility (MARAD–2020–0127), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- By personal delivery to the room and address listed above between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- By fax to the Federal Docket Management Facility at 202–493–2251.

Faxed, mailed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches and suitable for copying and electronic scanning. The format of electronic submissions should also be no larger than 8½ by 11 inches. If you mail your submission and want to know when it reaches the Federal Docket Management Facility, please include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments, all submissions will be posted, without change, to the Federal Docket Management Facility website (*http://www.regulations.gov*) and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Use Notice that is available on the Federal Docket Management Facility website and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see Privacy Act. You may view docket submissions at the Federal Docket Management Facility or electronically on the Federal Docket Management Facility website.

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, including the application review process, and the receipt of the current application for the proposed BMOP deepwater port appears in the BMOP Notice of Application, previously published in the **Federal Register** and available for review by going to *www.regulations.gov* and searching docket number ''MARAD–2020–0127.'' The ''Summary of the Application'' from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's impact on the natural and human environment. For the proposed deepwater port, USCG and MARAD are the co-lead Federal agencies for determining the scope of this review, and in this case, it has been determined that review must include preparation of an EIS. This NOI is required by 40 CFR 1501.9. It briefly describes the proposed action, possible alternatives and our proposed scoping process. You can address any questions about the proposed action, the scoping process or the EIS to the USCG or MARAD project managers identified in this notice (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), (2) evaluation of deepwater port and onshore site/pipeline route alternatives or (3) denying the application, which for purposes of environmental review is the ''no-action'' alternative.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see Dates), and ends when USCG and MARAD have completed the following actions:

- Invites the participation of Federal, state, and local agencies, any affected Tribe, the applicant, in this case BMOP, and other interested persons;
- Determines the actions, alternatives and impacts described in 40 CFR 1501.9;
- Identifies and eliminates from detailed study, those issues that are not significant or that have been covered elsewhere;
- Identifies other relevant permitting, environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises the options provided in 40 CFR 1500.4 and 40 CFR 1500.5

Once the scoping process is complete, USCG and MARAD will prepare a draft EIS. When complete, MARAD will publish a **Federal Register** notice announcing public availability of the Draft EIS. (If you want that notice to be sent to you, please contact the USCG or MARAD project manager identified in **FOR FURTHER INFORMATION CONTACT**). You will have an opportunity to review and comment on the Draft EIS. The USCG, MARAD and other appropriate cooperating agencies will consider the received comments and then prepare the Final EIS. As with the Draft EIS, we will announce the availability of the Final EIS and give you an opportunity for review and comment. The Act requires a final public hearing to be held in the Adjacent Coastal State. Its purpose is to receive comments on matters related to whether or not an operating license should be issued. The final public hearing will be held after the Final EIS is made available for public review and comment.

Summary of the Application

BMOP is proposing to construct, own, and operate a deepwater port terminal in the Gulf of Mexico to export domestically produced crude oil. Use of the deepwater port would include the loading of various grades of crude oil at flow rates of up to 80,000 barrels per hour (bph). The BMOP deepwater port would allow for up to one (1) Very Large Crude Carriers (VLCCs) or other crude oil carriers to moor at the catenary anchor leg mooring (CALM) and connect with the deepwater port via floating connecting crude oil hoses. The maximum frequency of loading VLCCs or other crude oil carriers would be approximately 2 million barrels per day (1,920,000), 365 days per year.

The overall project would consist of offshore and marine components as well as onshore components as described below.

The BMOP deepwater port offshore and marine components would consist of the following:

- Two (2) new CALM Buoys installed, one in WC 508 (CALM Buoy No. 1) and the other in EC 263(CALM Buoy No. 2). The CALM Buoys will be anchored to the seafloor via an engineered mooring system capable of accommodating mooring forces exerted by a VLCC or other large seafaring vessels during loading operations. Two 24-inch diameter floating hoses will be connected to each CALM Buoy. The hoses will be approximately 1,500 feet long and used for loading operations.
- Two new PLEMs installed and anchored on the seafloor. Two 24-inch undersea flexible hoses will be connected to each PLEM and associated CALM Buoy.
- Two Crude Oil Loading Pipelines, approximately 4,710 feet long to PLEM/CALM Buoy No. 1 and 6,085 feet long to PLEM/CALM Buoy No. 2, installed from the WC 509 Platform Complex to the PLEM and CALM locations, one for each PLEM and CALM Buoy. The pipelines will be installed with the top of pipe at least three feet below the natural seafloor.
- New MLV on WC 148 Platform;
- Two new 36-inch risers connected to the Crude Oil Loading Pipelines on WC 509B Platform;
- New control room on WC 509B Platform;
- Three new pig barrels, one on the WC 509A Platform and two on WC 509B Platform;
- Meter station for crude oil on the WC 509B Platform;
- New living quarters (LQ) and heliport on the WC 509C Platform;
- Surge valves and tank on the WC 509B Platform; and
- New ancillary equipment for the 509 Platform (*e.g.,* power generators, instrument/utility air system, fuel tanks, ac units, freshwater makers, firewater system, seawater and freshwater system, sewage treatment unit, fuel gas system, diesel system, closed drain system, open drain system, hydraulic power unit, hypochlorite system, cranes, communications tower and system,

radar) to support operation of the offshore facilities.

The BMOP deepwater port onshore storage and supply components would consist of the following:

- Safety Zone—The Applicant is requesting that the USCG Captain of the Port establish a Safety Zone around the entire DWP operations area. The Safety Zone will only be open to entry for VLCCs or other crude oil carriers prepared for connection for loading of crude oil, and the necessary service vessels supporting that process.
- Anchorage area—Existing USCG-designated anchorage areas will be utilized for VLCCs (or other crude carriers) awaiting mooring at a CALM Buoy or if they must disconnect from the CALM Buoys for safety reasons.
- Support vessel mooring area—A designated Service Vessel Mooring Area will be established in proximity to the offshore WC 509 facilities.
- Temporary pre-fabrication yards—Component fabrication will occur at multiple existing fabrication facilities within the GOM coastal region.
- Support facilities—Facilities within the GOM coastal region providing support for offshore operations and maintenance activities (*e.g.,* helicopters, supply vessels, work boats, equipment suppliers, and maintenance workers).

For more information on the BMOP deepwater port project, you can visit the *Regulations.gov* website: *http://www.regulations.gov* under docket number MARAD–2020–0127

Privacy Act

The electronic form of all comments received into the Federal Docket Management Facility can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The Department of Transportation Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or by visiting *http://www.regulations.gov.*

(Authority: 33 U.S.C. 1501, *et seq.,* 49 CFR 1.93).

Dated: November 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–24550 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2008–0331]

Pipeline Safety: Request for Special Permit; Columbia Gas Transmission, L.L.C.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for a special permit renewal and the addition of special permit segments received from the Columbia Gas Transmission, L.L.C. (TCO). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by December 7, 2020.

ADDRESSES: Comments should reference the docket number for this specific special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request for the renewal and addition of pipeline segments from TCO seeking a waiver from the requirements of 49 CFR 192.611(a): Change in class location: Confirmation or revision of maximum allowable operating pressure. This special permit is being requested in lieu of pipe replacement or pressure reduction for 8 special permit segments consisting of 2.76 miles in 4 existing special permit segments and an additional 1.22 miles in 4 new special permit segments on the TCO pipeline system. The 3.98 miles of proposed special permit segments are located in

Putnam and Kanawha Counties, West Virginia. The TCO pipeline class locations in the special permit segments have changed from a Class 1 to a Class 3 location. The TCO pipeline special permit segments are 30-inch diameter pipelines with an existing maximum allowable operating pressure of either 920 pounds per square inch gauge (psig) or 935 psig. The special permit segments are comprised of the 30-inch diameter SM80 Pipeline installed in 1955 and the 30-inch diameter SM80 Loop Pipeline installed between 1967 and 1969.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the TCO pipeline are available for review and public comment in Docket No. PHMSA–2008–0331. We invite interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2020–24555 Filed 11–4–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Fair Housing Home Loan Data System Regulation

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of the information collection titled ''Fair Housing Home Loan Data System Regulation.''

DATES: Comments must be submitted on or before January 4, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0159, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0159'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by the following method:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0159'' or ''Fair Housing Home Loan Data System Regulation.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing this notice.

Title: Fair Housing Home Loan Data System Regulation.

OMB Control No.: 1557–0159.

Type of Review: Regular review.

Description: Part 27 requires certain national banks to record certain information, and all national banks to retain certain information. Specifically, national banks must record certain home loan data if they: (1) Are otherwise required to maintain and report data pursuant to Regulation C,[2] which implements the Home Mortgage Disclosure Act (HMDA),[3] in which case they are HMDA reporters, or (2) receive more than 50 home loan applications annually.[4] Specifically, national banks that are HMDA reporters meet the part 27 requirement by recording HMDA data along with the reasons for denying

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[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

[2] 12 CFR part 1003.

[3] 12 U.S.C. 2801 *et seq.*

[4] The OCC issued part 27 as part of a settlement agreement in a case in which the plaintiffs alleged that Federal agencies, including the OCC, were obligated to exercise supervisory and regulatory powers to prevent discrimination in home mortgage lending under Title VIII of the Civil Rights Act of 1968 (Fair Housing Act). *See National Urban League, et al.* v. *Office of the Comptroller of the Currency, et al.,* 78 FRD. 543, 544 (D.D.C. May 3, 1978) (Defendants were the OCC, FRB, FDIC, and FHLBB). For discussion of this case, *see* 44 FR 63084, 63084 (Nov. 2, 1979).

any loan application on the HMDA Loan Application/Register (LAR).[5] A national bank that is not a HMDA reporter but that receives more than 50 home loan applications annually must comply with part 27 by either: (1) Recording and reporting HMDA data and denial reasons on the LAR as if they were a HMDA reporter,[6] or (2) recording and maintaining part 27-specified activity data relating to aggregate numbers of certain types of loans by geography and action taken.[7] Part 27 also requires that all national banks, including those not subject to the recording requirements, to maintain certain application and loan information in loan files. It further provides that the OCC may require national banks to maintain and submit additional information if there is reason to believe that the bank engaged in discrimination.

The requirements in part 27 are as follows:

- 12 CFR 27.3(a)(1) requires provision of the data that national banks are required to collect on home loans pursuant to Regulation C.
- Section 27.3(a)(2) requires national banks that receive more than 50 applications but are not HMDA reporters to collect certain information quarterly.
- Section 27.3(a) also lists exceptions to the HMDA–LAR recordkeeping requirements.
- 12 CFR 27.3(b) lists the information national banks must attempt to obtain from an applicant as part of a home loan application and sets forth the information that banks must disclose to an applicant.
- 12 CFR 27.3(c) sets forth additional information national banks must maintain in each of their home loan files.
- 12 CFR 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log found in Appendix III to part 27 including if: (1) There is reason to believe that the bank is prescreening, or otherwise engaging in discriminatory practices on a prohibited basis, (2) complaints filed with the Comptroller or letters in the Community Reinvestment Act file are found to be substantive in nature, indicating that the bank's home lending practices are, or may be, discriminatory, or (3) analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) and Regulation C indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin.
- 12 CFR 27.5 requires a national bank to maintain the information required by § 27.3 for 25 months after the bank notifies the applicant of action taken on an application or after withdrawal of an application.
- 12 CFR 27.7 requires a national bank to submit to the OCC, upon request prior to a scheduled examination, the information required by §§ 27.3(a) and 27.4. Non-HMDA reporters with more than 50 applications are required to submit this data using the Monthly Home Loan Activity Format form in Appendix I to part 27 and the Home Loan Data Submission Form in Appendix IV to part 27, except that there is an additional exclusion for national banks with fewer than 75 applications. Specifically, section 27.7(c)(3) states that a bank with fewer than 75 home loan applications in the preceding year is not required to submit such forms unless the home loan activity is concentrated in the few months preceding the request for data, indicating the likelihood of increased activity over the subsequent year, or there is cause to believe that a bank is not in compliance with the fair housing laws based on prior examinations and/or complaints, among other factors.
- § 27.7(d) provides that if there is cause to believe that a national bank is in noncompliance with fair housing laws, the Comptroller may require submission of additional Home Loan Data Submission Forms. The Comptroller may also require submission of the information maintained under § 27.3(a) and Home Loan Data Submission Forms at more frequent intervals than specified.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 956.

Estimated Annual Burden: 19,864 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel,Office of the Comptroller of the Currency.

[FR Doc. 2020–24586 Filed 11–4–20; 8:45 am]

BILLING CODE 4810–33–P

[5] 12 CFR 27.3(a)(1)(i).

[6] 12 CFR 27.3(a)(5).

[7] 12 CFR 27.3(a)(2).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice; correction.

SUMMARY: The Internal Revenue Service published a document in the **Federal Register** of October 28, 2020, concerning requests for comments on the REG–118412–10 forms. The document was inadvertently titled Request for Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. The correct title is Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act.

DATES: Written comments should be received on or before December 28, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act.

OMB Number: 1545–2178.

Regulation Number: REG–118412–10.

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding status as a grandfathered health plan.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 133,200.

Estimated Number of Responses: 66,600.

Estimated Time per Response: 18 minutes.

Estimated Total Annual Burden Hours: 2,200.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–24576 Filed 11–4–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Periodic Meeting of the U.S. Department of the Treasury Tribal Advisory Committee

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury Tribal Advisory Committee (TTAC) will convene for a public meeting on Wednesday, December 9, 2020, from 1 p.m.–4 p.m. Eastern Time. Due to safety protocol in response to the COVID–19 pandemic, the meeting will be held electronically. The meeting is open to the public, and the meeting is accessible to individuals with differing abilities.

DATES: The meeting will be held on Wednesday, December 9, 2020 from 1 p.m. to 4 p.m. Eastern Time.

ADDRESSES: Due to safety concerns in response to the COVID–19 pandemic, the meeting will be held electronically. Attendees are requested to register online or by telephone by 5 p.m. Eastern Time on Friday, December 4, 2020. Attendees with a valid email address may visit *https://www.cvent.com/d/d7q4cc* or for mobile registration at *https://www.cvent.com/d/d7q4cc?dvce=2* to complete a secure online registration form. All other attendees may contact Marie Vazquez Lopez at Vazquez-Lopez at *Marie.VazquezLopez@treasury.gov.* If you require a reasonable accommodation, please contact the Departmental Offices Reasonable Accommodations Coordinator at *ReasonableAccommodationRequests@treasury.gov.* If requesting a sign language interpreter, please make sure your request to the Reasonable Accommodations Coordinator is at least (5) five days prior to the event if at all possible. For all other inquiries concerning the TTAC meeting, please contact *TTAC@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Montoya, Policy Analyst, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 1426G, Washington, DC 20220, at *nancy.montoya@treasury.gov* or (202) 622–2031 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 3 of the Tribal General Welfare Exclusion Act of 2014, Public Law 113–68, 128 Stat. 1883, enacted on September 26, 2014 (TGWEA), directs the Secretary of the Treasury (Secretary) to establish a seven member Tribal Advisory Committee to advise the Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers.

Pursuant to Section 3 of the TGWEA and in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1 *et seq.,* the TTAC was established on February 10, 2015, as the ''U.S. Department of the Treasury Tribal Advisory Committee.'' The TTAC's Charter provides that it shall operate under the provisions of the FACA and shall advise and report to the Secretary on:

(1) Matters related to the taxation of Indians;

(2) The establishment of training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian tribes of Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian tribal governments; and

(3) The establishment of training of such internal revenue field agents, and provisions of training and technical assistance to tribal financial officers, about implementation of the TGWEA and any amendments.

Sixth Periodic Meeting

In accordance with section 10(a)(2) of the FACA and implementing regulations at 41 CFR 102–3.150, Krishna P. Vallabhaneni, the Designated Federal Officer of the TTAC, has ordered publication of this notice to inform the public that the TTAC will convene its sixth periodic meeting on Wednesday, December 9, 2020, from 1 p.m. to 4 p.m. Eastern Time. Due to safety concerns in response to the COVID–19 pandemic, the meeting will be held electronically.

Summary of Agenda and Topics To Be Discussed

During this meeting, the seven members of the TTAC will provide an overview of the TTAC's 2020 progress, hold discussion and possible action on subcommittee recommendations, and adopt dates for the 2021 TTAC Public Meetings. Participants are welcome to make Public Comments related to tribal taxation to the TTAC at the meeting. In addition, the TTAC will read any public comments submitted and take other actions necessary to fulfill the Committee's mandate.

Public Comment

Members of the public wishing to comment on the business of the TTAC are invited to submit written statements by any of the following methods:

Electronic Statements

• Send electronic comments to *TTAC@treasury.gov* by November 18, 2020.

Paper Statements

• Send paper statements in triplicate to the Treasury Tribal Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 1426G, Washington, DC 20220.

The Department of the Treasury will post all statements on its website *https://www.treasury.gov/resource-center/economic-policy/tribal-policy/Pages/Tribal-Policy.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Krishna P. Vallabhaneni,

Tax Legislative Counsel.

[FR Doc. 2020–24575 Filed 11–4–20; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 215 November 5, 2020

Part II

Securities and Exchange Commission

17 CFR Parts 200, 230, 239, et al.

Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 239, 240, 270, and 274

[Release Nos. 33–10814; 34–89478; IC–33963; File No. S7–09–20]

RIN 3235–AM52

Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing rule and form amendments that would modernize the disclosure framework for open-end management investment companies. The disclosure framework would feature concise and visually engaging shareholder reports that would highlight key information that is particularly important for retail investors to assess and monitor their fund investments. Certain information that may be less relevant to retail investors—and of more interest to financial professionals and investors who desire more in-depth information—would no longer appear in funds' shareholder reports but would be available online, delivered free of charge upon request, and filed on a semi-annual basis on Form N–CSR. Funds' shareholder reports would serve as the central source of fund disclosure for existing shareholders. Thus, instead of delivering prospectus updates to existing shareholders each year, open-end funds would have an alternative way to keep shareholders informed. This framework would rely on the shareholder report (which would include a summary of material fund changes), along with timely notifications to shareholders about material fund changes as they occur and continued availability of the fund's prospectus. The Commission is also proposing amendments to open-end fund prospectus disclosure requirements to provide greater clarity and more consistent information about fees, expenses, and principal risks. Finally, the Commission is proposing amendments to the advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs.

DATES: Comments should be received by January 4, 2021.

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

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or

• Send an email to *rule-comments@sec.gov*. Please include File No. S7–09–20 on the subject line.

Paper Comments

• Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–20. 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 website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 you wish to make available publicly. Persons wishing to provide comments regarding the proposal may wish to submit our Investor Feedback Flier or Smaller Fund Feedback Flier, available at Appendices B and C, respectively.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Zeena Abdul-Rahman, Daniel K. Chang, Mykaila DeLesDernier, Pamela K. Ellis, Angela Mokodean, Senior Counsels; Amanda Hollander Wagner, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office; Daniel Rooney, Assistant Chief Accountant; Keith Carpenter or Michael Kosoff, Senior Special Counsels, at (202) 551–6921, Disclosure Review and Accounting Office; Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

SUPPLEMENTARY INFORMATION: The Commission is proposing new 17 CFR 230.498B [new rule 498B] under the Securities Act of 1933 (''Securities Act'').[1] We also are proposing amendments to the following rules and forms:

Commission reference	CFR citation [17 CFR]
Organization; Conduct and Ethics; And Information and Requests	§§ 200.1 through 200.800.
Section 800	§ 200.800.
Securities Act:	
Rule 156	§ 230.156.
Rule 433	§ 230.433.
Rule 482	§ 230.482.
Rule 498	§ 230.498.
Form N–14	§ 239.23.
Securities Act and Investment Company Act of 1940 (''Investment Company Act''):[2]	
Form N-1A	§§ 239.15A and 274.11A.
Securities Exchange Act of 1934 (''Exchange Act''):[3]	
Schedule 14A	§ 240.14a–101.
Exchange Act and Investment Company Act:	
Form N–CSR	§§ 249.331 and 274.128.

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 80a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

Commission reference	CFR citation [17 CFR]
Investment Company Act:	
Rule 30e–1	§ 270.30e–1.
Rule 30e–3	§ 270.30e–3.
Rule 31a–2	§ 270.31a–2.
Rule 34b–1	§ 270.34b–1.

Table of Contents

I. Introduction and Background

The Commission is proposing to tailor the disclosures that mutual funds and exchange-traded funds (''ETFs'' and, collectively with mutual funds, ''funds'') must provide to investors to highlight key information investors need to assess and monitor their fund investments and make informed investment decisions.[4] Currently, most mutual funds and ETFs rely on a layered disclosure framework with respect to the prospectus information they provide to fund investors in order to tailor this disclosure to investors' informational needs.[5] The vast majority of funds provide: (1) A summary prospectus to investors in connection with their initial investment decision; and (2) more-detailed information that may be of interest to some investors, which is available online in the form of the ''statutory prospectus'' and Statement of Additional Information (''SAI'').[6] However, this approach to

[4] For purposes of this release, the term ''fund'' generally refers to an open-end management investment company registered on Form N–1A or a series thereof, unless otherwise specified. Mutual funds and most ETFs are open-end management investment companies registered on Form N–1A. An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)].

[5] Throughout this release, we generally use the term ''investor'' to refer to both prospective investors in a fund and fund shareholders (*i.e.,* persons who hold an investment in securities issued by a fund). We generally use the term ''shareholder'' to refer specifically to those who hold an investment in securities issued by a fund.

[6] *See* section 5(b)(2) of the Securities Act [15 U.S.C. 77e(b)(2)] (generally requiring that a fund or financial intermediary deliver a prospectus to an investor in connection with his or her purchase of the fund's securities). Funds generally amend their prospectuses annually to reflect changes to the disclosed information.

A fund's prospectus generally must include information contained in the fund's registration statement. *See* section 10(a) of the Securities Act [15 U.S.C. 77j(a)]. For purposes of this release, a prospectus meeting the requirements of a section

Continued

layered, tailored disclosure does not extend to other disclosure funds provide to their shareholders. After making their initial decision to invest in a fund, fund shareholders typically receive an updated prospectus annually, as well as annual and semi-annual shareholder reports (or ''annual reports'' and ''semi-annual reports'' respectively, and collectively ''shareholder reports'').[7] These shareholder reports provide detailed information about a fund's operations and activities during the last full- or half-year period and can be quite lengthy. For example, it is not unusual for annual reports to exceed 100 pages in length.

In June 2018, the Commission issued a request for comment seeking feedback on retail investors' experience with fund disclosure and on ways to improve fund disclosure.[8] We have considered feedback the Commission received in response to this request for comment, which generally showed that retail investors prefer concise, layered disclosure and feel overwhelmed by the volume of fund information they currently receive. We have also considered prior investor testing and surveys, past fund disclosure reform initiatives, and developments affecting fund disclosure practices.[9]

After considering this information, we are proposing a layered disclosure framework for fund shareholders that would highlight key information for assessing and monitoring a fund investment and informing investment decisions (*e.g.,* whether to buy additional shares, continue to hold, or sell a fund investment), with additional information available online and upon request. The proposal would implement this new framework principally by amending the requirements for funds' annual and semi-annual reports to highlight information that we believe is particularly important for retail shareholders to assess and monitor their ongoing fund investments. These tailored shareholder reports would serve as the primary fund disclosure that existing shareholders receive each year, in addition to notices of certain material changes if they occur during the year.

The proposal is designed to alleviate concerns that fund retail shareholders currently may receive disclosure materials that are not well-suited to their needs, which may contribute to investor confusion or indifference. Current disclosures, for example, may include information that is less useful for most retail shareholders to assess and monitor their fund investments, either because the information is primarily designed to inform an initial purchase decision, or because the information is of interest to only some investors (for example, those investors who want detailed fund information), as well as financial professionals and market analysts. Furthermore, current fund disclosures in some cases are delivered close in time to one another and include similar sets of information that may appear redundant or inconsistent to shareholders. Under the proposal, the amounts and types of available fund information would remain largely unchanged. However, information that is of interest only to some shareholders, or information that we believe generally is less useful for purposes of assessing and monitoring an ongoing investment, would be available online and delivered upon request to fund shareholders who want that additional information.

In addition to layering disclosure for existing fund shareholders, we are proposing certain amendments to the way funds present their fees and expenses and principal risks in prospectuses. Many retail investors responding to the Fund Investor Experience RFC stated that current fee and expense and principal risk disclosure is difficult to understand and use. The proposed amendments are designed to provide investors with simpler, easier-to-understand information about a fund's fees and expenses and principal risks, including a summary presentation of bottom-line fee figures that uses plain language descriptions and more concise principal risk disclosure that generally orders risks by importance. Consistent with the current layered approach to prospectus disclosure, additional information about a fund's fee and expenses and risks would remain available for interested investors.

To improve the clarity of fee and expense information that is available to investors more generally, we also propose to amend the Commission's investment company advertising rules. The proposed amendments would require that a registered investment company or business development company (''BDC'') advertisement discussing fees and expenses include certain standardized figures and provide reasonably current information. In addition, we are proposing amendments to address potentially misleading statements about fees and expenses in these investment company advertisements.

A. Current Approach To Disclosure for Fund Shareholders

Today, a fund investor receives a prospectus in connection with his or her initial purchase of fund shares. A fund's prospectus serves as the principal selling document for potential investors to help inform investment decisions and facilitate fund comparisons. Fund prospectuses provide important information that an investor should consider when making an investment, including information about a fund's principal investment strategies, fees and expenses, principal risks, and performance.[10] Under the Federal securities laws, a fund (or a financial intermediary) must deliver an updated copy of the fund's summary or statutory prospectus to an existing fund shareholder if the shareholder purchases additional shares of the fund.[11] We understand that, to satisfy

10(a) prospectus is referred to as a ''statutory prospectus.'' Form N–1A requires a fund to disclose the information that Items 2 through 8 of Form N–1A require in numerical order at the front of the prospectus. *See* General Instruction C.3.a to Form N–1A. For purposes of this release, we refer to this front section of the statutory prospectus as the ''summary section of the statutory prospectus.''

A fund may use a summary prospectus (which includes the information required or permitted by Items 2 through 8 of Form N–1A) to satisfy prospectus delivery obligations under certain conditions (*e.g.,* the statutory prospectus is posted online). *See* rule 498 under the Securities Act [17 CFR 230.498]. For purposes of this release, a summary prospectus that a fund uses to satisfy its prospectus delivery obligations, as rule 498 permits, is referred to as a ''summary prospectus.''

[7] *See* section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)]; rule 30e–1 under the Investment Company Act [17 CFR 270.30e–1]. Shareholders in a fund typically receive an annual update of the fund's prospectus to satisfy prospectus delivery requirements for any additional shares of the fund the shareholder may purchase. *See infra* discussion accompanying and following footnote 11. In addition to the annual prospectus update, a shareholder also may receive prospectus supplements, or ''stickers,'' during the year if material or other changes occur to the fund. *See infra* footnote 13 and accompanying text.

[8] *See* Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891 (June 11, 2018)] (''Fund Investor Experience RFC'').

[9] *See, e.g., infra* Sections I.B and I.C.

[10] *See, e.g.,* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (''2009 Summary Prospectus Adopting Release''). The summary prospectus that the Commission adopted took into account investors' preferences as reflected in focus group interviews and a telephone survey. *See* 2009 Summary Prospectus Adopting Release at n.32 and accompanying text.

[11] Section 10(a)(3) of the Securities Act, and section 24(e) and 17 CFR 270.8b–16 [rule 8b–16 under the Investment Company Act], generally require a fund to update its registration statement (which includes its prospectus) annually. The effect of section 10(a)(3) is to require funds to update their prospectuses annually to reflect current fee, performance, and other financial information (the ''annual prospectus update'').

Section 5(b)(2) of the Securities Act makes it unlawful to deliver a security for purposes of sale or for delivery after sale ''unless accompanied or applicable prospectus delivery requirements, most funds send an updated summary or statutory prospectus annually to all shareholders to avoid the need to track each shareholder's additional purchase activity throughout the year. Other funds may track this activity and send a summary or statutory prospectus only to those shareholders who have purchased fund shares during the relevant period. The vast majority of funds use summary prospectuses.[12] Outside of the annual prospectus update, a fund shareholder may also receive updates at other times during the year when a fund supplements, or ''stickers,'' its prospectus disclosure to reflect material or other changes.[13]

In addition to annual prospectus updates and interim stickers, fund shareholders also receive shareholder reports on a semi-annual basis.[14] These reports include detailed information about a fund's operations over a given half- or full-year period, including information about the following items. Certain of this information, including fund performance information, appears only in annual reports.

- The ongoing costs of a $1,000 fund investment for the most recent fiscal half-year, including actual expenses (which a shareholder can use to understand his or her ongoing costs of investing in the fund) and hypothetical expenses (which a shareholder can use to compare different funds' ongoing costs);
- Performance, including information about the fund's performance over the past 10 years and fund management's discussion of fund performance for the last fiscal year;
- Portfolio holdings, which includes a list of the fund's investments and graphical representations of the fund's holdings by certain categories (*e.g.,* type of security, industry sector, geographic region, credit quality, or maturity); [15]
- Fund financials, including financial statements and financial highlights, which are audited in annual reports; [16]
- A fund's board of directors and management, including remuneration that the fund paid to these and certain other parties;
- Results of any shareholder vote held during the relevant period;
- The availability of additional information regarding the fund's proxy voting record, code of ethics, quarterly portfolio holdings, and board of directors;
- Changes in and disagreements with fund accountants;
- Any board approval of an investment advisory contract during the relevant period; and
- The operation and effectiveness of the fund's liquidity risk management program.[17]

Additionally, some funds currently include other information in their shareholder reports that is not required by Commission rules or forms. For example, some funds typically include in their shareholder reports information such as president's letters, interviews with portfolio managers, market commentary, or specific portfolio statistics that are not required (*e.g.,* top ten largest holdings, summary statistics with respect to debt yields and maturities).[18] Based on staff analysis, the average annual report is approximately 134 pages long, and the average semi-annual report is approximately 116 pages long.[19]

Shareholder reports and prospectuses provide some of the same categories of information, including information about expenses and performance. A fund shareholder typically receives an annual report and an annual prospectus update close in time, commonly within two months of one another.[20] We understand that some funds even deliver a shareholder report and the annual prospectus update at the same time.

With respect to the delivery mechanism, a fund shareholder currently receives shareholder reports and prospectuses in paper or electronically.[21] We understand that

preceded'' by a statutory prospectus. Because the requirements of section 5(b)(2) are applicable to ''any person,'' its obligations apply to financial intermediaries through which funds are sold, as well as to the funds themselves. *See supra* footnote 6 (recognizing that a fund or financial intermediary may deliver a summary prospectus to satisfy this prospectus delivery obligation under certain conditions).

[12] We estimate that as of December 31, 2018, approximately 93% of mutual funds and ETFs use summary prospectuses. This estimate is based on data on the number of mutual funds and ETFs that filed a summary prospectus in 2018 in the Commission's Electronic Data, Gathering, Analysis, and Retrieval system (''EDGAR'') (10,808) and the Investment Company Institute's estimated number of mutual funds and ETFs as of December 31, 2018 (11,656). *See* Investment Company Institute, 2019 Investment Company Fact Book, at 50, *available at https://www.ici.org/pdf/2019_factbook.pdf.*

[13] *See generally* 17 CFR 230.497 [rule 497 under the Securities Act]; *see also* section 12(a)(2) of the Securities Act (providing a civil remedy if a prospectus includes an untrue statement of a material fact or omits to state a fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading); 17 CFR 230.408 [rule 408 under the Securities Act] (requiring registrants to include, in addition to the information expressly required to be included in a registration statement, such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading).

[14] *See* section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)]; rule 30e–1 under the Investment Company Act [17 CFR 270.30e–1]. A fund or an intermediary may transmit the shareholder report to an investor. Most fund investors engage an investment professional and hold their fund investments as beneficial owners through accounts with intermediaries. As a result, intermediaries commonly assume responsibility for distributing fund shareholder reports to beneficial owners. *See* Optional internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (June 5, 2018) [83 FR 29158 (June 22, 2018)] (''Rule 30e–3 Adopting Release''), at paragraph accompanying n.274.

[15] A fund may include a summary schedule of its investments in securities of unaffiliated issuers, which includes approximately its 50 largest holdings, in the financial statements it provides in the shareholder report, provided it makes the complete list of investments in unaffiliated issuers available online and upon request. Alternatively, a fund must include that complete list of its investments in securities of unaffiliated issuers in its shareholder reports. *See* Instruction 1 to Item 27(b)(1) of Form N–1A; Instruction to Item 27(c)(1) of Form N–1A; 17 CFR 210.12–12B [rule 12–12B of Regulation S–X].

[16] *See* Items 27(b)(1) and 27(b)(2) of Form N–1A. The financial statements and financial highlights in a fund's semi-annual report need not be audited. *See* Items 27(c)(1) and 27(c)(2) of Form N–1A.

[17] *See* Item 27(b), (c), and (d) of Form N–1A; rule 30e–1(b) under the Investment Company Act [17 CFR 270.30e–1(b)].

[18] *See, e.g.,* Fund Investor Experience RFC, *supra* footnote 8, at Section II.D.5.

[19] We recognize, however, that the length of funds' shareholder reports can vary substantially. For example, the staff observed annual reports ranging in length from 22 pages to more than 600 pages. These figures are based on a 2020 staff review that included a sample of reports from large, mid-sized, and small funds that were available on fund websites. One apparent reason for the different lengths of these reports is that some reports covered a single fund (or series), while others covered many. For example, most reports that were between 22 and 45 pages long covered a single series. However, the number of series a report covered did not solely explain the differences in length. For reports that were longer than 45 pages, there generally was not a clear and consistent relationship between the number of series a report covered and the report's length. *See also* Comment Letter of Investment Company Institute on File No. S7–08–15 (Mar. 14, 2016), at n.49, *available at https://www.sec.gov/comments/s7-08-15/s70815-581.pdf* (estimating that, in 2016, the average annual report was 114 pages long).

[20] Under rule 30e–1, funds generally must transmit annual reports within 60 days after the close of the fiscal year. *See* rule 30e–1(c) [17 CFR 270.30e–1(c)]. Under Securities Act section 10(a)(3) and Investment Company Act rule 8b–16(a), funds typically update their prospectuses within 120 days of the end of fiscal year-end, and updated prospectuses are often delivered to existing shareholders soon thereafter.

[21] *See* Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] (providing Commission views on the use of electronic media to deliver information to investors, with a focus on electronic delivery of prospectuses, annual reports, and proxy solicitation materials); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Investment Company Act Release No. 21945 (May 9, 1996) [61 FR 24644 (May 15, 1996)]; Use of Electronic Media, Investment Company Act Release No. 24426 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)].

shareholders electing electronic delivery of fund disclosure materials typically receive an email that contains a link to where the materials are available online. Additionally, if a fund chooses to rely on rule 30e–3, beginning as early as January 1, 2021, a shareholder who currently receives fund shareholder reports in the mail may begin receiving instead notices that a shareholder report is available at an identified website address.[22] Nonetheless, a shareholder may continue to receive the full report in paper if he or she notifies the fund (or relevant financial intermediary) that he or she wishes to receive paper copies of the reports. The costs of delivering prospectuses and shareholder reports, including printing and mailing costs and processing fees, are generally fund expenses borne by shareholders.

Beyond prospectuses and shareholder reports, many funds prepare other information for potential or current investors that the securities laws and Commission rules do not require. For example, many funds prepare advertising materials, which can include materials in newspapers, magazines, radio, television, direct mail advertisements, fact sheets, newsletters, and on various web-based platforms. Advertising materials are subject to certain requirements under Commission rules.[23] As an example, many funds prepare monthly or quarterly fact sheets that concisely provide certain information about a fund, such as the fund's performance and strategies, illustrations of the fund's holdings, and certain fund statistics (*e.g.,* net asset value, expense ratio). Fact sheets are often one or two pages long. Some shareholders or financial professionals may use fact sheets to monitor fund investments because, for example, they include more up-to-date performance information than shareholder reports or prospectuses.

B. Information About Investor Preferences

Our understanding of investor preferences regarding fund disclosure is informed by many sources, including responses to the Fund Investor Experience RFC, prior investor testing and surveys, and past disclosure reform initiatives. In response to the Fund Investor Experience RFC, the Commission received many comments from individual investors, including through a Feedback Flier on Improving Fund Disclosure (the ''Feedback Flier'') that accompanied the release to facilitate retail investor input.[24] In addition to the input we received from individual investors, some other commenters on the Fund Investor Experience RFC provided the results of investor surveys they conducted regarding fund disclosure.[25] Moreover, the Commission and its staff have been involved with other relevant investor testing and surveys, including investor testing regarding shareholder reports in 2011 and a study on financial literacy in 2012.[26] Several past Commission rulemakings have also provided information about investors' disclosure preferences, including rulemakings regarding summary prospectuses for mutual funds and ETFs, summary prospectuses for variable annuity and variable life insurance contracts, and broker-dealer and investment adviser relationship summaries.[27]

1. Fund Shareholder Preferences Regarding Ongoing Disclosures

Based on available information, as detailed below, we understand that many fund shareholders would prefer to receive a smaller volume of fund disclosures each year. In addition, many shareholders view funds' current annual and semi-annual reports as overly long and complex. Available evidence suggests that, as a result of the volume and complexities of fund disclosures, many shareholders do not read much, if any, of the ongoing disclosures they receive. We understand that fund shareholders would prefer concise, layered shareholder report disclosure that highlights key information and that uses design features to make the reports easier to understand and use.

Investor Preferences for Concise, Layered Disclosure

The vast majority of individual investors responding to questions in the Fund Investor Experience RFC about summary disclosure expressed a preference for summary disclosure with additional information available online or upon request, while only a very few stated that they did not prefer concise, summary disclosure.[28] Some investors specifically addressed and supported a more concise, summary shareholder report.[29] Moreover, several investors expressed concern about the current length of fund disclosure materials.[30] Commenters' overall preference for summary disclosure is generally consistent with other information the Commission has received—through investor testing, surveys, and other information-gathering—that similarly

[22] *See* rule 30e–3 under the Investment Company Act [17 CFR 270.30e–3]; Rule 30e–3 Adopting Release, *supra* footnote 14.

[23] *See infra* Section II.I (discussing the Commission's advertising rules and certain proposed changes to these rules).

[24] The majority of individual investors responding to the Fund Investor Experience RFC used the Feedback Flier to provide their views. *See* Fund Investor Experience RFC, *supra* footnote 8, at Appendix B. Unless otherwise indicated, comments cited in this release are the public comments on the Fund Investor Experience RFC, *supra* footnote 8, which are available at *https://www.sec.gov/comments/s7-12-18/s71218.htm.*

[25] *See, e.g.,* Comment Letter of Broadridge Financial Solutions, Inc. (Oct. 31, 2018) (''Broadridge Comment Letter I''); Comment Letter of the Consumer Federation of America (Oct. 31, 2018) (''CFA Comment Letter''); Comment Letter of Investment Company Institute (Oct. 24, 2018) (''ICI Comment Letter I''); Comment Letter of Broadridge Financial Solutions, Inc. (Apr. 28, 2020) (''Broadridge Comment Letter II'').

[26] *See* Investor Testing of Selected Mutual Fund Annual Reports (Feb. 9, 2012) (''2012 Report on Investor Testing of Fund Annual Reports''), *available at https://www.sec.gov/comments/s7-08-15/s70815-3.pdf*; SEC Staff, Study Regarding Financial Literacy Among Investors (Aug. 2012) (''Financial Literacy Study''), *available at http://www.investor.gov/publications-research-studies/sec-research*; *see also* Recommendation of the Investor Advisory Committee on Disclosure Effectiveness (May 21, 2020) (''IAC Disclosure Effectiveness Recommendation''), *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/disclosure-effectiveness.pdf* (discussing, among other things, research findings relating to investors' understanding of fund disclosure).

[27] *See* 2009 Summary Prospectus Adopting Release, *supra* footnote 10; Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (''Variable Contract Summary Prospectus Adopting Release''); Form CRS Relationship Summary; Amendments to Form ADV, Investment Advisers Act Release No. 5247 (June 5, 2019) [84 FR 33492 (July 12, 2019)] (''Form CRS Adopting Release'').

[28] For example, of the 49 individual investors who responded to a question about summary disclosure in the Feedback Flier, 46 investors preferred summary disclosure and three investors did not. *See, e.g.,* Comment Letter of Carol Palmer (June 5, 2018) (''Palmer Comment Letter''); Comment Letter of Perry Balke (June 5, 2018) (''Balke Comment Letter'') (''Seems like there should be a disclosure for the ultimate investor and then additional/other disclosures for Advisors/Institutions to analyze.''); Comment Letter of Sara Karlidag (June 6, 2018) (''Karlidag Comment Letter''); Comment Letter of Chip Morton (Dec. 28, 2018) (''Morton Comment Letter'') (''I like the more detailed reports''). Investors who responded to the Fund Investor Experience outside of the Feedback Flier also supported more concise, summary disclosure. *See, e.g.,* Comment Letter of Virginia Lamp (Aug. 13, 2018); Comment Letter of Mark Pitts (July 15, 2018).

[29] *See, e.g.,* Comment Letter of Ann Watters (Oct. 8, 2018); Comment Letter of Allen Weaver (Oct. 8, 2018) (''Weaver Comment Letter''); Comment Letter of Steve Henry (Oct. 8, 2018) (''Henry Comment Letter'').

[30] *See, e.g.,* Comment Letter of Carla Rojas (June 9, 2018) (''Rojas Comment Letter'') (stating that fund disclosure is too long); Comment Letter of Richard Franco (Sept. 24, 2018) (''Franco Comment Letter''); Comment Letter of Lisa Nevin (June 13, 2018) (''Nevin Comment Letter''); Comment Letter of Mike Woods (Sept. 2, 2018) (''Woods Comment Letter''); Comment Letter of David (Aug. 30, 2018) (''David Comment Letter'') (stating that fund disclosures are too overwhelming to be useful).

indicates that investors strongly prefer concise, layered disclosure.[31]

Investor Views on the Usability and Design of Funds' Shareholder Reports

Available evidence suggests that investors generally view fund shareholder reports as difficult to understand. Several investors responding to the Fund Investor Experience RFC stated that fund disclosure is too complicated.[32] For instance, many investors indicated that there is too much technical writing in fund disclosure.[33] Investors also expressed a strong preference for the inclusion of more tables, charts, and graphs in fund disclosure to make information more understandable to the average investor.[34] Similarly, the majority of investors participating in certain past quantitative and qualitative investor testing initiatives on the Commission's behalf expressed the view that funds' annual reports are written more for advanced investors, financial professionals, or regulators than for an average investor.[35] Investor surveys that other market participants have conducted further support the conclusion that investors view funds' shareholder reports as too lengthy and complicated, and difficult for the average investor to use to effectively find information of interest.[36] These surveys have found that, for example, approximately 41% to 72% of surveyed investors find fund shareholder reports difficult to understand.[37]

Investors' Current Use of Fund Disclosures

Several investors responding to the Fund Investor Experience RFC stated that they do not review funds' disclosure materials at all.[38] Investor testing and surveys also suggest that many fund shareholders tend to read very little, if any, of funds' disclosure materials. For example, in one investor survey, 12% of fund shareholders stated that they ''never'' review mutual fund or ETF disclosure, while an additional 37% said that they review this disclosure ''some of the time.''[39] Another survey found that 63% of mutual fund shareholders who recalled receiving fund shareholder reports read, at most, very little of them.[40] Two other surveys found somewhat higher readership levels of shareholder reports, with only 4% and 8% of surveyed shareholders responding that they do not read the reports.[41] However, a majority of fund shareholders in one of these surveys also indicated that they spend 15 minutes or less reviewing the reports.[42]

Survey results relating to readership of shareholder reports also suggest that shareholders may not read some, or all,

[31] *See, e.g.,* Broadridge Comment Letter I; ICI Comment Letter I; Broadridge Comment Letter II; 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26 (noting that the concept of a shortened annual report appealed to many focus group participants); *see also* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at Section II (discussing investors' preferences for summary disclosure with respect to fund prospectuses); Financial Literacy Study, *supra* footnote 26 (noting that, based on the feedback of commenters and the results of quantitative and qualitative research, ''[w]ith respect to investment product disclosures, investors favor summary documents containing key information about the investment product''); Understanding Investor Preferences for Mutual Fund Information, Investment Company Institute (2006) (''Investor Preferences Report''), *available at https://www.ici.org/pdf/rpt_06_inv_prefs_full.pdf*; Form CRS Adopting Release, *supra* footnote 27, at n.36 (discussing similar preferences for concise disclosure with respect to broker-dealer and investment adviser relationship summaries); Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27, at n.33 (discussing commenters' support for layered disclosure in the case of variable annuity and variable life insurance contracts); IAC Disclosure Effectiveness Recommendation, *supra* footnote 26 (discussing, among other things, the use of layered disclosure as an approach to develop more investor-friendly disclosures).

[32] *See, e.g.,* Karlidag Comment Letter; Rojas Comment Letter; Comment Letter of Melanie Jallah (June 12, 2018) (''Jallah Comment Letter''); Nevin Comment Letter; Comment Letter of Roberto Delmonte (June 15, 2018) (''Delmonte Comment Letter''); Broadridge Comment Letter I (stating that in a quantitative survey, 72% of investors who review mutual fund or ETF disclosure said they do not find the information easy to understand); Comment Letter of Helen and Bob Hague (Aug. 30, 2018) (''Hague Comment Letter'') (stating that they understand summary prospectus disclosure, but not annual report disclosure); Comment Letter of Michael Dougle (Aug. 30, 2018) (''Dougle Comment Letter''); David Comment Letter.

[33] *See, e.g.,* Comment Letter of Harold Thomas (June 8, 2018) (''Thomas Comment Letter''); Rojas Comment Letter; Jallah Comment Letter; Comment Letter of Kate Freedman (June 12, 2018) (''Freedman Comment Letter''); Nevin Comment Letter; Delmonte Comment Letter; Comment Letter of Rich Kirchoff (June 21, 2018) (''Kirchoff Comment Letter''); Comment Letter of Tom Arnold (June 23, 2018) (''Arnold Comment Letter'') (stating that there is too much boilerplate in fund disclosures, which are legal documents instead of informative documents); Comment Letter of Mimi Solo (July 16, 2018) (''Solo Comment Letter''); Woods Comment Letter (stating that fund disclosure is not useful because there is too much boilerplate and legalese).

[34] *See, e.g.,* Comment Letter of Jack Wilhelm (Aug. 30, 2018) (''Wilhelm Comment Letter''); Comment Letter of Frank W. (Aug. 30, 2018) (''Frank W. Comment Letter''); Comment Letter of Caryn Stiles (Aug. 30, 2018) (''Stiles Comment Letter''); Comment Letter of Mrs. Kellie (Aug. 30, 2018); Hague Comment Letter; Comment Letter of J.L. (Aug. 30, 2018) (''J.L. Comment Letter''); Woods Comment Letter; Comment Letter of Amanda Yukle (Sept. 6, 2018) (''Yukle Comment Letter''); Comment Letter of Joanna Baker (Sept. 11, 2018) (''Baker Comment Letter''). However, one investor expressed a preference for text disclosure. *See* Comment Letter of Mark Freeland (Dec. 2, 2018) (''Freeland Comment Letter'').

See also Financial Literacy Study, *supra* footnote 26 (explaining that, based on public comments and qualitative and quantitative research, investors prefer that disclosures be written in clear, concise, understandable language, using bullet points, tables, charts, and/or graphs); Investor Preferences Report, *supra* footnote 31 (indicating that investors prefer graphics and charts describing an investment over a narrative description).

[35] *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 10, 75, and 80. For example, one focus group participant in the 2012 research described the annual report disclosure they reviewed as ''mind-clogging,'' while another participant suggested that annual reports ''should be written in fifth grade English.'' Another participant stated, ''If they're sending it to us, use a summary and pie charts. (The more sophisticated investors) can go online.''

[36] *See* Broadridge Comment Letter I (explaining the findings of qualitative feedback from 45 retail investors regarding a typical mutual fund annual report, including that investors found the document to be too long and overwhelming and preferred disclosures that can be read in a few minutes and that focus on essential information); Mutual Fund Investors' Views on Shareholder Reports: Reactions to a Summary Shareholder Report Prototype, Investment Company Institute (Oct. 2018) (''ICI Investor Survey''), *available at https://www.ici.org/pdf/ppr_18_summary_shareholder.pdf*; Broadridge Comment Letter II.

[37] *See* Broadridge Comment Letter I (stating that 72% of surveyed investors that review mutual fund or ETF disclosures do not find them easy to understand); ICI Investor Survey, *supra* footnote 36 (stating that 67% of surveyed mutual fund investors who recalled receiving fund shareholder reports indicated that the reports are difficult to understand); Broadridge Comment Letter II (providing the results of two surveys in which 41% and 53% of surveyed investors, respectively, found the reports very or somewhat difficult to understand, with older investors and those with lower incomes more likely to find the reports difficult to understand).

[38] *See, e.g.,* Delmonte Comment Letter; Comment Letter of Helena Krus (July 29, 2018) (''Krus Comment Letter''); Comment Letter of Logan Fowler (Aug. 13, 2018) (''Fowler Comment Letter''); Wilhelm Comment Letter; Comment Letter of Nina Grano (Aug. 30, 2018) (''Grano Comment Letter''); Comment Letter of Jack Olstrom (Aug. 30, 2018) (''Olstrom Comment Letter''); Dougle Comment Letter; Comment Letter of Frank J. (Aug. 30, 2018); J.L. Comment Letter; Franco Comment Letter; Comment Letter of Irwin Joseph (Nov. 19, 2018) (''Joseph Comment Letter''). Some of these commenters stated that they do not review fund disclosure materials because they are too long or complex, or generally are not well suited to investors' needs. *See, e.g.,* Fowler Comment Letter; Franco Comment Letter; Grano Comment Letter.

[39] *See* Broadridge Comment Letter I.

[40] *See* ICI Investor Survey, *supra* footnote 36; *see also* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 61, 69 (stating that, of participants in the qualitative component of this testing, 52% read a few key sections of fund annual reports, 14% scan the table of contents and/or the first few pages, and 25% file it or discard it unread; of online survey respondents, 72% read a few key sections, 10% scan the first few pages, and 3% file it or discard it unread).

[41] *See* Broadridge Comment Letter II. One of these surveys found that 8% of surveyed investors do not read the reports, 19% read very little of the reports, and 28% read some of the reports. The other survey found that 4% of surveyed investors do not read the reports and 56% read some of the reports.

[42] *See id.* (providing the results of a survey in which 21% of investors said that they typically spend 5 minutes or less reviewing shareholder reports and an additional 41% of investors said that they typically spend 6 to 15 minutes reviewing the reports).

of a fund's shareholder report due, in part, to the fact that many view shareholder reports as overly long and complex documents that are not designed to meet the average shareholder's needs.[43] Fund shareholders may, however, be more likely to read a more concise version of a fund's shareholder report.[44] Academic research similarly suggests that, due to limits on an individual's ability to absorb and process information, investors may be more likely to understand and effectively use concise disclosure that is well-organized and focused on key information.[45]

Investor Views on the Content of Funds' Shareholder Reports

Investors participating in investor testing and surveys have expressed a consistent interest in certain specific shareholder report disclosure items.[46] The principal items of interest that investors have consistently identified for purposes of monitoring an ongoing fund investment include performance, holdings, and fund expenses.[47] For example, investor testing and surveys have found that approximately 60% to more than 80% of investors believe that fund performance information is important.[48] As for fund holdings information, testing and surveys have found that approximately 38% to 79% of investors view this information as important.[49] Testing and surveys have also found that approximately 34% to 72% of investors believe that fund expense information is important.[50]

Investors have expressed varying levels of interest in reviewing a fund's financial statements and financial highlights. For example, at least one survey has found somewhat high levels of interest in this information from shareholders who currently review fund shareholder reports (*i.e.,* 63% of these investors often review a fund's financial statements), and another survey found that a majority of investors rated financial highlights disclosure as important.[51] Other surveys, as well as comments on the Investor Experience RFC, suggest that the average investor may have less interest in financial statements and financial highlights.[52] As for other types of shareholder report disclosure, investors typically have expressed less interest in these other disclosures.[53]

[43] *See, e.g.,* ICI Investor Survey, *supra* footnote 36 (''The survey results demonstrate that mutual fund investors who find the current reports difficult to understand are less likely to read them.'').

[44] *See, e.g.,* Broadridge Comment Letter I (discussing the results of a quantitative survey related to fund disclosure in which approximately 39% of investors said they would be more likely to look at or review a summary format of a fund's annual and semi-annual reports); ICI Comment Letter I (discussing an investor survey of a summary shareholder report prototype, in which more than 90% of participants indicated that they would be more likely to read the summary prototype than a full-length shareholder report); Broadridge Comment Letter II (providing the results of a survey in which 88% of investors indicated that they were more likely to read a summary shareholder report than a full-length report). Two commenters used the same summary shareholder report prototype, developed by the ICI, in their investor surveys. The prototype was approximately three pages in length and primarily focused on performance, fund expenses, and illustrations of fund holdings. *See* ICI Comment Letter I; Broadridge Comment Letter II.

[45] *See, e.g.,* Disclosure: Psychology Changes Everything, George Loewenstein, Cass R. Sunstein, and Russell Goldman, Annual Review of Economics (2014) (providing a comprehensive survey of literature relevant to disclosure regulation and suggesting that ''[g]iven the limits of human attention, perhaps the most obvious way to improve the effectiveness of disclosures is to simplify them . . . [and] to reduce the number of less important disclosures so as to increase the salience of the most important ones''); *see also infra* Section III.C.1 (discussing additional academic research on characteristics that may increase the effectiveness of a given disclosure).

[46] We are not aware of investor testing or surveys that specifically have explored fund shareholders' level of interest in prospectus-related disclosure they receive through annual prospectus updates or interim prospectus stickers. However, the results of at least one survey suggest that fund shareholders are more likely to use shareholder reports than prospectuses to monitor their fund investments. *See* Investor Preferences Report, *supra* footnote 31, at 15.

[47] *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 51–52 (stating that about half of online survey respondents considered items regarding performance, holdings, and expenses as ''absolutely essential information for any investor''); Broadridge Comment Letter I; ICI Comment Letter I; Investor Preferences Report, *supra* footnote 31; Broadridge Comment Letter II. Some commenters on the Fund Investor Experience RFC also suggested that a summary or streamlined shareholder report should focus on a fund's expenses, performance, and holdings. *See, e.g.,* Comment Letter of The Capital Group Companies (Oct. 30, 2018) (''Capital Group Comment Letter''); Henry Comment Letter. Similarly, we understand that these content topics are those that experts recommend that investors consider in understanding a fund investment. *See, e.g.,* IAC Disclosure Effectiveness Recommendation, *supra* footnote 26, at n.4 and accompanying text (''To select a mutual fund, for example, experts are nearly unanimous in recommending that investors consider the fund's investment objectives and strategies, risks, fees and expenses, past performance, including the volatility of that performance, the reputation of the fund manager, tax implications of an investment in the fund, and information about such account features as investment minimums.'').

[48] *See* Broadridge Comment Letter I (finding that, of the 50% of surveyed investors that review mutual fund or ETF annual and semi-annual reports ''always'' or ''most of the time,'' 75% of those investors often look at or review fund performance information); 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 49 (stating that 61% of participants in the qualitative component of this testing ranked the discussion of fund performance in the top three most important shareholder report items); ICI Comment Letter I (finding that approximately 83% of surveyed investors said that performance highlights information is very important or somewhat important); Investor Preferences Report, *supra* footnote 31 (stating that, after purchase, 76% of investors review performance information); Broadridge Comment Letter II (providing the results of an investor survey in which 89% of investors rated the performance section of the annual report as important and 63% rated the portfolio commentary (or performance highlights) section as important).

[49] *See* Broadridge Comment Letter I (stating that, of the 50% of surveyed investors that review mutual fund or ETF annual and semi-annual reports ''always'' or ''most of the time,'' 67% of those investors often look at or review fund portfolio holdings information); 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 49 (finding that 38% of participants in the qualitative component of this testing ranked the graphical representation of holdings in the top three most important shareholder report items); *see also* ICI Comment Letter I (stating that approximately 79% of surveyed investors said that graphical representation of holdings information is very important or somewhat important); Investor Preferences Report, *supra* footnote 31 (stating that, after purchase, 41% of investors review portfolio holdings); Broadridge Comment Letter II (discussing a survey in which 63% of investors rated disclosure about the characteristics of a fund—including top holdings, asset allocations, and industry allocations—as important for annual reports and 64% of investors rated this disclosure as important for semi-annual reports).

[50] *See* Broadridge Comment Letter I (stating that, of the 50% of surveyed investors that review mutual fund or ETF annual and semi-annual reports ''always'' or ''most of the time,'' 61% of those investors often look at or review fund expense information); 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 49 (finding that 34% of participants in the qualitative component of this testing ranked the expense example in the top three most important shareholder report items); Broadridge Comment Letter II (discussing a survey in which 69% of investors rated expense disclosure as important for annual reports and 66% of investors rated it as important for semi-annual reports); *see also* ICI Comment Letter I (stating that approximately 72% of surveyed investors said that the fund expense example is very important or somewhat important); Investor Preferences Report, *supra* footnote 31 (stating that, after purchase, 55% of investors review fund fees and expenses).

[51] *See* Broadridge Comment Letter I; Broadridge Comment Letter II (stating that 55% of investors rated the financial highlights as important annual report disclosure and 53% of investors rated this disclosure as important for semi-annual reports, but 47% of surveyed investors viewed the statement of financial condition and operations as important disclosure for annual or semi-annual reports).

[52] *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 49 and 52 (indicating that approximately 38% to 41% of surveyed investors found the financial highlights to be important, while approximately 24% to 33% of surveyed investors believed that financial statements were important); *see also* ICI Comment Letter I (determining not to include financial statements and most financial highlights data points in a summary shareholder report mockup and instead concluding that ''they were of a more technical nature that a typical retail investor would not read or understand,'' although such information would be available online under the commenter's proposed approach); Rojas Comment Letter (''What am I supposed to do with a very long list of holdings and financial statements?''); Balke Comment Letter (''Financial Statements are of little value.''); Fowler Comment Letter (''What am I supposed to do with fund financial statements?'').

[53] *See* Broadridge Comment Letter I (finding that surveyed investors tended to have less interest in

Investor Views on the Volume and Frequency of Fund Disclosure

In addition to concerns about the length of funds' shareholder reports, some investors responding to the Fund Investor Experience RFC expressed concern about the overall volume and frequency of fund disclosures they receive each year. For example, several investors expressed the view that they receive too many fund disclosure materials and that they feel overwhelmed by the amount of information they receive.[54] Another investor expressed a preference for less frequent disclosure.[55]

However, with respect to shareholder reports in particular, one investor survey found that 86% of investors thought that the current semi-annual frequency at which they receive reports was ''about the right frequency,'' while 11% of investors viewed semi-annual reports as too frequent and 3% expressed a preference for more frequent shareholder reports. In this survey, investors' preferred frequency changed somewhat for a prototype summary shareholder report.[56] If they were to receive a summary shareholder report, 56% of investors preferred semi-annual reports, 27% preferred quarterly reports, 17% preferred annual reports, and 1% did not want to receive the reports.[57]

2. Fee and Risk Disclosure Preferences

We understand that investors generally prefer concise, summary disclosure that allows them to quickly understand key information. Similarly, we understand that this general preference extends to investors' preferences about disclosures regarding fund fees and risks.

Investor Views on Fee and Risk Disclosure

The majority of investors responding to a question in the Feedback Flier about fee disclosure expressed the view that funds do not clearly disclose their fees and expenses.[58] Many of these investors suggested that funds should simplify their fee and expense disclosure.[59] Several investors recommended reducing the number of line items in the prospectus fee table or providing only one ''bottom-line'' number showing the fees associated with an investment in the fund.[60] Several investors also expressed an interest in comparing fees and expenses across multiple funds to help inform their investment decisions.[61] Other commenters who responded more generally to the Fund Investor Experience RFC also expressed concern that fund fees are hard to understand, and that certain terminology Form N–1A uses (*e.g.,* use of terms like ''12b–1 fees'' and ''front-end loads'') is similarly difficult to understand.[62] Some commenters suggested that funds should disclose fees in terms of dollars rather than percentages to make the disclosure more understandable to investors.[63]

Investor Views on Principal Risk Disclosure

Many investors responding to the Fund Investor Experience RFC also suggested that disclosure about a fund's risks is too long.[64] Some investors suggested that funds should order risks by importance and provide the most important risks first.[65] Other investors suggested that more focused risk disclosure would be helpful.[66] Consistent with these investor preferences, Commission staff has encouraged funds to take steps to improve their principal risk disclosure including by, for example, ordering risks by importance, better tailoring their risk disclosure, and concisely summarizing principal risks in the summary prospectus.[67]

3. Disclosure Delivery Preferences

Based on information from the Fund Investor Experience RFC and investor testing and surveys, investors have shown a general familiarity with using the internet to find information about a fund and have expressed a range of preferences regarding how they receive fund disclosure (*i.e.,* in paper or electronically). In the Fund Investor Experience RFC, the Commission sought information on investors' use of the internet to communicate about and find information on fund investments, as well as their preferences on the form and manner of disclosure delivery.[68] In response, many investors indicated that they go to fund or intermediary websites to get information about a fund investment.[69] Many investors also expressed a preference for receiving fund disclosure electronically, either through email, mobile application, or

remuneration paid to directors, officers, and others, as well as information about directors and officers); 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 52 (stating that surveyed investors generally had less interest in information about changes in, and disagreements with accountants; results of any shareholder vote; discussion of the reasons the board approved an advisory contract; statements about where to find certain additional fund information; and information about directors and officers); Broadridge Comment Letter II (providing the results of a survey in which 26% of investors rated disclosure about the fund's directors and officers as important, and 25% of investors rated disclosure about the board's approval of the investment advisory contract as important).

[54] *See, e.g.,* Delmonte Comment Letter (''There is too much information provided to me. I buy a mutual fund because I want convenience and to more efficiently spend my time. Stop giving me hours['] worth of reading I do not understand.''); Solo Comment Letter (stating that there are too many fund disclosure materials, they are too long, and they do not distill the right information); Rojas Comment Letter.

[55] Comment Letter of Anonymous (Aug. 30, 2018) (''Anonymous Comment Letter'') (''I invest for the long term. I do not need constant updates.'')

[56] *See supra* footnote 44 (discussing the prototype summary shareholder report developed by the ICI).

[57] *See* Broadridge Comment Letter II.

[58] Approximately 33 investors responded to the Feedback Flier question asking, ''Do you think funds clearly disclose their fees and expenses?'' Of these 33 investors, 21 investors replied ''no'' and 12 investors replied ''yes.''

[59] *See, e.g.,* Krus Comment Letter; Stiles Comment Letter; Anonymous Comment Letter; Hague Comment Letter; J.L. Comment Letter; Woods Comment Letter; Comment Letter of Jake Hamm (Sept. 3, 2018); Yukle Comment Letter.

[60] *See, e.g.,* Grano Comment Letter; Anonymous Comment Letter; Yukle Comment Letter; J.L. Comment Letter.

[61] *See, e.g.,* Palmer Comment Letter; Balke Comment Letter; Karlidag Comment Letter; Kirchoff Comment Letter; Solo Comment Letter; Krus Comment Letter.

[62] *See, e.g.,* Comment Letter of AARP (Oct. 31, 2018) (''AARP Comment Letter''); Comment Letter of Independent Directors Council (Oct. 30, 2018); Comment Letter of Carla Ruiz (Aug. 17, 2018) (''Ruiz Comment Letter''). A recent study of mutual fund financial literacy also found that many survey participants were unable to correctly answer certain true-or-false questions about general aspects of funds' fee structures, as well as other characteristics of funds. *See* Brian Scholl and Angela Fontes, Adding Depth to Financial Literacy: What Does the Public Know About Mutual Funds? Towards a New Index of Investor Knowledge, SEC Office of the Investor Advocate (July 18, 2019).

[63] *See, e.g.,* AARP Comment Letter; Comment Letter of A. Miller (July 21, 2018); *see also infra* footnote 573 (citing other evidence that dollar-based disclosure may be easier for some investors to understand).

[64] *See, e.g.,* Krus Comment Letter; Solo Comment Letter; Fowler Comment Letter; Stiles Comment Letter; Comment Letter of Hector Ewing (Aug. 30, 2018) (''Ewing Comment Letter''); J.L. Comment Letter; Woods Comment Letter; Baker Comment Letter; Olstrom Comment Letter.

[65] *See, e.g.,* Stiles Comment Letter; Dougle Comment Letter; J.L. Comment Letter; Ruiz Comment Letter; *see also* Frank W. Comment Letter (expressing interest in disclosure that better explains the level of a given risk).

[66] *See, e.g.,* Freeland Comment Letter (stating that funds should only disclose risks based on how the fund normally and actually invests).

[67] *See* Division of Investment Management, Accounting and Disclosure Information 2019–08, Improving Principal Risks Disclosure, *available at https://www.sec.gov/investment/accounting-and-disclosure-information/principal-risks/adi-2019-08-improving-principal-risks-disclosure* (''ADI 2019–08'').

[68] *See* Fund Investor Experience RFC, *supra* footnote 8, at Section II.B.2.

[69] *See, e.g.,* Karlidag Comment Letter; Thomas Comment Letter; Jallah Comment Letter; Delmonte Comment Letter; Solo Comment Letter; Comment Letter of C. Scott (July 26, 2018) (''Scott Comment Letter''); Comment Letter of James McRitchie (Sept. 4, 2018) (''McRitchie Comment Letter'').

website availability.[70] Several other investors preferred to access most fund information electronically, with the exception of certain information they preferred to receive on paper.[71] Other investors stated that they generally prefer to receive fund information in paper format.[72] A few investors specifically suggested that paper should be the default delivery mechanism for a ''summary'' shareholder report.[73] In addition, investor testing and surveys suggest that many investors would prefer enhanced availability of fund information on the internet in a layered disclosure framework, although some investors prefer to receive fund disclosures in paper format.[74]

C. Developments Affecting Fund Disclosure and Marketing Practices

In addition to evidence about investor preferences regarding fund disclosure, our proposal is informed by developments affecting fund disclosure and marketing practices. With respect to our proposed amendments to promote more concise, layered disclosure, these developments include advances in technology and the Commission's experience with summary prospectus disclosure, as well as the growing length and complexity of funds' shareholder reports since the mid-1990s. Additionally, our proposed amendments to investment company advertising rules are informed by our observations about recent investment company marketing practices in light of increased industry focus on fees, and competition based on fees.

Advances in Technology

For more than 20 years, the Commission has recognized the internet's important role in providing disclosure materials and other information to investors and maximizing investor access to information.[75] During this time, technology has continued to evolve, and investors' access to the internet has increased. For example, as of 2019, approximately 94% of households owning mutual funds had internet access, while only 68% of these households had internet access in 2000.[76] Moreover, advances in technology, including increasing use of mobile devices to access information, are expanding the avenues that funds and intermediaries can use to communicate with investors and make it easier to provide interactive or customizable information.[77] We understand that many funds and financial intermediaries are using technology in an effort to communicate more effectively with fund investors and to respond to investor preferences, and continue to explore additional ways to use technology to better communicate with investors.[78] The Commission, while considering the needs and preferences of investors, also has recognized that modernizing the manner in which funds and others make information available to investors allows them to leverage the benefits of technology and reduce fund costs.[79]

Experience With Layered Disclosure, and the Growing Length and Complexity of Shareholder Reports Over Time

The Commission also has taken multiple steps with respect to fund prospectuses to both recognize investors' preferences for concise and engaging disclosure of key information and ensure that additional information that may be of interest to some investors is available through a layered approach to disclosure.[80] We believe these initiatives have benefitted investors. For example, research shows that the introduction of a more concise summary prospectus may allow investors to spend less time and effort to arrive at the same portfolio decision they would have made after reading the longer statutory prospectus.[81] Approximately

[70] *See, e.g.,* Rojas Comment Letter; Jallah Comment Letter; Freedman Comment Letter; Nevin Comment Letter; Kirchoff Comment Letter; Arnold Comment Letter; Scott Comment Letter; Krus Comment Letter. Some funds responding to the Fund Investor Experience RFC also suggested that website disclosure is consistent with many investors' preferences. *See, e.g.,* Capital Group Comment Letter; Comment Letter of Fidelity Investments (Oct. 31, 2018) (''Fidelity Comment Letter''); Comment Letter of Vanguard (Oct. 31, 2018) (''Vanguard Comment Letter'').

[71] Many of these investors preferred to receive statements in paper. *See* Comment Letter of Arthur Blanchard (Nov. 19, 2018) (''Blanchard Comment Letter''); Ewing Comment Letter; Joseph Comment Letter; Krus Comment Letter. Other investors appeared to have different preferences. *See* Comment Letter of Mark S. (Aug. 30, 2018) (preferring to receive ''important'' information by mail); Olstrom Comment Letter (preferring to receive tax forms in paper); Comment Letter of Carl Waranowksi (Nov. 25, 2018) (''Waranowski Comment Letter'') (preferring to receive ''important'' information in paper).

[72] *See, e.g.,* Grano Comment Letter; Comment Letter of Jane D. Nelson (Aug. 30, 2018); Comment Letter of Duane Lee (Dec. 3, 2018) (''Lee Comment Letter''); Comment Letter of Mark Moran (Dec. 4, 2018); Morton Comment Letter; Comment Letter of Brad Shockey (Oct. 9, 2018).

[73] *See* Henry Comment Letter; Weaver Comment Letter.

[74] For example, the 2012 investor testing suggested that an investor looking for a fund's annual report is most likely to seek it out on the fund's website, rather than request it by mail or phone or by retrieving it from the Commission's EDGAR system. *See* 2012 Report on Investor Testing of Fund Annual Reports *supra* footnote 26, at 72. Many investors indicated that they would prefer that fund information be made available in both electronic and paper versions, with a plurality of respondents preferring electronic transmission by email with the option to easily request a paper copy of a particular report, though a significant minority indicated that they would still prefer to receive a paper copy through the mail. *Id.* at 183. *See also* Broadridge Comment Letter I (providing data on surveyed investors' current methods for receiving mutual fund and ETF disclosure and preferred delivery methods that suggest that preferences are mixed, with 47% of investors primarily receiving fund disclosure by mail and 44% primarily receiving fund disclosure by email); CFA Comment Letter (stating that the following percent of respondents to a 2006 survey expressed interest in using the internet to: (1) Obtain general information about funds (59%); (2) research individual funds (58%); (3) receive periodic reports and disclosure documents (49%); (4) use a calculator to compare costs (47%); (5) communicate with a financial services professional (39%); or (6) purchase mutual funds (26%)); Broadridge Comment Letter II (providing the results of a survey in which 34% of investors said they were more likely to review a summary shareholder report if received by mail and 50% of investors said they were more likely to review such a report if received by email). *See also infra* footnote 76 (discussing increasing internet access over the years).

[75] *See, e.g., supra* footnote 21. For a more-detailed discussion of other Commission releases that have involved using the internet to provide or improve access to information, *see* Rule 30e–3 Adopting Release, *supra* footnote 14, at n.18; *see also* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) [84 FR 57162 (Oct. 24, 2019)] (''ETF Adopting Release''), at n.229 (encouraging ETFs to consider whether there are technological means to make their disclosure more accessible).

[76] *See* Ownership of Mutual Funds, Shareholder Sentiment, and Use of the internet, ICI Research Perspectives (Oct. 2019) (''Study on Mutual Fund Investors' Use of the internet''), *available at https://www.ici.org/pdf/per25-08.pdf*; *see also* CFA Comment Letter (providing a 2014 report discussing the growth of internet usage).

[77] *See, e.g.,* Vanguard Comment Letter; ICI Comment Letter I; CFA Comment Letter.

[78] *See, e.g.,* Fidelity Comment Letter; Comment Letter of Putnam Investments (on behalf of the Mutual Fund Broker-Dealer Working Group) (Nov. 30, 2018) (''Putnam Comment Letter''); ICI Comment Letter I; Capital Group Comment Letter (stating that a growing percentage of fund shareholders and their advisers use the fund group's website to obtain information about its funds, its organization, and other investment insights); CFA Comment Letter (providing a 2014 study entitled ''Can the internet Transform Disclosures for the Better?'' that, among other things, reviewed the content and design of fund and intermediary websites). For example, we understand that several funds and financial intermediaries provide interactive features on their websites such as fund screener tools, expense calculators, and retirement planning tools and use mobile applications to engage with fund shareholders.

[79] *See* Rule 30e-3 Adopting Release, *supra* footnote 14; Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27.

[80] *See* New Disclosure Option for Open-End Management Investment Companies, Investment Company Act Release No. 23065 (Mar. 13, 1998) [63 FR 13968 (Mar. 23, 1998); 2009 Summary Prospectus Adopting Release, *supra* footnote 10; Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27.

[81] *See* John Beshears, James Choi, David Laibson, and Brigitte Madrian, How Does Simplified Disclosure Affect Individuals' Mutual Fund Choices?, Explorations in the Economics of Aging,

93% of funds use summary prospectuses.[82]

On the other hand, the Commission has not taken comprehensive steps to create a layered disclosure framework for funds' shareholder reports.[83] Funds' shareholder reports generally have become longer and more complex over the years. For example, until 1994, funds were only required to provide certain financial information in their shareholder reports, generally consistent with the types of information that section 30(e) of the Investment Company Act identifies.[84] During this time, however, many funds provided other information in these reports voluntarily, including information about general economic conditions, the fund's performance, and services provided to shareholders.[85] Over the past two decades, the amount of information that funds are required to include in shareholder reports (or that funds otherwise voluntarily include in these reports) has increased substantially.[86]

Developments Affecting Investment Company Advertisements

In recent years, investment companies increasingly have been marketing themselves on the basis of costs in an effort to attract investors. For instance, we have observed some funds calling themselves ''no-expense'' or ''zero-expense'' funds, or emphasizing their low expense ratios, despite the fact that investors may experience other investment costs.[87] These other investment costs include, for example, securities lending costs or wrap program fees that may provide revenue to the fund's adviser, its affiliates, or others and that may effectively allow the fund to reduce its reported expense ratio because the prospectus fee table is not required to reflect the relevant category of costs. Investment company advertising rules currently place limits on how a fund may present its performance to promote comparability and prevent potentially misleading advertisements.[88] These rules, however, generally do not prescribe the presentations of fees and expenses in advertisements to address similar concerns about comparability or potentially misleading information.[89]

II. Discussion

D. Overview of Proposed New Disclosure Framework

1. Executive Summary

The amendments we are proposing would modify the disclosure framework for funds registered on Form N–1A to create a new layered disclosure approach designed to highlight key information for retail investors. The new disclosure approach is designed to tailor the information that investors receive to help investors better assess and monitor their fund investments and make informed investment decisions. We recognize that investors have different levels of knowledge and experience, and we seek to promote disclosure that is inviting and usable to a broad spectrum of investors.

In order to help achieve these goals, the proposal includes the following principal elements:

• *Shareholder Reports Tailored to the Needs of Retail Shareholders:* Under the proposal, fund investors would continue to receive fund prospectuses in connection with their initial investment in a fund, as they do today. Thereafter, a shareholder would receive concise and visually engaging annual and semi-annual reports designed to highlight information that we believe is particularly important for retail shareholders to assess and monitor their fund investments on an ongoing basis. This information would include—among other things—fund expenses, performance, and portfolio holdings. We also propose to provide funds the flexibility to make electronic versions of their shareholder reports more user-friendly and interactive.

• *Availability of Additional Information on Form N–CSR and Online:* Information currently included in annual and semi-annual reports that may be less relevant to retail fund shareholders, and of more interest to financial professionals and other investors who desire more in-depth information, would be made available online and delivered free of charge in paper or electronically upon request by the fund (or intermediary through which shares of the fund may be purchased or sold). This information

75, 76 (David A. Wise ed., 2011), *available at https://scholar.harvard.edu/laibson/publications/how-does-simplified-disclosure-affect-individuals-mutual-fund-choices*.

[82] *See supra* footnote 12.

[83] The Commission has, however, adopted rules that permit streamlined disclosure of portfolio holdings in funds' shareholder reports. In 2004, the Commission adopted an approach that gives funds the option to include summary portfolio schedules in their shareholder reports, provided the complete portfolio schedule is filed on Form N–CSR and available, free of charge, to investors. *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)], at Section II.B and paragraph accompanying n.111 (''February 2004 Shareholder Report Adopting Release'') (noting that these amendments were ''designed to streamline shareholder reports and help investors to focus on a fund's principal holdings, and thereby better evaluate the fund's risk profile and investment strategy,'' and would reduce printing and mailing costs for most funds).

[84] *See, e.g.,* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928, 37951 (Aug. 22, 1983)] (adopting Form N–1A, which included annual and semi-annual report requirements in what was then Item 23 of the form). In 1994, the Commission adopted amendments requiring funds to disclose information in their shareholder reports about the results of shareholder votes and any changes in and disagreements with accountants. *See, e.g.,* Amendments to Proxy Rules for Registered Investment Companies, Investment Company Act Release No. 20614 (Oct. 13, 1994) [59 FR 52689 (Oct. 19, 1994)]. In 1996, Congress added section 30(f) to the Investment Company Act, which allows the Commission to require that funds' semi-annual reports include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors. National Securities Markets Improvement Act of 1996, Public Law 104–290, Section 207, 110 Stat. 3416, 3430 (Oct. 11, 1996).

[85] *See, e.g.,* Standardization of Financial Statement Requirements in Management Investment Company Registration Statements and Reports to Shareholders, Investment Company Act Release No. 11490 (Dec. 15, 1980) [45 FR 83517 (Dec. 19, 1980)], at nn.3–4 and accompanying text.

[86] *See, e.g.,* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)] (''Independent Directors Release'') (requiring shareholder report disclosure regarding a fund's board of directors); Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25922 (Jan. 31, 2003) [68 FR 6564 (Feb. 7, 2003)] (requiring funds to disclose in their annual and semi-annual reports to shareholders the methods by which shareholders may obtain information about proxy voting); February 2004 Shareholder Report Adopting Release, *supra* footnote 83 (requiring funds to add shareholder report disclosure regarding fund expenses borne by shareholders, a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories, and management's discussion of fund performance, while allowing funds to include a summary portfolio schedule in these reports); Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release No. 26486 (June 23, 2004) [69 FR 39798 (June 30, 2004)] (requiring shareholder report disclosure about the basis for the board's approval of advisory contracts during the most recent fiscal half-year).

[87] A fund's expense ratio is the figure in its prospectus fee table that represents the fund's total annual operating expenses, expressed as a percent of the fund's average net assets. *See also infra* Section II.H.1.c (discussing costs that the expense ratio does not reflect).

[88] *See, e.g.,* Amendments to Investment Company Advertising Rules, Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760 (Oct. 6, 2003)]; Advertising by Investment Companies, Investment Company Act Release No. 16245 (Feb. 2, 1988) [53 FR 3868 (Feb. 10, 1988)] (''1988 Advertising Rules Release''); Mutual Fund Sales Literature Interpretive Rule, Investment Company Act Release No. 10915 (Oct. 26, 1979) [44 FR 64070 (Nov. 6, 1979)].

[89] While Commission rules require a fund to disclose maximum sales loads in some advertisements, and FINRA rules also limit how a fund advertisement may describe investment costs in some respects, these limitations currently apply only to a subset of fund advertisements. *See infra* Section II.H.2.

also would be filed on a semi-annual basis with the Commission on Form N–CSR. This information would include, for example, the schedule of investments and other financial statement elements. Shareholder reports would contain cover page legends directing investors to websites containing this information.

• *Amendments to Scope of Rule 30e–3 to Exclude Funds Registered on Form N–1A:* The proposal contemplates that a fund's shareholder reports, as modified pursuant to the proposed rule and form amendments, would serve as the central source of fund disclosure for existing shareholders. To ensure that all fund investors would experience the anticipated benefits of the proposed new tailored disclosure framework, we are proposing to amend the scope of rule 30e–3 to exclude open-end funds.[90] Beginning as early as January 1, 2021, funds may begin relying on rule 30e–3, which generally permits funds to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of the reports' online availability, instead of directly providing the reports to shareholders.[91] The new proposed disclosure framework considers feedback that commenters provided in response to the Fund Investor Experience RFC and reflects the Commission's continuing efforts to search for better ways of providing investors with the disclosure that they need. In light of these and other considerations, we preliminarily believe that the proposed disclosure approach represents a more-effective means of improving investors' ability to access and use fund information, and of reducing expenses associated with printing and mailing, than continuing to permit open-end funds to rely on rule 30e–3.

• *Tailoring Required Disclosures to Needs of New versus Ongoing Fund Investors:* It is currently common for fund shareholders to receive an updated annual prospectus each year. We are proposing new rule 498B, which would provide an alternative approach that uses layered disclosure, discussed in more detail below, to keep investors informed about their fund investment and updates to their fund that occur year over year. Under this proposed rule, new investors would receive a fund prospectus in connection with their initial investment in a fund, as they currently do, but funds would not deliver annual prospectus updates to investors thereafter. The proposed layered disclosure framework would instead rely on the shareholder report (including a summary in the annual report of material changes that occurred over the prior year), as well as timely notifications to shareholders regarding material fund changes as they occur, to keep investors informed about their fund investments and enable them to make informed decisions about whether to buy, sell, or hold fund shares. Current versions of the fund's prospectus would remain available online and would be delivered upon request in a manner consistent with the shareholder's delivery preference.

• *Improvements to Prospectus Disclosure of Fund Fees and Risks; Request for Comment on Improving Fund Fee and Expense Disclosures:* We recognize that fund fees and risks are two areas that investors find particularly important to assessing a prospective fund investment, and two disclosure areas that can be complex and confusing. We are proposing amendments to funds' prospectus disclosure that are designed to help investors more readily understand a fund's fees and risks, and that use layered disclosure principles that tailor disclosures of these topics to different types of investors' informational needs. We are also proposing amendments that would refine the scope of funds that are required to disclose the fees and expenses associated with investments in other funds as a component of a fund's bottom line annual expenses in the prospectus fee table. Furthermore, we are requesting comment on how we could improve the ways in which funds disclose their fees and expenses, in order to represent the full costs associated with a fund investment more accurately and to help investors better understand their investment costs.

• *Fee and Expense Information in Fund Advertisements:* Finally, we are proposing amendments that are designed to respond to developments that we have observed in fund advertising. The proposed amendments would require that presentations of investment company fees and expenses in advertisements and sales literature be consistent with relevant prospectus fee table presentations and be reasonably current. The proposed amendments also address representations of fund fees and expenses that could be materially misleading. The proposed advertising rule amendments would affect all registered investment company and BDC advertisements and would not be limited to open-end fund advertisements.

2. Considerations and Goals

Concerns and Considerations About Current Disclosure Framework

The proposed new disclosure framework—particularly, the new tailored approach to disclosure with respect to fund shareholder reports and prospectuses—is designed to address the concern that shareholder report and prospectus disclosures may appear redundant or inconsistent to shareholders, as well as our belief that prospectus disclosure in particular may often be less relevant to the informational needs of a shareholder who is simply monitoring his or her fund investment. As a preliminary matter, fund prospectuses and shareholder reports have historically served different purposes. The prospectus acts as the principal selling document for investors to inform investment decisions and facilitate fund comparisons. The shareholder report, on the other hand, provides information to a fund's current shareholders about the fund's operations and performance during the past fiscal period. Moreover, the shareholder report and prospectus present certain of the same types of information (*e.g.,* fund performance and expenses) differently in light of their intended audiences.[92]

As a result, there are ways in which the current disclosure framework may not tailor fund disclosure contents to the needs of different types of investors. Much of the information in a fund's prospectus, including disclosure about the fund's principal investment strategy and principal risks, often remains the same from year to year. Receiving continuing disclosure of this unchanging information therefore might not be useful to existing fund investors, although investors typically receive annual prospectus updates that include this content. On the other hand, to the extent a fund has a material change (*e.g.,* it materially changes its principal investment strategy and has different

[90] We discuss the operational aspects of this proposed amendment to the scope of rule 30e–3, including compliance date issues, in Section II.G *infra.*

[91] Notwithstanding rule 30e–3, investors who have elected electronic delivery of fund documents or have opted in to paper delivery of shareholder reports receive delivery of shareholder reports pursuant to their elections. *See infra* footnote 532 and accompanying text.

[92] For example, a shareholder report currently includes backward-looking information about a fund's actual ongoing expenses over the most recent fiscal half-year, while a prospectus includes forward-looking information about fees for new investments in a fund (*i.e.,* sales charges) and the fund's projected future expenses. As another example, a shareholder report typically provides performance and other information as of the end of the fund's most recent fiscal year, while a prospectus presents fund performance as of the end of a calendar year to help prospective investors compare potential fund investments.

principal risks, or changes its fees), this information may be more salient to a shareholder's monitoring of his or her investments. Under the current disclosure framework, these changes might not be highlighted to shareholders.[93] The fact that current fund disclosures might not meet investors' informational needs may contribute to investor disinterest or confusion. The potential for disinterest or confusion may be particularly pronounced when a shareholder receives prospectus and shareholder report disclosure close in time, which often occurs in the case of the annual report and the annual prospectus update.[94]

Although prospectus disclosure may be less well-suited for analyzing and monitoring an ongoing fund investment, some fund shareholders may be more likely to review a fund's prospectus instead of its shareholder reports based simply on length. Over the past two decades, the amount of information that funds are required to include in shareholder reports (or that funds otherwise voluntarily include in these reports) has increased substantially.[95] This amount of disclosure may not correspond with investors' expressed preferences for concise, layered disclosure that highlights key information. The substantial length of shareholder reports also may make it more difficult for investors to understand and effectively use the information.[96]

In addition, we have considered the extent to which modifying the disclosure framework for funds, for example by requiring funds to transmit the tailored shareholder reports that this proposal envisions, could result in cost savings.[97] Shareholders generally bear these fund expenses, and therefore may be bearing costs for information they prefer not to be delivered to them. For example, retail shareholders may prefer *not* to have delivered to them information that is more technical in nature and may be more relevant for financial professionals and other investors who desire more in-depth information (such as complete fund financial statements, as opposed to receiving summary disclosure about fund holdings and expenses).

This proposal reevaluates funds' disclosure framework in light of all of these considerations. The proposed new approach is based on the goal of promoting more-digestible, tailored disclosure that fund shareholders can use to monitor their ongoing fund investments efficiently and meaningfully, with layered information that may be less relevant to retail shareholders available online and upon request. Likewise, the proposed approach is designed to help a fund shareholder to use shareholder reports to compare funds he or she already owns and assess how the shareholder's mix of funds fits into his or her overall investment portfolio.

The proposed approach to funds' overarching disclosure framework would be complemented by more-targeted proposed improvements to fund prospectus fee and risk disclosures, as well as proposed amendments to investment company advertising rules. Collectively, the proposed amendments are designed to facilitate investors' ability to make informed investment decisions and monitor their investments thereafter.

Tailoring Fund Disclosure Using Layered Disclosure Principles

The layered disclosure approach underlying the proposed new disclosure framework would build on the Commission's experience in conforming required fund disclosures to the informational needs of different types of investors. In recent years, the Commission has adopted rules that rely on layered disclosure principles to tailor fund disclosures to the particular needs of retail investors, as well as financial professionals and other investors who desire more in-depth information.[98] Similarly, in past years the Commission has taken into account the relative informational needs of new investors and ongoing shareholders in tailoring the requirements for investment company disclosures.[99]

The proposed new disclosure framework also would reflect various stakeholders' suggestions and stated preferences for fund disclosure that more directly highlights key fund information and is tailored to investors' needs. For example, the Commission's Investor Advisory Committee has recommended that the Commission develop an approach to funds' shareholder reports that would rely on summary disclosure and layered disclosure principles.[100] Similarly, the proposed new disclosure framework would reflect investor preferences as we understand them based on investor testing, surveys, and other information-gathering, which have consistently indicated that retail fund investors prefer concise disclosure that focuses on the most important fund information.[101]

Leveraging Technology To Modernize Funds' Disclosure Requirements

In addition, the proposed new disclosure framework would leverage technology to modernize funds' disclosure requirements.[102] Our

[93] For example, to the extent a fund has a known or expected increase in its fees and expenses for the current year, a fund shareholder would receive information about the new fee and expense levels in the annual prospectus update. That is, the prospectus fee table in year 1 would present fees as x%, and in year 2 would present fees as y%. But the prospectus would not necessarily highlight or explain the change from year to year, nor would the fund's shareholder reports.

[94] *See supra* footnote 20 and accompanying text.

[95] *See supra* footnote 19 and accompanying text (noting that the average page length of annual reports is approximately 134 pages).

[96] *See supra* Section I.B.

[97] *See infra* Section III.C.2.d (as discussed in this section, we anticipate that the proposed new disclosure framework would produce cost savings, due to reduced printing and mailing costs and processing fees, even after taking into account the effects of our proposed exclusion of open-end funds from the scope of rule 30e–3).

[98] *See* 2009 Summary Prospectus Adopting Release, *supra* footnote 10; Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27; *see also* discussion at *supra* footnotes 5–6 and accompanying text.

[99] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27. In particular, the Commission received positive feedback on its proposal to provide an ''initial summary prospectus'' to new investors in variable annuity and variable life insurance contracts, and an ''updating summary prospectus'' to investors each year after their initial investment in a variable contract. *Id.* at text accompanying nn.33 and 335. In part on the basis of that positive feedback, the Commission adopted that proposal.

[100] *See* Recommendation of the Investor Advisory Committee Regarding Promotion of Electronic Delivery and Development of a Summary Disclosure Document for Delivery of Investment Company Shareholder Reports (Dec. 7, 2017), *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-promotion-of-electronic-delivery-and-development.pdf.* The recommendation provided, among other things, that the Commission explore: (1) Methods to encourage a transition to electronic delivery that respect investor preferences and that increase the likelihood that investors will see and read important disclosure documents; and (2) development of a summary, layered disclosure document for shareholder reports that incorporates key information from the report along with prominent notice regarding how to obtain a copy of the full report, and would be designed to be delivered either by mail or by email (depending on the investors' delivery preferences). This proposal also takes into account the Investor Advisory Committee's recent recommendation on improving the effectiveness of investor disclosures (including in the context of fund disclosures). *See* IAC Disclosure Effectiveness Recommendation, *supra* footnote 26.

[101] *See* discussion at *supra* Section I.B.1.

[102] Individuals' access to and use of the internet has increased significantly in the last few decades, including among demographic groups that have previously been less apt to use the internet. *See* Pew Research Center, internet/Broadband Fact Sheet (last updated June 12, 2019), *available at https://www.pewresearch.org/internet/fact-sheet/internet-broadband.* We understand these trends extend to individuals' use of online resources to manage their finances and investments. *See, e.g.,* Can the internet Transform Disclosures for the Better? Consumer Federation of America (Jan.

Continued

proposal would use the internet as a medium to provide information to investors and distinguish between information that investors receive directly (either in paper or electronically, depending on investors' preferences) and information that is available to investors online. The proposal also takes steps to encourage funds to use online tools to enhance and personalize the information that they provide to shareholders, as constantly developing online technology presents unique potential to enrich investors' experience in understanding and engaging with their fund investments.[103]

Shareholder Report as the Central Source of Fund Disclosure for Existing Shareholders

In proposing the new disclosure framework, which employs the shareholder report as the central source of fund disclosure for existing shareholders, we considered the extent to which permitting open-end funds to continue relying on rule 30e–3 to transmit shareholder reports would affect our policy goals. Since adopting rule 30e–3, we have continued to analyze and hear from industry participants regarding further improvements to our disclosure regime. As a result, we now believe that a tailored shareholder report that highlights key information would provide better information for investors than the notices required under rule 30e–3. Furthermore, if a fund were permitted to rely upon both rule 30e–3 and proposed rule 498B, shareholders in such a fund would no longer directly receive shareholder reports *or* annual prospectus updates, and thus would not be sent any periodic regulatory disclosure documents.[104] We believe the proposed new disclosure framework would also largely preserve the expected cost savings to funds and investors that funds would experience by choosing to rely on rule 30e–3.[105]

E. Annual Shareholder Report

We are proposing to add new Item 27A to Form N–1A to specify the design and content of funds' annual and semi-annual reports. We also are proposing to remove the provisions in current Item 27 of Form N–1A that relate to annual and semi-annual reports.

The table below summarizes the proposed content that funds would include in their annual reports or Form N–CSR reports in comparison to current shareholder report disclosure requirements.[106] While the proposed content requirements for shareholder reports that are transmitted in paper would generally be the same as the requirements for reports that are transmitted electronically (and that appear online or are accessible through mobile electronic devices), we are proposing instructions that address electronic presentation and are designed to provide flexibility to enhance the usability of reports that appear online or on mobile devices.[107]

TABLE 1—ANNUAL REPORT CONTENTS

Current annual shareholder report disclosure *(current Form provision)*	Description of proposed amendments	Proposed rule and form provisions	Discussed below in
	Add new identifying information to the beginning of the annual report.	Item 27A(b) of Form N–1A	Section II.B.2.a.
Expense example *(Form N–1A Item 27(d)(1))*.	Retain in annual report in a more concise form.	Item 27A(c) of Form N–1A	Section II.B.2.b.
Management's discussion of fund performance ("MDFP") *(Form N–1A Item 27(b)(7))*.	Retain in annual report in summary form	Item 27A(d) of Form N–1A	Section II.B.2.c.
	Add new fund statistics section to the annual report.	Item 27A(e) of Form N–1A	Section II.B.2.d.
Graphical representation of holdings *(Form N–1A Item 27(d)(2))*.	Retain in annual report	Item 27A(f) of Form N–1A	Section II.B.2.e.
	Add new material fund changes section to the annual report.	Item 27A(g) of Form N–1A	Section II.B.2.f.
Changes in and disagreements with accountants *(Form N–1A Item 27(b)(4))*.	Retain in annual report in summary form	Item 27A(h) of Form N–1A	Section II.B.2.g
	The entirety of the currently-required disclosure would move to Form N–CSR and would need to be available online and delivered (in paper or electronic format) upon request.	Item 8 of Form N–CSR Rule 30e–1(b)(2) and (b)(3)	Section II.D.1.c.
Statement regarding liquidity risk management program *(Form N–1A Item 27(d)(6)(ii))*.	Retain in annual report	Item 27A(i) of Form N–1A	Section II.B.2.h.
Statement regarding the availability of quarterly portfolio schedule, proxy voting policies and procedures, and proxy voting record *(Form N–1A Item 27(d)(3) through (5))*.	Include a more general reference to the availability of additional fund information in the annual report.	Item 27A(j) of Form N–1A	Section II.B.2.i.
	Add provision allowing funds to optionally disclose in their annual reports how shareholders may revoke their consent to householding.	Item 27A(k) of Form N–1A	Section II.B.2.j.

2014), *available at https://consumerfed.org/pdfs/can-the-internet-transform-disclosures-for-the-better.pdf*.

[103] *See infra* Section II.B.4.

[104] *See infra* Section III.C.2.d.

[105] *See id.*

[106] This release separately discusses the proposed content requirements for funds' semi-annual reports. *See infra* Section II.C.

[107] *See infra* Section II.B.4.

TABLE 1—ANNUAL REPORT CONTENTS—Continued

Current annual shareholder report disclosure *(current Form provision)*	Description of proposed amendments	Proposed rule and form provisions	Discussed below in
Financial statements, including schedule of investments *(Form N–1A Item 27(b)(1))*.	Move to Form N–CSR Would need to be available online and delivered (in paper or electronic format) upon request.	Item 7(a) of Form N–CSR Rule 30e–1(b)(2) and (b)(3)	Section II.D.1.a.
Financial highlights *(Form N–1A Item 27(b)(2))*.	Retain certain data points, but generally move to Form N–CSR. Would need to be available online and delivered (in paper or electronic format) upon request.	Item 7(b) of Form N–CSR Rule 30e–1(b)(2) and (b)(3)	Section II.D.1.b.
Results of any shareholder votes during the period *(Rule 30e–1(b))*.	Move to Form N–CSR Would need to be available online and delivered (in paper or electronic format) upon request.	Item 9 of Form N–CSR Rule 30e–1(b)(2) and (b)(3)	Section II.D.1.d.
Remuneration paid to directors, officers, and others *(Form N–1A Item 27(b)(3))*.	Move to Form N–CSR Would need to be available online and delivered (in paper or electronic format) upon request.	Item 10 of Form N–CSR Rule 30e–1(b)(2) and (b)(3)	Section II.D.1.e.
Statement regarding the basis for the board's approval of investment advisory contract *(Form N–1A Item 27(d)(6)(i))*.	Move to Form N–CSR Would need to be available online and delivered (in paper or electronic format) upon request.	Item 11 of Form N–CSR Rule 30e–1(b)(2) and (b)(3)	Section II.D.1.f.
Management information and statement regarding availability of additional information about fund directors *(Form N–1A Item 27(b)(5) and (6))*.	Remove from shareholder reports, but information would remain available in a fund's SAI, which is available online or delivered upon request.		Section II.E.
Rule 30e–3 disclosure, if applicable *(Form N–1A Item 27(d)(7))*.	Remove from shareholder reports		Section II.G.
Funds have discretion to provide other information in their shareholder reports (*e.g.,* president's letters).	Limit annual report disclosure to that which is permitted or required under proposed Item 27A of Form N–1A.	Instruction 1 to Item 27A(a) of Form N–1A.	Section II.B.1.b.

1. Scope of Annual Report Disclosure, and Registrants Subject to Amendments

We propose to limit the scope of funds' annual reports in several respects to reduce their overall length and complexity. First, we propose to require a fund to prepare separate annual reports for each of its series. Second, we generally propose to limit the content a fund may include in its annual report.

a. Scope With Respect to Separate Series and Classes

Many mutual funds and ETFs are organized as single registrants with several series (sometimes referred to as portfolios).[108] Each series has its own investment objectives, policies, and restrictions. The Federal securities laws and Commission rules often treat each series as a separate fund.[109] A single fund or series can have multiple share classes. Classes typically differ based on fee structure, with each class having a different sales load and distribution fee. Series and classes of a registrant are often marketed separately, without reference to other series or classes or to the registrant's name.[110]

Currently, fund registrants may prepare a single shareholder report that covers multiple series. We believe this approach contributes to the length and complexity of shareholder reports. For example, a shareholder that is invested in one series of the registrant would need to spend more time searching through the report to find disclosure related to his or her investment. Moreover, a shareholder report that provides information for multiple series may present an increased risk of shareholder confusion. For instance, if two series included in the same shareholder report were to have similar names, there could be a greater risk that a shareholder would mistakenly review information that does not relate to his or her investment. Because the length and complexity associated with multi-series shareholder reports are inconsistent with our goal of creating concise shareholder report disclosure that a shareholder can more easily use to assess and monitor his or her ongoing fund investment, we are proposing to require fund registrants to prepare separate annual reports for each series of the fund.[111] As a result, a shareholder would receive an annual report that only addresses the series in which he or she is invested. We believe that this more-focused annual report would be more relevant to shareholders than a multi-series report and, accordingly, shareholders would be more likely to read such disclosure.

Although we are proposing to restrict funds' annual reports to include only one series of a fund, our proposal would not require a shareholder report to cover

[108] *See* sections 18(f)(1) and (2) of the Investment Company Act [15 U.S.C. 80a–18(f)(1) and (2)]; 17 CFR 270.18f–2 [rule 18f–2 under the Investment Company Act].

[109] *See, e.g.,* 17 CFR 270.22c–2(c)(2); 17 CFR 270.22e–4(a)(5); General Instruction A to Form N–1A (defining ''fund'' to mean a registrant or a separate series of the registrant).

[110] *See* Rulemaking for EDGAR System, Investment Company Act Release No. 26990 (July 18, 2005) [70 FR 43558 (July 27, 2005)], at text following n.17.

[111] *See* Instruction 4 to proposed Item 27A(a). Similarly, we have generally required that registrants present summary information separately for each fund in a multiple fund prospectus to promote the goal of concise, readable summaries. *See* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at text accompanying nn.43–60. Under the proposal, fund registrants could continue to include multiple shareholder reports that cover different series in a single Form N–CSR report filed on EDGAR. We do not believe this would affect the usability of the information for shareholders because shareholder reports for each series would separately be available online, and we understand that shareholders generally do not go to EDGAR to find fund shareholder reports. *See, e.g., supra* footnote 74.

a single class of a multiple-class fund.[112] Because different share classes of a fund represent interests in the same investment portfolio, much of the proposed shareholder report disclosure would be the same for all classes.[113] For disclosure that would differ among classes, such as expenses and performance data, the amended disclosure requirements that we are proposing would specifically require funds to provide certain class-specific information.[114]

We request comment on the proposed scope of disclosure for the annual report, including the following:

1. Would the proposed requirement that a fund registrant prepare separate annual reports for each of its series result in shareholder report disclosure that is easier for fund shareholders to navigate and assess? If not, why not? Would requiring separate annual reports for each series increase the reports' relevance to shareholders and increase the likelihood that shareholders would read them? If not, why not? How would this proposed requirement affect the approach fund registrants currently use to prepare and transmit shareholder reports? Are there ways to modify the proposed instruction that would further improve disclosure for shareholders or reduce burdens for fund registrants? Instead of the proposed instruction, should we continue to permit fund registrants to prepare a single annual report that covers multiple fund series, as they may today? If so, why, and should there be any limits on the number of series for which information is presented?

2. Are there certain types of funds for which a multi-series presentation in an annual report may be useful to shareholders? If so, which types of funds, and what are the benefits of a multi-series presentation to shareholders? Should we permit certain types of funds, but not others, to prepare annual reports covering multiple series of the same fund?

3. Are there ways we could allow multi-series presentations in annual reports while also promoting our goals of providing concise, readable disclosure to existing shareholders that is tailored to their informational needs? If so, how?

4. A fund may have multiple share classes with differing fee structures. Should these multi-class funds be permitted to reflect only one or a subset of classes, rather than all share classes in a shareholder report so long as a fund produces a shareholder report that relates to each share class? Would such an approach reduce the complexity of the disclosure and provide more-tailored information that is specific to a shareholder's investment in the fund? Or, conversely, would such a requirement not benefit shareholders? For example, could it reduce shareholders' ability to compare classes of a fund? Should there be limits on the number or types of classes that a single annual report may cover to reduce potential complexity or length? For example, should we prohibit an annual report transmitted to retail shareholders from including disclosure related to a fund's institutional class? Are there potential complexities or burdens associated with such an approach? Please explain.

b. Scope of Content

As a general matter, we are proposing to allow a fund to include in its annual report only the information that Item 27A of Form N–1A specifically permits or requires.[115] We believe that allowing only the required or permitted information to appear in a fund's annual report would promote consistency of information presented to shareholders and would allow retail shareholders to focus on information particularly helpful in monitoring their investment in a fund.[116] We also believe this approach would encourage more impartial information by preventing funds from adding information commonly used in marketing materials.

We recognize, however, that there may be limited circumstances in which it may be appropriate for a fund to provide more or less information than what proposed Item 27A of Form N–1A would permit or require. Specifically, if a fund's particular circumstances may cause the required disclosures to be misleading, the proposal would allow the fund to add additional information to the report that is necessary to make the required disclosure items not misleading.[117] As an example, if a fund changed its investment policies or structure during or since the period shown, the expense, performance, or holdings information that a fund must include in its annual report may require additional disclosure to render those presentations not misleading. Disclosure in response to this provision should generally be as brief as possible. Moreover, if a required disclosure is inapplicable, the proposed rule would permit the fund to omit the disclosure.[118] Similarly, to promote better-tailored disclosure, a fund would be permitted to modify a required legend or narrative information if the modified language contains comparable information to what is otherwise required.[119]

The proposed amendments to Form N–1A would not permit a fund to incorporate by reference any information into its annual report.[120] That is, a fund could not refer to information that is located in other disclosure documents in order to satisfy the content requirements for an annual report. The limited number of proposed disclosure items in the annual report is designed to promote the goal of providing a concise, more-engaging report that gives shareholders key information to assess and monitor their ongoing fund investments.[121] We do not believe that permitting funds to

[112] *See* Instruction 4 to proposed Item 27A(a). This approach is similar to the approach taken in the summary prospectus, which similarly may describe more than one class of a fund. *See* rule 498(b)(4) [17 CFR 230.498(b)(4)].

[113] For example, this would include, among other disclosure items, graphical representations of holdings, the required statistics (*i.e.,* the size of the fund, its number of holdings, and portfolio turnover rate), the narrative discussion of factors that affected the fund's performance, and most categories of material fund changes.

[114] We discuss these proposed requirements in more detail below. *See infra* Section II.B.2.b (discussing the proposed requirement to provide expense information for each class) and Section II.B.2.c.ii (discussing the proposed requirement to disclose average annual total returns for 1-, 5-, and 10-year periods for each class).

[115] *See* Instruction 3 to proposed Item 27A(a) of Form N–1A; *see also infra* Section II.B.2 (discussing the content requirements of the proposed annual report, as well as certain optional content that a fund may include in its annual report).

We are, however, proposing flexibility with respect to the use of online tools to assist shareholders in understanding the contents of an annual report that appears online or otherwise is provided electronically. *See* Instruction 8 to proposed Item 27A(a) of Form N–1A; *see also* discussion at section II.B.4 *infra.*

[116] Many of the proposed instructions to each requirement provide some flexibility so that a fund can tailor its presentation of information to match how the fund invests. For instance, a fund has the ability to select the categories that are reasonably designed to depict clearly the types of a fund's investments when preparing its graphical representation of holdings. *See* proposed Item 27A(f) of Form N–1A.

[117] *See* Instruction 2 to proposed Item 27A of Form N–1A (permitting a fund to include disclosure that is required under 17 CFR 270.8b–20 (rule 8b–20 under the Investment Company Act)); rule 8b–20 under the Investment Company Act (providing, ''[i]n addition to the information expressly required to be included in a registration statement or report, there shall be added such further information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading'').

[118] *See* Instruction 7 to proposed Item 27A(a) of Form N–1A.

[119] *See id.*

[120] *See* Instruction 5 to proposed Item 27A(a). Incorporation by reference refers to the practice of, instead of including disclosure in a specific document, referring to another document that contains the specified information.

[121] *See, e.g.,* Instructions 1, 3, and 5 to proposed Item 27A(a) of Form N–1A.

incorporate information by reference into the shareholder report is consistent with this goal, because it would require shareholders to take an additional step to locate information that funds incorporate by reference into their reports. While the proposed rule would require or permit a fund's shareholder report to refer to other materials in some cases, those other materials would not incorporate information into the fund's shareholder report for purposes of satisfying the annual report disclosure requirements.[122]

Although the proposed rule would only permit the inclusion of certain information in the annual report, it would not prevent a fund from referring shareholders to the availability of certain additional website information near the end of the report or providing additional information to shareholders in the same transmission as the annual report.[123] For example, the proposed rule would not preclude a fund from providing a letter to investors explaining its management philosophy or investment outlook in the same transmission that includes the annual report. However, the proposal would require that the shareholder report be given greater prominence than these other materials, except for certain specified disclosure materials.[124] We would generally consider a fund to satisfy the ''greater prominence'' requirement if, for example, the shareholder report is on top of a group of paper documents that are provided together or, in the case of an electronic transmission, the email or other message includes a direct link to the report or provides the report in full in the body of the message.[125] This proposed requirement would not, however, apply to certain specified disclosure materials that a fund may transmit with an annual report, which include summary prospectuses, statutory prospectuses, notices of the online availability of proxy materials, and other shareholder reports.[126]

We request comment on the scope of content that the proposed rule would require or permit a fund to include in its annual report, including the following:

5. Is it appropriate to restrict the content of a fund's annual report to include only the information the form would permit or require? If not, why not? Would these proposed limits on content create a more effective presentation for investors? Are there other approaches we should consider (such as permitting space in the annual report for funds to disclose other information they deem important to investors)? What are the benefits and drawbacks of shorter or longer disclosure, or a more flexible approach to disclosure, for investors relative to the proposed approach?

6. Is it appropriate for funds to have flexibility to include other communications to shareholders in the same transmission as a shareholder report? Should the shareholder report be subject to the proposed prominence requirement? If not, should we require other prominence or formatting standards if the transmission includes other materials, or should we impose other requirements or limitations associated with materials that funds could transmit along with the shareholder report?

7. As proposed, should we allow a fund to modify a required legend or narrative information as long as the modified language contains comparable information? If not, why not? Should we use this approach for all aspects of the annual report, or are there particular areas where requiring uniform language across all funds' annual reports would be particularly valuable to shareholders, for example, to facilitate comparisons or improve shareholder understanding? If so, how should we balance the potential value of uniform language with potential concerns that uniform language may not be well-tailored to a particular fund or its shareholders?

8. Is it appropriate not to permit funds to incorporate information by reference into their annual reports, as proposed? If not, why not? Is there certain information that a fund should be permitted to incorporate by reference into its annual report? If so, what information, and why?

c. Scope With Respect to Other Registrants

Our proposed amendments to annual reports would only apply to shareholder reports for investment companies registered on Form N–1A. These funds represent the vast majority of investment company assets under management.[127] We also have recently adopted changes to the disclosure framework for closed-end funds and variable insurance contracts tailored to these investment companies' characteristics and, in the case of closed-end funds, to implement congressional directives.[128] The recently adopted changes to closed-end fund disclosure include multiple changes to these funds' shareholder report disclosures, and we would like to understand funds' and investors' experience with this new disclosure framework before proposing additional disclosure amendments.[129] Similarly, we anticipate that the recently adopted changes to the variable insurance contract disclosure framework would significantly change investors' experience with variable contract disclosure. While these changes are focused more on prospectus disclosure and not shareholder report disclosure, we would like to assess the impact of these changes prior to proposing additional disclosure changes for variable contracts.[130] Our proposed amendments therefore do not extend at this time to other investment companies such as closed-end funds, unit investment trusts, or managed open-end investment companies not registered on Form N–1A (*i.e.,* issuers of variable

[122] *See, e.g.,* Instructions 8 and 9 to proposed Item 27A(a) of Form N–1A; proposed Items 27A(b)(4) and 27A(j) of Form N–1A.

[123] *See* proposed Item 27A(j) of Form N–1A; *infra* Section II.B.2.i (discussing the provision that would allow funds to refer to the availability of additional website information, if the fund reasonably believes shareholders would likely view the information as important).

[124] *See* Instruction 12 to proposed Item 27A(a) of Form N–1A. This is substantially similar to a requirement in rule 498, which provides that a fund's summary prospectus generally must be given greater prominence than other materials that accompany the summary prospectus. *See* rule 498(f)(2).

[125] These examples of how funds may satisfy the proposed prominence requirement are consistent with interpretations of similar requirements in other Commission rules and forms. *See, e.g.,* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at text accompanying n.220 (''Generally, we believe that the 'greater prominence' requirement would be satisfied if the placement of the Summary Prospectus is more prominent than accompanying materials, *e.g.,* the Summary Prospectus is on top of a group of paper documents that are provided together.''); General Instructions 10.C and 10.D of Form CRS (requiring a relationship summary delivered in paper format to be the first among any documents delivered at that time, and a relationship summary delivered electronically to be presented prominently in the electronic medium (*e.g.,* as a direct link or in the body of an email or message)).

[126] See id.

[127] *See infra* Section III.B.1.

[128] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27; Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33836 (Apr. 8, 2020) [85 FR 33290 (Jun. 1, 2020)] (''Closed-End Fund Offering Reform Adopting Release'').

[129] *See, e.g.,* Closed-End Fund Offering Reform Adopting Release, *supra* footnote 128, at Section II.I.2.a (discussing new annual report requirements for funds that file a short-form registration statement), Section II.I.2.b (discussing proposed MDFP disclosure that would appear in registered closed-end funds' annual reports), and Section II.I.5 (discussing enhancements to certain registered closed-end funds' annual report disclosure).

[130] Moreover, of the variable contract structures, only variable contracts with separate accounts structured as management investment companies—those registered on Form N–3—have annual and semi-annual shareholder reporting requirements under rule 30e–1.

annuity contracts registered on Form N–3).

We request comment on the scope of entities that would be covered by our proposed amendments to annual reports, including the following:

9. To what extent, if any, should the proposed amendments to shareholder reports be extended to other investment companies besides open-end mutual funds and ETFs organized as management investment companies?

10. For example, ETFs can be organized as management investment companies registered on Form N–1A or as unit investment trusts (''UITs'') that are registered on Form N–8B–2 and subject to certain Commission exemptive orders. UIT ETFs are organized differently than and subject to a different disclosure framework than funds.[131] For example, exemptive orders for UIT ETFs generally require these ETFs to transmit annual reports that include their financial statements, but the content of these ETFs' annual reports is not necessarily the same as the current content of funds' annual reports. Despite these differences between funds and UIT ETFs, should UIT ETFs be permitted to rely upon proposed rule 498B, or permitted or required to use a tailored annual report? If so, to what extent, if any, should the conditions to rely on proposed rule 498B or use a tailored annual report be modified for UIT ETFs? If a UIT ETF were to use a tailored annual report, should the content of its report differ from the content of a tailored annual report for open-end management companies? For example, should this ETF's financial statements remain in the report in accordance with its exemptive order, or should it be able to provide its financial statements through other means (*e.g.,* on a website and through a Form N–CSR report, even though these ETFs are not otherwise required to file Form N–CSR reports), subject to potential conditions that the ETF provide other information in an annual report? Do shareholders in UIT ETFs have the same informational needs as fund shareholders? For example, do UIT ETFs' shareholders need the same performance information, or do their needs differ since a UIT ETF generally replicates an index?

11. Should the Commission amend the requirements for registered closed-end funds' and BDCs' annual reports, to reflect any of the amendments we are proposing for open-end funds' annual reports?[132] As an example, the Commission recently adopted rules requiring: (1) Certain closed-end funds (registered closed-end funds, as well as BDCs) to include key information in their annual reports regarding fees and expenses, premiums and discounts, and outstanding senior securities that the funds currently disclose in their prospectuses; and (2) registered closed-end funds to provide management's discussion of fund performance in their annual reports to shareholders.[133] If the Commission were to propose to tailor closed-end funds' shareholder reports in a manner that is similar to how we are proposing to tailor open-end funds' shareholder reports, how should such tailoring incorporate these recently adopted disclosure requirements, as well as the other content that currently appears in closed-end funds' shareholder reports? For example, should we propose to update the fee and expense information that appears in closed-end funds' shareholder reports to more closely match the proposed fund expense presentation that would appear in open-end funds' shareholder reports? As another example, would it be appropriate to require closed-end funds to file on Form N–CSR certain information that currently appears in their shareholder reports (such as their full financial statements) and make this information available on a website, instead of including it in their reports, as we are proposing for open-end funds?

2. Contents of the Proposed Annual Report

The following table outlines the information the proposed rule would generally require funds to include in their annual reports. As is the case today, the proposed annual report would not be subject to page or word limits. We are not proposing page or word limits because we believe such limits could constrain appropriate disclosure or lead funds to omit material information. However, we believe that the proposed limits on the contents of these reports would limit their length, which would support our goal of concise, readable disclosure.[134]

TABLE 2—OUTLINE OF PROPOSED ANNUAL REPORT

	Description	Proposed item of form N–1A	Current item of form N–1A containing similar requirements
Cover Page or Beginning of Report	Fund/Class Name(s)	Item 27A(b)	
	Ticker Symbol(s)	Item 27A(b)	
	Principal U.S. Market(s) for ETFs	Item 27A(b)	
	Statement Identifying as ''Annual Shareholder Report''.	Item 27A(b)	
	Legend	Item 27A(b)	
Content	Expense Example	Item 27A(c)	Item 27(d)(1).
	Management's Discussion of Fund Performance.	Item 27A(d)	Item 27(b)(7).
	Fund Statistics	Item 27A(e)	
	Graphical Representation of Holdings	Item 27A(f)	Item 27(d)(2).
	Material Fund Changes	Item 27A(g)	

[131] A UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities. *See* section 4(2) of the Investment Company Act [15 U.S.C. 80a–4]. By statute, a UIT is unmanaged and its portfolio is fixed. A UIT does not have a board of directors, corporate officers, or an investment adviser to render advice during the life of the trust. ETFs organized as UITs seek to track the performance of an index by investing in the component securities of an index in the same approximate proportions as the index. *See* ETF Adopting Release, *supra* footnote 75, at nn.42, 44.

[132] *See also infra* text accompanying footnote 645 (asking whether to extend any of the new requirements for funds' prospectus risk disclosure to the risk disclosure that certain closed-end funds are required to include in their annual reports).

[133] *See supra* footnote 129.

[134] For example, we believe funds generally would be able to reduce the length of their annual reports from more than 100 pages on average to a more concise presentation that is approximately 3 to 4 pages in length for paper reports, or an equivalent length for electronic reports. For paper reports, the amendments may allow funds to deliver annual reports using a trifold self-mailer (or a similarly concise mailing). A trifold self-mailer can eliminate the need for an envelope or separate pieces of paper. It is generally a large piece of paper that is folded to create multiple pages of information within a self-contained piece of mail.

TABLE 2—OUTLINE OF PROPOSED ANNUAL REPORT—Continued

	Description	Proposed item of form N–1A	Current item of form N–1A containing similar requirements
	Changes in and Disagreements with Accountants.	Item 27A(h)	Item 27(b)(4).
	Statement Regarding Liquidity Risk Management Program.	Item 27A(i)	Item 27(d)(6)(ii).
	Availability of Additional Information	Item 27A(j)	Item 27(d)(3) through (5).
	Householding Disclosure (optional)	Item 27A(k)	*.

* Rule 30e–1(f)(3) currently requires a fund to explain, at least once a year, how a shareholder may revoke his or her consent to householding. This explanation is not currently required in funds' shareholder reports, and we similarly would not require it in the proposed annual report.

To help market participants understand this proposed disclosure, Appendix A to this release includes a hypothetical annual report. This hypothetical annual report is provided solely for illustrative purposes and is not intended to imply that it would reflect a ''typical'' annual report under the proposed amendments. We also are providing the hypothetical annual report to illustrate for investors what a more concise, tailored shareholder report could look like and are providing a feedback flier that investors can use to provide their views on the hypothetical report and other issues in Appendix B.[135]

We discuss each of the proposed content requirements in detail below, including specific requests for comment regarding each proposed item of the annual report. In addition to the more-specific requests for comment below, we also request general comments on the proposed content requirements for funds' annual reports.

12. In addition to the proposed content requirements for funds' annual reports, should we require or permit funds to provide additional information in their shareholder reports? For example, is there other information that funds typically include in their annual reports as a matter of practice or to comply with other regulatory requirements (*e.g.,* tax-related disclosure under the Internal Revenue Code about the fund's distributions)? Would it be beneficial to shareholders to receive any additional information in the annual report, or should funds provide this information through other mechanisms (*e.g.,* on their websites, in materials separately transmitted with the annual report, or in account statements)?

13. Are the topics that funds would discuss in their annual reports under the proposed amendments appropriate to provide fund shareholders with key information for assessing and monitoring their fund investments? Are there additional topics that should be required? Please explain. Are any of the topics redundant with information that appears in other disclosure requirements? If so, which topics, and why are they redundant?

14. How would the proposed amendments affect the length of funds' annual reports? Would the length of the proposed reports affect a fund's approach for delivering the full report in the mail, relative to its current approach for mailing annual reports?

15. Would proposed Item 27A result in disclosure that is of an appropriate length to be engaging and accessible to fund shareholders, or should we take additional steps to limit the length or complexity of annual report disclosure? For example, should we impose page or word limits on annual reports? If so, what should they be? Should we limit the length of any particular section of the annual shareholder report, and if so, what should these limits be?

a. Cover Page or Beginning of the Report

The proposed amendments to Form N–1A would require a fund to provide the following information on the cover page or at the beginning of the annual report:

- The name of the fund, as well as the class(es) to which the annual report relates;
- The exchange ticker symbol of the fund's shares, or the ticker symbol of each class adjacent to the class name;
- If the fund is an ETF, the principal U.S. market(s) on which the fund's shares are traded;
- A statement identifying the document as an ''annual shareholder report;'' and
- The following legend: ''This annual shareholder report contains important information about [the Fund] for the period of [beginning date] to [end date] [as well as certain changes to the Fund]. You can find additional information about the Fund at [Fund website address]. You can also request this information by contacting us at [toll-free telephone number and, as applicable, email address].'' [136]

Currently, funds are not required to include specific cover page information in their shareholder reports. However, we understand that, as a matter of practice, funds typically include identifying information—such as the fund's name, the period of time the report covers, and whether the report is an annual or semi-annual report—at the beginning of the report or on a cover page. We are proposing to require specific identifying information at the beginning of the annual report so that shareholders can readily identify the purpose and scope of the report. This is also substantially similar to information that must appear at the beginning of fund prospectuses.[137]

The proposed legend is designed to help shareholders understand the purpose of the annual report, as well as the time period covered by the report. It also describes how a shareholder can obtain additional information about the

[135] The hypothetical annual report is substantially similar to the prototype summary shareholder report that two commenters used in investor surveys. *See supra* footnote 44. For example, both of these sample reports provide information about a fund's expenses, performance, and holdings. The primary differences between the sample reports are that the hypothetical annual report would include a modified expense presentation, a performance line graph similar to current shareholder reports, and two new items related to fund statistics and material fund changes. Further, while the commenter that developed the prototype summary shareholder report supported the inclusion of liquidity risk management program disclosure, the prototype did not include this disclosure because the underlying requirement was not effective at that time. *See* ICI Comment Letter I.

[136] *See* proposed Item 27A(b) of Form N–1A. The reference to the ''beginning'' of an annual report is designed to address circumstances in which there is not a physical page that would precede the report, for example, when the report appears online or on a mobile device. *See infra* Section II.B.4.

[137] *See* Item 1 of Form N–1A.

fund, consistent with similar legends that appear on the cover page of the summary prospectus.[138] The website address a fund would provide in the legend would need to be specific enough to lead shareholders directly to the materials that would be required to be accessible on the fund's website under this proposal, including the fund's financial statements and financial highlights.[139] Funds also would have discretion to include other ways a shareholder can find or request additional information about the fund, such as Quick Response Code (''QR code'') or referring the reader to mobile applications.[140]

In addition, the proposed amendments would permit funds to include graphics, logos, and other design or text features to help shareholders identify the materials as the fund's annual report.[141]

We request comment generally on the proposed content requirements for the cover page or beginning of the annual report, and specifically on the following issues:

16. Is there additional information that we should permit or require funds to provide on the cover page or at the beginning of their annual reports? If so, what are the benefits of that additional information? For example, should we permit or require funds to include a table of contents, or would a table of contents add undue length to the shareholder report and provide limited benefits to shareholders given the general brevity of the report?

17. Should we remove or modify any of the information the proposed rule would permit or require funds to include on the cover page or at the beginning of their annual report, and if so, what information and how should we modify it?

b. Fund Expenses

We are proposing a simplified expense presentation in the annual report that would require a fund to provide the expenses associated with a hypothetical $10,000 investment in the fund during the preceding reporting period. In particular, the table must show: (1) An assumed $10,000 beginning account value; (2) total return during the period, before deducting expenses; (3) expenses in dollars paid during the period; (4) ending account value in dollars, based on net asset value return and the assumed $10,000 beginning account value; and (5) expenses as a percent of an investor's investment in the fund (*i.e.* expense ratio).[142] ETFs must also include the ending value of the account based on market value return.[143] The proposed expense example would appear as follows, and the individual aspects of the example are described in more detail below.

What were your Fund costs for the period? *(based on a hypothetical $10,000 investment)*

What were your Fund costs for the period? ***(based on a hypothetical $10,000 investment)***

[Fund or Class Name]	Beginning account value [beginning date]	Total return before costs paid*	**Costs paid†**	Ending account value [end date] (based on net asset value return)	[For ETF only] Ending account value [end date] (based on market value return)	**Costs paid as a percentage of your investment†**
	$10,000	+ (plus) $[x]	- **(minus) $[x]**	= (equals) $[x]		**%**

* In this footnote, the fund would be required to describe qualitatively in plain English other costs included in total return, if material to the fund. For example, if applicable and material, the fund would note that fund investment transaction costs, securities lending costs, or acquired fund fees and expenses reduced the total return.

† In this footnote, the fund would be required to note in plain English that the actual costs paid during the period do not reflect certain costs paid outside the fund (such as purchase and exit costs charged by the shareholder's broker-dealer).

[138] *See* rule 498(b)(1)(v).

[139] *See* Instruction 2 to proposed Item 27A(b); *infra* Section II.C. The website could be a central site with prominent links to the materials that would need to be accessible under the proposed amendments to rule 30e–1.

[140] A QR code is a two-dimensional barcode capable of encoding information such as a website address, text information, or contact information. For example, when included on print materials, these codes can be read using the camera on a smartphone to take the user directly to a specific website address.

[141] *See* Instruction 1 to proposed Item 27A(b) of Form N–1A.

[142] *See* proposed Item 27A(c) of Form N–1A; *see also* discussion at *infra* Section II.B.4 and *infra* footnote 338 and accompanying text for a discussion of additional tools a fund can provide online to facilitate shareholder engagement.

[143] *See* proposed Item 27A(c) of Form N–1A.

Commenters on the Fund Investor Experience RFC stated that shareholders believe the information provided in the current shareholder report expense example is important because it helps them understand the costs associated with investing in the fund.[144] The proposed expense information is intended to reflect shareholders' preferences to understand fee and expense information, while simplifying the expense example that currently appears in funds' shareholder reports.

Funds' shareholder reports currently include an expense example consisting of two different tables.[145]

- The first table shows the actual cost in dollars for a $1,000 investment in the fund over the prior six-month period based on the actual return of the fund. This presentation is intended to help a shareholder calculate the actual ongoing fund expenses, in dollars, that he or she has incurred.
- The second table shows the cost in dollars for a $1,000 investment in the fund over the prior six-month period based on a hypothetical 5% annual return (and not, as for the first table, the actual return of the fund during that period). Because funds are required to use the same hypothetical annual return in calculating their expenses here, this second table is designed to help shareholders compare the expenses of their fund with those of other funds.[146]

Currently, the fund expenses presented in the shareholder report expense examples are different in several respects from those in the prospectus fee table and example. The shareholder report example is derived from a fund's financial statements and therefore reflects actual historical expenses that a shareholder incurred over the past year (*i.e.,* backwards-looking expenses). The prospectus example, on the other hand, reflects hypothetical future expenses (*i.e.,* forward-looking expenses).[147] Currently, the prospectus fee table also reflects sales loads that an investor would pay and the expenses associated with the fund's investments in another fund (referred to as Acquired Fund Fees and Expenses (''AFFE'')), whereas the shareholder report expense presentation does not, because these elements are not reflected in the fund's financial statements.[148] Additionally, unlike the shareholder report example, the prospectus fee table must reflect any material changes in fees that occurred since the prior fiscal year and cannot reflect certain fee waivers.[149]

The information about fund expenses that we are proposing funds include in the annual report is designed to simplify the expense example that currently appears in funds' shareholder reports, and to provide shareholders with additional tools to understand the expenses they paid during the prior fiscal year. The proposal would replace the two current expense examples in the shareholder report with one simplified expense table. The new table would vary from the current disclosures in several respects. First, under the proposal, funds would have to provide the expenses associated with a $10,000 investment in the fund, rather than the current $1,000 investment amount.[150] We are proposing to increase the dollar value because we believe that $10,000 is a more realistic investment amount for an individual shareholder today.[151] Additionally, because Form N–1A requires funds to use an assumed $10,000 investment for the expense presentation in the prospectus, the proposal would align this aspect of the two expense presentations and promote a more consistent disclosure experience for investors.[152] Similarly, we are proposing to align the rounding conventions of the expense presentations in the shareholder report with those of the prospectus.[153]

Furthermore, funds would no longer be required to show the total amount of expenses along with hypothetical return information for the period. Instead, funds would continue to provide expense information along with actual return information, with amendments to this presentation of expenses that we believe would help show shareholders how much of their money was actually invested in the market (versus how much of their money was paid for fees and expenses).[154] Like the current expense presentation, the proposed presentation would show an assumed beginning account value, an ending account value, and expenses paid during the period. However, rather than only requiring funds to disclose the ending account value net of fees (as they do today), we are proposing to require funds to disaggregate this amount. Funds would individually disclose: (1) The costs paid during the period, (2) the fund's total return during the period before costs were paid, and (3) the ending account value based on the fund's net asset value return. A fund would have to provide each of these figures as a mathematical expression (using ''+'', '' − '', and ''='' signs), as shown in the example above.[155] Costs would have to be expressed as a negative amount (with a '' − '' sign preceding the cost amount), and total return, if negative during the period, also would have to be expressed as a negative amount with a '' − '' sign preceding it. Conversely, if the fund's total return were positive during the period, it would be preceded by a ''+'' sign.

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[144] *See, e.g.,* ICI Comment Letter I (stating that the information provided in the current expense example is responsive to investors' keen interest in knowing how much it will cost them to invest in a fund); *see also* Capital Group Comment Letter (noting that the current expense example provides investors with information on the cost of their investments).

[145] *See* Item 27(d)(1) of Form N–1A. The instructions to this item require a fund to calculate the expense example using a fund's expense ratio for the preceding six months and not to include the impact of sales loads, if any.

[146] The first table does not permit a direct comparison of fund costs because positive performance would make fund expenses expressed as a dollar amount higher and negative performance would make fund expenses expressed as a dollar amount lower. So, for example, if two funds had the same fees, the fund with the better performance would appear more expensive. *See* February 2004 Shareholder Report Adopting Release, *supra* footnote 83.

[147] *See* February 2004 Shareholder Report Adopting Release, *supra* footnote 83, at text following n.96.

[148] *See* Item 27(d)(1) of Form N–1A; *see also* Section II.H.1.g (discussing proposed changes to the disclosure requirements for AFFE in fund prospectuses, which would permit funds that invest 10% or less of their total assets in acquired funds to omit the AFFE line item in the fee table and instead disclose the amount of the fund's AFFE in a footnote to the fee table).

[149] *See* Instruction 3(d)(ii) and 3(e) of Item 3 of Form N–1A (prohibiting a fund from reflecting fee waivers unless they reduce the fund's operating expenses for no less than one year from the effective date of the fund's prospectus).

[150] *See* proposed Item 27A(c) of Form N–1A.

[151] *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998] (''1998 Form N–1A Prospectus Amendments''), at n.74 and accompanying text (increasing the hypothetical investment to $10,000 in the prospectus example presentation because the Commission recognized that the typical fund investment was increasing in size). Because we are proposing to raise the hypothetical investment amount to $10,000, we are also proposing to similarly raise the required rounding conventions for dollar values in the table to the nearest dollar, rather than the nearest cent.

[152] *But see supra* footnotes 147 through 149 and accompanying text (discussing the key differences between the presentation of expense information in the prospectus and the shareholder report).

[153] *See* proposed Instruction 1(a) of Item 27A(c) of Form N–1A (requiring all percentages in the table to be rounded to the nearest hundredth of one percent and all dollar figures in the table to be rounded to the nearest dollar).

[154] The expense example in the annual report would provide expense information that covers a 12-month reporting period.

[155] *See* proposed Instructions 1(b) of Item 27A(c) of Form N–1A (''Provide the amounts in each of the columns as a mathematical expression, as appropriate (*i.e.,* include +, − and = symbols). Costs paid during the period must be expressed as a negative amount. Total return, if negative during the period, must be expressed as a negative amount.'').

We believe that this presentation would facilitate a shareholder's understanding of how costs and performance affect his or her ending account value. Fund fees and expenses are central information for shareholders because they can significantly affect a fund's investment returns over time.[156] We recognize that shareholders could benefit from additional transparency into the costs associated with investing in the fund. However, while some of these costs are fixed and easily quantifiable, others are variable and can be difficult to calculate.[157]

The proposed presentation is designed to help investors evaluate these costs by disclosing costs directly deducted from the fund's assets alongside the fund's return. The fund's return will reflect these costs as well as any performance expenses associated with the fund's portfolio management activities (such as the fund's securities lending activities and transaction costs associated with the fund purchasing and selling portfolio investments). Similarly, some fund expenses are paid directly as fees for investing in the fund, while others are performance expenses associated with the fund's portfolio management activities. We believe it is important for shareholders to appreciate fully the costs they pay to invest in a fund, and how performance expenses affect the fund's investment return. We also are proposing to require that funds qualitatively describe, in a footnote to the example, any of these performance expenses that are material as discussed below. We are not proposing to require a similar presentation based on hypothetical performance, because we believe that the primary purpose of a shareholder report is to provide shareholders with actual information about the fund's performance and expenses over the past year or half-year period.[158]

We also are proposing certain ETF-specific disclosures that would provide shareholders more transparency into the unique cost structure of an ETF. Under our proposal, an ETF would be required to disclose two versions of the ending account value, one based on the ETF's net asset value return and the other based on its market value return.[159] This proposed requirement is designed to allow shareholders to understand any difference between the ETF's performance and market price, and to highlight for shareholders the indirect costs associated with investing in an ETF, including commissions and premium/discount costs.[160]

Unlike the current expense presentation, we are proposing to require funds to present expense information in *two* formats: (1) As a dollar amount, as discussed above; and (2) as a percentage of a shareholder's investment in the fund (which would be a new addition to the current presentation). We believe that requiring two formats would provide shareholders with a more complete understanding of the expenses associated with their investments. The proposed new percentage-based expense information is designed to provide shareholders with a basis for comparing the level of current period expenses of different funds (as percentages are comparable). This addition would complement the dollar-based expense presentation, which is designed to permit shareholders to estimate the costs, in dollars, that they incurred over the reporting period.We are also proposing to require funds to give the expense columns (*i.e.,* the ''costs paid'' and ''costs paid as a percentage of your investment'' columns) of the table more prominence than the remainder of the expense table to draw the attention of investors to these important data points. Funds would have flexibility to use various text and table features to satisfy this requirement.[161]

We also are proposing several modifications to simplify other aspects of the required expense disclosure. First, we are proposing to remove the currently required narrative preamble to the expense table in its entirety.[162] As a replacement for this preamble, we are proposing certain specified brief required footnotes to the table.[163] We believe that the simplified expense table, along with the footnotes to the table that we would require funds to include, would provide shareholders with the most relevant information from the lengthy preamble that currently precedes the expense example.

First, a fund would be required to include a footnote to the ''total return before costs paid'' column that qualitatively describes, in plain English, other costs that are included in the fund's total return, if material to the fund. For example, if applicable, the fund should explain that total return includes fund investment transaction costs, securities lending costs, or AFFE, and that these costs materially reduced the fund's return.[164] We believe that requiring this qualitative discussion would give funds the opportunity to describe certain expenses that may be difficult to calculate, but that materially affect fund performance. Also, by requiring funds to describe these types of performance expenses in a footnote, while including the direct costs of the fund in the expense example, shareholders might be better able to appreciate the fact that the costs associated with their investment include both fixed costs and indirect variable costs.

[156] *See* Fund Investor Experience RFC, *supra* footnote 8, at text accompanying n. 36. Some commenters on the Fund Investor Experience RFC expressed concern that fund disclosure may not accurately represent the full costs associated with a fund investment. *See, e.g.,* Delmonte Comment Letter; Fowler Comment Letter; Blanchard Comment Letter.

[157] For example, some commenters on the Fund Investor Experience RFC discussed challenges associated with disclosing transaction costs, including a potential negative impact on investors' ability to understand fund costs. *See, e.g.,* ICI Comment Letter I; Comment Letter of BlackRock, Inc. (Oct. 31, 2018) (''BlackRock Comment Letter''). Based on experience in certain jurisdictions that require transaction cost disclosure, these commenters indicated that transaction cost disclosure can confuse or mislead investors—including through reported transaction costs of zero or negative amounts in some instances in those jurisdictions—because funds may use different calculation methods and certain calculation inputs are subjective in nature. *See* ICI Comment Letter I; *see also* Slippage Causes Confusion in MiFID II Fund Rules Row, Chris Flood, Financial Times (Jan. 26, 2018), *available at https://www.ft.com/content/7b37016a-00fc-11e8-9650-9c0ad2d7c5b5.*

[158] *See supra* footnote 147 and accompanying text. While the current expense example based on a hypothetical 5% annual return was designed to help shareholders compare the expenses of their fund with those of other funds, we believe that the proposed requirement to present expense information as a percentage as well as a dollar amount also would provide this comparative value. *See supra* footnote 146 and accompanying text; *infra* paragraph accompanying footnote 161.

[159] We are also proposing conforming changes to Item 13(a) of Form N–1A to incorporate the requirement for ETFs to disclose total return based on the ETF's per share market value return in the financial highlights. *See* proposed amendments to General Instruction 3 of Item 13(a) of Form N–1A.

[160] *See* proposed General Instruction 1(i)(*i*) of Item 27A(c) of Form N–1A. We also are proposing to maintain the current instructions specific to ETFs, including the requirement to state that investors may pay brokerage commissions on their purchases and sales of ETF shares, which are not reflected in the expense table, as well as the requirement to exclude any fees charged for the purchase and redemption of the ETF's creation units. *See* proposed General Instruction 1(i)(*ii*) and 1(i)(*iii*) of Item 27A of Form N–1A.

[161] *See* proposed General Instruction 1(c) of Item 27A(c) of Form N–1A (providing flexibility for funds to use, for example, graphics, larger font size, different border width or column shading, or different colors or font styles to satisfy this prominence requirement).

[162] Currently, a fund must precede the expense example with a narrative preamble explaining that the purpose of the expense example disclosure is to help shareholders understand the ongoing costs of investing in the fund and to compare those costs with the ongoing costs of investing in other mutual funds. The preamble defines ongoing costs as fund expenses, including management fees and distribution [and/or service] (12b–1) fees. *See* Item 27(d)(1) of Form N–1A.

[163] *See* footnotes to the expense example in proposed Item 27A(c).

[164] *See* Instruction 1(f) to proposed Item 27A(c)

Furthermore, a fund would be required to briefly explain, in plain English, in a footnote to the ''Costs paid as a percentage of your investment'' column that the expense information does not reflect shareholder transaction costs associated with purchasing or selling fund shares.[165] This would draw investor attention to the fact that there may be additional costs not reflected in the expense example, if applicable. Finally, if a fund's shareholder report covers a period of time that is less than a full reporting year, the fund would be required to include a footnote to the table noting this and explaining that expenses for a full reporting period would be higher than the figures shown.[166]

We also are proposing certain modifications to the instructions associated with the computation of fund expenses to reflect the proposed changes to the expense example. We are proposing an instruction that would direct funds to calculate ''Costs paid'' by multiplying the figure in the ''Cost paid as a percentage of your investment'' column by the average account value over the period based on an investment of $10,000 at the beginning of the period.[167] The figure in the ''Cost paid as a percentage of your investment'' column, in turn, would be the fund's expense ratio as it appears in the fund's most recent audited financial statements or financial highlights.[168] The figure in the ''Ending account value (based on net asset value return)'' column would similarly be derived from figures in the fund's audited financial statements or financial highlights. To calculate this figure, the fund would multiply $10,000 by the fund's net asset value return as it appears in the fund's most recent audited financial statements or financial highlights.[169] The figure in the ''Total return before costs paid'' column would be calculated by subtracting $10,000 (the figure in the ''Beginning account value'' column) and the figure in the ''Costs paid'' column from the ''Ending account value (based on net asset value return)'' column.[170] Additionally, for ETFs we are proposing an instruction for how an ETF should calculate the ETF's ending account based on market value return.[171]

We are proposing to maintain certain of the current instructions that we believe would continue to provide useful information to shareholders. If a fund incurred any ''extraordinary expenses'' during the reporting period, we are proposing to continue to allow the fund to briefly describe, in a footnote to the expense table, what the actual expenses would have been if these extraordinary expenses were not incurred.[172] Similarly, if a fund is a feeder fund, we are proposing to continue to allow that fund to reflect the aggregate expenses of the feeder fund and the master fund in the expense table and to include a footnote stating that the expense table reflects the expenses of both the feeder and master funds.[173] Additionally, if the shareholder report covers more than one class of a fund or more than one feeder fund that invests in the same master fund, the shareholder report may include a separate expense table, or a separate line item in the expense table, for each class or feeder fund.[174]

We request comment on our proposed approach to revising the expense information that would appear in funds' annual reports, and specifically on the following issues:

18. Would the information that would be included in the proposed expense example permit shareholders to estimate the actual costs, in dollars, that they incurred over the reporting period and provide shareholders with a basis for comparing expenses across different funds? If not, why not? Which, if any, of the proposed disclosure requirements should we modify? Is there a better way of describing the fund's expenses to shareholders in the annual report?

19. Should we, as proposed, require funds to provide the costs in dollars associated with investing in the fund based on an assumed $10,000 investment? Should we increase the assumed investment amount from $1,000 to $10,000, as proposed? Should we use some other amount, and if so, what amount would be more appropriate and why?

20. Should we, as proposed, align the rounding conventions included in the expense example instructions in the shareholder report with those included in the instructions to the prospectus expense table?

21. Should we, as proposed, require funds to disclose individually: (1) The costs paid during the period, (2) the fund's total return during the period before costs were paid, and (3) the ending account value based on the fund's net asset value return? Why or why not? Instead, should we require funds to disclose the total return net of fees? Are the proposed calculation instructions for these figures appropriate? Why or why not? Would providing expense information in this disaggregated manner facilitate shareholder understanding of how costs and performance each affect the ending account value? Why or why not?

22. Should we, as proposed, require funds to disclose the figures in the expense table as a mathematical expression? Would shareholders find this presentation useful?

23. Should we, as proposed, require funds to use text features to highlight the columns showing costs paid during the period (both in dollars and as a percentage of the investment)? Would this approach draw shareholder attention to those figures? Is there a particular format that we should require to highlight these columns, instead of (as proposed) providing flexibility in how to highlight them?

24. Should we require funds to provide the costs associated with investing in the fund as a percentage of a shareholder's investment in the fund (*i.e.,* expense ratio)? Would this disclosure assist shareholders in comparing the level of current period expenses of different funds?

25. Should we, as proposed, require ETFs to provide the ending value of the

[165] *See* Instruction 1(g) to proposed Item 27A(c). Funds would not be required to disclose the amount of such fees.

[166] *See* Instruction 1(i) to proposed Item 27A(c). This would generally apply to newly formed funds that are required to file an annual or semi-annual report for a period less than the reporting period.

[167] *See* Instruction 2(a) to proposed Item 27A(c) of Form N–1A.

[168] *See* proposed Instruction 2(c). In the semi-annual report, the fund's expense ratio would be calculated in the manner required by Instruction 4(b) to Item 13(a) of Form N–1A, using the expenses for the fund's most recent fiscal half-year. *Id.*

[169] *See* proposed Instruction 2(e). In the semi-annual report, the fund's ending account value would be calculated in the manner required by Instruction 3 to Item 13(a) of Form N–1A. *Id.*

[170] *See* proposed Instruction 2(d) of Item 27A(c) of Form N–1A.

[171] *See* proposed Instruction 2(f) of Item 27A(c) of Form N–1A (requiring funds to multiply $10,000 by the fund's market value return). In an ETF's annual report, an ETF would be required to use the market value return as it appears in the ETF's most recent audited financial statements or financial highlights in its calculations. In the semi-annual report, the fund's market value return should be calculated in the manner required by Instruction 3 to Item 13(a) of Form N–1A. *Id.*

[172] *See* Instruction 1(k) to proposed Item 27A(c) of Form N–1A (defining ''extraordinary expenses'' as ''expenses that are distinguished by their unusual nature and by the infrequency of their occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the Fund, taking into account the environment in which the Fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the Fund operates. The environment of a Fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of government regulation''); *see also* Instruction 2(a)(ii) to Item 27(d) of Form N–1A.

[173] *See* Instruction 1(d) to proposed Item 27A(c) of Form N–1A.

[174] *See* Instruction 1(e) to proposed Item 27A(c) of Form N–1A.

account based on market value return, in addition to the value based on net asset value return? If so, should we require or permit ETFs to provide any additional information to explain the costs reflected in these two values to shareholders? For example, should we require or permit ETFs to provide a narrative explanation of what these values represent, how they differ from each other, and/or what impact they have on the fund's performance?

26. Should we require, as proposed, funds to include the expense ratio and cost in dollars only for the period covered by the report? Should we instead require funds to include fund expense information over other historical periods, such as 5 years, 10 years, or some other period?

27. Should we, as proposed, require funds to describe qualitatively other costs included in total return, if material to the fund? Would this requirement be helpful to investors, and if so, what types of investors would find the disclosure to be particularly helpful? If the disclosure would not be helpful to investors, why not? Should we instead permit, rather than require, funds to include these costs in the expense example or in a footnote? Should we require funds to separately disclose the amount of securities lending costs, or fund investment transaction costs, that the fund incurred during the period? Should we require funds to include in the footnote the amount of any acquired fund fees and expenses that the fund includes in its then-effective prospectus fee table? Would quantifying acquired fund fees and expenses in the footnote be appropriate in light of the fact that acquired fund fees and expenses are not included in a fund's audited financial statements, and calculation of acquired fund fees and expenses can require a degree of estimation when the acquired funds have different fiscal year-ends than the acquiring fund? Would disclosing quantitative amounts of securities lending or fund investment transaction costs present the same or additional considerations? Is it appropriate for any or all of these costs to be included in a footnote? Should funds instead be required to include this information in the expense table itself? Is there another, more appropriate, place to include this information?

28. Should we, as proposed, require funds to briefly explain in a footnote that the example does not reflect transaction costs associated with purchasing or selling fund shares? Alternatively, should we permit, rather than require, funds to include this footnote?

29. Should we, as proposed, continue to allow a fund that is a feeder fund to reflect the aggregate expenses of the feeder fund and the master fund in the expense table and to include a footnote stating that the expense table reflects the expenses of both the feeder and master funds? Should we instead require feeder funds to separately disclose the fees associated with the feeder and the master funds, respectively?

30. Do the proposed footnotes to the expense presentation adequately convey the information that was previously included in the preamble to the current expense examples? If not, what additional information should we require or permit funds to disclose, and in what format should funds have to present this additional disclosure? Instead of including the information in footnotes, is there a more appropriate location for the information? Is there any additional information that we should permit or require funds to convey in notes to the expense presentation? For example, if the fund plans to increase its fees materially and this change would be disclosed in the proposed ''Material Fund Changes'' of the annual report, should we either permit or require the fund to cross-reference this disclosure as a note to the expense presentation?

31. Should we adopt any additional or different expense disclosure requirements for certain types of funds? For example, in addition to what we proposed, are there any additional or different expenses that may only be relevant to ETFs (accounting for the unique characteristics of their structure) that we should require or permit ETFs to disclose?

32. Should we allow funds to cross-reference additional resources that would allow each shareholder to calculate the actual expenses that he or she paid? For example, should we allow funds to cross-reference online expense calculators produced by third-party vendors? Alternatively, should we allow funds to cross-reference an online expense calculator provided by the Commission or FINRA, such as FINRA's fund analyzer tool? Since FINRA's fund analyzer only provides forward-looking information, rather than the actual past expenses that shareholders have paid during the period, would this information be useful to shareholders?

33. In what ways can technology make personalized expense information possible? For example, should funds or intermediaries provide calculators or other tools to help investors understand their individual investment costs? Have improvements in technology since 2004, when the Commission considered requiring personalized expense information in quarterly account statements, made it easier for funds or intermediaries to provide personalized expense information in quarterly account statements or through other mechanisms? [175] If funds were to provide personalized expense information, how can we design the disclosure to reduce potential investor concerns about sharing their personal information or about data security? Are there any other concerns associated with such disclosure?

34. Should we require funds to submit interactive data files (for example, formatted using eXtensible Business Reporting Language (''XBRL'')) containing their expense example information? Why or why not? Would it be useful for shareholders to have access to the expense example in a structured data format? Would this meaningfully complement the current requirement that funds submit their prospectus risk/return summary information in Inline XBRL format, or would it be duplicative with this current requirement? Is there any other information from funds' shareholder reports that we should require funds to submit in a structured data format?

c. Management's Discussion of Fund Performance

Given fund investors' interest in performance information for purposes of monitoring and assessing their ongoing fund investments, we propose largely to maintain the current requirements for the management's discussion of fund performance (''MDFP'') section of the annual report, with several proposed targeted changes.[176] Currently, MDFP disclosure consists of the following:

- A narrative discussion of the factors that materially affected the fund's performance during the most recently completed fiscal year;
- A line graph providing account values for each of the most recently completed 10 fiscal years (or for the life of the fund, if shorter) based on an initial $10,000 investment in comparison to the returns of an appropriate broad-based securities

[175] *See* February 2004 Shareholder Report Adopting Release, *supra* footnote 83, at paragraph accompanying n.36 (recognizing that a requirement for individualized expense disclosure in quarterly statements would have required costly systems changes for funds and intermediaries at that time).

[176] *See supra* footnote 47 and accompanying text (discussing information about investors' interest in shareholder report performance information, including the results of various investor testing and surveys in which approximately 60–80% of surveyed investors expressed interest in fund performance information or the narrative discussion of factors affecting the fund's performance).

market index for the same period (as well as more narrowly based indexes that reflect the market sectors in which the fund invests, at the fund's discretion);

- A table showing the fund's average annual total returns for the past 1-, 5-, and 10-year periods (or for the life of the fund, if shorter);
- A statement accompanying the line graph and table to the effect that past performance does not predict future performance and that these presentations do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of shares;
- A discussion of the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the fund's investment strategies and per share net asset value, as well as the extent to which the fund's distribution policy resulted in distributions of capital; and
- For ETFs that do not provide certain premium or discount information on their websites, a table showing the number of days the fund shares traded at a premium or discount to net asset value.[177]

We are proposing amendments to the MDFP requirements to make the disclosure more concise and to take into account that shareholders may no longer receive fund prospectuses—which include performance information—after their initial purchase of fund shares.[178] These proposed amendments therefore would require the MDFP to include additional performance-related information that is available in fund prospectuses, including certain class-specific performance information and comparative information showing the average annual total returns of one or more relevant benchmarks. We also are proposing to amend the definition of an appropriate broad-based securities market index to clarify that all funds should compare their performance to the overall applicable securities market, for purposes of both fund annual reports and prospectuses.

i. Narrative MDFP Disclosure

We propose to retain the current requirement that funds' annual reports include a narrative discussion of factors that materially affected the fund's performance during the most recent fiscal year, with minor modifications to encourage concise disclosure.[179] The narrative MDFP disclosure is designed to aid shareholders in assessing a fund's performance over the prior year.[180] We continue to believe this disclosure provides information that helps shareholders understand and evaluate fund performance over that time period. However, based on staff review of current disclosures, we believe that some funds provide overly long narrative discussions that likely impede shareholders' ability to understand easily the key factors that affected the fund's performance. Therefore, we are proposing to amend the current requirement to specify that the disclosure must ''briefly summarize'' the ''key'' factors that materially affected the fund's performance during the last fiscal year, including the relevant market conditions and the investment strategies and techniques used by the fund's investment adviser.[181] A proposed instruction would direct funds not to include lengthy, generic, or overly broad discussions of the factors that generally affected market performance during a fund's last fiscal year.[182] The proposed instruction would also direct funds to use graphics or text features—such as bullet lists or tables—to present the key factors, as appropriate. We understand that some funds currently attempt to make their narrative disclosure easier for shareholders to understand by, for example, using tables or charts to show how the fund performed in comparison to a relevant benchmark or to identify the significant contributors to or detractors from the fund's performance by holding, industry, geographic region, or other relevant category. We believe these types of presentations may be helpful to shareholders, and funds could continue to include them in annual reports under the proposal.

We recognize that funds currently may include additional information in their shareholder reports that is designed to help shareholders understand fund performance and market conditions, such as a fund president's letter to shareholders, interviews with portfolio managers, market commentary, and other similar information. Under the proposed amendments, a fund could not include this additional information in its annual report.[183] We believe that information about the key factors affecting a fund's performance, which the proposal would require, would likely satisfy many fund shareholders' needs and would provide a more focused presentation. Although we understand that the additional information funds currently include in shareholder reports may be helpful to some shareholders, we believe the potential benefits of this information to a subset of shareholders, on balance, do not warrant the additional length they would contribute to the annual report. We also believe that allowing this discretionary information would not further our goal of presenting shareholders with the information that is most central to understanding their fund's performance. Funds would, however, be able to provide materials that include this additional information to shareholders in the same transmission as the annual report (*e.g.,* in the same email or envelope), provided that the annual report is given greater prominence.[184] Funds could also provide this additional information on their websites, as we understand many funds do today. Further, funds could refer to additional website information near the end of their shareholder reports if they reasonably believe that shareholders will likely view the information as important.[185]

We request comment on the proposed amendments to the narrative MDFP disclosure, including:

35. Should we retain the requirement for a fund to include narrative MDFP disclosure in annual reports? Why or why not? Does this disclosure help shareholders better understand a fund's performance?

36. Should we require the narrative MDFP disclosure to summarize briefly the key factors that materially affected

[177] *See* Item 27(b)(7) of current Form N–1A.

[178] *See infra* Section II.F.

[179] *See* Item 27(b)(7)(i) of Form N–1A; proposed Item 27A(d)(1) of Form N–1A. Currently, funds are required to discuss the factors that materially affected the fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the fund's investment adviser. Item 27(b)(7)(i) of Form N–1A.

[180] *See* February 2004 Shareholder Report Adopting Release, *supra* footnote 83, at paragraph accompanying n.96; Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050 (Apr. 12, 1993)] (''MDFP Adopting Release'').

[181] *See* proposed Item 27A(d)(1) of Form N–1A.

[182] *See* Instruction 1 to proposed Item 27A(d)(1) of Form N–1A.

[183] *See supra* Section II.B.1.b (discussing the proposed instruction that would permit funds only to include in their annual reports information that is permitted or required by proposed Item 27A).

[184] Commission rules currently do not preclude a fund from including other materials in the same transmission as shareholder reports. Our proposal similarly would not limit a fund's ability to provide other materials in the same transmittal as the proposed annual report. We believe this would allow funds to communicate with shareholders more efficiently through a single transmittal without detracting from our goal of concise, readable shareholder reports. However, we are proposing to require that the annual report be given greater prominence than other materials, with the exception of certain other specified disclosure materials. *See supra* footnotes 124–126 and accompanying text.

[185] *See infra* Section II.B.2.i.

the fund's performance during the last fiscal year, as proposed? Would different instructions better further the Commission's goals of making narrative MDFP disclosure more concise so shareholders can understand more efficiently the key factors that affected a fund's performance? If so, what should those alternative instructions be, and how would they better further our goals?

37. As proposed, should we direct funds to use graphics or text features, such as bullet lists or tables, to present the key factors, as appropriate? Should we require funds to use specific graphics or text features to help shareholders more readily understand the key factors affecting fund performance and to create consistency among annual reports? Or is a more flexible approach, like we propose, more appropriate to allow funds to develop presentations tailored to individual funds and the needs of their shareholders?

38. Should we expressly limit the length of the narrative MDFP disclosure? If so, how (*e.g.,* word or page limits)? If not, why not?

39. Are there other ways we could require or encourage funds to provide concise narrative MDFP disclosure focused on the key factors that affected the fund's performance, beyond our proposed revisions and instruction directing funds not to include lengthy, generic, or overly broad discussions of the factors that generally affected market performance? For example, should we expressly require a discussion about the types of investments that drove fund performance, or can shareholders intuit this by reviewing the fund's investment strategy?

40. Should we amend the narrative MDFP disclosure requirement to limit or expand the examples of the types of factors that funds should discuss? For example, should we refer to other factors, beyond the current references in this requirement to relevant market conditions and the investment strategies and techniques the fund's adviser used? Should we require funds to discuss holdings that significantly contributed to or detracted from their performance during the past fiscal year (*e.g.,* by holding, industry, geographic region, or other relevant category), as many funds do today? Should we require or encourage funds to discuss other topics, such as: (1) The fund's performance in relation to its benchmark; (2) the reason for and effect of any large cash or temporary defensive position on fund performance; (3) the effect of any tax strategies, or the effects of taxes, on fund performance; or (4) whether the fund engages in high portfolio turnover and the effect of portfolio turnover on fund performance?

41. Should we incorporate concepts or requirements from management's discussion and analysis requirements that apply to annual reports of operating companies and BDCs on Form 10–K? [186] For example, should we require or encourage funds to disclose material financial and statistical data that the fund believes would enhance a shareholder's understanding of the fund's performance? As another example, would it be appropriate to require or permit forward-looking disclosure? If so, are there any related rules or rule amendments we should adopt to facilitate this disclosure? For instance, should we require or permit a fund to disclose when a key factor that materially affected the fund's performance for the last fiscal year is not expected to materially affect the fund's future performance (*e.g.,* because the fund has sold the underlying investment or because of an unusual or infrequent event or transaction)?

42. Are there ways we could prevent funds from providing generic or boilerplate narrative MDFP disclosure that does not change much from year to year? If so, how?

43. Are there any best practices in narrative MDFP disclosure that we should encourage or require?

44. Should we permit or require additional information in the annual report that is intended to help shareholders understand fund performance, such as interviews with portfolio managers or a president's letter? Is this additional information helpful to shareholders? If so, should it be included as part of the MDFP, or in some other part of a fund's annual report?

ii. Performance Line Graph and Request for Comment on Use of Market Indexes in Performance Disclosure

We also are proposing to retain the requirements for the performance line graph currently included in annual reports, with certain amendments designed to improve the current presentation.[187] The line graph generally shows the performance of a $10,000 investment in the fund and in an appropriate broad-based securities market index over a 10-year period.[188] This disclosure is designed to permit a comparison of the performance of the fund with ''the market'' and to put the narrative discussion into perspective.[189] In addition to required information about an appropriate broad-based securities market index's performance, a fund has the option to compare its performance to other indexes, including more narrowly based indexes that reflect the market sectors in which the fund invests.[190] We continue to believe the line graph presentation helps shareholders understand how the fund has performed over a 10-year time horizon in comparison to an appropriate broad-based securities market index and other relevant indexes, as applicable.[191] Because this presentation shows performance in dollar terms, based on an initial $10,000 investment, we believe the line graph may contribute to shareholders' understanding of fund performance—because some individuals may find it easier to assess dollar figures than percentages—and complements the percentage-based presentation in the average annual total returns table.[192] We also believe the line graph helps illustrate the variability of a fund's returns (*e.g.,* whether the fund's returns have been volatile or relatively consistent from year to year) and

[186] *See, e.g.,* Item 303 of Regulation S–K; Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Securities Act Release No. 10750 (Jan. 30, 2020) [85 FR 12068 (Feb. 28, 2020)].

[187] *See* Item 27(b)(7)(ii)(A) of Form N–1A; proposed Item 27A(b)(2)(A).

[188] An ''appropriate broad-based securities market index'' is one that is administered by an organization that is not an affiliated person of the fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. *See* Instruction 5 to Item 27(b)(7)(ii) of current Form N–1A; Instruction 6 to proposed Item 27A(d)(2) of Form N–1A.

[189] *See* MDFP Adopting Release, *supra* footnote 180, at paragraph accompanying n.17.

[190] *See* Instruction 6 to Item 27(b)(7)(ii) of Form N–1A; Instruction 7 to proposed Item 27A(d)(2) of Form N–1A.

[191] Many investors view performance information as important for purposes of monitoring a fund investment. *See supra* footnote 48 and accompanying text. With respect to the performance line graph in particular, one study found that 55% of surveyed investors ranked the line graph and table of fund's performance in the top three most important categories of annual report information. Approximately 49% of surveyed investors classified this information as ''absolutely essential for any investor.'' *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 49, 51.

[192] *See infra* Section II.B.2.c.iii (discussing total returns table). To the extent that a fund chooses to provide tools to help shareholders better understand online or mobile presentations of annual reports, the ability to customize the investment amount and investment time horizon could be areas that lend themselves to add-on functionality that funds may wish to build into these presentations. If a fund provides such tools, the default presentation would be required to be the values that the proposed Form N–1A requirements prescribe (*e.g.,* an initial investment of $10,000 would be the default presentation for the line graph, although the tools would allow a shareholder to increase or reduce this investment amount). *See* discussion at *infra* Section II.B.4 and *infra* footnote 338 and accompanying text.

therefore provides shareholders with some information about the risks of their fund investment. Moreover, the line graph presentation may help investors understand the general benefits of long-term investments (*e.g.,* compound interest). We recognize potential critiques that the line graph may not show the variability of a fund's returns as clearly as certain other presentations (such as the bar chart we require in fund prospectuses that shows annual total returns as a percentage of an investment).[193] However, given the other benefits of the line graph—particularly that it presents performance in dollar terms that may be easier for some shareholders to assess—we are proposing to retain the line graph presentation.

We are proposing to retain the current requirement to present fund performance in relation to an appropriate broad-based securities market index because we continue to believe that performance disclosure without relevant context showing market performance would not provide the information that shareholders need to understand how their fund performed. For example, performance disclosure without this type of context would not give shareholders a sense of how their investments might have performed had their money been invested elsewhere. However, we request comment on this proposed requirement below.

We also recognize potential critiques about the use of market indexes in presenting performance information. These include critiques that index licensing fees can be costly to funds (and, indirectly, to fund investors) and that, depending on the index selected, comparing a fund's performance against the index in some cases may be less effective in helping shareholders understand the fund's performance and risks. For example, because funds have discretion to choose an appropriate broad-based securities market index, a fund may choose an index that it is more likely to outperform to make it look like the fund is doing better than the corresponding market (for instance, this could occur if a bond fund selects a more conservative bond market index). In addition, index providers can experience errors or other difficulties in constructing, computing, or maintaining indexes. For example, an index that includes companies in emerging and frontier markets may experience data or computational errors if there is less information publicly available about these companies due to differences in regulatory, accounting, auditing, and financial recordkeeping standards.[194]

While we propose largely to maintain the current line graph presentation and associated instructions, we are proposing three revisions to the instructions associated with the line graph. First, we propose to add a new instruction to clarify the scope of required disclosure in an annual report that covers multiple classes.[195] The proposed instruction would require a fund to present performance information for at least one class in the line graph (in addition to the required information for an appropriate broad-based securities market index). The proposed instruction provides funds with discretion to determine which class or classes to present in the line graph, subject to certain limitations that are consistent with existing limitations on prospectus performance presentations.[196]

Second, we propose to remove an instruction that allows the line graph to cover periods longer than the past 10 fiscal years. We are concerned that this current instruction may introduce variability that reduces the benefits of the line graph. For example, as the time period on the line graph lengthens, any volatility of the fund's returns may become harder to identify because the scale of the line graph typically would need to cover a wider range of account values (*e.g.,* a scale of $0 to $1,000,000 rather than $0 to $30,000) that reflects growth in the account. This increase in scale generally would make any particular increase or decrease in account value (*e.g.,* an increase or decrease of $3,000) harder to identify. Further, this current instruction may result in performance presentations that could give rise to unrealistic investor expectations. For funds in existence for a long period of time (*e.g.,* 40 years), a line graph that shows the performance of a $10,000 investment at the outset of the fund may not be particularly relevant for the average shareholder, who likely has not been invested in the fund for such an extended period of time. The line graph also could show an ending account value that is substantially higher than the value of an initial $10,000 investment at the end of a 10-year period (*e.g.,* an ending account value of $1,000,000 versus an ending account value of $25,000). While we propose to limit the line graph presentation to the fund's last 10 fiscal years, funds may include similar presentations covering longer periods of time on their websites or in other marketing materials.

Third, we propose to clarify the definition of an appropriate broad-based securities market index. Currently, both a fund's prospectus and annual report must compare the fund's performance to an ''appropriate broad-based securities market index.'' [197] The Commission has described such an index as ''one that provides investors with a performance indicator of the overall applicable stock or bond markets, as applicable,'' while also stating that a fund would have ''considerable flexibility in selecting a broad-based index that it believes best reflects the market(s) in which it invests.'' [198] Our staff has observed varying practices with respect to the benchmarks funds use. Some funds, for example, disclose their performance against a benchmark index that may not provide a performance indicator of ''the overall applicable stock or bond markets,'' such as an index tied to a particular sector, industry, geographic location, asset class, or strategy (*e.g.,*

[193] *See* Item 4(b)(2)(ii) of Form N–1A (requiring a bar chart in a fund's prospectus that shows a fund's annual total returns for each of the last 10 calendar years (or the life of the fund, if shorter). Because the prospectus bar chart shows the percentage of returns for each year, it may more clearly show variations in a fund's returns than the line graph, which shows the cumulative performance of a $10,000 investment. For example, assume a fund experienced returns of negative 10% in year 1 and year 9. The bar chart would clearly show a negative 10% return in each of these years. However, in the line graph presentation, the negative 10% return in year 1 could appear as a much smaller change than a negative 10% return in year 9 (*e.g.,* a $1,000 decrease on a $10,000 investment in year 1 versus, for example, a $3,000 decrease in year 9 if the account value had increased to $30,000 in year 8).

[194] *See* SEC Chairman Jay Clayton, PCAOB Chairman William D. Duhnke III, SEC Chief Accountant Sagar Teotia, SEC Division of Corporation Finance Director William Hinman, SEC Division of Investment Management Director Dalia Blass, *Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited* (Apr. 21, 2020), *available at https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting.*

[195] *See* Instruction 13(a) to proposed Item 27A(d)(2).

[196] *See* current Instruction 3 to Item 4(b)(2) of Form N–1A (allowing a fund to select which class to include (*e.g.,* the oldest class, the class with the greatest net assets) if the fund: (1) Selects the class with 10 or more years of annual returns if other classes have fewer than 10 years of annual returns; (2) selects the class with the longest period of annual returns when the classes all have fewer than 10 years of returns; and (3) if the fund provides annual total returns for a class that is different from the class selected for the most immediately preceding period, it explains in a footnote the reasons for selecting a different class).

[197] *See* Item 4(b)(2)(iii) and Instruction 5 to Item 27(b)(7) of Form N–1A.

[198] In 1993, the Commission adopted rules requiring funds to compare their performance to a ''broad-based index in order to provide investors with a benchmark for evaluating fund performance that affords a greater basis for comparability than a narrow index would afford.'' *See* MDFP Adopting Release, *supra* footnote 180, at paragraph preceding nn.19–20, and n.21 and accompanying paragraph.

growth or value indexes).[199] While indexes based on narrow segments of the market may be useful for comparison purposes, we believe that all funds should compare their performance to the overall market.

Therefore, we are proposing to include language that clarifies that a ''broad-based index'' is one that represents the overall applicable domestic or international equity or debt markets, as appropriate.[200] This clarifying language would continue to provide a fund with flexibility in selecting a broad-based index that the fund believes best reflects the market(s) in which it invests. The form instructions also would continue to encourage a fund to include narrower indexes that reflect the market segments in which the fund invests in its performance presentation along with its appropriate broad-based securities market index.[201] If a fund invests in both equity and debt securities, such as a balanced fund, the fund may include more than one appropriate broad-based securities market index. The fund may also include a blended index—one that combines the performance of more than one index, such as equity and debt indexes—as an additional index to supplement the appropriate broad-based securities market index(es) that the fund includes. The proposed amendments to the definition of an appropriate broad-based securities market index would affect performance presentations in fund prospectuses, as well as fund annual reports.[202]

We request comment on the proposed line graph presentation and on the use of market indexes more generally in performance presentations, including the following:

45. Should we require the annual report to include the performance line graph, as proposed? Why or why not? Should we modify the proposed requirements for the line graph? For example, should the line graph show returns in terms of percentages instead of dollar values? Are there other presentations that would help shareholders better understand a fund's performance over the past 10 years (or for the life of the fund, if shorter) and the variability of its returns?

46. We understand that the line graph can be difficult to read in black and white and may not fully illustrate volatility in the early years displayed in the graph.[203] Are there other performance presentations that could better address these issues than the proposed approach and that would retain the benefits of the line graph presentation to shareholders? For example, should we replace the line graph with something similar to the bar chart required in fund prospectuses, which may be easier to read in black and white?[204] Would this alternative presentation better show year-to-year volatility? Is the risk/return bar chart easy for shareholders to understand, or do shareholders prefer the line graph presentation that shows returns in terms of dollars rather than percentages? If we were to replace the line graph with something similar to the risk/return bar chart, should that alternative presentation present returns in terms of dollars instead of percentages?

47. Should we require the line graph to cover at least one class of a fund when a single shareholder report covers multiple classes, as proposed? Alternatively, should the graph be limited to one class or required to cover more than one class? How can we make sure that the line graph remains readable but provides sufficient information to help shareholders understand fund performance and risks?

48. Should we no longer allow funds to provide a line graph that covers periods longer than 10 years in their annual reports, as proposed? What are the benefits and drawbacks of permitting line graph presentations that cover more than 10 years, if a fund's registration statement has been effective for more than 10 years? If we were to continue to permit the line graph to cover a period of time that is longer than 10 years, should we limit the time period that the graph may cover in any way (*e.g.,* limit the time period to no more than 20 years)?

49. Should we require funds to provide information in shareholder reports about the performance of an appropriate broad-based securities market index, as proposed? What are the advantages and disadvantages of this information? Does information about an appropriate broad-based securities market index's performance provide investors with a helpful performance indicator of the overall relevant market?[205] If so, do these benefits justify the burdens, including costs to the fund (and ultimately its shareholders) of paying one or more index providers to allow the fund to include this information in the fund's disclosure? Is cost a significant factor for funds when they determine which, and how many, indexes to include in their shareholder reports? How are these costs assessed (for example, are they assessed on a per-disclosure basis or on some other basis)?

50. Should we modify the definition of ''appropriate broad-based securities market index,'' as proposed? If not, why not? If so, is the proposed definition appropriate, or should we modify it in any way? For example, should we permit funds to use blended indexes only as secondary indexes, as proposed (as an index could be ''broad-based'' only if it represents the overall applicable equity or debt markets), or should we permit funds to use these indexes as primary appropriate broad-based securities market indexes under certain circumstances? If we were to permit this, what if any conditions would be appropriate to ensure that the index remains ''broad-based''? For example, should there be requirements limiting a fund to the number of indexes that could be blended for this purpose (*e.g.,* 2), or the types of indexes that could be blended? Similarly, should we modify current requirements that permit funds to use non-securities market indexes only as secondary indexes, and not as appropriate broad-based securities market indexes? Are there concerns with certain funds using blended indexes or non-securities market indexes as secondary, rather than primary, indexes, such as concerns about investor understanding or costs associated with disclosing multiple indexes (*e.g.,* index licensing fees)? Do blended or non-securities market indexes provide an appropriate point of comparison for an investor to evaluate his or her fund's performance? If we were to allow blended indexes or non-securities market indexes as a primary index, how could we tailor this approach to make sure that investors receive a performance indicator of the overall applicable market?[206] Is the proposed definition clear? For example, is it clear that an index composed of securities of firms in a particular industry or group of related industries would not be broad-based?

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199 When the Commission adopted the requirement to compare a fund's performance against an appropriate broad-based securities market index, the Commission clarified, ''An index would not be considered to be broad-based if it is composed of securities of firms in a particular industry or group of related industries.'' *See id.* at n.21.

200 *See* proposed Instruction 6 to proposed Item 27A(d)(2) of Form N–1A.

201 *See* proposed Instruction 7 to proposed Item 27A(d)(2) of Form N–1A.

202 *See* proposed Item 4(b)(2)(iii) of Form N–1A.

203 *See supra* footnote 193.

204 *See* Item 4(b)(2)(ii) of Form N–1A.

205 *See* MDFP Adopting Release, *supra* footnote 180, at n.21 and accompanying text.

206 *See* MDFP Adopting Release, *supra* footnote 180, at n.21 and accompanying text.

51. Are there other changes we should make to the definition of appropriate broad-based securities market index, or to the framework for providing index performance more generally? For example, are there ways we could facilitate an investor's ability to understand the relevance of an appropriate broad-based securities market index, while maintaining funds' flexibility to select an appropriate and cost-effective benchmark? [207] As another example, are there ways we could address concerns that some funds may choose an index for the purpose of making the fund's performance look better? Are there other instructions or guidance we could provide regarding the selection of an appropriate broad-based securities market index?

52. We are proposing to amend the definition of appropriate broad-based securities market index for purposes of Form N–1A. Should the same amended definition apply to fund prospectuses and fund shareholder reports, as proposed? If not, why not? Should we make corresponding amendments to the definition of appropriate broad-based securities market index in Form N–2 with respect to MDFP requirements for registered closed-end funds? [208] Why or why not?

53. Should funds have discretion to provide information in shareholder reports about the performance of more narrowly based indexes that reflect the market sectors in which the fund invests, as proposed? Is the information these indexes provide helpful to shareholders, or does additional index performance information make the disclosure more difficult for shareholders to understand?

54. Should index providers be required to meet certain governance, due diligence, or other similar standards if an index's performance will be included in fund disclosure? Why or why not? If we imposed any such requirement, how would funds expect to determine whether those standards have been met?

55. Are there alternative measures that we should permit or require funds to use to provide investors with comparative information about market performance, instead of an appropriate broad-based securities market index or more narrowly based indexes that reflect the market sectors in which the fund invests? If so, what alternative measures (*e.g.,* the rate of inflation or a risk free rate), and why are those measures appropriate and preferable to the use of indexes? [209]

iii. Performance Table

We are proposing to retain the current requirement that funds' annual reports include a table presenting average annual total returns for the past 1-, 5-, and 10-year periods, although we are proposing amendments to require three pieces of additional information. Specifically, the proposal would require that the table include: (1) The average annual total returns of an appropriate broad-based securities market index; (2) the fund's average annual total returns without sales charges (in addition to current disclosure that shows returns reflecting applicable sales charges); and (3) average annual total returns for each class that the report covers, in each case for the past 1-, 5-, and 10-year periods.[210] The average annual total returns table is designed to assist shareholders in comparing the performance of different funds.[211] We also believe that the table complements the line graph to help shareholders evaluate a fund's performance and risks.

The amendments we are proposing to the average annual total returns table are designed, in part, to better conform the table to a similar presentation that funds include in their prospectuses. Like the current prospectus disclosure regarding average annual total returns, we propose to require funds to include in the shareholder report table information about the average annual total returns of an appropriate broad-based securities market index.[212] A fund would provide the index's returns for the same periods as its own returns (*e.g.,* 1-, 5-, and 10-year periods). We understand that many funds already provide this information in their annual reports. We believe that requiring all funds to provide this information would help shareholders better understand a fund's performance and risks in the context of the broader market.[213] We also believe that proposing this change would be beneficial because fund shareholders may no longer receive annual prospectus updates as a result of our proposed amendments to the prospectus delivery framework for existing fund shareholders.[214] Consistent with the current prospectus performance presentation, the proposed amendments would permit funds to include returns information for one or more other relevant indexes, such as a more narrowly based index that reflects the market sectors in which the fund invests.[215] We are proposing to permit funds to include more than one index in the table because we understand that in some cases this approach may help shareholders understand how the fund's performance compared to, for example, performance of both the broader market and the market sector in which the fund invests. These proposed amendments are designed to help shareholders more easily evaluate a fund's performance and risks relative to the market and to better align the information in the table with the current line graph presentation so a shareholder has contextual information to help assess both year-over-year returns and average annual returns over set periods. At the same time, we recognize concerns about the use of indexes in performance presentations, and we are seeking comment on our proposed approach.[216]

[207] *See, e.g.,* Fowler Comment Letter (''Compare to a market measure I understand, and the asset class the fund holds.''); Ewing Comment Letter (''Compare against a market measure I know, like the S&P 500, not some obscure thing I never heard of.''); Frank W. Comment Letter; *see also* ICI Comment Letter I (requesting that the Commission be mindful of, and sensitive to, the fees and costs associated with including index information in a fund's prospectus).

[208] *See* Instruction 4.g(2)(F) to Item 24 of Form N–2, as amended by Closed-End Fund Offering Reform Adopting Release, *supra* footnote 128.

[209] For example, some market participants consider the 10-year U.S. Treasury note rate as a risk-free rate.

[210] *See* Item 27(b)(7)(ii)(B) of Form N–1A; proposed Item 27A(d)(2)(ii) of Form N–1A. Item 27(b)(7)(ii)(B) of Form N–1A currently requires the following:

''In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 26(b)(1).''

[211] *See* MDFP Adopting Release, *supra* footnote 180, at paragraph accompanying n.26. We recognize, however, that the table has certain limitations with respect to fund comparisons because it reflects fiscal year data and funds can have different fiscal year periods.

[212] *See* Item 4(b)(2)(iii) of Form N–1A (requiring that a fund's prospectus include a table showing its average annual total returns for 1-, 5-, and 10-calendar year periods, along with the returns of an appropriate broad-based securities market index for the same periods). The proposed amendments to the performance table would use the same amended definition of an appropriate broad-based securities market index as the proposed line graph presentation. *See supra* paragraph accompanying footnote 197.

[213] *See* 1998 Form N–1A Prospectus Amendments, *supra* footnote 151, at text accompanying n.69 (discussing the purpose of the required prospectus disclosure regarding the average annual total returns of an appropriate broad-based securities market index).

[214] *See infra* Section II.E.

[215] *See* Instruction 2(b) to Item 4(b)(2) of current Form N–1A; Instruction 2(b) to proposed Item 4(b)(2) of Form N–1A (amending the cross reference to the description of other more narrowly based indexes from Instruction 6 to current Item 27(b)(7) to Instruction 7 to proposed Item 27A(d)(2)); Instruction 7 to proposed Item 27A(d)(2) of Form N–1A.

[216] *See supra* Section II.B.2.c.ii.

We further propose to modify the average annual total returns table to require funds to separately provide the average annual total returns with and without sales charges, as applicable.[217] Currently, the table is only required to include average annual total returns that reflect sales charges.[218] We believe comparative information about average annual total returns with and without sales charges may help shareholders better understand the impact of sales charges on the returns of their investments. We also believe that additional information about average annual total returns without sales charges may help shareholders better compare the fund's returns to that of a relevant index.[219]

We also propose to add a new instruction for the average annual total returns table to require a fund to provide average annual total returns information for each class the shareholder report covers.[220] This is consistent with the prospectus average annual total returns table, which must reflect average annual total returns for every class a prospectus covers.[221] We believe it is important for shareholders to receive performance information that directly relates to the class in which they invest. Because each class can have different expenses that affect the class's returns, performance information for each class would allow a shareholder to understand the performance of his or her investment better and to compare performance among the classes the report covers.[222] While the proposed shareholder report expense disclosure would include class-specific performance information for the reporting period, the average annual total returns table would provide class-specific performance information over a longer time period. Further, although the line graph in the annual report similarly provides longer-term performance information, it is not currently required to include information for each class (nor are we proposing to require this, because we recognize that additional lines in the graph for each class may make the graph difficult to read). Additionally, under the proposal, shareholders generally may not receive annual prospectus updates, which include class-specific returns, and would instead receive prompt notices of certain material changes that generally would not include this information. As a result of these considerations, we believe the average annual total returns table in the shareholder report should include information for each class the report includes.

Currently, funds must include a statement accompanying the line graph and table to the effect that past performance does not predict future performance, and that the line graph and table presentations do not reflect taxes that a shareholder would pay on fund distributions or redemptions.[223] We propose to simplify the statement about past performance. Specifically, under the proposed amendments, a fund would be required to include a statement to the effect that the fund's past performance is not a good predictor of how the fund will perform in the future.[224] We propose to require funds to use text features to make this statement noticeable and prominent through, for example, graphics, larger font size, or different colors or font styles.[225] Under the proposal, funds would continue to be required to state that the disclosed performance information does not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares to alert investors to these tax consequences.[226]

Additionally, we propose to add a new instruction allowing funds to add brief additional disclosure that would contextualize the line graph and average annual returns table they include in their shareholder reports. Specifically, the proposed instruction provides that if a material change occurred to the fund during the relevant performance period, such as a change in investment adviser or a change to the fund's investment strategies, the fund may include a brief legend or footnote to describe the material change and when it occurred.[227] We believe this additional disclosure could help shareholders understand potential changes in fund performance related to material fund changes that have occurred during the relevant performance period.[228] Under the proposal, funds would have discretion to determine when to disclose information about a prior material change to a fund in connection with its performance presentation. We are proposing a discretionary approach, instead of requiring funds to include this disclosure for all material changes, because we recognize that some material changes to a fund may not affect a fund's performance, or may have only an insignificant effect on performance. Although a fund generally would be able to use discretion to determine when to disclose a prior material change in connection with its performance presentation, a fund would need to disclose information about such a change if, absent that disclosure, the fund's performance presentation would otherwise be misleading.[229]

While we believe it is beneficial for shareholders to receive information about a fund's performance in the annual report each year, we understand that funds provide more current, ongoing performance information through other mechanisms, such as their websites. We are proposing to require funds that provide updated performance

[217] *See* proposed Item 27A(d)(2)(ii) of Form N–1A. One commenter on the Fund Investor Experience RFC prepared a mock summary shareholder report that included average annual total returns shown with and without sales charges, as applicable. *See* ICI Comment Letter I. Under the proposal, a fund that does not impose sales charges would only provide a single set of average annual total returns figures (*i.e.,* returns without sales charges).

[218] *See* Item 27(b)(7)(ii)(B) of Form N–1A (requiring average annual total returns computed in accordance with Item 26(b)(1), which reflects sales charges in the calculation of returns). In connection with the proposed amendment, we propose to add a new computation instruction to explain that funds should calculate average annual total returns without sales charges in accordance with Item 26(b)(1) of Form N–1A, except the fund should not deduct sales charges as otherwise described in the instructions to that item. To provide a fund's 1-year annual total return without sales charges, a fund would use the same 1-year total return figure reflected in its most recent audited financial highlights. *See* Instruction 5 to proposed Item 27A(d)(2) of Form N–1A.

[219] Further, the proposed requirement to present the fund's annual total return without sales charges for the last fiscal year would align with audited information shareholders currently receive in the financial highlights section of shareholder reports. *See* Item 27(b)(2) of Form N–1A; Instruction 3 to Item 13(a) of Form N–1A. We understand that some shareholders review financial highlights information when assessing and monitoring their fund investments. *See, e.g., supra* footnote 52.

[220] *See* Instruction 13(b) to proposed Item 27A(d)(2) of Form N–1A.

[221] *See* Instruction 3(c)(i) to Item 4(b)(2) of Form N–1A.

[222] *See* 1998 Form N–1A Prospectus Amendments, *supra* footnote 213, at text accompanying n.66.

[223] *See* Item 27(b)(7)(ii)(B) of Form N–1A.

[224] *See* proposed Item 27A(d)(2)(iii)(A) of Form N–1A. We also propose to make a conforming change to similar language that must appear in the prospectus. *See* proposed amendments to Item 4(b)(2) of Form N–1A.

[225] *See* proposed Item 27A(d)(2)(iii)(A) of Form N–1A.

[226] *See* proposed Item 27A(d)(2)(iii)(B) of Form N–1A.

[227] *See* Instruction 14 to proposed Item 27A(d)(2). In addition, consistent with current Form N–1A requirements, if a fund uses an index in a shareholder report that is different from the index used for the immediately preceding reporting period, the later report would need to explain the reason(s) for the change and disclose the returns of both the new and former indexes. *See* Instruction 7 to Item 27(b)(7)(ii) of Form N–1A; Instruction 8 to proposed Item 27A(d)(2) of Form N–1A.

[228] *See* Blanchard Comment Letter (suggesting that identifying fund changes that may have changed a fund's performance would improve current fund performance presentations).

[229] *See, e.g.,* rule 8b–20 under the Investment Company Act [17 CFR 270.8b–20].

information through widely accessible mechanisms, such as fund websites, to include a statement in the shareholder report directing shareholders to where they can find this information.[230] If a fund were to include such a statement, it also would be required to provide a means of facilitating access to the updated performance information, including, for example, a hyperlink to where the information may be found if the shareholder report is provided electronically or a URL address or QR code if the shareholder report is delivered in paper format.[231]

We request comment on the proposed average annual total returns table and associated amendments, including the following:

56. Should the annual report include the average annual total returns table, as proposed? Why or why not? Should we modify the proposed requirements for the table? If so, how?

57. Should we require funds to include the average annual total returns of an appropriate broad-based securities market index and allow funds to include the returns of additional indexes in the average annual total returns table, as proposed, and as funds currently do in their prospectuses? Should we make any changes to this aspect of the proposal? Please explain.

58. Should we require funds to include the average annual total returns of each class that the annual report covers, as proposed, and as funds currently do in their prospectuses? Should we modify this aspect of the proposal? For example, should we only require average annual total returns for one class or for a set number of classes? If so, should we provide funds with flexibility for determining which class to disclose in the average annual total returns table, similar to the proposed instruction for the line graph, or should we take a different approach?[232] Are there ways to improve the design or presentation of the table, particularly when covering multiple classes?

59. Should we modify the average annual total returns table to require funds to separately provide the average annual total returns with and without sales charges, as proposed? Would requiring information about average annual total returns without sales charges be helpful to shareholders, or would this information make the table too confusing or complex? Have we provided sufficient calculation instructions for funds to determine average annual total returns without sales charges? If not, what additional information do funds need for purposes of this calculation?

60. Should we, as proposed, modify the statement that currently must accompany the line graph and table indicating that past performance does not predict future performance and retain the statement that the line graph and table presentations do not reflect taxes that a shareholder would pay on fund distributions or redemptions? Are there other ways we could make the statement about past performance more understandable for shareholders? Is the statement clarifying that performance does not reflect the deduction of taxes helpful to shareholders, or is it unnecessary boilerplate? If it is not helpful to shareholders, should we modify or remove this language?

61. Should we, as proposed, allow a fund to include a brief legend or footnote to its line graph and average annual total returns table to describe a material change, such as a change in investment adviser or a change to the fund's investment strategies, that occurred to the fund during the relevant period? Would this provision provide shareholders with useful contextual information? If so, should we make the disclosure mandatory? If not, why not? Are there ways we could improve the utility or design of this provision? For example, are there ways we should modify the provision to limit any risk that funds might attempt to justify fund losses by referring to an unrelated change to the fund? Is the meaning of ''material change'' in this provision sufficiently clear, or do funds need more guidance to help them determine whether a change is material for purposes of this provision? Should we modify the standard for determining the types of changes that funds can disclose in connection with their shareholder report performance presentations? For example, rather than refer to material changes, should we identify specific types of changes that funds can disclose? If so, what types of changes should the provision cover (*e.g.,* should it be limited to changes in investment advisers and changes in principal investment strategies, or should it include other changes)? If we retain a principles-based standard, should we use a different standard than material changes (*e.g.,* significant changes)? Should we only allow a ''brief'' legend or footnote, as proposed?

62. Should we require funds that provide updated performance information through widely accessible mechanisms, such as fund websites, to include information in their annual reports directing shareholders to where they can find updated performance information, as proposed? Should we modify or clarify this requirement in any way? Should we instead permit, but not require, a fund to include this information in its annual report? As proposed, should we require funds that provide updated performance information on their websites to inform shareholders of this updated information in their annual shareholders reports and to direct shareholders to where the updated performance information is located? Should we require all funds to provide updated performance information on their websites? If so, what performance information? How often should it be updated?

iv. Other MDFP Amendments

We propose to simplify the current requirement that a fund discuss in its annual report the effect of any policy or practice of maintaining a specified level of distribution to shareholders (a ''stable distribution policy'') on the fund's investment strategies and per share net asset value during the last fiscal year, as well as the extent to which the fund's distribution policy resulted in distributions of capital.[233] The current disclosure requirement is meant to give shareholders a clearer picture of whether a fund had to distribute capital, as well as profits, to maintain its distribution rate.[234] Under the proposed amendments, a fund that has a stable distribution policy and that was unable to maintain the specified level during the past fiscal year would need to disclose this.[235] We also propose to maintain disclosure concerning distributions that resulted in returns of capital.[236] By modifying this provision to focus on circumstances when a fund was unable to meet the specified level of distribution in its stable distribution policy or had distributions that resulted in returns of capital, the proposal is designed to result in disclosure that is more meaningful to shareholders than

[230] *See* Instruction 15 to proposed Item 27A(d)(2).

[231] *See* Instruction 9 to proposed Item 27A(a); *see also infra* footnotes 342 and 343 and accompanying paragraph. Consistent with this instruction, a fund could provide a direct link to the updated performance information or a link to a central site that provides a direct link to the fund's updated performance information.

[232] *See supra* footnote 196 and accompanying text.

[233] *See* Item 27(b)(7)(iii) of Form N–1A (requiring a fund to ''[d]iscuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the fiscal year [as well as] the extent to which the Fund's distribution policy resulted in distributions of capital'').

[234] *See* MDFP Adopting Release, *supra* footnote 180, at Section I.C.4.

[235] *See* proposed Item 27A(d)(3) of Form N–1A.

[236] *See id.*

the current requirement. In particular, we believe that the proposed disclosure about a fund's inability to maintain a specified level of distribution would be important to shareholders in funds that have stable distribution policies because they typically expect to receive regular distributions. As a result, the fund's inability to meet the specified level of distributions may affect a shareholder's investment decision (*e.g.,* whether to continue to hold the fund). In addition, we believe that simplifying the language of this requirement, as proposed, could result in disclosure that is more understandable to shareholders because funds tend to use language in their disclosures that tracks the language of Commission form requirements. As most funds do not have stable distribution policies, we do not anticipate that this proposed disclosure requirement would add to the length of most shareholder reports.

The Commission recently adopted amendments to limit the requirement that ETFs provide premium and discount information in their annual reports to only those ETFs that do not provide premium and discount disclosure on their websites in accordance with 17 CFR 270.6c–11 [Investment Company Act rule 6c–11].[237] We are not proposing any amendments to this annual report requirement beyond a technical amendment to clarify that it only applies to ETFs.[238] We believe that most ETFs will provide premium and discount information on their websites instead of in their annual reports.[239]

We request comment on the proposed amendments to the MDFP disclosure regarding stable distribution policies and on the ETF premium and discount information that would remain in the annual report, as well as on MDFP disclosure more generally, including:

63. Should we modify the requirement that funds discuss the effects of any stable distribution policy under current Item 27(b)(7)(iii) in their annual reports, as proposed? Would the proposed requirement provide meaningful information to shareholders that is not otherwise available? Should we instead remove any specific disclosure requirements related to stable distribution policies? If we do not require this type of information in annual reports, should we require funds to make it available elsewhere?

64. Should we continue to require ETFs that do not provide premium and discount information on their websites in accordance with Investment Company Act rule 6c–11 to include premium and discount information in their annual reports? If not, where should they disclose this information?

65. Money market funds currently are not required to provide MDFP disclosure in their annual reports because the Commission has previously noted that the problems that MDFP disclosure seek to address with respect to investor understanding of performance do not appear to exist with respect to money market funds.[240] The proposal similarly would not require money market funds to provide MDFP disclosure. Should we require some or all money market funds to provide performance information in their shareholder reports? For example, should we require money market funds to include performance information similar to what they must disclose in their prospectuses (*e.g.,* 7-day yield, average annual total returns table, and performance bar chart) or similar to what other funds must disclose in their annual reports (*e.g.,* performance line graph)? If so, should these requirements apply to all money market funds or to a subset of money market funds, such as only money market funds that rely on proposed rule 498B (*i.e.,* whose shareholders receive prompt notice of certain material changes to the fund, with online access to the prospectus)?

66. Are there other changes we should make to current MDFP disclosure requirements? Please explain.

d. Fund Statistics

We are proposing to require a fund to disclose certain fund statistics in its annual report, including the fund's: (1) Net assets, (2) total number of portfolio holdings, and (3) portfolio turnover rate. We are also proposing to permit a fund to disclose any additional statistics that the fund believes would help shareholders better understand the fund's activities and operation during the reporting period (*e.g.,* tracking error, maturity, duration, average credit quality, or yield).[241] Based on information we received in response to the recent Fund Investor Experience RFC, it is our understanding that investors prefer succinct fund disclosures in graphical format, and they are less likely to review information presented in long narratives.[242] We believe that permitting funds to provide key fund statistics in a user-friendly format could enable funds to provide more meaningful information to investors, and encourage investors to focus on the more significant factors in evaluating the fund's operations.

We are proposing to require funds to include their net assets as of the end of the reporting period because we believe this disclosure would provide important context for other required information in the shareholder report.[243] Under our proposal, funds would be required to provide a graphical presentation of holdings.[244] A fund would have the flexibility to provide this graphical presentation either as a percentage of the fund's net asset value, total investments, or investment exposures.[245] We believe that knowing the fund's net assets would allow a shareholder to appreciate better the impact of each holding on the overall performance of the fund.

Similarly, we are proposing to require funds to include the total number of portfolio holdings as of the end of the

[237] *See* Adopting Release, *supra* footnote 75; Item 27(b)(7)(iv) of Form N–1A.

[238] *See* proposed Item 27A(d)(4) of Form N–1A.

[239] *See* ETF Adopting Release, *supra* footnote 75, at paragraph accompanying n.499 (stating that the Commission believes that most ETFs not relying on rule 6c–11 will choose to comply with the website disclosure requirements in that rule).

[240] *See* MDFP Adopting Release, *supra* footnote 180, at Section I.C.5 (noting, however, that money market funds retain the option of providing investors with a discussion of their performance, including illustrative line graphs).

[241] *See* proposed Item 27A(e).

[242] *See* Broadridge Comment Letter I (commenter conducted survey showing that investors are more likely to review fund disclosures if they are delivered in a summary format); *see also* ICI Comment Letter I (encouraging the Commission to allow funds to produce summary shareholder reports that are succinct and informative).

[243] Because the measure of a fund's net assets is included in the fund's audited financial statements, the fund would be required to use or derive such statistic from the fund's audited financial statements. *See* proposed Instruction 3 to proposed Item 27A(e).

If a fund provides tools to help shareholders better understand online or mobile presentations of annual reports, it may wish to provide the ability for shareholders to refer to updated net assets when reviewing these presentations, so they are seeing current information. Because the measure of a fund's net assets that would appear in the annual report would be derived from the fund's audited financial statements, the ability to update this statistic (which updates would presumably not be based on audited financial statements) would have to be an add-on functionality, and not a replacement for the end-of-period statistic that would appear on online presentations. For example, a fund could include a pop-up box attached to the fund's net assets information showing the fund's net assets as of a more recent specified date. *See* discussion at *infra* Section II.B.4; *see also infra* footnote 338 and accompanying text (discussing the proposed instruction requiring that the default presentation that any electronically presented annual report uses must be the value that the applicable form requirement prescribes).

[244] *See infra* footnote 259. Because we are proposing to require that the fund statistics section appear adjacent to the graphical representation of holdings in the annual report, the net assets statistic would provide shareholders with relevant context for the holdings information that we believe would be helpful to shareholders. *See infra* Section II.B.3.

[245] *See infra* text accompanying footnote 264.

reporting period.[246] Investors historically have viewed information about a fund's holdings as important to their investment decision process.[247] Many funds currently voluntarily provide the number of fund holdings on their websites, but Commission rules do not require them to do so. We believe that, together with the graphical holdings information and net assets, knowing the number of a fund's holdings could help investor to understand better the fund's diversification, which could in turn provide insight into the fund's susceptibility to market fluctuations.[248] Accordingly, to help ensure that an investor has access to information about the total number of fund holdings and to help contextualize other information that funds disclose, we are proposing that funds include that information as of the end of the reporting period in their annual reports.

Finally, we are proposing to require funds to include their portfolio turnover rate as of the end of the reporting period.[249] A higher portfolio turnover rate generally indicates higher transaction costs and may result in higher taxes.[250] Therefore, we believe that a fund's portfolio turnover rate may provide shareholders with a more complete view of the costs associated with investing in the fund.

Besides requiring funds to include their net assets, number of fund holdings, and portfolio turnover rate, we are providing flexibility for funds to disclose additional fund statistics if they are reasonably related to a fund's investment strategy. In general, funds would be limited in their ability to include information in their annual reports beyond that which Form N–1A would specifically permit or require.[251] We are proposing an exception to this limitation because these additional fund statistics may help shareholders better understand the fund's activities and operation during its most recent fiscal year. Permitting funds to provide key fund statistics that are tailored to the fund's investment strategy could enable them to provide information that is meaningful to their specific shareholder base. The proposed flexibility to include additional ''statistics''—a term that we believe conveys a brief presentation of quantitative measures—is designed to provide information in a concise format that would assist shareholders in evaluating significant factors that reflect the fund's performance and operations. For example, a fund that has a stated investment objective of maintaining returns that correspond to the returns of a securities index might consider including its tracking error as an additional statistic. Similarly, a fund that invests primarily in fixed-income bonds might consider including statistics such as maturity, duration, average credit quality, or yield. In each case, these additional statistics would be reasonably related to the relevant fund's investment strategy and would help shareholders better understand the fund's activities and operations during the reporting period.

We are proposing several instructions that are designed to help shareholders more easily digest any additional statistics that funds would disclose in their annual reports, and to provide context for understanding the disclosed statistics. First, if a fund provides a statistic that is disclosed elsewhere on Form N–1A, the fund must follow any associated instructions describing the calculation method for the relevant statistic.[252] Second, we are proposing an instruction that would encourage a fund to use tables, bullet lists, or other graphics or text features to disclose the statistics.[253] This instruction is designed to promote the presentation of fund statistics in a useful format.[254] Third, if a statistic is included in, or could be derived from, a fund's financial statements or financial highlights, we are proposing an instruction that would require a fund to use or derive such statistic from the fund's most recent financial statements or financial highlights.[255] Fourth, we are proposing an instruction that would allow a fund to describe briefly the significance or limitations of any disclosed statistics in a parenthetical, footnote, or similar presentation.[256] Finally, if a fund chooses to include additional statistics, we are proposing an instruction that would require additional statistics to be reasonably related to the fund's investment strategy.[257] These proposed instructions are, in the aggregate, designed to help promote the integrity and consistency of the information that funds may choose to provide, while allowing funds to tailor their disclosure to increase its usefulness to investors.

We seek comment on our proposal to require funds to provide important fund statistical information in the annual report and specifically on the following issues:

67. Should we require a fund to include its size, in terms of its net assets, in the annual report, as proposed? Should we instead permit, but not require, a fund to include its net assets? Why or why not? What informational benefits would requiring this information in the annual report serve? For example, would knowing a fund's net assets provide shareholders with useful context for evaluating the required graphical representation of holdings that also would appear in the annual report?

68. Are there any additional statistics we should require funds to disclose that would provide information about their size, or the change in their size over

[246] Because all portfolio holdings are included in a fund's audited financial statements, the fund would be required to use or derive this statistic from the fund's audited financial statements. *See* proposed Instruction 3 to proposed Item 27A(e) of Form N–1A; *see also supra* footnote 243 (discussing the use of online tools to supplement, rather than replace, statistics that are derived from a fund's audited financial statements).

[247] *See e.g.,* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 9 (noting that 45% of investors deemed a fund's portfolio holdings as ''absolutely essential information to any investor'').

[248] *See, e.g.* Morningstar's Investing Glossary, *available at http://www.morningstar.com/InvGlossary/number_of_holdings_in_portfolio.aspx* (noting that number of holdings information is meant to be a measure of portfolio risk because the lower the number of portfolio holdings, ''the more concentrated the fund is in a few companies or issues, and the more the fund is susceptible to the market fluctuations in these few holdings''). *But see* Concentrate on Concentration, FINRA Weekly Update, *available at https://www.finra.org/investors/learn-to-invest/advanced-investing/concentration-risk* (stating that a portfolio can be subject to concentration risk even when assets are invested in many different holdings).

[249] Because a fund's portfolio turnover is included in the fund's audited financial highlights, the fund would be required to use or derive the portfolio turnover from the fund's audited financial highlights. *See* Instruction 3 to proposed Item 27A(e); *see also supra* footnote 243 (discussing the use of online tools to supplement, rather than replace, statistics that are derived from a fund's audited financial statements).

[250] *See supra* footnote 558.

[251] For instance, funds have the ability to select the most appropriate categories when preparing their graphical representation of holdings. *See* proposed Item 27A(f) of Form N–1A.

[252] *See* Instruction 1 to proposed Item 27A(e). For example, a fund that chooses to disclose its yield as an additional statistic would have to calculate the yield pursuant to the requirements of Item 26(b)(2) of Form N–1A.

[253] We are not proposing to require such formatting to maintain flexibility and allow a fund to tailor the format of its disclosure to its unique characteristics.

[254] *See* Instruction 2 to proposed Item 27A(e).

[255] *See* proposed Instruction 3 to proposed Item 27A(e) of Form N–1A.

[256] *See* proposed Instruction 4 to proposed Item 27A(e). For example, a fund that chooses to disclose its tracking error may wish to include additional disclosure explaining that tracking error is the difference between a mutual fund portfolio's returns and its benchmark index, calculated on a scale between 0 and 1.0—with 1.0 representing perfect correlation.

[257] *See* proposed Instruction 5 to proposed Item 27A(e). This proposed instruction is designed to limit the types of statistics a fund includes only to those that are most pertinent in light of a fund's investment strategy, and to prevent disclosure ''creep.''

time? For example, should we require a fund to provide the change in the fund's net asset value from one year to another over a five-year period, as is currently required in the financial highlights? Why or why not?

69. Should we require a fund to include the total number of portfolio holdings in the annual report, as proposed? Should we instead permit, but not require, funds to include total number of portfolio holdings? Why or why not? What informational benefits would requiring this information in the annual report serve? For example, would knowing this information help shareholders evaluate other aspects of the fund's investment strategy, risks, and/or performance? Or, would this information be misleading to investors under certain circumstances (for example, if a fund has over 1,000 holdings but the majority of the fund's assets are invested in only 10–20 of those holdings)? Does the total number of portfolio holdings information serve as a useful statistic for a shareholder to help understand a fund's diversification and/or susceptibility to market fluctuations? Is the total number of holdings information a useful supplement to the graphical representation of holdings?

70. Should we require a fund to include its portfolio turnover rate in the annual report, as proposed? Should we instead permit, but not require, funds to include portfolio turnover rate? Why or why not? What informational benefits would requiring this information in the annual report serve? For example, does the portfolio turnover rate information serve as a useful statistic for a shareholder to understand the costs associated with investing in the fund?

71. Are there any other statistics that we should require funds to disclose in their annual reports? For example, should we require a fund to include information regarding its annual total return for each of the preceding five years or the fund's portfolio turnover rate, as is currently required in the financial highlights?

72. Is it appropriate to allow a fund, as proposed, to include additional statistics that are reasonably related to the fund's investment strategy and that the fund believes would help shareholders better understand the fund's activities and operations during the reporting period? Why or why not? Should the Commission provide additional guidance on how to determine whether a statistic is reasonably related to the fund's investment strategy? Would allowing funds to include additional fund statistics in their shareholder reports result in disclosure that may be overly long, complex, technical and/or duplicative? The proposal would permit funds to include additional fund statistics online (for example, in online tools that funds may overlay onto the shareholder reports that they provide on their websites), but not in the version of the report that shareholders receive in paper format.[258] Is this approach appropriate? Why or why not?

73. Would funds include additional statistics in their shareholder reports, as the proposed rule would permit? If so, what types of statistics would funds include, and how would these statistics help investors to understand the fund's investment strategy, risks, and/or performance? For example, would a fixed-income fund include statistics regarding yield, maturity, and/or duration?

74. If a fund chooses to include in its annual report a statistic that Form N–1A requires the fund to disclose elsewhere, should we, as proposed, require such a fund to follow the Form N–1A instructions describing the calculation methodology for the relevant statistic? Should we place any additional limitations on the statistics funds would be allowed to include? For example, should we limit the number of additional statistics a fund could include? Should we specify the share class(es) tied to the statistics funds could disclose *(e.g.,* require funds to include information only for the most expensive share class)? Should we only allow a fund to include a fund statistic that the fund otherwise discloses to shareholders and reports to the Commission, such as information the fund includes on Form N–PORT, Form N–CEN, or in the fund's financial statements, prospectus, or SAI? Should we include an instruction that would prohibit funds from including information generated by third-party vendors, such as Morningstar or Lipper ratings or sustainability rankings? If so, why, and what should this instruction specify?

75. Is the proposed instruction that would encourage a fund to use graphics or text features, such as bullet lists or tables, as appropriate to disclose fund statistics helpful to promote succinct, useful presentations of information that will help shareholders understand their fund's investment strategy, risks, and/or performance? Should we require any particular presentation for the statistics that all funds would have to include in their annual report, and if so, what presentation and why?

[258] *See infra* Section II.B.4.

76. Should we, as proposed, allow funds to describe the significance or limitations of each disclosed statistic? If so, is the instruction that the additional disclosure be presented in a parenthetical, footnote, or similar presentation appropriate, or are there any more-specific requirements that we should include in the instruction? Should we require, rather than permit, this disclosure?

77. Should we, as proposed, require additional statistics to be reasonably related to the fund's investment strategy? Would this limitation appropriately tailor the statistics a fund chooses to include to those that are most pertinent in light of a fund's investment strategy?

78. Should we require a fund to organize the disclosure of the statistics in a manner that gives each statistic similar prominence? Would such a limitation prevent funds from obscuring statistics that reflect less favorably on the fund's performance returns? Are there other instructions that could achieve this goal? Would a ''similar prominence'' requirement for fund statistics result in any anomalous disclosure results, or the need for Commission clarification or guidance (for example, if certain statistics require more context than others, or certain statistics lend themselves better to graphic display than others)?

79. Are there any additional instructions that we should include that would permit additional flexibility in presenting fund statistics? For example, if the value of a statistic significantly changed during the most recent fiscal year, should we allow or require funds to briefly describe the factors that contributed to the change? As another example, should we allow funds to provide comparative statistics, such as applying the same statistic to a relevant index or peer group in the same fiscal year? Would investors find this comparative information useful? If so, should we require, rather than permit, this disclosure? If the value of a statistic has significantly changed from the value disclosed in the fund's previous shareholder report, should we allow a fund to explain the factors that contributed to the change in value? Would shareholders find this information useful? If so, should we require, rather than permit, this disclosure?

e. Graphical Representation of Holdings

We are proposing to retain the current requirements for the graphical representation of holdings that funds currently include in their shareholder reports, with certain revisions designed to improve the current presentation. The graphical representation of holdings is one or more tables, charts, or graphs depicting the fund's portfolio holdings by category (for example, type of security, industry sector, geographic region, credit quality, or maturity) as of the end of the reporting period.[259] The purpose of this presentation is to illustrate, in a concise and user-friendly format, the allocation of a fund's investments across particular categories of investments (such as asset classes).[260] We understand that many investors, including investors responding to the Fund Investor Experience RFC, have viewed information about a fund's holdings as important to know when making an investment decision.[261] We believe a layered approach to the disclosure of portfolio holdings, where a graphical representation of holdings is provided in the annual report and more detailed and current portfolio holdings information is available online and upon request, helps shareholders understand how the fund invested its assets. While currently investors receive both the graphical representation of holdings and a schedule of investments, we are only retaining the graphical representation of holdings, and not a more complete list of fund portfolio holdings, because we believe it provides a better summary presentation that shareholders can more easily review.[262]

We are proposing two changes to the current requirements relating to the graphical representation of holdings. Currently, funds have the flexibility to base the tabular or graphic presentation of holdings on the fund's net asset value or total investments. We also are proposing to permit funds to show their holdings based on either the fund's net exposure, or total exposure, to particular categories of investments.[263] As funds do today, a fund would have to disclose its graphical representation of holdings using categories, and with a basis of presentation (*i.e.,* presented according to the fund's net asset value, total investments, or investment exposures) that is reasonably designed to depict clearly the types of investments made by the fund, given its investment objectives.[264]

The proposed amendment to allow investment exposure as a basis for presenting a fund's graphical representation of holdings is designed, in part, to provide a more meaningful presentation of holdings for funds that use derivatives to obtain investment exposures as part of their investment strategies.[265] A graphical representation of holdings based on net asset value or total investments may not represent the true economic exposure of a fund that uses derivatives. For example, a fund that executes its strategy primarily through derivatives transactions (*e.g.,* a managed futures fund or a commodity strategy fund) may invest a majority of its assets in government securities or money market funds, while a substantial portion of the fund's risks and returns may be derived from derivatives that compose only a small portion of its assets. In this situation, giving a fund the flexibility to present the graphical representation of holdings on an exposure basis could show a more accurate picture of the sources of the fund's investment risks and returns.[266] A fund that uses ''net exposure'' or ''total exposure'' as a basis for representing its holdings would also be permitted to include a brief explanation of this presentation.

The proposed amendment also is designed to provide a more meaningful presentation of holdings for certain funds that hold both long and short positions. Currently, the requirements for the graphical representation of holdings may not take into account both long and short positions. The proposed amendment provides clarity that funds that hold both long and short positions may present the long and short positions separately (*i.e.,* total exposure), or show the combined effect of both positions (*i.e.,* net exposure).[267] We believe this additional flexibility will allow certain funds, such as funds with ''long-short'' investment strategies, to provide representations that are tailored to their holdings and investment strategies. However, funds would not have full discretion to select their basis of presentation. They must select a basis of presentation (*i.e.,* presented according to the fund's net asset value, total investments, or investment exposures) that is reasonably designed to depict clearly the types of investments made by the fund, given its investment objectives.[268]

We are also proposing a minor change with respect to funds that intend to depict portfolio holdings according to credit quality. Currently, such a fund must describe how the credit quality of its holdings was determined and, if credit ratings are used, the fund must explain why it selected a particular credit rating.[269] We understand that there is diversity in practice as to the length of these disclosures, with some funds including a significant level of detail, while others include only relatively brief disclosure. We are proposing minor revisions instructing funds to keep these disclosures brief and concise.[270] These proposed

[259] *See* Item 27(d)(2) of current Form N–1A.

[260] *See* February 2004 Shareholder Report Adopting Release, *supra* footnote 83, at Section II.B.3.

[261] *See, e.g.,* Baker Comment Letter; Scott Comment Letter; Stiles Comment Letter; Waranowski Comment Letter; Wilhelm Comment Letter; *see also supra* footnote 47; *supra* footnote 247 (stating that the 2012 Report on Investor Testing of Fund Annual Reports noted that 45% of investors deemed a fund's portfolio holdings as ''absolutely essential information to any investor'').

[262] Investors have expressed a strong preference for including more tables, charts, and graphs in fund disclosure to make information more understandable to the average investor. *See supra* footnote 34.

The full schedule of portfolio holdings will be available online and upon request on at least a quarterly basis. *See* proposed rule 30e–1(b)(2). We discuss the availability of the schedule of investments in *infra* Sections II.D.1.a and II.D.2.a. *See also* rule 6c–11 under the Investment Company Act, which requires daily portfolio holdings for ETFs relying on the rule.

[263] *See* proposed Item 27A(f) of Form N–1A.

[264] *See id.; see also* Item 27(d)(2) of current Form N–1A.

[265] *See* Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers' Transactions in Certain Leveraged/Inverse Investment Vehicles, Investment Company Act Release No. 33704 (Nov. 25, 2019) [85 FR 4446 (Jan. 24, 2020)] ''Derivatives Proposing Release''), at Section I.A (providing an overview of funds' use of derivatives).

[266] For example, the XYZ Commodity Strategy Fund might invest 20% in commodity-linked derivatives and 75% in money market funds, such that the economic exposure of the fund would be the same as a 95% direct investment in commodities. Under the proposal, the fund would be permitted to show 95% exposure to commodities in its graphical representation of holdings instead of showing both the 20% derivative position and 75% money market fund position. However, a fund would have to select a basis of presentation that is reasonably designed to depict clearly the types of investments made by the fund, given its investment objectives. *See infra* footnote 268 and accompanying text.

[267] As an example, if a fund had a 5% long position in XYZ Automotive Co and a 4% short position in QRS Automotive Inc., the fund might show (1) the 5% long position in the automotive industry and separately show a 4% short position (total exposure); or (2) the net position of 1% in the automotive industry (net exposure).

[268] *See* proposed Item 27A(f) of Form N–1A.

[269] *See* Item 27(d)(2) of current Form N–1A. Funds that choose to depict portfolio holdings according to credit quality must include a description of how the credit quality of the holdings was determined. This description should include a discussion of the credit quality evaluation process, the rationale for its selection, and an overview of the factors considered. If the fund uses credit ratings issued by a credit rating agency to depict credit quality, the fund should explain how the credit ratings were identified and selected, and include this description near, or as part of, the graphical representation. *See* Removal of Certain References to Credit Ratings under the Investment Company Act, Investment Company Act Release No. 30847 (Dec. 27, 2013) [79 FR 1316 (Jan. 8, 2014)], at Section III.B.

[270] *See* proposed Item 27A(f) of Form N–1A.

amendments are designed to keep the narrative disclosures in the annual report brief.

We request comment on the proposed amendments to the graphical representation of holdings disclosure requirements:

80. Should we retain the graphical representation of holdings in annual reports? Why or why not? Does this graphical representation help shareholders better understand a fund's holdings?

81. Are there any concerns about the current graphical representation of holdings presentation in shareholder reports? Are there any best practices we should encourage or require?

82. For funds that take significant derivatives positions or hold both long and short positions, would an exposure-based presentation help shareholders better understand a fund's holdings? Should we permit all funds to present their holdings on an exposure basis, as proposed? Should we require certain funds to present their holdings on an exposure basis? Why or why not? If so, for what types of funds and fund strategies would an exposure-based presentation be particularly useful? Should we be more prescriptive as to how to calculate exposure? If so, how? Should an exposure presentation be on a net or total basis or permit flexibility? Why or why not? Should we permit funds to pick how they present their holdings or should we prescribe when funds should use net asset value, total investments, net exposure, or total exposure? If we prescribe the basis of presentation, how should we determine which type of fund uses which type of presentation?

83. For funds that depict portfolio holdings according to credit quality, we are proposing to require that a fund briefly describe how the credit quality of its holdings was determined and, if credit ratings are used, the fund must concisely explain why it selected a particular credit rating. Is this additional disclosure about credit quality necessary and/or useful? If so, why? Would funds be able to succinctly provide this information? If not, why not?

84. Should we expressly permit or require other types of presentations, such as top 10 holdings or changes in holdings over time? If so, what types of presentations and why? If not, why not?

85. Should we permit or require other ways of presenting a fund's holdings? For example, instead of or in addition to the graphical representation of holdings, should we require disclosure of a fund's top holdings or a complete schedule of investments in the annual report? If so, what types of presentations should we require and why?

86. Should we consider any other changes to the graphical representation of holdings requirements?

f. Material Fund Changes

We propose to add a new section to the annual report to describe material changes to the fund. Specifically, a fund would have to describe briefly any material change in an enumerated list of items (as well as any other material change that the fund chooses to disclose) that has occurred since the beginning of the reporting period or that the fund plans to make in connection with its annual prospectus update.[271] This proposed requirement is designed to highlight for fund shareholders the most salient information they typically receive through annual prospectus updates and tailor the presentation of this information to these existing shareholders' needs (as opposed to the needs of new or prospective investors for whom prospectus disclosure is primarily designed). We believe this new shareholder report disclosure would allow shareholders to better recognize and understand material changes to their fund investment, which may inform a shareholder's future investment decisions (*i.e.,* whether to hold or sell the fund investment, or to purchase additional shares).

Under the proposal, a fund would be required to include disclosure in its annual report that briefly describes a material change with respect to any of the following items:

- A change in the fund's name (as described in Item 1(a)(1) of Form N–1A);
- A change in the fund's investment objectives or goals (as described in Item 2 of Form N–1A);
- An increase in the fund's ongoing annual fees, transaction fees, or maximum account fee (as described in Item 3 of Form N–1A); [272]
- A change in the fund's principal investment strategies (as described in Item 4(a) of Form N–1A); [273]
- A change in the principal risks of investing in the fund (as described in Item 4(b) of Form N–1A);
- A change in the fund's investment adviser(s), including sub-adviser(s) (as described in Item 5(a) of Form N–1A); [274] and
- A change in the fund's portfolio manager(s) (as described in Item 5(b) of Form N–1A).

Additionally, a fund could include any other material fund change that it would like to disclose to its shareholders.[275]

This item would notify fund shareholders of material changes to the fund that have occurred or that the fund expects to make in its forthcoming annual prospectus update. Currently, fund shareholders typically receive information about these changes in: (1) Annual prospectus updates; or (2) other prospectus updates they may receive throughout the year (which can take the form of a prospectus ''sticker'' or an updated copy of the fund's prospectus or, under the proposal, a notice of material change under proposed rule 498B).[276] While fund shareholders

[271] *See* proposed Item 27A(g) of Form N–1A; *see also supra* footnote 20 (recognizing that funds generally must transmit annual reports within 60 days after fiscal year-end and funds' annual prospectus updates are typically finalized within 120 days after fiscal year-end) and *infra* paragraph accompanying footnote 287 (discussing the annual report disclosure of material changes the fund plans to make in connection with its annual prospectus update).

[272] *See infra* Section II.H (discussing proposed amendments to Item 3 of Form N–1A). The proposed rule would only require funds to disclose material increases to the fund's ongoing annual fees, transaction fees (*e.g.,* purchase charges or exit charges), or maximum account fee because we believe shareholders would be more interested in investment cost increases, rather than decreases. A fund may, however, voluntarily disclose material decreases to its fees and expenses in its annual report.

[273] Under 17 CFR 270.35d–1 [Investment Company Act rule 35d–1], a fund with a name that suggests investments in certain industries, investments, countries, or geographic regions generally must have a policy to invest at least 80% of the value of its assets in the relevant investments that its name suggests (a ''names rule investment policy''). This names rule investment policy is part of the fund's principal investment strategy. Under rule 35d–1, a fund must provide shareholders with at least 60 days prior notice of any change to its names rule investment policy under certain circumstances. *See* rule 35d–1(a)(2)(ii), (a)(3)(iii), and (c); Request for Comments on Fund Names, Investment Company Act Release No. 33809 (Mar. 2, 2020) [85 FR 13221 (Mar. 6, 2020)].

If, under the proposed requirement to disclose certain material fund changes in the annual report, the fund provides notice of a change to its names rule investment policy, that notice would satisfy the requirements of rule 35d–1 if: (1) The annual report is provided to shareholders at least 60 days before the fund changes its names rule investment policy; (2) the annual report contains the statement required by rule 35d–1(c)(2) (*e.g.,* ''Important Notice Regarding Change in Investment Policy''); (3) and the envelope in which the shareholder report is delivered (if applicable) has this same statement, as required by rule 35d–1(c)(3).

[274] The proposal would not require a fund to disclose a change in a sub-adviser where Item 5 of Form N–1A would not require the fund to disclose the name of the sub-adviser in its prospectus. *See* Instructions 1 and 2 to Item 5 of Form N–1A.

[275] For example, a fund may wish to disclose in its annual report plans to liquidate or merge the fund, even if previously disclosed to shareholders.

[276] *See supra* footnote 13 and accompanying text; Comment Letter of Investment Company Institute (Oct. 1, 2019) (''ICI Comment Letter II'') (stating that respondents to an ICI member survey indicated that they primarily mail prospectus stickers to inform shareholders of material changes to the portfolio manager, material increases in fees, material (but

receive information about material changes today, we are concerned that material changes to a fund may not always be readily apparent to an existing shareholder. For example, changes that the annual prospectus update discusses may not be easy for an average shareholder to identify, as there is no requirement for a fund to identify or highlight changes to the fund in its prospectus.[277] Instead, a fund only has to update the prospectus disclosure to reflect the substance of the change. For example, if a fee has changed, the prospectus disclosure would include the new fee, but the prospectus would not have to disclose the old fee or highlight that the fee had changed. Thus, we believe the proposed requirement to disclose material fund changes in the annual report may increase the salience of material fund changes for shareholders and help shareholders more efficiently monitor and assess their fund investments relative to current disclosure requirements.

The categories of fund changes that we propose to require funds to disclose in their annual reports are meant to capture the types of material changes to prospectus disclosure that we believe are important to fund shareholders, that may influence their investment decisions, and that are more likely to occur. Specifically, the types of material changes that a fund would need to disclose in its annual report generally align with the key prospectus disclosure items the Commission requires in summary prospectuses (and in the summary section of statutory prospectuses) that we understand investors typically use to make investment decisions.[278] We believe the annual report should help a shareholder monitor and assess his or her fund investment, which includes information to help a shareholder assess whether to maintain or change a fund investment. Because we understand that investors often use information about a fund's principal investment strategy, principal risks, fees, investment objectives or goals, name, investment adviser, and portfolio manager to inform initial investment decisions, we believe that material changes to these items may affect a shareholder's assessment of whether to hold, buy, or sell fund shares.[279] In addition to the identified types of changes, funds could disclose other material changes on a discretionary basis, which we believe would provide flexibility to funds to highlight any additional material changes for investors concisely. Instead of identifying the types of material changes a fund must disclose and providing flexibility for funds to disclose other material changes, we considered proposing a more principles-based approach.[280] However, we believe that our proposed approach would provide more certainty to funds about the types of changes they must disclose and enhance consistency of annual report disclosure across funds.

Under the proposal, a fund would not be required to disclose material changes to other summary prospectus items (or to the corresponding items in the summary section of the statutory prospectus) because either they are unlikely to change, and we believe they are less likely to affect a shareholder's investment decisions (*e.g.,* tax information or financial intermediary compensation), or the shareholder report already provides similar information (*e.g.,* performance information). Additionally, information about shareholder voting results would not be required to be disclosed in the annual report because we believe that the material fund changes section of the report would reflect many of the types of material fund changes that may result from a shareholder vote.[281] For example, if shareholders approve a change in the fund's concentration policy, implementing this change would likely affect the fund's principal investment strategy and principal risks and warrant shareholder report disclosure of the associated change to the fund's principal investment strategy and principal risks. Further, if shareholders approve a new investment advisory contract with a higher management fee, this would likely increase the fund's ongoing annual fees and would trigger disclosure under this item if the resulting increase was material.

A fund would be required to disclose a change in its annual report only if the change is material to the particular fund. A fund should base this materiality determination on the facts and circumstances of the fund and the specific change. For example, an index fund might determine that a change in its portfolio manager is not a ''material'' change that it would need to disclose in its annual report, given the nature of the manager's involvement in portfolio decisions for the fund. At the same time, a fund that changes its principal investment strategy from primarily investing in U.S. investment-grade bonds to primarily investing in emerging market high-yield bonds would disclose this change in its annual report, as well as through earlier communications to shareholders if the change already occurred.[282]

To help shareholders understand the material changes, a fund would have to provide a concise description of each change that provides enough detail to allow shareholders to understand the change and how it may affect shareholders.[283] For example, this could include stating that the fund's ongoing annual fees have increased from 0.55% to 0.65%, rather than simply stating that the fund's ongoing annual fees have changed or increased. As another example, if a fund's principal risks have materially changed, it could identify the newly identified or newly removed types of principal risks, rather than only stating that the principal risks have changed.

Disclosure of material fund changes in the annual report would include a legend to the effect of the following:

This is a summary of certain changes [and planned changes] to the Fund since [date]. For more complete information, you may

nonfundamental) changes to the fund's investment objectives or strategies, changes to subadvisory agreements or subadvisers, changes in the fund's index or benchmark, changes to the fund's name, or planned fund mergers or liquidations). *See also infra* Section II.F.3.b (discussing proposed rule 498B's notice requirement).

[277] This also may be the case when a fund delivers an updated version of its prospectus to reflect material or other changes at other times throughout the year. However, a prospectus sticker that a fund instead may deliver for the same purpose typically would identify a change more explicitly.

Some other types of registered investment companies currently are required to identify certain changes in their shareholder disclosure materials. *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27 (requiring updating summary prospectuses for variable contracts, which provide a brief description of any important changes with respect to the contract that occurred within the prior year to allow investors to better focus their attention on new or updated information relating to the contract); rule 8b–16(b) under the Investment Company Act (requiring certain registered closed-end funds to identify specific types of material changes in their annual reports).

[278] *See* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at n.35 and accompanying text; *see also* Arnold Comment Letter; Baker Comment Letter; Dougle Comment Letter; Freeland Comment Letter; Wilhelm Comment Letter.

[279] *See supra* footnote 278; What US Households Consider When They Select Mutual Funds, 2018, ICI Research Perspective (May 2019), *available at https://www.ici.org/pdf/per25-03.pdf.*

[280] For example, we considered an approach that would direct funds to disclose all material changes, without identifying the categories of material changes they would need to disclose.

[281] *See infra* Section II.D.1.d.

[282] These earlier communications may include, for example, notices about a change in the fund's names rule investment policy, prospectus stickers, or notices under proposed rule 498B. *See, e.g., supra* footnotes 273 and 276 and *infra* Section II.F.3.b.

[283] *See* Instruction 1 to proposed Item 27A(g).

review the Fund's next prospectus, which we expect to be available by [date] at [website address] or upon request at [toll-free telephone number and, as applicable, email address].[284]

The proposed legend would inform shareholders that they can obtain more information about a specific material change by consulting the fund's next annual prospectus update. It also would explain how shareholders may find or request a copy of the annual prospectus update once it is available.

Under the proposed rule, funds generally would be required to disclose any enumerated material change that occurred since the beginning of the fund's most recently completed fiscal year, even if the fund already disclosed the material change to shareholders through other mechanisms during the year.[285] For example, if a shareholder received a prospectus sticker discussing the change, the change would still appear in the annual report.[286] As a result, the annual report would be a general repository for the enumerated material changes that occurred throughout the year. We believe it may be helpful for shareholders to be able to review a brief summary of all material changes that occurred during the year, instead of requiring shareholders to compile information from different sources if they want to understand all material changes for the year.

Along with changes that occurred since the beginning of the last fiscal year, the fund's annual report also would have to disclose material changes that the fund plans to make in connection with updating its prospectus for the current fiscal year. We are proposing this requirement so the annual report could be the primary disclosure source for fund shareholders, and they generally would not need to review the fund's annual prospectus update (other than to gather additional information about a particular fund change of interest). For example, we believe it would be more efficient for a shareholder to be able to review a single report to assess and monitor his or her fund investment, instead of receiving an annual report and then subsequently receiving an annual prospectus update or notice of additional material changes approximately two months later.[287] We understand that it is common for funds generally to be aware of material changes they plan to make in connection with updating their prospectuses before they transmit annual reports.[288] However, we recognize that the fund's associated post-effective amendment making these changes to its prospectus may not be effective at the time the fund transmits its annual report and may be subject to the staff review process.[289] As a result, the manner in which the fund describes the change in its prospectus may be subject to modification at the time the fund is required to transmit an annual report. Under these circumstances, we believe it would be appropriate for a fund to provide only a high-level description of the change because the exact disclosure regarding the change in the prospectus could be subject to modification. The proposed legend that would accompany this disclosure would direct shareholders to the fund's next prospectus for additional detail, and the fund would need to provide a date by which it expects the updated prospectus to be available. In any event, a fund would not have to use the same language describing the change in its annual report as it uses in its prospectus (although neither description of the change would be permitted to be misleading).

We acknowledge that there could be scenarios where a material change occurs shortly before a fund transmits its annual report and, as a result, it would be difficult for the fund to disclose the material change in the annual report while still transmitting the report to shareholders within the required period (60 days after the fund's fiscal year-end).[290] For example, a fund's high-profile portfolio manager may resign shortly before the fund must transmit its annual report to shareholders. Under these circumstances, a fund (or intermediary) should provide a timely notice of the material change to shareholders under proposed rule 498B, if applicable, or through a prospectus sticker or annual prospectus update. The fund would also need to disclose the material change in its next annual report.[291]

We request comment on the proposed material fund changes section of the annual report, including the following:

87. Should funds be required to disclose material fund changes in their annual reports, as proposed? Should all funds be required to disclose fund changes in their annual reports, as proposed, or should we exclude any subset of funds from this requirement (for example, should we exclude funds that do not rely on proposed rule 498B and that deliver annual prospectus updates to existing shareholders each year)? Instead of requiring disclosure about material changes in the annual report, should we require disclosure of these changes somewhere else, such as the prospectus or the fund's website? What location would be most appropriate for purposes of making the information available to shareholders? What location would be the most efficient for these purposes?

88. Are the categories of fund changes in the proposed enumerated list the types of changes that are most relevant to fund shareholders and that may

[284] *See* Instruction 2 to proposed Item 27A(g) of Form N–1A. A fund would provide the internet address of the central site where a link to the fund's next prospectus will be available, if applicable, as well as a toll-free telephone number and, as applicable, the email address that shareholders can use to request copies of the fund's prospectus.

[285] However, the proposed rule would not require a fund to disclose a material change that it already disclosed in its last annual report. This could occur if, for example, a material change took place at the beginning of the last fiscal year before the fund transmitted the last annual report or the fund planned to make the material change in connection with its annual prospectus update for the last fiscal year. *See* Instruction 3 to proposed Item 27A(g) of Form N–1A.

[286] Under proposed rule 498B, a fund would need to timely notify existing shareholders of material fund changes. A fund also would have to disclose recent material changes in its annual report even if previously disclosed through a rule 498B notice. *See infra* Section II.F.3.b.

[287] *See supra* footnote 20 and accompanying text; *infra* Section II.F.3.b (discussing a proposed requirement that a fund provide timely notices of material fund changes to shareholders if the fund relies on proposed rule 498B to no longer deliver prospectuses to its shareholders).

[288] A fund typically must file a post-effective amendment to its registration statement that includes material changes at least 60 days prior to the time the amendment is effective (that is, before the fund can use it), and a fund typically aims for the amendment to be effective within 120 days of its fiscal year-end. *See generally* 17 CFR 230.485 [rule 485 under the Securities Act]; *supra* footnote 20. As a result, we understand that funds typically have already prepared and filed these post-effective amendments within 60 days of fiscal year-end, before they must transmit annual reports under Commission rules. *See* rule 30e–1(c) under the Investment Company Act [17 CFR 270.30e–1(c)].

[289] Generally, the staff reviews post-effective amendments to fund registration statement that contain material changes (other than certain specific routine items). *See generally* rule 485 under the Securities Act.

[290] *See* rule 30e–1(c) [17 CFR 270.30e–1].

[291] As an example, assume a fund's fiscal year ends on December 31, 2020. As a result, it would be required to transmit its 2020 annual report by March 1, 2021 (60 days after December 31) and would likely finalize its annual prospectus update by April 30, 2021 (120 days after December 31). If the fund's high-profile portfolio manager resigned on February 25, 2021, and it were difficult for the fund to prepare disclosure about this change to include in its 2020 annual report before March 1, 2021, the fund could instead disclose this change in its 2021 annual report. Shareholders would also receive more-timely notice of the change through other mechanisms, including the annual prospectus update, prospectus stickers, or notices under proposed rule 498B, depending on the circumstances. If the fund instead were able to disclose the change in its portfolio manager in the 2020 annual report, it would not be required to also disclose that change in its 2021 annual report or, if the fund relied on proposed rule 498B, in a notice under that rule. *See* Instruction 3 to proposed Item 27A(g) of Form N–1A; proposed rule 498B(c)(2).

influence their investment decisions? Are there other categories of material changes that should be disclosed in the annual report? For example, should funds be required to disclose all material changes that occur as a result of a shareholder vote, rather than just the ones included in the enumerated list?

89. Is the scope of the categories of fund changes in the proposed enumerated list appropriate? If not, how should we modify the scope? For example, rather than requiring a fund to disclose material increases in a fund's ongoing annual fees, transaction fees, or maximum account fee (as described in proposed Item 3 of Form N–1A), should we require funds to disclose any material changes (that is, both increases and decreases) to fee and expense information described in its prospectus fee summary or fee table?

90. Should we expand or reduce the scope of fee-related items that the material fund changes disclosure would include? For example, should we only require funds to disclose a material increase in ongoing annual fees because the annual report is directed to existing shareholders, or is it valuable for a fund shareholder to receive information about material increases to the fund's transaction fees in case he or she is considering purchasing additional shares in the fund? We understand that account fees are relatively rare and typically small in size. Should the proposed item refer to account fees, or should it only refer to ongoing annual fees and transaction fees? Additionally, we are proposing to allow funds that invest 10% or less of their total assets in acquired funds to disclose acquired fund fees and expenses in a footnote to the prospectus fee table, instead of in the bottom-line ongoing annual fees.[292] Although such a fund's investments in acquired funds would be limited, are there circumstances in which its acquired fund fees and expenses could increase to such an extent that we should require the fund to disclose the increase in acquired fund fees and expenses in the annual report (*e.g.,* as a separate material change, or as a material increase to the fund's ongoing annual fees if the fund's combined ongoing annual fees and acquired fund fees and expenses materially increase in the aggregate)?

91. Would disclosure about the identified categories of material changes be redundant with other shareholder report disclosure? For example, would funds discuss certain categories of material changes, such as material changes to the fund's principal investment strategy, in the narrative MDFP disclosure? If so, do the two disclosure items serve sufficiently different purposes, or should we modify the proposed requirements to limit potential redundancy? For example, if we require funds to disclose information about material strategy changes in the narrative MDFP disclosure and not in the material fund changes disclosure, would it be more difficult for shareholder to identify and understand information about material fund changes? Under that approach, where should a fund disclose information about a material strategy change the fund plans to make in its annual prospectus update?

92. Instead of identifying particular types of material changes a fund must disclose in its annual report, as proposed, should we use a more principles-based or flexible framework for disclosing fund changes? For example, should we require funds to disclose all material changes without identifying particular categories of changes? Under a more principles-based or flexible framework, how could we make sure the disclosure focuses on fund changes that would be of interest to fund shareholders and is not unduly long or complex?

93. Does the proposed provision allowing funds to disclose additional material changes on a discretionary basis provide funds with appropriate flexibility to consider their particular facts and circumstances? Would the benefits of this flexibility justify any resulting increase in the shareholder report's length and complexity? Should we provide more flexibility by permitting funds to disclose other changes that may not necessarily be material to the fund? If so, what types of other changes would funds disclose, and how would information about that change assist shareholders? Alternatively, should we not permit funds to optionally disclose other categories of material changes and instead limit the types of material changes funds can disclose in the annual report to only those listed in the form item?

94. Should funds be required to disclose only material changes, as proposed? Would requiring funds to make a materiality assessment of relevant changes introduce unnecessary subjectivity into the disclosure? Or is a materiality threshold appropriate to limit the annual report disclosure to the types of changes that would be most important to shareholders? Would a different threshold be more appropriate? For example, should we require a fund to disclose ''significant'' or ''substantial'' changes in its annual report? If so, why?

95. As proposed, should funds be required to disclose any material changes in their annual reports that occurred since the beginning of the fund's last fiscal year (even if the fund has already disclosed any of these changes to existing shareholders, for example through prospectus supplements, notices under proposed rule 498B, or other non-shareholder report mechanisms)? Would it be beneficial for shareholders to see all of these changes summarized in a single place? Alternatively, would this approach have unintended consequences, such as increased investor confusion?

96. Should funds be required to disclose material changes that they plan to make in connection with updating their prospectuses under section 10(a)(3) of the Securities Act for the current fiscal year, as proposed? Does this proposed requirement raise timing concerns, compliance difficulties, liability risks, or other concerns that we have not adequately addressed? Are there certain types of changes where these concerns are more pronounced (*e.g.,* where the parameters of the change are more likely to be modified between the time a fund transmits its annual report within 60-days after its fiscal year end and the time its post-effective amendment updating the relevant prospectus disclosure is effective, generally within 120 days after its fiscal year end)? How should we address any associated concerns? Are there other mechanisms, other than the annual report, that funds should be required or permitted to use to notify existing shareholders of these changes?

97. How detailed should annual report disclosure of a fund change be? Should we require, as proposed, that the description of the change be concise but with sufficient detail to allow shareholders to understand the change and how the change may affect shareholders? If not, should the description of the change be more or less detailed than proposed? Please explain.

98. Should funds be required to provide the proposed legend in the fund changes section of the annual report? Would the proposed requirement to provide an estimated date by which the fund's next prospectus will be available on its website or upon request present difficulties for funds or shareholders? What are those difficulties, and how could we address them? Would the proposed legend make it sufficiently clear to fund shareholders that the

[292] *See infra* Section II.H.1.g.

prospectus with additional information about the change is not currently available but will be available at a later date? If not, how could we make this clearer?

g. Changes in and Disagreements With Accountants

We are proposing to require funds to include a concise discussion of certain disagreements with accountants in the annual report. Funds currently are required to disclose certain information concerning changes in and disagreements with accountants in their shareholder reports. The current disclosure requirement is applicable only if a fund's accountant has resigned or was dismissed.[293] In this case, the fund has to disclose the information that 17 CFR 229.304 [Item 304 of Regulation S–K] requires, concerning the circumstances surrounding the former accountant's dismissal or resignation, whether in the fund's two most recent fiscal years there were certain accounting-related disagreements with the former accountant, and other related information.[294] We understand that funds rarely include disclosure about disagreements with accountants, and therefore we assume that the events that necessitate this disclosure rarely occur. In addition, we believe that current disclosure regarding these types of events may not be particularly investor-friendly because of the complexity of the accounting issues that may give rise to any disagreements.

However, we believe that retaining this disclosure in funds' shareholder reports in summary form continues to be important because this would put investors on notice of the dismissal or resignation of an accountant and the existence of a material disagreement with that accountant.[295] We believe this shareholder report disclosure could discourage funds' audit ''opinion shopping.''[296] ''Opinion shopping'' generally refers to the search for an auditor that is willing to support a proposed accounting treatment that is designed to help a fund achieve its reporting objectives, even though that treatment could frustrate reliable reporting.[297]

We propose to move the currently-required disclosure to Form N–CSR and to replace it in the annual report with a high-level summary of information that funds would report on Form N–CSR.[298] Specifically, when a fund has a material disagreement with an accountant that has resigned or been dismissed, the fund would have to include in its annual report: (1) A statement of whether the former accountant resigned, declined to stand for re-election, or was dismissed and the date thereof; and (2) a brief, plain English description of disagreement(s) with the former accountant during the fund's two most recent fiscal years and any subsequent interim period that the fund discloses on Form N–CSR.[299] Funds would not be required to disclose, and we would not expect funds to disclose, the absence of disagreements in response to this proposed disclosure requirement.

We request comment on the proposed amendments to the current requirements to include disclosure about disagreements with accountants in funds' annual reports, including:

99. Should we require funds to include high-level disclosure about changes in and disagreements with accountants in their annual reports, as proposed? Why or why not? Is the current disclosure requirement regarding changes in and disagreements with accountants helpful to fund shareholders? How frequently do the events that necessitate this disclosure occur? Would the proposed amendments improve shareholders' ability to understand this information?

100. As proposed, funds would only need to disclose certain disagreements with accountants (those that occurred within the past two fiscal years and where the accountant either has resigned or was dismissed) in the annual report. Should we require any additional information about changes in or disagreements with accountants in the annual report? Are there any types of disagreements that funds should not have to include in their annual report? Which ones and why?

101. Is there any other information about the fund's accountants or the fund's financial statements that we should require funds to disclose in the annual report?

h. Statement Regarding Liquidity Risk Management Program

In 2016 and 2018, the Commission adopted a series of reforms designed to promote effective liquidity risk management across the open-end fund industry and enhance disclosure regarding fund liquidity and redemption practices.[300] As part of these reforms, if a fund's board of directors has reviewed the fund's liquidity risk management program as required by 17 CFR 270.22e–4 [rule 22e–4 under the Act] during the fund's most recent fiscal half-year, the fund is required to briefly discuss the operation and effectiveness of the liquidity risk management program in its most recent shareholder report.[301] In adopting this requirement, the Commission stated that it had considered commenters' suggestions that shareholder report disclosure would have the benefit of allowing funds to produce tailored disclosure suited to the particular liquidity risks and management practices of the specific fund.[302]

We continue to believe that requiring funds to provide shareholders with information about the operation and effectiveness of the fund's liquidity risk management program (along with appropriate prospectus risk disclosure and MDFP disclosure) may help provide investors a comprehensive picture of the fund's liquidity risks and their

[293] Specifically, the disclosure requirement is applicable when the independent accountant who was engaged as the principal accountant to audit the fund's financial statements, or an independent accountant who was previously engaged to audit a significant subsidiary and on whom the principal accountant expressed reliance in its report, has resigned or was dismissed.

[294] *See* 17 CFR 229.304; *see also* Item 27(b)(4) and Item 27(c)(4) of Form N–1A.

The types of disagreements that funds are required to disclose relate to—among other things—internal controls over financial reporting, management representations, the need to expand the scope of the audit based on information suggesting issues with a prior audit report, and questions regarding reliability of previous audit reports. *See* Items 304(a)(1)(v)(A)–(D) of Regulation S–K.

[295] *See, e.g.,* ICI Comment Letter I (noting that changes in and disagreements with accountants are not common, but when they do occur, this information is key information for shareholders).

[296] *See* Disclosure Amendments to Regulation S–K, Form 8–K and Schedule 14A Regarding Changes in Accountants and Potential Opinion Shopping Situations, Securities Act Release No. 6766 (Apr. 7, 1988) [53 FR 12924 (Apr. 12, 1988)] (''Changes in Accountants and Potential Opinion Shopping Adopting Release''); *see also* Foreign Issuer Reporting Enhancements, Securities Act Release No. 8959 (Sept. 23, 2008) [73 FR at 58310 (Oct. 6, 2008)].

[297] *See* Changes in Accountants and Potential Opinion Shopping Adopting Release, *supra* footnote 296, at Section I.

[298] *See infra* Section II.D.1.c (discussing proposed Form N–CSR filing requirement).

[299] *See* proposed Item 27A(h) of Form N–1A. This proposed disclosure requirement is applicable specifically in the circumstances that footnote 293, *supra,* describe.

[300] Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)]; Investment Company Swing Pricing, Investment Company Act Release No. 32316 (Oct. 13, 2016) [81 FR 82084 (Nov. 18, 2016) (''2016 Liquidity Rule Release''); Investment Company Liquidity Disclosure, Investment Company Act of 1940 Release No. 33142 (June 28, 2018) [83 FR 31859 (Jul. 10, 2018)] (''2018 Liquidity Disclosure Release'').

[301] *See* Item 27(d)(6)(ii) of Form N–1A; *see also* 2018 Liquidity Disclosure Release, *supra* footnote 300. The compliance date for larger entities was December 1, 2019 and for smaller entities was June 1, 2020.

[302] *See* 2018 Liquidity Disclosure Release, *supra* footnote 300, at n.47 and accompanying text.

management. However, having reviewed shareholder report disclosures responsive to this requirement, we preliminarily believe that the disclosure in its current form is not well-suited to a concise shareholder report. The staff has observed that the shareholder report liquidity risk management disclosure often appears as a lengthy recitation of the requirements of rule 22e–4 and is not tailored to a particular fund. This disclosure does not lend itself to the type of focused disclosure that the proposed shareholder report is designed to include. Therefore, we propose to revise the disclosure requirements to emphasize that the disclosure must be tailored to each fund and be concise.[303]

Given the nature and quality of the disclosure we have seen, we believe the statement regarding the fund's liquidity risk management program (''liquidity risk management disclosure'') should be more tailored, concise, and informative to help shareholders better understand how the fund is managing its liquidity risks, which in turn could inform the shareholders' ability to monitor their investments in the fund. Therefore, we propose replacing the current disclosure with a brief summary of:

- The key factors or market events that materially affected the fund's liquidity risk during the reporting period;
- The key features of the fund's liquidity risk management program; and
- The effectiveness of the fund's liquidity risk management program over the past year.[304]

We are also proposing an instruction that a fund should, where appropriate, tailor the disclosure responsive to this requirement to the fund rather than rely on generic, standard disclosures.[305] The disclosure should not include a recitation of all the elements of the fund's liquidity risk management program. Instead, it should include the key features of the program as they relate to the fund.[306] For example, a loan fund may briefly describe any expedited settlement agreements, or an international fund may describe the availability of a line of credit or increasing its investments in highly liquid assets ahead of extended holidays (*e.g.,* Chinese New Year). We believe this disclosure would help inform investors about the sources of the liquidity risk for the fund, the key steps fund management takes to ameliorate those risks, and a statement explaining whether those steps have been effective. We believe that requiring tailored disclosure would better inform investors, which is a benefit we considered in assessing any incremental additional burden.

Finally, we propose to keep the timing requirements for the liquidity risk management disclosure consistent with the current requirements. We continue to believe it is appropriate to require a fund to include the liquidity risk management disclosure in the annual or semi-annual report following the period when the fund performed its required annual review of the liquidity risk management program, which may reduce costs and allow funds to provide more effective and timely disclosure.[307]

We request comment on the proposed approach of including the liquidity risk management disclosure in the shareholder report:

102. Should we require the liquidity risk management disclosure be included in the shareholder report, as proposed? Should we instead require it to be included in another disclosure document such as the fund's Form N–CSR, statutory prospectus or summary prospectus, or on the fund's website? If so, where should it be included?

103. Would the proposed disclosure requirements provide shareholders the appropriate information to help them understand the fund's liquidity and liquidity risks and make more-informed investment decisions? Is the disclosure an improvement over the current disclosure requirements? Is the requirement to tailor the disclosure to each fund appropriate? If not, why not? How could the proposed disclosure requirements be improved?

104. Should we continue to require the liquidity risk management disclosure to be included in the most recent shareholder report following the board's review of the program or, for consistency, should we only require the disclosure in the annual report?

105. Rather than requiring all funds to include the liquidity risk management disclosure in their shareholder reports as proposed, should we instead require only a subset of funds to include this disclosure? For example, should we only require this disclosure for funds that hold less than 50% of their net assets in highly liquid investments? Alternatively, should all funds that have a highly liquid investment minimum be required to include this disclosure? Are there any concerns about funds identifying themselves through this disclosure as holding a certain percentage of assets that are not primarily highly liquid investments? If so, what are those concerns and how can they be addressed?

106. Is there any other liquidity-related information that may be relevant to shareholders that funds should be required to disclose in the shareholder report or on Form N–CSR? Are there alternative approaches to providing relevant liquidity information to shareholders? If so, what are they, and why should we use them?

i. Availability of Additional Information

We are proposing to require funds to include a statement in the annual report that informs investors about additional information that is available on the fund's website.[308] Specifically, funds would have to provide a brief, plain English statement that certain additional fund information is available on the fund's website. This statement would have to include plain English references to, as applicable, the fund's prospectus, financial information, holdings, and proxy voting information. In addition, if the shareholder report appears on a fund's website or otherwise is provided electronically, the fund must provide a means of immediately accessing this additional information (such as a hyperlink or QR code).[309]

Under current shareholder report requirements, funds must include statements regarding the availability of the fund's: (1) Quarterly portfolio schedule, (2) proxy voting policies and procedures, and (3) proxy voting record.[310] We believe that this information may be important to certain investors, and they may not know this information is available or how to find it.[311] Because of the importance of this

[303] *See* proposed Item 27A(i) of Form N–1A.

[304] *See* proposed Item 27A(i) of Form N–1A.

[305] *See* Instruction 1 to proposed Item 27A(i) of Form N–1A. For example, using the same disclosure for all funds in a fund group may not be appropriate in light of this proposed instruction. However, we generally believe it would be appropriate for funds in a fund group with similar investments, and that are subject to the same liquidity risks, to use the same disclosure.

[306] Appendix A to this release contains a hypothetical annual report that was created solely for illustrative purposes and includes an example of the type of disclosure Item 27A(i) intends to elicit.

[307] *See* 2018 Liquidity Disclosure Release, *supra* footnote 300, at Section II.B.2.

If the board were to review the liquidity risk management program more frequently than annually, a fund could choose to include the discussion of the program's operation and effectiveness over the past year in the fund's annual and/or semi-annual report, but this discussion would not be required to be included in both reports. *See infra* footnote 369 and accompanying text.

[308] *See* proposed Item 27A(j) of Form N–1A.

[309] *See* Instruction 9 to proposed Item 27A(a) of Form N–1A; *see also infra* Section II.B.4.

[310] *See* Items 27(d)(3) through (5) of Form N–1A.

[311] *See, e.g.,* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26 (reports on investor preferences for shareholder report items); Investor Preferences Report, *supra* footnote 31

Continued

information to some investors and consistent with a layered approach to fund disclosure that makes more–detailed or technical information available to those investors who find the information valuable, we believe it is important to continue to inform investors that this information is available and how to find it. The proposed new statement would consolidate several currently required statements about the availability of information (including the quarterly portfolio schedule, proxy voting policies and procedures, and proxy voting record) with a single statement that covers this same information.

We are also proposing to require funds to refer in the statement to other information that would not itself be included in the annual report under the proposal.[312] First, because the annual report would no longer include financial statements, we believe it is appropriate to inform investors that this information is available. In addition, because the annual report briefly describes certain changes to the fund's prospectus, we believe it is important to remind investors about the availability of the current fund prospectus, which may provide additional context to the changes described in the report.

We also propose to provide a fund with the flexibility to refer to other information available on the fund's website, if it reasonably believes that shareholders would likely view the information as important.[313] For example, a fund may wish to refer investors to a document describing the benefits of certain types of investments, a description of credit ratings, additional performance presentations, or additional commentary about how the fund performed. We believe this flexibility is appropriate because funds may wish to provide additional information to investors that may be more tailored or relevant to a given fund. We also believe this flexibility is appropriate given the content limitations imposed on the proposed annual report.[314] This additional information referred to in the annual report would have the same status under the Federal securities laws as any other website or other electronic content that the fund produces or disseminates. The fact that a shareholder report references other information available on a fund's website does not change the legal status of the referenced information. For instance, a performance presentation or description of credit ratings on a fund's website would be subject to the same legal requirements and have the same legal status regardless of whether the information was referenced in a shareholder report.[315]

We request comment on the proposed amendments to include disclosure about additional information that is available to investors outside of the annual report, including:

107. Would this proposed disclosure requirement be useful to investors? Instead of requiring a statement that certain items are available online, should we require a statement that more generally indicates that additional information is available on the fund's website without listing particular items? Are there any other changes we should make to the proposed statement about the availability of additional information? Are there other information items that funds should be required to include in the statement? Why? Are there any information items that should be excluded? If so, why? Instead of one statement that certain items are available online, should we require shareholder reports to include hyperlinks throughout the report linking to additional related content that is available online (*e.g.,* require a hyperlink in the ''Graphical Representation of Holdings'' section to the fund's portfolio schedule)? If so, what specific additional references and hyperlinks should we require and why?

108. As proposed, funds would have the flexibility to refer investors to additional information that is available on the fund's website if the fund reasonably believes that shareholders would likely view the information as important. Should any limits be placed on this additional information? If so, why? For example, should it be limited to content that the fund has prepared?

109. Should we permit or require funds to refer investors to information at *Investor.gov*, such as information about how to read a shareholder report?[316] If not, why not?

110. Are there any other changes that should be made to the disclosure requirement about the availability of additional information?

j. Householding

We are proposing to retain the provision that permits funds to explain how to revoke consent to the householding of the annual report.[317] Investors often invest in funds through a variety of individual and family accounts and, as a result, sometimes receive multiple copies of the same documents from those funds. To avoid duplication, Commission rules allow funds to deliver a single copy of a prospectus, proxy materials, and a shareholder report to investors who share the same address and meet certain other requirements.[318] This practice is known as ''householding.''

Rule 30e–1 permits and we propose to continue permitting the householding of fund shareholder reports if, in addition to the other conditions set forth in the rule, the fund has obtained from each investor written or implied consent to the householding of shareholder reports at such address.[319] The rule requires funds that wish to household shareholder reports based on implied consent to send a notice to each investor stating, among other things, that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, funds relying on the householding provision must explain to investors who have provided written or implied consent

(reports on investor preferences with respect to fund disclosure items); Scott Comment Letter; Wilhelm Comment Letter; Stiles Comment Letter; McRitchie Comment Letter.

[312] *See* Instruction 1 to proposed Item 27A(a) and proposed Item 27A(j); *see also infra* Section II.B.3. If the annual report appears on a website or is otherwise provided electronically, funds must provide a means of facilitating access to this information, such as including a hyperlink to this information.

[313] *See* Instruction 3 to proposed Item 27A(a) of Form N–1A.

[314] The proposed annual report may only include information that Item 27A of Form N–1A specifically permits or requires. *See* Instruction 3 to proposed Item 27A(a) of Form N–1A; *see also* discussion at *supra* Section II.B.1.b.

[315] *See* discussion at *infra* Section II.B.4.

[316] The Commission's Office of Investor Education and Advocacy maintains the website as an online resource to help investors make sound investment decisions and avoid fraud. The website includes investment bulletins, alerts, guidance and tools designed to assist investors, including those owning funds, in obtaining additional information and resources on understanding and managing their investments. *See, e.g.,* Investor Bulletin: How to Read a Mutual Fund Shareholder Report (Apr. 3, 2013) (''How to Read a Mutual Fund Shareholder Report''), *available at https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-how-read-mutual-fund-shareholder*; How to Read a Mutual Fund Prospectus (June 13, 2016), *available at https://www.investor.gov/news-alerts/investor-bulletins/how-read-mutual-fund-prospectus-part-1-3-investment-objective-strateg.*

[317] *See* current rule 30e–1(f) and proposed rule 30e–1(e) and proposed Item 27A(k) of Form N–1A.

[318] *See* 17 CFR 230.154 [rule 154 under the Securities Act] (permitting the householding of prospectuses); 17 CFR 240.14a–3(e)(1) [rule 14a–3(e)(1) under the Exchange Act] (permitting the householding of proxy materials other than the proxy card); and rule 30e–1 under the Investment Company Act (permitting the householding of shareholder reports).

[319] *See* rule 30e–1(f); proposed rule 30e–1(b)(2).

how they can revoke their consent. If relying on the householding provision, one way to satisfy this last requirement (to provide an annual notice) is to include a statement in the annual report. We propose to continue permitting funds to include this statement in the annual report.[320]

We request comment on the proposed permitted inclusion of householding-related language in the annual report:

111. Should funds be permitted to include language about how an investor can revoke consent to householding in the annual report? If not, why not? Should we prescribe specific householding-related language that funds could include in their annual reports? If so, why, and what should that language be?

112. Should we consider any change to the householding disclosure requirements or to the rule provision that permits householding of shareholder reports? If so, why?

3. Format and Presentation of Annual Report

In addition to the proposed content requirements for the annual report, we are proposing general instructions related to the format and presentation of the report. These proposed general instructions are designed to improve and simplify the presentation of shareholder reports and encourage funds to use plain-English, investor-friendly principles when drafting their reports.

First, we are proposing an instruction specifying that the information in the annual reports would be required to appear in the same order as would be required under the proposed amendments to Form N–1A.[321] We are requiring that information appear in a specific order so that the information that we believe to be most salient to shareholders, such as expenses, would appear first in the report, and to promote consistency and comparison across funds.[322] The proposed ordering requirements also would place related content close together to help investors better understand the topics being discussed. For example, fund statistics and graphical representation of holdings both provide information about the fund's portfolio and therefore would be placed adjacent to one another.

In addition, the proposed general instructions to the shareholder report requirements are designed to promote effective communication between the fund and its investors. Therefore, we propose new requirements that funds use ''plain English'' principles for the organization, wording, and design of the annual report, taking into consideration fund shareholders' level of financial experience.[323] Specifically, the proposed instructions would direct funds to be concise and direct and to use short sentences, active voice, and definite, concrete, everyday words. Funds would be instructed not to use legal jargon, highly technical business terms (unless they are clearly explained) or multiple negatives. Funds also would be instructed to write their annual report as if addressing the investor, using terms such as ''you'' or ''we.'' The proposed instructions also would direct funds to avoid the use of vague or imprecise boilerplate, as we believe this type of language would be unlikely to inform an investor effectively. The proposed instructions also direct funds to use white space, and implement other design features to make the annual report easy to read.

Further, the proposed instructions would encourage funds to consider using, as appropriate, a question-and-answer format, charts, graphs, tables, bullet lists, and other graphics or text features as a way to help provide context for the information presented.[324] We believe that these alternative ways of presenting information could increase readability and that this proposed instruction could encourage funds to use these presentation options, where appropriate.

In addition, the proposed instructions would include legibility requirements for the body of every printed annual or semi-annual shareholder report and other tabular data.[325] Those requirements would be consistent with the legibility requirements that apply to prospectuses.[326] We believe that the proposed legibility requirements would help ensure that shareholder reports are easily readable by investors.

We request comment on the proposed general instructions regarding the format and presentation of the annual report, including:

113. Would the proposed general instructions provide clear guidance to funds when preparing an annual report? Should any of the proposed instructions be modified or not be included? If so, which ones, how should they be modified (if applicable), and why?

114. The proposed general instructions prescribe the order of information in the annual report. Is requiring a specific order for that information appropriate? Should the order be changed? If so, how? For instance, are there certain items that funds should disclose earlier (or later) in the report to be more consistent with shareholders' general areas of interest? Should we, for example, require disclosure of material fund changes earlier in the report? Does the proposed order of disclosure items appropriately place related items close together, or are there changes we could make to improve a shareholder's ability to understand how different disclosure items relate to one another?

115. Would the proposed general instruction that directs funds to comply with legibility requirements assist investors by helping to promote the readability of shareholder reports? Are there other requirements that we should include to assist investors with the readability of shareholder reports?

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[320] Because the proposed annual report may only include information that Item 27A of Form N–1A specifically permits or requires, the proposed householding provision is necessary to permit funds to include a householding statement in the report. *See* Instruction 3 to proposed Item 27A(a) of Form N–1A; *see also* discussion at *supra* Section II.B.1.b.

[321] *See* Instruction 1 to proposed Item 27A(a) of Form N–1A. This proposed instruction would also include provisions that are applicable to an annual report that appears on a website or is otherwise provided electronically. *See infra* footnote 331 and accompanying text.

[322] While investors may be more likely to compare prospective investments using a prospectus, an investor may use the proposed annual report to compare funds he or she already owns and assess how the investor's mix of funds fits into his or her overall investment portfolio. A consistent presentation would assist in this analysis.

[323] *See* Instruction 6 to proposed Item 27A(a) of Form N–1A.

[324] *See* Instruction 8 to proposed Item 27A(a) of Form N–1A; *see also, e.g.,* Susan Kleimann, *Making Disclosures Work for Consumers,* Presentation to the SEC's Investor Advisory Committee (June 14, 2018) (''Kleimann''), *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061418-slides-by-susan-kleimann.pdf* (encouraging, for example, using question-and-answer format, the using headings to make structure clear, using a strong design grid to organize elements, making line length readable, and using common words and sentence constructions as ways of designing disclosure to promote readability).

[325] *See* Instruction 13 to proposed Item 27A(a) of Form N–1A. In an annual or semi-annual shareholder report posted on a website or otherwise provided electronically, the proposed instructions would provide that a fund may satisfy legibility requirements applicable to printed documents by presenting all required information in a format that promotes effective communication as described in Instruction 8 to proposed Item 27A(a).

[326] 17 CFR 230.430 [Rule 420 under the Securities Act] generally provides that the body of all printed prospectuses and all notes to financial statements and other tabular data included therein be in roman type at least as large as legible 10-point modern type. However, where a prospectus is distributed through an electronic medium, rule 420 provides, in part, that issuers may satisfy legibility requirements applicable to all printed documents, by presenting all required information in a format readily communicated to investors.

116. Are there other alternative ways of presenting information that we should encourage funds to consider using?

4. Electronic Annual Reports

We recognize that fund shareholders may access their annual reports and other regulatory documents online, rather than (or in addition to) receiving the reports in paper format. Shareholders could elect to receive their annual reports through electronic delivery.[327] Additionally, under our proposal, funds that rely either on rule 498 or on proposed rule 498B would have to make the most recent annual report available online.[328] We also recognize that investors are increasingly relying on mobile applications for financial information, and we anticipate that funds may wish to make annual reports available in a format that these applications support (for example, electronic presentations other than a static email or PDF file). Presenting fund information—including annual reports—electronically has the potential advantage of permitting greater innovation and information-tailoring than the use of a static paper document. For example, funds could overlay electronic tools onto online disclosure, such as calculators, hover-over or pop-up information, and interactive features. Presenting information electronically could also improve the content of fund disclosures by, for example, allowing investors to customize certain fund disclosures, such as fees, expenses, and performance, based on an investor's individual circumstances. However, we appreciate that the use of electronic channels, and the overlay of electronic tools onto required regulatory documents, may present both practical and legal questions for fund registrants and other market participants.[329]

In light of this, we are proposing instructions that are designed to clarify requirements for electronic annual reports and to promote the use of interactive, user-friendly design features that may be tailored to meet individual investors' needs and improve investor engagement. We are tailoring certain proposed instructions to reflect that annual reports may be electronic as well as paper-based. First, the proposed requirements for the annual report's ''cover page'' are also applicable to the ''beginning'' of the report, which is designed to reflect that electronic reports may not have a physical page at their beginning.[330] Similarly, the proposed instruction that would provide an ordering requirement for the contents of an annual report also includes a provision for annual reports that appear on a website or are otherwise provided electronically.[331] This proposed instruction specifies that information should be organized in a manner that gives each item similar prominence, and presents the information in the same order, as that provided by the order the proposed instruction prescribes. For instance, an annual report available on a website could satisfy this requirement if each required disclosure item is presented with equal prominence in a separate tab and the order of the tabs follows the prescribed order, such as from left-to-right or top-to-bottom. Similarly, a mobile application could satisfy this requirement if the shareholder report navigation screen presents each shareholder report item with equal prominence and follows the prescribed order of information.[332]

We are also proposing instructions that would provide additional flexibility for funds to add additional tools and features to annual reports that appear on a website or are otherwise provided electronically.[333] The proposed instructions would encourage funds to use online tools designed to enhance an investor's understanding of material in the annual reports. This could include, for example: Video or audio messages, mouse-over windows, pop-up definitions or explanations of difficult concepts, chat functionality, and expense calculators. It also includes other forms of electronic media, communications, or tools designed to enhance an investor's understanding of material in the annual report. For example, this could include the ability to customize expense, performance or holdings information, or to make performance information more interactive.[334] We believe that permitting and encouraging these design features would allow for a more interactive and user-friendly experience and would improve investor engagement. When using interactive graphics or tools, funds are permitted to include instructions on their use and interpretation.[335] In addition, the proposed general instructions clarify that any explanatory or supplemental information that funds provide as online tools may not obscure or impede understanding of the required disclosures.[336]

The default presentation of the content of any electronically presented annual report must use the value that the applicable requirement under Item 27A prescribes.[337] For example, while the default presentation in the expense example and performance line graph must be on a $10,000 assumed investment, a feature may permit an investor to enter a different amount but the investor must, as a default, be able to view the assumed amount.[338] One result of this instruction would be that when the contents of a fund's annual reports are derived from the fund's audited financial statements, the default online presentation would be the audited figures.

Under the general instructions we are proposing, any information that is included in online tools that the fund uses, but that is not included in the annual report that the fund files on Form N–CSR, would have the same status under the Federal securities laws as any other website or other electronic content that the fund produces or disseminates.[339] For example, if a fund includes a video providing more detail about the fund's investments and performance, the video may, based on the facts and circumstances, be an advertisement subject to rule 482.[340]

[327] Under this proposal, shareholder reports must be delivered in paper unless, consistent with Commission guidance, a shareholder elects electronic delivery. *See supra* footnote 21 and accompanying text.

[328] *See infra* Sections II.F.3.a and II.J.

[329] For example, the legal requirements associated with a particular online tool may vary based on what information is present and how it is presented. We discuss these issues in more detail below. In addition, it may be costly to produce, maintain and update electronic tools and produce tools that function well on a variety of devices (such as phones, tablets and computers).

[330] *See supra* footnote 136.

[331] *See* Instruction 1 to proposed Item 27A(a) of Form N–1A.

[332] *See infra* footnotes 338–340 and related discussion regarding the recordkeeping and record retention requirements associated with such electronic tools.

[333] *See* Instruction 8 to proposed Item 27A(a) of Form N–1A.

[334] For example, one feature may be the ability to hover over a point on the performance line graph to see the date and dollar value associated with that point.

[335] *See* Instruction 10 to proposed Item 27A(a) of Form N–1A.

[336] *See id.* (providing that any supplemental information may not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included).

[337] *See* Instruction 8 to proposed Item 27A(a) of Form N–1A.

[338] *See* Item 27A(c) and (d) of Form N–1A.

[339] *See* Instruction 8 to proposed Item 27A(a) of Form N–1A. That instruction would provide, in part: ''Any information that is not included in the annual or semi-annual shareholder report filed on Form N–CSR shall have the same status, under the Federal securities laws, as any other website or electronic content that the Fund produces or disseminates.''

[340] 17 CFR 230.482. An investment company advertisement that complies with rule 482 is

Under these circumstances, the fund would be subject to the same liability standard and filing requirements that attach to any other rule 482 advertisement. This proposed instruction is designed to remind funds about liability and any filing requirements associated with any additional information that a fund chooses to include with the online version of its annual report (other than the shareholder report information that it files with the Commission on Form N–CSR). This supplemental information would also be subject to a record retention requirement.[341]

Finally, we are proposing an instruction providing that if the shareholder report references other information that is available online, the report should include a link or some other means of immediately accessing that information.[342] The proposed instruction states that, for example, the fund should provide hyperlinks to the fund's prospectus and financial statements if the information is available online. The proposed instruction also states that, in an annual report that is delivered in paper format, funds may include website addresses, QR codes, or other means of providing access to such information.[343] We believe these approaches are consistent with a layered approach to disclosure, and that providing ready access to the information that a shareholder report references (but does not directly include) would be a convenient feature for investors. Under these requirements, a fund must include a link specific enough to lead investors directly to a specific item or alternatively to a central site with prominent links to the referenced information. For example, a reference to a fund's prospectus could include a direct link to the prospectus or might include a link to the landing page that includes prominent links to several fund documents, such as the summary prospectus, prospectus, SAI and annual reports. However, the link cannot lead investors to a home page or section of the fund's website other than on which the specified item is posted. This proposed requirement is designed to permit the investor easily to locate (*i.e.,* without numerous clicks) the information in which he or she is interested.

We request comment on the proposed general instructions regarding electronic annual reports, including:

117. Are the proposed instructions that are designed to reflect that annual reports may be electronic as well as paper-based appropriate? Specifically, would the requirements for the ''beginning'' of the shareholder report clarify the contents that the Commission would require to appear first in electronically presented annual reports? Similarly, is the proposed instruction permitting an ''equivalent'' order (to that prescribed in Form N–1A) for annual reports that appear on a website or are otherwise provided electronically (such as a mobile application) appropriate, and is this instruction clear? If not, why not? Are there any other instructions that would help clarify content and format requirements for electronic annual reports?

118. The proposed general instructions would encourage a fund to use online tools for annual reports that are available electronically. Would this proposed instruction help to explain the content required to be included in the annual report? Is permitting the additional information conveyed by these tools appropriate? Should there be any limits on the types of additional information that funds present along with electronic versions of their annual reports, in addition to the limits prescribed by the proposed instructions (*e.g.,* that explanatory or supplemental information be responsive to the proposed shareholder report content requirements, that it not be misleading or impede understanding of the required disclosures, and that the default presentation contents in electronically presented shareholder reports be based on the same assumptions required by Item 27A)? For instance, should we permit a fund's expense presentation to include an explanation that compares a fund's expenses to its peer group?

119. The federal securities laws generally do not prohibit a fund from posting a version of its annual or semi-annual shareholder report translated into a foreign language on its website.[344] Further, we understand that funds occasionally will include online tools, such as translators, on their websites to assist non-English speaking investors and investors with disabilities to assess information about the fund. Should the Commission address the translation of a shareholder report or other documents filed with the Commission (such as a prospectus) into a foreign language and the transmission of those documents to shareholders? If so, what factors should the Commission consider? Should the Commission address foreign language shareholder reports (and foreign language versions of other fund regulatory materials) not only for open-end funds, but also other types of funds? If the Commission were to amend its rules to address the transmission of foreign language shareholder reports, should it also require foreign language versions of shareholder reports to be filed with the Commission?

120. As proposed, any additional information that a fund presents in connection with an electronic version of its annual report that is not included in the annual report filed on Form N–CSR would have the same status under the Federal securities laws as any other website or electronic content that the fund produces or disseminates. Is this approach appropriate? Notwithstanding this proposed instruction, should we require a fund to file this additional information with the Commission? If so, why, and through what channels should funds be required to file the additional information (*e.g.,* on Form N–CSR)? Is it appropriate to provide investors additional information online that would not have to be provided in paper to investors who request paper documents? If not, why not?

121. Is it appropriate to require that any electronic version of an annual report provide a means of facilitating access (such as a hyperlink) to any information that is referenced in the annual report that is available online? If not, why not? Similarly, is it appropriate to permit an annual report that is delivered in paper to include website addresses, QR codes, or other

deemed to be a section 10(b) prospectus for purpose of section 5(b)(1) of the Securities Act. As a section 10(b) prospectus, an investment company advertisement is subject to liability under section 12(a)(2) of the Securities Act and the antifraud provisions of the Federal securities laws.

[341] Section 31(a) of the Investment Company Act imposes recordkeeping obligations on registered investment companies, and also requires that each investment adviser (that is not a majority-owned subsidiary), depositor, and principal underwriter for a registered investment company maintain and preserve such records as the Commission shall prescribe to record that person's transactions with the registered investment company. The Commission prescribes those recordkeeping requirements under 17 CFR 270.31a–1 [rule 31a–1] and rule 31a–2. Specifically, rule 31a–1 provides the records that a registered investment company must maintain; rule 31a–2 provides the retention period for those records.

To address funds' retention of any supplemental information that a fund chooses to include in its online version of its annual report (other than the shareholder report information that the fund files with the Commission on Form N–CSR), we are proposing a conforming change to rule 31a–2 that would require that every investment company preserve for a period not less than six years, the first two years in an easily accessible place, any shareholder report required by § 270.30e–1 (including any version posted on a website or otherwise provided electronically) that is not filed with the Commission in the exact form in which it was used. *See* proposed rule 31a–2(a)(7).

[342] *See* Instruction 9 to proposed Item 27A(a) of Form N–1A.

[343] *See id.*

[344] *See supra* paragraph accompanying footnotes 339 through 341 and accompanying text (discussing the status under the Federal securities laws of information that funds include on their websites).

means of facilitating access to such information? Should the use of website addresses and QR codes be required for annual reports delivered in paper?

122. As proposed, the additional explanatory or supplemental information permitted in an electronic annual report may not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included. Are these restrictions appropriate? If not, why not? Should this instruction also specify that any explanatory or supplemental information that funds provide as online tools be responsive to the proposed content requirements for shareholder reports? Could this additional restriction prevent funds from providing information that some shareholders might find useful? Or would it be helpful in furthering the goal of ensuring that explanatory or supplemental information not obscure understanding of the required disclosures?

123. Rather than what we are proposing, should funds be able to transmit multiple-series annual reports to shareholders but be required to provide tools for tailoring the online presentation of the disclosure to an individual series? Should we require multi-class funds to provide tools for tailoring the online presentation of the disclosure to an individual class? Why or why not?

124. When a fund's annual report is available on a website or otherwise available electronically, should the investor be warned when he or she leaves the annual report content and moves to other fund content? If so, why? Should all annual report content (particularly when shown on multiple pages or tabs), be clearly identified as being part of the annual report? If not, why not?

125. Do the proposed general instructions sufficiently encourage electronic design and delivery of the annual report? Are the general instructions sufficiently flexible to permit delivery on phones, tablets, and other devices and to accommodate information conveyed via videos, interactive graphics, or tools and calculators? How can the Commission encourage funds to make fuller use of innovative technology to enable more interactive, user-friendly annual reports?

F. Semi-Annual Shareholder Report

We are proposing to specify the design and content of funds' semi-annual reports through new Item 27A of Form N–1A. These design and content specifications are similar to those we are proposing for funds' annual reports.[345]

The table below summarizes the proposed content that funds would include in their semi-annual reports and compares the proposal to current semi-annual report disclosure requirements.

TABLE 3—OUTLINE OF PROPOSED SEMI-ANNUAL REPORT

	Description	Proposed item of form N–1A	Current item of form N–1A containing similar requirements
Cover Page or Beginning of Report.	Fund/Class Name(s)	Item 27A(b).	
	Ticker Symbol(s)	Item 27A(b).	
	Principal U.S. Market(s) for ETFs	Item 27A(b).	
	Statement Identifying as "Semi-Annual Shareholder Report".	Item 27A(b).	
	Legend	Item 27A(b).	
Content	Expense Example	Item 27A(c)	Item 27(d)(1).
	Management's Discussion of Fund Performance (optional).	Item 27A(d)	Item 27(b)(7).
	Fund Statistics	Item 27A(e).	
	Graphical Representation of Holdings	Item 27A(f)	Item 27(d)(2).
	Material Fund Changes (optional)	Item 27A(g).	
	Changes in and Disagreements with Accountants	Item 27A(h)	Item 27(b)(4).
	Statement Regarding Liquidity Risk Management Program.	Item 27A(i)	Item 27(d)(6)(ii)
	Availability of Additional Information	Item 27A(j)	Item 27(d)(3) through (5).

1. Scope and Contents of the Proposed Semi-Annual Report

As with the proposed annual report, we propose to limit the scope of funds' semi-annual reports in several respects to reduce the overall length and complexity of these reports. First, we propose to require a fund registrant to prepare separate semi-annual reports for each series of the fund.[346] Second, we propose generally to limit the content a fund may include in its semi-annual report to the information that Item 27A of Form N–1A specifically permits or requires.[347] However, if a fund's particular circumstances may cause the required disclosures to be misleading, the fund may add additional information that is necessary to make the required disclosure items not misleading. Finally, the proposed amendments to Form N–1A would not permit a fund to incorporate by reference any information into its semi-annual report.[348] Collectively, these restrictions parallel our proposed scope and content limitations for annual reports.[349] As is the case today, the proposed semi-annual report would not be subject to page or word limits. As noted above, we believe a set limit could constrain appropriate disclosure or lead funds to omit material information. However, we believe that the proposed limits on the contents of shareholder reports should nonetheless limit their length in support of our goal of concise, readable disclosure.[350]

[345] *See supra* section II.B.

[346] *See* Instruction 4 to proposed Item 27A of Form N–1A.

[347] *See* Instruction 3 to proposed Item 27A of Form N–1A.

[348] *See* Instruction 5 to proposed Item 27A of Form N–1A.

[349] *See supra* Section II.B.1.a and II.B.1.b; *see also* Instructions 3, 4, and 5 to proposed Item 27A of Form N–1A.

[350] Because we estimate that the proposed annual report would be approximately 3 to 4 pages in length, we similarly estimate that the proposed semi-annual report (which would include fewer required disclosure items than the proposed annual report) would be approximately 3 to 4 pages in length or shorter. In the case of paper delivery, this

The cover page or beginning of the proposed semi-annual report would essentially contain the same content as the annual report (with the only difference being references to a ''semi-annual report'' instead of an ''annual report'').[351]

Semi-annual reports currently include an expense example.[352] The proposed semi-annual report would retain an expense example, which would be subject to the same content requirements as the expense example in the proposed annual report.[353]

We do not currently require MDFP in semi-annual reports. Under our proposal, semi-annual reports similarly would not require MDFP, but funds could include this disclosure on an optional basis.[354] We understand that it is currently common for funds to include MDFP in their semi-annual reports, and we believe that continuing to allow this disclosure would enable funds to identify factors that could help investors better contextualize other information disclosed in the semi-annual report. However, any such disclosure would have to comply with the proposed content requirements for MDFP in annual reports.[355]

Under our proposal, semi-annual reports, like annual reports, would have to include certain fund statistics, including the fund's: (1) Net assets, (2) total number of portfolio holdings, and (3) portfolio turnover rate.[356] This new disclosure requirement for semi-annual reports would parallel proposed required disclosures in annual reports.[357] As in annual reports, this proposed disclosure requirement is intended to provide succinct fund disclosures in a format that investors may be more likely to review than long narratives, and is designed to help contextualize other disclosures required in semi-annual reports.[358] In addition, a fund could disclose any additional statistics that it believes would help shareholders better understand the fund's activities and operation during its most recent fiscal half-year.[359]

Semi-annual reports currently include a graphical representation of holdings.[360] For the same reasons that we propose to retain the current requirements for the graphical representation of holdings in the annual report (with revisions designed to improve the presentation), we propose to retain the current requirements for the graphical representation of holdings in funds' semi-annual reports.[361] The graphical representation of holdings in the proposed semi-annual report would be subject to the same content requirements as in the proposed annual report.[362]

We do not currently require a discussion of material changes to the fund in semi-annual reports. Under our proposal, such disclosure would still not be required, but funds could include this disclosure on an optional basis.[363] We believe that permitting, but not requiring, this disclosure is appropriate because we anticipate that it would be common under the proposed rules for fund shareholders to receive notices of material changes as they occur throughout the year (*i.e.,* the notices that proposed rule 498B would require, or as prospectus ''stickers'' for those funds that do not rely on proposed rule 498B).[364] Requiring a discussion of material changes in the semi-annual report could be duplicative in light of these other notices. However, we are permitting funds to include this disclosure in their semi-annual reports because we anticipate that there could be circumstances in which discussing material changes could help investors better contextualize other information in the semi-annual report. Any such disclosure would have to comply with the proposed content requirements for the discussion of material changes in annual reports.[365]

As discussed above, we are proposing to require funds to include, under certain conditions, a statement in their semi-annual or annual reports regarding their liquidity risk management program.[366] This statement would include a brief summary of: (1) The key factors or market events that materially affected the fund's liquidity risk during the reporting period, (2) the key features of the fund's liquidity risk management program, and (3) the effectiveness of the fund's liquidity risk management program over the past year.[367] Depending on the timing of the fund's board's review of the fund's liquidity risk management program, the fund would include the statement in either its annual or semi-annual report.[368] If the board were to review the liquidity risk management program more frequently than annually, a fund could choose to include the discussion of the program's operation and effectiveness over the past year in the fund's annual and/or semi-annual report, but this discussion would not be required to be included in both reports.[369]

Under current shareholder report requirements, funds must include statements regarding the availability of certain information not included in the semi-annual report, namely the fund's: (1) Quarterly portfolio schedule; (2) proxy voting policies and procedures; and (3) proxy voting record.[370] Under our proposal, the semi-annual report would have to similarly include a brief, plain English statement that certain additional fund information is available on the fund's website, including, as applicable, the fund's prospectus, financial statements, quarterly portfolio schedule, and proxy voting record.[371] The statement could also reference other information on the fund's website that the fund reasonably believes shareholders would view as important.[372] In addition, if the shareholder report appears on a fund's website or otherwise is provided electronically, the fund must provide a means of facilitating access to that additional information (such as a

may allow funds to deliver semi-annual reports using a trifold self-mailer (or a similarly concise mailing). *See supra* footnote 134 and accompanying text.

351 *See* proposed Item 27A(b) of Form N–1A; *see also supra* Section II.B.2.a.

352 *See* Item 27(d)(1) of Form N–1A.

353 *See* proposed Item 27A(c) of Form N–1A; *see also supra* Section II.B.2.b. The expense example in the semi-annual report would cover a 6-month reporting period.

354 *See* proposed Item 27A(d) of Form N–1A.

355 *See supra* Section II.B.2.c.

356 *See* proposed Item 27A(e) of Form N–1A.

357 We note, however, that semi-annual reports currently must disclose net assets and portfolio turnover rate as part of the requirement to disclose condensed financial information. *See* Item 27(c)(2) of Form N–1A; *see also supra* footnotes 243 and 249 and Section II.B.2.d.

358 *See supra* text accompanying footnotes 243 through 250.

359 *See* proposed Item 27A(e) of Form N–1A; *see also supra* text accompanying and following footnote 251.

360 *See* Item 27(d)(2) of Form N–1A.

361 *See supra* footnotes 260–262 and accompanying text.

362 *See* proposed Item 27A(f) of Form N–1A; *see also supra* Section II.B.2.e.

363 *See* proposed Item 27A(g) of Form N–1A.

364 *See infra* Section II.F.3.b (discussing the notices of material changes that the proposal would require, for funds relying on proposed rule 498B); *see also infra* footnote 870 and accompanying text (estimating that 90 percent of funds would rely on proposed rule 498B instead of sending annual prospectus updates to existing shareholders).

365 *See supra* Section II.B.2.f.

366 *See supra* Section II.B.2.g.

367 *See* proposed Item 27A(i) of Form N–1A.

368 *See supra* footnote 307 and accompanying text.

369 *See* Instruction 3 to proposed Item 27A(i) of Form N–1A. Current Form N–1A includes the same instruction providing flexibility for a fund whose board reviews the liquidity risk management program more frequently than annually to include the discussion of the program in either the semi-annual report or the annual report, but not both. *See* Instruction to Item 27(d)(6)(ii) of Form N–1A.

370 *See* Items 27(d)(3) through (5) of Form N–1A.

371 *See* proposed Item 27A(j) of Form N–1A.

372 *Id.*

hyperlink).[373] Collectively, these requirements would be the same as the proposed requirements with regard to the availability of additional information in annual reports.[374]

We request comment generally on the proposed scope and content requirements for funds' semi-annual reports, and specifically on the following issues:

126. Is the proposed scope for semi-annual reports appropriate? To the extent the Commission changes the proposed scope of annual reports, should the Commission adopt those same changes for semi-annual reports? In contrast, are there any unique scope considerations for semi-annual reports, as opposed to annual reports?

127. Are the proposed content requirements for semi-annual reports appropriate? To the extent that the Commission adopts changes to the proposed content requirements for annual reports, should the Commission adopt those same changes for semi-annual reports? In contrast, are there any unique content considerations for semi-annual reports, as opposed to annual reports? For example, are there any amendments we should make to the proposed MDFP requirement to clarify disclosure obligations in the context of a semi-annual reporting period, as opposed to an annual reporting period? As another example, should we require the statement regarding the fund's liquidity risk management program in both the annual and the semi-annual reports, instead of providing the flexibility to include this disclosure in either report (depending on the timing of the board's review of the program)?

128. Is it appropriate to permit, but not require, funds to include MDFP and a discussion of material fund changes in their semi-annual reports? Why or why not? Would funds include this optional disclosure in their semi-annual reports, and if so, why? Should we permit any additional flexibility with regard to the content requirements of semi-annual reports and, if so, are there any corresponding changes that we should make to the proposed form amendments to implement such flexibility?

129. Should the Commission make any changes to the frequency of fund shareholder reports? For example, should the Commission require the transmittal of fund shareholder reports more or less frequently than on a semi-annual basis?[375] To what extent would changes in the frequency of shareholder reports impact investors and their investment decision-making?

2. Format and Presentation of Semi-Annual Report

Under our proposal, as discussed below, the semi-annual report would be generally subject to the same format and presentation requirements as the annual report.[376]

Information in semi-annual reports would be required to appear in the same order as the corresponding form items appear in the proposed amendments to Form N–1A.[377] Any information that a fund could choose to include in the semi-annual report would also be subject to this proposed ordering requirement (that is, it would have to be presented in the same order as the parallel mandatory disclosures in annual reports).[378] Like the parallel requirement for annual reports, this proposed ordering requirement for semi-annual reports is designed to ensure that information we believe is most salient to shareholders would appear first in the report. The proposed ordering requirement also is designed to promote consistency and comparison across funds and would place related report contents close together.

The other proposed instructions for annual reports' format and presentation discussed above also would apply to semi-annual reports. These include the proposed ''plain English'' instructions for the organization, wording, and design of the report.[379] They also include the proposed instructions encouraging funds to consider using, as appropriate, a question-and-answer format, charts, graphs, tables, bullet lists, and other graphics or text features as a way to help provide context for the information presented.[380]

We request comment generally on the proposed format and presentation requirements for funds' semi-annual reports, and specifically on the following issues:

130. Are the proposed format and presentation requirements for semi-annual reports appropriate? To the extent that the Commission adopts rules that include changes to these requirements for annual reports, should the Commission adopt those same changes for semi-annual reports? In contrast, are there any unique considerations with regard to the format and presentation requirements for semi-annual reports, as opposed to annual reports?

131. Under our proposal, semi-annual reports may optionally include certain disclosures that would be required to be included in annual reports.[381] Is it appropriate to require any such optional disclosures to be presented in the same order as the information would be presented in annual reports? To what extent could this cause confusion for investors reading semi-annual reports, given that some semi-annual reports might contain additional optional disclosures interspersed between required disclosures? In contrast, to what extent would it be confusing to require these optional disclosures to be presented in a different order (*e.g.,* following all required disclosures)?

3. Electronic Semi-Annual Reports

a. Proposed Instructions and Requirements

Our proposed instructions for electronic annual reports, including those that promote the use of interactive, user-friendly electronic design features, would also apply to semi-annual reports.[382] Among other things, these proposed instructions would (1) provide ordering and presentation requirements for semi-annual reports that appear on a website or are otherwise provided electronically, (2) provide additional flexibility for funds to add additional tools and features to semi-annual reports that appear on a website or are otherwise provided electronically, and (3) require a semi-annual report to include a link or some other means of immediately accessing information referenced in the report that is available online.[383]

We request comment generally on the proposed instructions regarding funds' electronic semi-annual reports, and specifically on the following issues:

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[373] *See* Instruction 1 to proposed Item 27A(j) of Form N–1A.

[374] *See id.; see also supra* Section II.B.2.g.

[375] *See infra* Section II.C.3.b (seeking comment on, among other things, an alternative approach in which the requirement to transmit a semi-annual report could be satisfied instead by updating certain information that appears on a fund website either semi-annually or on some more-frequent basis).

[376] *See* Section II.B.3.

[377] *See* Instruction 2 to proposed Item 27A(a) of Form N–1A. This proposed instruction would also include provisions that are applicable to a semi-annual report that appears on a website or is otherwise provided electronically. *See infra* Section II.C.3.

[378] *Id.*

[379] *See* Instruction 6 to proposed Item 27A(a) of Form N–1A; *see also supra* footnote 323 and accompanying paragraph.

[380] *See* Instruction 8 to proposed Item 27A(a) of Form N–1A; *see also supra* footnote 324 and accompanying paragraph.

[381] *See supra* footnotes 354 and 355 and accompanying text (discussing the proposal to permit, but not require, MDFP to be included in semi-annual reports) and *supra* footnotes 363 through 365 (discussing the proposal to permit, but not require, a discussion of material fund changes to be included in semi-annual reports).

[382] *See supra* Section II.B.4.

[383] *Id.*

132. Are the proposed instructions regarding funds' electronic semi-annual reports appropriate? Should any of those instructions be modified or should any other revisions be made to the Commission's proposal with regard to electronic shareholder reports, in order to better reflect investor preferences or to encourage the use of electronic shareholder reports by funds?

b. Alternatives Involving Electronic Semi-Annual Reports

Currently, funds are required to transmit semi-annual reports to shareholders, and—as with annual reports—they will be able to satisfy this requirement in certain cases under rule 30e–3 by posting the report (and certain other required materials) online and providing a notice of the reports' online availability.[384] We considered proposing alternative requirements for transmitting semi-annual reports. For example, we considered allowing funds to satisfy the requirement to transmit semi-annual reports by filing certain information on Form N–CSR. Also, in light of current internet use trends, we considered allowing funds to satisfy the requirement to transmit a semi-annual report by updating certain information on a fund website either semi-annually or on some more-frequent basis.

For example, we understand that many funds currently publish monthly or quarterly fact sheets online.[385] These fact sheets tend to include much of the information that would appear in the proposed requirements for funds' semi-annual reports, and often present such information in a concise format that may be appealing to investors. We understand that some shareholders or financial professionals may use fact sheets to monitor fund investments because, among other reasons, fact sheets include more up-to-date performance information than shareholder reports or prospectuses. While we are not proposing an approach in which a fund's obligation to transmit semi-annual reports would be deemed to be satisfied if the fund were to merely post updated fact sheets (or similar documents) online on a semi-annual or more-frequent basis, we are soliciting comment on potential disclosure alternatives that would leverage information that many funds already provide on their websites.

An approach that would leverage frequently updated website content, such as fund fact sheets, raises the consideration of how frequently required regulatory disclosures should ideally be provided to fund shareholders. Our proposed semi-annual report requirement parallels current requirements with regard to the frequency of shareholder reports, which are statutorily mandated to be transmitted on a semi-annual basis.[386] We are currently unaware of any evidence indicating that fund investors specifically desire shareholder reports to be provided less frequently.[387] The proposed approach also reflects our view that the proposed amendments to the contents of annual and semi-annual reports represent the information that would be most useful and salient to investors in assessing and monitoring their fund investments.

More generally, we considered the effects and benefits of a disclosure framework in which fund shareholders have regulatory information ''pushed'' to them on a semi-annual basis (*e.g.,* the required direct transmission of shareholder reports twice a year) versus a hypothetical disclosure framework in which fund shareholders would have the onus to periodically ''pull'' regulatory disclosures from various sources (*e.g.,* information that is periodically updated on a fund website).[388] We are concerned that such a hypothetical disclosure framework would represent a significant change in current practices. We are also concerned that a ''pull''-only disclosure framework may not be aligned with investor preferences. Although we understand that some investors prefer receiving fund disclosure electronically (*e.g.,* through email, mobile application, or website availability), we do not have evidence that these investors would prefer a disclosure approach in which they would receive no notification that updated disclosures are available.[389] We recognize that a hypothetical disclosure framework could require funds to ''push'' to investors a short notice that updated information is available online, similar to the current approach under rule 30e–3. However, rule 30e–3 contemplates notices being provided semi-annually. To the extent that, under the hypothetical disclosure framework, funds would update their online materials more frequently than semi-annually, providing notices each time that online materials were updated could be costly and could dissuade funds from updating these materials. Moreover, we understand that some investors generally prefer to receive at least certain fund information in paper format.[390] We recognize that there are other possible permutations of these disclosure approaches (for example, providing a notice of updated online information only semi-annually or permitting a fund to rely on rule 30e–3 with respect to the requirement to provide semi-annual reports, while continuing to require funds to provide annual reports directly to shareholders), and we request comment on these possible approaches below.

In addition, potential regulatory challenges and unintended consequences could result from such a hypothetical disclosure framework. For example, as discussed below, we seek comment regarding the extent to which this hypothetical framework could result in a bifurcated disclosure system. That is, we ask about the effects on fund investors if certain funds would no longer transmit semi-annual reports directly and instead would update information posted online, while other funds would continue to transmit semi-annual reports directly.

We request comment generally on the alternatives to the proposed semi-annual report transmission requirement that we considered, and specifically on the following issues:

133. Should the Commission require the direct transmission of semi-annual reports, as proposed? Alternatively, should the Commission adopt different conditions for satisfying this transmission requirement? For example, should funds be permitted to satisfy this requirement by filing certain information on Form N–CSR, pursuant to certain conditions? If so, what information should be filed, and what conditions would be appropriate? As another example, under the proposal, funds registered on Form N–1A would no longer be permitted to rely on rule 30e–3 to satisfy annual and semi-annual

[384] *See supra* footnote 22 and accompanying text. The Commission has previously interpreted the meaning of ''transmit'' in this context. *See* discussion of previous Commission guidance on the use of electronic media for delivery purposes, *supra* footnote 21.

[385] *See generally supra* text following footnote 23.

[386] *See* section 30(e) of the Investment Company Act.

[387] *See, e.g.,* Broadridge Comment Letter II. *See also* ICI Comment Letter I (asserting that a streamlined shareholder report should be required on the same semi-annual frequency as the current shareholder report). *But see supra* footnotes 54 to 55 and accompanying text (discussing some investors' concerns about the volume and frequency of fund disclosure materials they currently receive).

[388] For example, rule 30e–3 could be understood as a hybrid ''push/pull'' disclosure framework in which notices are pushed out to investors to notify them that shareholders reports have been posted online and are available to be pulled down. *See* rule 30e–3(c). In addition, rule 30e–3 allows shareholders to elect to remain in a pure ''push'' disclosure framework in which those shareholders will continue to have shareholder reports directly delivered to them. *See* rule 30e–3(f).

[389] *See supra* footnote 70 and accompanying text.

[390] *See supra* footnotes 71 and 72 and accompanying text.

report transmission requirements.[391] Should we instead continue to permit these funds to rely on rule 30e–3 as an alternative method of transmitting their semi-annual reports (while, as proposed, no longer permitting them to rely on the rule with respect to annual reports)? What evidence is there (for example, of investor preferences) to support different transmission requirements for semi-annual reports versus annual reports?

134. As a further alternative, would it be appropriate for the Commission to permit funds to satisfy their obligations to transmit semi-annual reports by updating certain information that appears on their websites (for example, updating a fund fact sheet), either semi-annually or on some more frequent basis? If so, what frequency and which information would be appropriate? Would it be appropriate to require a fund's website to include all of the information that we are proposing that funds include in their semi-annual reports, a subset of this information, or different information? To what extent should the Commission specify the content, presentation, and/or accessibility requirements for such information, and what should these requirements be? How, if at all, should funds be required to inform shareholders that updated information is available on their websites? Should there be any other conditions for a fund to be able to satisfy its semi-annual report transmission obligations in this way, and if so what should they be? To what extent should the Commission consider or address the fact that, pursuant to rule 482 under the Securities Act, fact sheets and other information that funds make available online are generally considered to be omitting prospectuses, and are thus subject to prospectus liability that does not apply to shareholder reports? Should information that funds make available online under this alternative be required to be filed with the Commission? To what extent would this alternative approach result in a bifurcated disclosure system, as described above? What would be the effects on investors and those who wish to review semi-annual reports, if semi-annual reports were only prepared by some, but not all, funds? Would this alternative be aligned with investor preferences for fund shareholder report disclosure? Would it otherwise raise any investor protection concerns, and if so, what concerns?

135. Are there any further alternatives the Commission should consider with regard to semi-annual reports specifically, or reports that the fund would transmit on an other-than-annual basis generally? To what extent should any of these alternatives provide special consideration for electronic shareholder reports?

G. New Form N–CSR and Website Availability Requirements

We are proposing to amend Form N–CSR and rule 30e–1 to implement our proposed layered disclosure framework.

We are proposing to require funds to continue to file certain information, which is currently included in fund shareholder reports, on Form N–CSR.[392] Section 30 of the Investment Company Act requires funds to file their shareholder reports, including certain information that must appear in their reports, with the Commission.[393] Because we are proposing a framework in which certain information would no longer appear in funds' shareholder reports, we are proposing amendments to Form N–CSR that would create new filing requirements for this information in order to continue to require funds to file the information with the Commission.

This Form N–CSR filing requirement would further the proposed layered disclosure framework by making available a broader set of fund information than the information that appears in funds' annual and semi-annual reports. The information that would be filed on Form N–CSR is less retail-focused than the information that would appear in funds' annual and semi-annual reports, but as detailed below we believe that retaining the availability of this information would be important for investors who desire more in-depth information, financial professionals, and other market participants. The information included on Form N–CSR also would continue to provide shareholders and other market participants with access to historical, immutable data regarding the fund on EDGAR. This historical information also would facilitate the Commission's fund monitoring responsibilities and could create significant efficiencies in the location of information for data gathering, search, and alert functions used in those monitoring activities. For example, filing on EDGAR facilitates the financial statement reviews that section 408 of the Sarbanes-Oxley Act of 2002 mandates. Additionally, because Form N–CSR is filed with the Commission on EDGAR, a fund can incorporate by reference information that is disclosed on Form N–CSR, including the fund's financial statements, into a fund's registration statement, subject to certain limitations.[394] Finally, a fund's principal executive and financial officer(s) are required to certify the financial and other information included on Form N–CSR, and are subject to liability for material misstatements or omissions on Form N–CSR.[395]

The amendments that we are proposing to rule 30e–1 would require funds to make available on their website the information that they would newly have to file on Form N–CSR, and to deliver such information upon request, free of charge.[396] These proposed website availability requirements are designed to provide ready access to this information for shareholders who find this information pertinent. The proposed requirements also would assist those investors who find it most convenient to locate fund materials on a website that is not EDGAR.

The following table outlines the content that we propose to require funds to include in their Form N–CSR filings and make available online. This content is currently included in a fund's annual and semi-annual reports.

[391] *See infra* Section II.G.

[392] *See* proposed Items 7 through 11 of Form N–CSR.

[393] *See* Investment Company Act sections 30(a), 30(e); *see also infra* Table 4.

[394] *See* 17 CFR 270.0–4 [rule 0–4 under the Investment Company Act] (additional rules on incorporation by reference for funds); 17 CFR 230.411 [rule 411 under the Securities Act] (general rules on incorporation by reference in a prospectus); 17 CFR 232.303 [rule 303 of Regulation S–T] (specific requirements for electronically filed documents); General Instruction D to Form N–1A.

[395] *See* 17 CFR 270.30a–2 [rule 30a–2 under the Investment Company Act] and Item 13(a)(2) of Form N–CSR; *see also* Certification of Disclosure in Companies' Quarterly and Annual Reports, Investment Company Act Release No. 25722 (Aug. 28, 2002) [67 FR 57275 (Sept. 09, 2002)].

The Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 745 (2002) (the "Sarbanes-Oxley Act") requires the principal executive and principal financial officer of most management investment companies to provide two different certifications in their periodic reports. Section 302 of the Sarbanes-Oxley Act requires a certification that, among other things, relates to the accuracy of the information included in the N–CSR filing. Section 906 of the Sarbanes-Oxley Act added new Section 1350 to Title 18 of the United States Code, which requires a certification that, among other things, represents that the N–CSR filing fairly presents, in all material respects, the fund's financial condition and results of operations, and is subject to specific Federal criminal provisions.

[396] *See* proposed rule 30e–1(b)(2) (funds would be required to post online Items 7 through 11 of Form N–CSR as well as the fund's complete portfolio holdings, if any, as of the close of the company's most recent first and third fiscal quarters).

TABLE 4—OUTLINE OF PROPOSED NEW FORM N–CSR AND WEBSITE AVAILABILITY REQUIREMENTS

Description (and related statutory requirement)	Current rule and form requirement(s) for shareholder report disclosure (if any)	Proposed new disclosure items for filing on SEC forms	Proposed website availability requirements
Financial statements for funds *(required by section 30(e) of the Investment Company Act).*	Items 27(b)(1) and 27(c)(1) of Form N–1A.	Proposed Item 7(a) of Form N–CSR.	Proposed rule 30e–1(b)(2)(i).
Financial highlights for funds	Items 27(b)(2) and 27(c)(2) of Form N–1A.	Proposed Item 7(b) of Form N–CSR.	Proposed rule 30e–1(b)(2)(i).
Remuneration paid to directors, officers and others of funds *(required by section 30(e) of the Investment Company Act).*	Items 27(b)(3) and 27(c)(3) of Form N–1A.	Proposed Item 10 of Form N–CSR.	Proposed rule 30e–1(b)(2)(i).
Changes in and disagreement with accountants for funds.	Items 27(b)(4) and 27(c)(4) of Form N–1A; Item 304 of Regulation S–K.	Proposed Item 8 of Form N–CSR.	Proposed rule 30e–1(b)(2)(i).
Matters submitted to fund shareholders for a vote.	Rule 30e–1(b)	Proposed Item 9 of Form N–CSR.	Proposed rule 30e–1(b)(2)(i).
Statement regarding the basis for the board's approval of investment advisory contract.	Item 27(d)(6) of Form N–1A	Proposed Item 11 of Form N–CSR.	Proposed rule 30e–1(b)(2)(i).
Complete portfolio holdings as of the close of the fund's most recent first and third fiscal quarters.	Currently required in Part F of Form N–PORT. Also website availability of this information currently required for funds relying on rule 30e–3..	N/A	Proposed rule 30e–1(b)(2)(ii).

1. Proposed Form N–CSR Filing Requirements

a. Financial Statements

We are proposing to require a fund to file its most recent complete annual or semi-annual financial statements on Form N–CSR, and provide certain data points from the financial statements in its annual and semi-annual reports, in lieu of including the fund's complete financial statements in its shareholder reports.[397] Consistent with current requirements, the fund's annual financial statements would be audited and accompanied by any associated accountant's report, while the semi-annual financial statements need not be audited.

Currently, funds are required to include audited financial statements in their annual reports and unaudited financial statements in their semi-annual reports.[398] Section 30(e) of the Investment Company Act provides that funds' annual and semi-annual reports include the fund's financial statements, which in turn must include a statement of assets and liabilities, a schedule of investments that shows the amount and value of each security owned by the fund on that date, a statement of operations, and a statement of changes in net assets.[399] The annual report must include audited financial statements accompanied by a certificate of an independent public accountant.[400] The financial statements (including the fund's schedule of portfolio investments) provide data regarding the values of the fund's portfolio investments as of the end of the reporting period. This provides a ''snapshot'' of data at a particular point in time, or, for example in the case of the statement of operations, historical data over a specified time period.[401]

The rules under Regulation S–X establish general requirements for portfolio holdings disclosures in fund financial statements. Information regarding a fund's schedule of portfolio investments is designed to enable shareholders to make more informed asset allocation decisions by allowing them to better monitor the extent to which their investment portfolios overlap. In addition, this information may provide shareholders—particularly those with facility in analyzing funds' individual portfolio holdings—with information about how a fund is complying with its stated investment objective and expose any deviation from the fund's investment objective (*i.e.,* style drift).[402] In lieu of providing a complete schedule of portfolio investments as part of the financial statements included in its shareholder report, a fund may provide a summary schedule of portfolio investments (''summary schedule'').[403] The summary schedule must list, separately, the 50 largest issues and any other issue exceeding one percent of the net asset value of the fund at the close of the period.[404]

Much of the length of funds' current annual and semi-annual reports is due to the inclusion of the complete financial statements.[405] Commenters on the Fund Investor Experience RFC, as well as information from prior investor testing and surveys, suggest that some investors generally believe the financial statements, or information derived from

[397] *See* proposed Item 7(a) of Form N–CSR; *see also supra* footnotes 198 through 211 and accompanying text (discussing the proposed requirement to include a graphical representation of a fund's holdings in the shareholder report).

[398] *See* Item 27(b)(1) and 27(c)(1) of Form N–1A. A fund's audited financial statements must include, among other items: (1) An audited balance sheet, or statement of assets and liabilities, as of the end of the most recent fiscal year; (2) an audited statement of operations for the most recent fiscal year; (3) an audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles (''GAAP''); (4) audited changes in net assets for the two most recent fiscal years; and (5) a schedule of investments in securities of unaffiliated issuers. *See* 17 CFR 210.3–18 and 210.6–10 [rules 3–18 and 6–10 of Regulation S–X].

[399] *See* sections 30(e)(1) through (4) of the Investment Company Act [15 U.S.C. 80a–29(e)(1) through (4)], and section 30(e)(6) of the Investment Company Act [15 U.S.C. 80a–29(e)(6)].

[400] *See* section 30(g) of the Investment Company Act [15 U.S.C. 80a–29(g)].

[401] *See* Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015) [80 FR 33590 (June 12, 2015)] (''Reporting Modernization Proposing Release''), at text following n.55.

[402] *See* February 2004 Shareholder Report Adopting Release, *supra* footnote 83, at text accompanying n.32.

[403] *See* Instruction 1 to Item 27(b)(1) of Form N–1A (permitting the inclusion of Schedule VI–summary schedule of investments in securities of unaffiliated issuers under 17 CFR 210.12–12C [Rule 12–12C of Regulation S–X] in lieu of Schedule 1—Investments of securities of unaffiliated issuers under 17 CFR 210.12–12 (Rule 12–12 of Regulation S–X)).

[404] *See* rule 12–12C, n.3 of Regulation S–X [17 CFR 210.12–12C].

[405] *See supra* footnote 19 and accompanying text (discussing the typical length of funds' annual reports today).

financial statements, is important.[406] However, we understand that many shareholders may find the current shareholder report financial statement disclosure to be complex and difficult to understand. For example, the 2012 Report on Investor Testing of Fund Annual Reports noted that while about a quarter of investors surveyed expressed the view that financial statement information is important, the majority of investors did not find the financial statement section of the shareholder report easy to understand, and investor comprehension of the section was low.[407] Similarly, one commenter on the Fund Investor Experience RFC stated that much of the information included in financial statements is of a technical nature with little importance to the average retail investor, and recommended that this information be included online.[408]

We are proposing to require funds to provide the complete financial statements on Form N–CSR, while retaining the graphical representation of holdings in the annual and semi-annual reports.[409] We believe that this layered approach to disclosure will help shareholders understand how the fund invests its assets. This approach is also designed to permit all shareholders, including retail shareholders, to monitor and assess their ongoing investment in the fund in a concise, easy-to-understand pictorial format, while preserving access to the more complete financial statements for shareholders that find this broader information useful. The graphical representation of holdings in funds' shareholder reports is also in line with the preferences investors have expressed for including more tables, charts, and graphs in fund disclosure to make information more understandable to the average investor.[410]

We also are proposing amendments to Form N–1A that would eliminate a fund's ability to provide a summary schedule in lieu of providing a complete schedule of portfolio investments as part of the financial statements. We believe that this is appropriate because the proposed annual and semi-annual reports would no longer include the complete financial statements (which includes the schedule of portfolio investments). Therefore, because a fund's full schedule of investments would only be included on Form N–CSR and on the fund website, we believe that allowing funds to use the summary schedule would be unnecessary and could potentially be confusing to shareholders. This proposed change would also reduce costs to the extent funds need not print and mail a complete schedule of portfolio investments as part of the financial statements unless a shareholder requests this information.[411] Furthermore, because the proposed annual and semi-annual reports are designed to help investors focus on the most salient features of the fund to better evaluate their investment, we do not believe it would be useful to shareholders, and may even be confusing, to allow funds to provide a summary schedule alongside the complete schedule of portfolio investments online.

We seek comment on our proposal to require funds to file their annual and semi-annual financial statements on Form N–CSR and make them available online rather than in a fund's shareholder reports, and specifically on the following issues:

136. Would our proposed layered approach to disclosure of financial statement information—by providing the graphical representation of holdings in the annual and semi-annual report and the complete financial statements on Form N–CSR—help tailor information to shareholders based on their informational needs? Are there any other data elements from funds' financial statements that should be included in funds' annual and semi-annual reports, and if so, what elements and why would they be useful for retail shareholders?

137. Is the direct transmission of audited financial statements, or a portion of them, important to fund investors, and if so, why? If important, would it be helpful to investors for any information in the annual report to be replicated verbatim from the audited financial statements, and for the report to make clear that certain information was audited? What information and why?

138. Should we, as proposed, eliminate a fund's ability to provide a summary schedule in lieu of providing a complete schedule of portfolio investments as part of the financial statements? Should we instead either permit funds to continue providing a summary schedule as part of their financial statements, or require funds to include a summary schedule in their shareholder reports? Would the latter alternative provide an appropriate complement to the graphical representation of holdings, or would including the summary schedule in funds' shareholder reports be duplicative and/or confusing in light of the proposed requirement to include the graphical representation of holdings in funds' annual and semi-annual reports? If we were to continue to permit funds to provide a summary schedule as part of their financial statements, should we also require these funds to make their complete portfolio holdings, as of the close of the fund's most recent second and fourth fiscal quarters, available on a website (in addition to the proposed requirement discussed below that funds make their first and third fiscal quarters' complete portfolio holdings available online)?[412] Should we permit a fund to make the summary schedule available online instead of the complete schedule of portfolio holdings? Why or why not?

139. Other than complete financial statements, is there any other financial information that funds should be required to file on N–CSR? Do investors and other market participants currently use the financial statement information that appears on EDGAR as part of funds' filed shareholder reports, and if so, how?

b. Financial Highlights

We are proposing to require funds to file their financial highlights

[406] *See supra* footnotes 51 and 52 and accompanying text (summarizing research findings regarding the level of investor interest in financial statement information).

[407] *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 15. The results of the 2012 Report on Investor Testing of Fund Annual Reports found that 24% of shareholders that were surveyed ranked the financial statements within the top three items of importance.

[408] *See* ICI Comment Letter I.

[409] *See* proposed Item 7 of Form N–CSR (requiring funds to provide the complete financial statements on Form N–CSR); *see also* Item 27A(f) of Form N–1A (requiring shareholder reports to include the graphical representation of holdings).

[410] *See* Kleimann, *supra* footnote 324; *see also supra* footnote 34.

[411] Under the proposal, this information would also appear online. As part of its proposal and adoption of rule 30e–3, the Commission similarly proposed to eliminate the ability of a fund relying on rule 30e–3 to provide a summary schedule in its shareholder report because the shareholder report would only be filed online and, therefore, the fund would not bear additional printing and mailing costs associated with providing the full schedule of investments. *See* Reporting Modernization Proposing Release *at* Section II.D.

The Commission ultimately determined to retain the ability for a fund that relies on rule 30e–3 to provide a summary schedule in the Rule 30e–3 Adopting Release, and acknowledged that a fund may choose to use a summary schedule for cost considerations or otherwise. *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at n.120. We believe the considerations underlying this proposal's treatment of the summary schedule are different because, unlike under rule 30e–3, no fund investors would have a shareholder report that includes the fund's financial statements directly transmitted to them. Under rule 30e–3, funds would still have to deliver shareholder reports that include full financial statements to any shareholder who so requests.

[412] *See infra* Section II.D.2.a.

information on Form N–CSR.[413] This information is identical to the information currently required in fund shareholder reports. We are proposing that funds would not include financial highlights information in their annual or semi-annual reports, with the exception of certain specific data points as discussed below.

Currently, funds are required to disclose the condensed financial information that Item 13(a) of Form N–1A requires (*i.e.,* financial highlights) in their annual and semi-annual reports.[414] The financial highlights include a summary table of financial information covering the preceding five years (or since the fund's inception, if less than five years).[415] Under certain circumstances, a fund may incorporate by reference its financial highlights from a report to shareholders into its prospectus.[416]

The information contained in a fund's financial highlights is generally designed to help investors evaluate the fund's historical performance and fund manager's investment management expertise.[417] For example, disclosure of changes in a fund's total return over a five-year period is designed to give a shareholder information regarding the fund's performance trends over time (*i.e.,* volatile vs. steady returns).[418] Similarly, a higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes when fund shares are held in a taxable account.[419]

While we would require funds to file the entirety of their financial highlights on Form N–CSR, we are also proposing to retain certain elements of the financial highlight information in funds' annual and semi-annual reports. These retained elements are those that we understand may be particularly helpful for shareholders to evaluate a fund's performance. This layered disclosure approach is designed to retain the financial highlight information that we believe would be most salient to retail shareholders in funds' shareholder reports, while preserving the entirety of this information on Form N–CSR for those shareholders to whom the broader information would be useful.[420] While one industry survey found that the average retail shareholder finds most of the items from the financial highlights section difficult to understand, this survey also concluded that a majority of shareholders found the total return and expense ratio information important for shareholders to monitor and assess their investments in a fund.[421] Accordingly, we are proposing that a fund would have to disclose its expense ratio in the ''Fund Expenses'' section of the proposed annual and semi-annual reports.[422] Also, while funds' shareholder reports would no longer include annual total returns for *each* of the preceding five years, the MDFP section of the annual report would continue to include certain information regarding a fund's annual total returns.[423] Shareholders also would continue to be able to assess performance trends over time using the performance line graph and performance table that would appear in the annual report.[424] Finally, we would require annual and semi-annual reports to include funds' disclosure of their net assets and portfolio turnover rate (which are also data elements from the fund's financial highlights) as of the end of the period covered by the report.[425] We believe that all of these data elements that would appear in the proposed annual and semi-annual reports would together serve as a snapshot—of both period-end data and data over time—that would provide retail shareholders with the financial highlights data that they have indicated they find most useful. Investors who want to continue to have access to all of the information that currently appears in funds' financial highlights would continue to be able to access this information on Form N–CSR and online.[426]

Item 13 of Form N–1A currently requires a fund to include financial highlights information in its prospectus, and an instruction to this item permits a fund to incorporate this information from a shareholder report under rule 30e–1 by reference into its prospectus.[427] Because, under the proposal, funds' shareholder reports would no longer include financial highlights, we are proposing to amend the current instruction to allow a fund to incorporate by reference into its prospectus its financial highlights from Form N–CSR.[428] For existing shareholders that have received the fund's shareholder report, a fund would be required to include a legend stating that additional information about the Fund's annual and semi-annual financial statements is available in Form N–CSR.[429] For new investors in the

[413] *See* proposed Item 7(b) of Form N–CSR.

[414] *See* Items 27(b)(2) and 27(c)(2) of Form N–1A. *See also* Item 13(a) of Form N–1A.

[415] The summary table contains information regarding changes in a fund's net asset value, total returns, portfolio turnover rate, and capital distributions, among other things, during the preceding five years. *See* Item 13(a) of Form N–1A.

[416] *See* Instruction 4(e) to Item 13 of Form N–1A. A fund currently may incorporate the financial highlights from a shareholder report into the prospectus if the fund delivers the shareholder report simultaneously with the prospectus or if the shareholder report has been previously delivered to shareholders. A fund that incorporates the financial highlights by reference must include a statement in its prospectus explaining that: (1) Additional information about the fund's investments is available in the annual and semi-annual reports to shareholders; (2) the fund's annual report provides a discussion of the market conditions and investment strategies that significantly affected the fund's performance during its last fiscal year; and (3) the fund's annual and semi-annual reports are available, without charge, upon request. A fund must also explain how shareholders may make inquiries to the fund, provide a telephone number for shareholders to call to request the annual or semi-annual report, and state whether the fund makes available its annual and semi-annual reports, free of charge, on the fund's website. *See* Item 1(b)(1) of Form N–1A.

[417] *See* Improving Descriptions of Risk by Mutual Funds and Other Investment Companies, Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172 (Apr. 4, 1995)].

[418] *See* How to Read a Mutual Fund Shareholder Report, *supra* footnote 316.

[419] *Id.*

[420] *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 138 (noting that a few of the investors who were surveyed indicated that they saw value in the financial highlights information and stated that financial highlights provided them with a snapshot of the fund and important fund performance trend data that is easy to digest).

[421] *See* ICI Comment Letter I (noting that shareholders from all age and income groups supported the inclusion of total return and expense ratio information in a summary shareholder report and indicated that it was important to include a graphical representation of these key measures. The survey also noted that two-thirds of mutual fund investors who read very little of the current shareholder report and found it difficult to understand, still indicated the total return and expense ratio chart was very important and needed to be kept in the summary shareholder report).

[422] *See* proposed Item 27A(c) of Form N–1A. The expense ratio would be based on the fund's net expenses under GAAP and would reflect any interest or dividend expense.

[423] *See* proposed Item 27A(d)(2)(B) of Form N–1A. Our proposal would require a fund to continue to disclose its average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the fund, if shorter) in its annual report, as funds do today.

[424] *See supra* Sections II.B.2.c.ii, II.B.2.c.iii.

[425] *See supra* Section II.B.2.d.

[426] The information that would be available online includes detailed year-over-year comparisons over the past five years of per-share information associated with net investment income, net gains or losses on securities and distributions, as well as expense ratio, portfolio turnover and return information.

[427] A fund may incorporate this information by reference if the fund delivers the shareholder report with the prospectus or, if the report has been previously delivered (*e.g.,* to a current shareholder), the fund includes the statement that Item 1(b)(1) of Form N–1A requires (*i.e.,* a statement that additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders). *See* Instruction (4)(e) to Item 13 of Form N–1A.

[428] *See* proposed amendments to Instruction (4)(e) to Item 13 of Form N–1A.

[429] *See* proposed amendments to Item 1(b)(1) of Form N–1A. The required statement would state (among other things) that: (1) Additional information about the fund's investments is

Continued

fund, the fund would be required to provide the fund's most recent shareholder report along with its prospectus.[430] This provision parallels the current provision that allows a fund to incorporate by reference its financial highlights from the fund's shareholder report.

Finally, as discussed above, we also are proposing amendments to Item 13(a) of Form N–1A to require an ETF to disclose its total return based on the ETF's per share market value return as of the end of the period.[431] This would align the information provided in the financial highlights with the expense information included in the annual and semi-annual reports.

We seek comment on our proposal to require financial highlights information to be disclosed on Form N–CSR, and specifically on the following issues:

140. Should we, as proposed, layer the information that appears in funds' financial highlight information to preserve the most retail-focused disclosure in funds' shareholder reports, while making the full financial highlights available on Form N–CSR and online? Would this proposed layered approach help tailor disclosure to shareholders based on their informational needs? If not, what changes should we make to the proposed approach?

141. Should we, as proposed, revise the Form N–1A instruction to permit funds to incorporate by reference their financial highlights from Form N–CSR into their prospectuses? Why or why not? If so, should we require funds to include a statement explaining that the fund's financial statements are included on Form N–CSR, that Form N–CSR is available, without charge, upon request, and how a shareholder may make inquiries to request Form N–CSR, and whether the fund makes available Form N–CSR on the fund's website?

142. Should we, as proposed, require ETFs to disclose market value return in their financial highlights? Would shareholders find this information useful? Because we are proposing to require this information to be included in the fund expenses section of the shareholder report, is it useful for shareholders to have this information in both the financial highlights and in the shareholder report?

143. Rather than allowing funds to incorporate by reference their financial highlights from Form N–CSR, should we instead remove the current Form N–1A instruction permitting funds to incorporate their financial highlights by reference into their prospectuses (thereby requiring funds to include their financial highlights in their prospectuses instead of incorporating this information by reference)? If we were to require funds to include their financial highlights in their prospectuses, should it be necessary for them to also file this information on Form N–CSR? Would shareholders benefit from having access to this information on Form N–CSR in addition to the prospectus? How burdensome would it be for a fund to include financial highlights into their prospectuses and also file that information on Form N–CSR?[432]

144. Rather than requiring the full financial highlights to be filed on Form N–CSR, should we require funds to file and post only certain data points from the financial highlights? If so, which ones? Do investors and other market participants currently use the financial highlights information that appears on EDGAR as part of funds' filed shareholder reports, and if so, how?

c. Changes in and Disagreement With Accountants for Funds

We are proposing to require a fund to file on Form N–CSR the disclosures that Item 304 of Regulation S–K currently requires, concerning changes in and disagreements with accountants.[433] As discussed above, funds must currently include this information in their shareholder reports.[434] The proposed Form N–CSR filing requirement would complement the proposed requirement for funds to include a high-level summary of changes in and disagreements with accountants in their annual reports.

While the disclosure that we are proposing funds to include in their shareholder reports would be designed to put shareholders on notice of the dismissal or resignation of an accountant and the existence of a material disagreement with that accountant, the information that funds would report on Form N–CSR would provide additional, more nuanced and technical disclosure that may be informative to some shareholders and other market participants. For example, this disclosure could be meaningful as it indicates that the fund has especially challenging, subjective, and/or complex accounting policies and financial statement disclosures or the accountant could not resolve audit findings. Moreover, we believe that it is appropriate to retain this disclosure in a location that includes audited financial information (as proposed, Form N–CSR) to provide those investors, financial professionals, and other market participants who review and analyze this disclosure with appropriate contextual information.

We seek comment on our proposal to require a fund to disclose on Form N–CSR the information required by Item 304 of Regulation S–K. We specifically request comment on the following issues:

145. Should we, as proposed, require a fund to file the information required by Item 304 of Regulation S–K on Form N–CSR? Why or why not?

146. Would requiring the Item 304 information to be filed on Form N–CSR be useful to investors, financial professionals, or other market participants? If so, what types of audiences would find this information to be particularly useful, and why? If not, why not?

147. Is the proposed Form N–CSR disclosure requirement appropriate and necessary in light of the proposed summary information about changes in and disagreements with accountants that we propose funds to include in their shareholder reports? If not, why not?

148. Rather than the proposed approach, should we instead amend and/or streamline the requirement to disclose Item 304 information and retain the amended disclosure in the fund's annual report? Why or why not? Do investors and other market participants currently use the Item 304 information that appears on EDGAR as part of funds'

available in the fund's annual report to shareholders and in Form N–CSR; (2) the fund's annual report and Form N–CSR are available, without charge, upon request. A fund must also explain how shareholders may make inquiries to the fund, provide a telephone number for shareholders to call to request the fund's annual report and Form N–CSR, and state whether the fund makes available Form N–CSR, free of charge, on the fund's website. *See* Item 1(b)(1) of Form N–1A.

[430] *See* proposed amendments to Instruction 4(e) to Item 13 of Form N–1A, current Instruction 4(e) to Item 13 of Form N–1A (allowing a fund to incorporate by reference its financial highlights from its shareholder report into the prospectus so long as the fund delivers the shareholder report with the prospectus (*i.e.,* for new shareholders)). If the shareholder report has been previously delivered (*e.g.,* to a current shareholder), the fund must include a statement clarifying that the financial highlights are being incorporated by reference pursuant to the requirements of Item 1(b)(1) of Form N–1A).

[431] *See supra* footnote 159. We are also proposing amendments to the instructions pertaining to total return calculations that would specify how an ETF should calculate its total return based on its per share market value. *See* proposed Instruction 3(a)(5) of Item 13(a) of Form N–1A.

[432] Under section 10(a)(3) of the Securities Act, funds typically update their prospectuses within 120 days of the end of fiscal year-end, and, typically, updated prospectuses are delivered to existing shareholders soon thereafter. *See supra* footnotes 11 and 20 (discussing the transmittal requirements for fund prospectuses).

[433] *See* proposed Item 8 of Form N–CSR.

[434] *See supra* footnote 293 and accompanying text.

filed shareholder reports, and if so, how?

d. Matters Submitted for a Shareholder Vote

We are proposing to require funds to include information about matters submitted for a shareholder vote on Form N–CSR, rather than in their shareholder reports.[435] This information is identical to the information currently required in fund shareholder reports. Currently, when a matter is submitted to a vote of shareholders, funds must disclose information regarding the substance of these matters, along with the results of such votes, in several ways. First, shareholders receive proxy statements that include detailed descriptions of issues brought before shareholders for their vote.[436] If a matter is submitted to a vote of fund shareholders during the period covered by an annual or semi-annual report, the fund must include certain information regarding the vote results in that report.[437] Furthermore, funds are required to disclose on Form N–CEN whether the fund submitted any matters for a shareholder vote during the reporting period.[438] Shareholder voting plays a valuable role in fund regulation, and providing information regarding shareholder votes keeps shareholders informed and may operate as a deterrent to self-dealing by the fund's adviser.[439]

The proposed amendments to the disclosure requirements for matters submitted for a shareholder vote are designed to further our proposed layered approach to shareholder report disclosure. The approach we are proposing also reflects our understanding that many retail shareholders tend not to review the information regarding vote results currently required in the shareholder report.[440]

Under our proposal, funds' annual and semi-annual reports would no longer include information about the results of shareholder votes, but shareholders would continue to receive information about these matters through other channels. Shareholders would continue to receive a detailed description of matters submitted for a shareholder vote in fund proxy statements. Furthermore, because the proposed annual report would require funds to describe certain material changes that have occurred in the fiscal year, shareholders would receive disclosure of certain material changes that have resulted from shareholder votes.[441] If it would be valuable to a shareholder to review additional information about the outcome of matters submitted for a shareholder vote, the shareholder would continue to have access to this more-detailed information, which the fund would file on Form N–CSR. For example, we anticipate that certain shareholders, particularly investors who desire more in-depth information, and other market participants would want to continue to have ready access to information about shareholder votes, to the extent they express investor preferences on matters such as changes in the fund's fundamental policies, investment advisory agreements, board of directors, and organizational documents.

We seek comment on our proposal to require funds to disclose the matters submitted to a vote of shareholders on Form N–CSR rather than the fund's shareholder reports, and specifically on the following issues:

149. Should we, as proposed, require funds to file the information regarding matters submitted for a shareholder vote on Form N–CSR? Why or why not? Alternatively, should we only require funds to disclose the information regarding matters submitted for a shareholder vote on the fund's website, and not also require funds to file this information with the Commission on Form N–CSR? Why or why not? Do investors and other market participants currently use the information regarding matters submitted for a shareholder vote that appears on EDGAR as part of funds' filed shareholder reports, and if so, how?

150. Would requiring this information to be filed on Form N–CSR be useful to investors, financial professionals, or other market participants? If so what types of audiences would find this information to be particularly useful, and why? If not, why not? If so, should we include information regarding matters submitted for a shareholder vote, or any summary of this information, in the proposed annual report? Why or why not?

151. Are there certain types of matters submitted for a shareholder vote that shareholders find more important than others? If so, what are they? Should we require funds to include in their annual and semi-annual reports the results of only certain matters submitted to a shareholder vote that retail shareholders find most pertinent? What matters would those be?

152. Rather than the proposed approach to disclosure regarding matters submitted for a shareholder vote, should we instead amend and/or simplify the current shareholder report disclosure requirement? If so, should we retain the amended disclosure in funds' annual and semi-annual reports? Why or why not?

e. Remuneration Paid to Directors, Officers, and Others

We are proposing to require funds to file the aggregate remuneration the fund paid to its directors, officers, and certain affiliated persons on Form N–CSR.[442] This information is identical to the information currently required in fund shareholder reports. Funds currently provide this information in their annual reports under section 30(e) of the Investment Company Act.[443]

As the Commission has noted, because of the substantial influence a fund's investment adviser has in determining its own remuneration, as well as the remuneration paid to directors and officers of the fund,

[435] *See* proposed Item 9 of Form N–CSR (requiring a fund to file on Form N–CSR the information that the fund currently provides in its shareholder reports pursuant to rule 30e–1(b)). *See also infra* footnote 437 (detailing the disclosure requirements with respect to matters submitted for a shareholder vote). The information regarding matters submitted for a shareholder vote that would be disclosed on Form N–CSR is identical to the information currently included in fund shareholder reports.

[436] *See e.g.* Schedule 14A [17 CFR 240.14a–101] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (providing the content requirements for investment company proxy statements).

[437] *See* rule 30e–1(b). This disclosure must include: (1) The date of the meeting and whether it was an annual or special meeting; (2) if the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting; and (3) a brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

[438] *See* Item B.10 of Form N–CEN.

[439] *See e.g.,* Amendments to Proxy Rules for Registered Investment Companies, Investment Company Act Release No. 19957 (Dec. 16, 1993) [58 FR 67729 (Dec. 22, 1993)] at text following n.6.

[440] *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 50 (stating that only 4% of investors say they review the discussion of the results of shareholder votes included in their annual and semi-annual reports).

[441] *See supra* Section II.B.2.f.

[442] *See* proposed Item 10 of Form N–CSR.

[443] *See* section 30(e)(5) of the Investment Company Act [15 U.S.C. 80a–30(e)(5)] (permitting the Commission to require that funds transmit to shareholders, at least semi-annually, reports containing, among other things, a statement of aggregate remuneration paid by the fund during the period covered by the report to officers, directors, and certain affiliated persons); *see also* Items 27(b)(3) and 27(c)(3) of Form N–1A. Funds are required to disclose aggregate remuneration paid to: (1) All directors and all members of any advisory board for regular compensation; (2) each director and each member of an advisory board for special compensation; (3) all officers; and (4) each person of whom any officer or director of the fund is an affiliated person.

availability of information about remuneration paid to the fund's directors and officers may help shareholders to analyze the use of corporate funds and assets, and to assess the value the fund's directors and officers bring to the fund.[444] In addition to the aggregate remuneration disclosure in a fund's shareholder report, a fund is currently required to provide detailed disclosures regarding compensation paid to each of the directors, members of any advisory board, and certain officers and affiliates in the fund's SAI.[445]

Based on the comments the Commission received on the Fund Investor Experience RFC, as well as information from prior investor testing and surveys, we understand that retail shareholders generally do not find remuneration information useful in the shareholder report and seldom review this section of the current shareholder report.[446] One commenter also stated that information regarding the remuneration of directors is technical, and recommended that this information instead be included online.[447] Because we believe that this type of information is not directly pertinent to a retail shareholder's understanding of the fund's operation and performance, and because similar information is available in the fund's SAI, we are proposing to remove the current remuneration disclosure from the shareholder reports. Investors who desire more in-depth information, financial professionals, and other market participants who would find remuneration-related information valuable (for example, in monitoring fund management) would continue to be able to find it in the fund's SAI (where compensation information is disclosed for each director), as well as in Form N–CSR filings (where compensation information is aggregated, as it is in shareholder reports today).

We seek comment on our proposal to require funds to disclose information about remuneration paid to directors, officers and others on Form N–CSR rather than the fund's annual reports, and specifically on the following issues:

153. Should we require funds to include information concerning remuneration paid to directors, officers and others in the proposed annual report? If so, why?

154. Is this remuneration information useful to investors, financial professionals, or other market participants? If so what types of audiences would find this information to be particularly useful, and why? If not, why not?

155. Rather than removing this disclosure entirely from the annual report, should we require funds to provide certain data points regarding remuneration paid to directors, officers and others in their annual reports? For example, should we require disclosure of remuneration paid to directors in the fund's shareholder report if it exceeds a certain threshold? Or, should we require a fund to disclose in its annual report any changes to director or officer remuneration during the reporting period?

156. Because more detailed information regarding compensation paid to directors and officers already must appear in a fund's SAI, would the proposed aggregated remuneration information filed on Form N–CSR meaningfully and usefully supplement this current SAI disclosure? If so, how? Or would the proposed aggregated remuneration information be duplicative of existing SAI disclosures? Do investors and other market participants currently use the information regarding compensation paid to directors and officers that appears on EDGAR as part of funds' filed shareholder reports, and if so, how?

f. Statement Regarding Basis for Approval of Investment Advisory Contract

Currently, funds are required to provide a statement, in the annual and semi-annual reports, regarding the basis for the board's approval of the fund's investment advisory contract.[448] We are proposing to require funds to provide this information on Form N–CSR, rather than in the fund's shareholder reports.[449] This information is identical to the information currently required in fund shareholder reports.

Under current shareholder report disclosure requirements, if the board of directors approved any investment advisory contract during the fund's most recent fiscal half-year, the fund is required to discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. When the Commission adopted these requirements in 2004, it stated that the purpose of this requirement was to ''encourage funds to provide a meaningful explanation of the board's basis for approving an investment advisory contract,'' which, in turn, the Commission hoped would encourage boards to ''consider investment advisory contracts more carefully and investors to consider more carefully the costs and value of the services rendered by the fund's investment adviser.'' [450]

We continue to believe that requiring funds to provide shareholders with information regarding the board's review of investment advisory contracts preserves transparency with respect to those contracts, and fees paid for advisory services, assists investors in making informed investment decisions, and encourages fund boards to engage in vigorous and independent oversight of advisory contracts.[451] However, we preliminarily believe that this disclosure is not well suited to the fund's shareholder report because it pertains less directly to a retail shareholder's understanding of the operations and performance of the fund and does not lend itself to the type of focused disclosure that the proposed annual report is designed to include. Because of the nature and quantity of information in this disclosure, we therefore believe that it may be better suited to appear in a different location that would continue to permit access to fund shareholders and other market participants who find this information to be particularly useful and

[444] *See* Disclosure of Management Remuneration, Investment Company Act Release No. 9900 (Aug. 18, 1977) [42 FR 43058 (Aug. 26, 1977)] at text accompanying nn.15 and 16 (noting that full public disclosure of remuneration paid to officers, directors and other persons is necessary for shareholders to make ''informed voting and investment decisions, regardless of whether the [fund's] board of directors or its security holders have approved the remuneration package received by management because of the substantial influence of management in determining its remuneration'').

[445] *See* Item 17(c) of Form N–1A (requiring a fund to disclose certain compensation information for each of the fund's directors and for each member of any advisory board who receives compensation from the fund, and for each of the three highest paid officers or any affiliated person of the fund who received aggregate compensation from the fund for the most recently completed fiscal year exceeding $60,000).

[446] *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 50 (stating that only 7% of investors say they review the discussion regarding fund directors and officers included in their annual and semi-annual reports); *see also* Broadridge Comment Letter I.

[447] *See* ICI Comment Letter I.

[448] *See* Item 27(d)(6) of Form N–1A.

[449] *See* proposed Item 11 of Form N–CSR. We are also proposing to eliminate Item 10(a)(1)(iii) of Form N–1A which requires funds to include, in the SAI, a statement noting that a discussion regarding the basis for the board's approval of any investment advisory contract is available in the fund's annual or semi-annual report, as applicable, and providing the period covered by the relevant report.

[450] *See* Disclosure Regarding Approval Of Investment Advisory Contracts By Directors Of Investment Companies, Investment Company Act Release No. 26486 (June 23, 2004) [69 FR 39798 (June 30, 2004)] (''Disclosure Regarding Approval of Advisory Contracts Release''), at text following n.23.

[451] *See id.* at n.18.

meaningful.[452] We believe that providing this information on Form N–CSR would continue to allow these persons effectively to consider the costs and value of the services that the fund's investment adviser renders.[453]

We seek comment on our proposal to require funds to disclose the basis for the board's approval of the fund's investment advisory contract on Form N–CSR rather than in the fund's shareholder reports, including the following specific issues:

157. Should we, as proposed, remove the information regarding the basis for the board's approval of a fund's advisory contract from shareholder reports? Should we instead amend and/or simplify this disclosure requirement and/or retain the amended disclosure in funds' annual and semi-annual reports? Would this amended disclosure be useful for retail shareholders to use to monitor and assess their ongoing investment in a fund?

158. Should we, as proposed, require funds to file the information regarding the board's approval of a fund's advisory contract on Form N–CSR? Why or why not? Do investors and other market participants currently use the information regarding the board's approval of a fund's advisory contract that appears on EDGAR as part of funds' filed shareholder reports, and if so, how?

2. Proposed Website Availability Requirements

a. Website Content Requirements

We are proposing to require a fund to post online all of the information that the proposal would newly require on Form N–CSR.[454] The fund would have to make this information available from 70 days after the end of the relevant fiscal period until 70 days following the next respective fiscal period.[455] Currently, funds are required to file reports on Form N–CSR not later than 70 days after the close of the fund's fiscal half-year.[456] Therefore, our proposal would align the timing of the availability of the information provided online with when reports on Form N–CSR are filed.

In addition, we are also proposing to require a fund (other than a money market fund) to make its complete portfolio holdings, as of the close of the fund's most recent first and third fiscal quarters, available on a website.[457] A fund would have to make this information available within 70 days after the close of each such quarter.[458] A fund's portfolio holdings information for its first and third fiscal quarters would have to remain publicly accessible online for a full fiscal year.[459]

This portfolio holdings information would complement the second and fourth fiscal quarter portfolio holdings information that we also are proposing to require funds to make available on a website (as part of the proposed requirement to make their financial statements available online).[460] The proposed requirement to post first and third quarter portfolio holdings online is therefore designed to provide investors and other market participants with easy access to a full year of complete portfolio holdings information in one location. Funds are currently required to disclose their holdings as of the end of each fiscal quarter in reports on Form N–PORT filed with the Commission (which are available on EDGAR). However, all open-end funds are not currently required to send holdings information as of the end of the first- and third-quarters to shareholders or to make that information accessible on a website other than EDGAR.[461] The proposed requirement would provide centralized access to this information, rather than requiring investors to access the fund's reports on Form N–PORT for each of those periods separately.[462] Also, we anticipate that the portfolio holdings information that funds would make available online would be available in a more user-friendly presentation than the information that funds report on N–PORT in structured data format.

We seek comment on the proposed requirements for website content that funds would have to make available under the proposals, including the following specific issues:

159. Should we, as proposed, require a fund to post online all of the information that would newly be filed on Form N–CSR?

160. How often should funds be required to update the information that appears online? For example, should we require a fund to update its online financial statement information more or less frequently than semi-annually or its online portfolio holdings information more or less frequently than quarterly? Should we instead, for example, require funds to update all information that appears online monthly or as soon as it becomes available? Why or why not?

161. What is the appropriate time period for a fund to have to make the newly required Form N–CSR information available online? Should we, as proposed, allow funds to delay the availability of materials online by 70 days after the end of the relevant fiscal period? Because funds send their annual and semi-annual reports 60 days after the end of the fiscal period, should we similarly adopt a 60-day delay for the online accessibility of information that funds would file on Form N–CSR?

162. How long should each of the newly required Form N–CSR materials have to remain accessible online? Should we, as proposed, require funds to maintain the required information on their websites for a full fiscal year? Is it useful for investors to have this

[452] *See* 2012 Report on Investor Testing of Fund Annual Reports, *supra* footnote 26, at 49 (noting that only 5% of investors surveyed ranked the discussion of board approvals of advisory contracts within the top three most important areas of information provided in shareholder reports).

[453] Fund shareholders also would receive disclosure about the factors that form the basis for the board's approval of the advisory contract if a fund's advisory contract were to require a shareholder vote. In this case, the fund would be required to include in its proxy statement a discussion of the material factors the board considered as part of its decision to approve the fund's investment advisory contract. *See* Item 22(c)(11) of Schedule 14A.

[454] *See infra* sentence accompanying footnote 470 (under our proposal, funds would have the option to satisfy this website availability by posting online its most recent report on Form N–CSR).

[455] *See* proposed rule 30e–1(b)(2)(i) (requiring a fund to disclose Items 7 through 11 of Form N–CSR on a website no later than 70 days after the end of the fiscal half-year or fiscal year of the fund until 70 days after the end of the next fiscal half-year or fiscal year of the fund, respectively).

[456] While rule 30e–1(c) requires a shareholder report to be transmitted to shareholders within 60 days after the close of the relevant period, we believe it is appropriate to align the availability of information online with the filing of Form N–CSR, because the online information would be filed on Form N–CSR.

[457] *See* proposed rule 30e–1(b)(2)(ii).

[458] Under this proposed requirement, the portfolio holdings for each of the first and third fiscal quarters would be required to appear on a website no later than 70 days after the close of each of the first and third fiscal quarters, respectively. For example, a fund with a December 31 fiscal year end would be required to make its complete portfolio holdings for the first quarter ending March 31 of the next year available within 70 days after the end of the first quarter.

[459] Proposed rule 30e–1(b)(2)(ii).

[460] *See supra* Section II.D.1.a.

To conform the format and content of the portfolio holdings schedules for the first and third quarters to those schedules presented in the fund's financial statements for the second and fourth quarters, the proposed rule would require the schedules for the first and third quarters to be presented in accordance with §§ 210.12–12 through 210.12–14 of Regulation S–X, which need not be audited. *See* proposed rule 30e–1(b)(2)(ii).

[461] *But see* rule 30e–3(b)(1)(iv) (requiring funds that rely on rule 30e–3 to make holdings information as of the end of the first and third quarters available on the fund's website). Our proposal would ensure that all investors have convenient access to the most recent four quarters of portfolio holdings in a central location.

[462] *See* Part F of Form N–PORT (requiring N–PORT filers to provide, as exhibits to Form N–PORT, the fund's complete portfolio holdings for the end of the first and third quarters of the fund's fiscal year, as of the close of the period, no later than 60 days after the end of the reporting period).

information available for a full fiscal year? Should we require the information to be available for a period longer or shorter than a full fiscal year (such as two years, or six months)?

163. Should we require only certain Form N–CSR items to be available for a full fiscal year? If so, which items should we require funds to make available for a full year and why? For example, how long should funds be required to maintain the portfolio holdings information that appears online? Should we, as proposed, require a fund to maintain its holdings information as of the close of each fiscal quarter for a full fiscal year? Would shareholders find this useful? As another example, should we require funds to maintain only their financial statements and portfolio holdings information for a full fiscal year, while permitting funds to remove the remainder of Form N–CSR information from their websites on a semi-annual basis?

164. Should we, as proposed, require the portfolio holdings information for the first and third quarters to be presented in accordance with the schedules set forth in §§ 210.12–12 through 210.12–14 of Regulation S–X?

165. Should we require any additional disclosure on fund websites to clarify to investors that portfolio holdings information for the fund's second and fourth quarters is available online as part of the fund's financial statements?

166. Should we adopt a specific format for how a fund should present its first and third fiscal quarter information online? If so, what should it be? For example, should we require this information be posted in XML format or a PDF form?

167. Rather than requiring funds to maintain all four most recent fiscal quarters of portfolio holdings information on fund websites, should we instead require funds to only provide portfolio holdings information for their most recent fiscal quarter (or some other period, such as the fund's most recent two fiscal quarters)? Alternatively, should we require funds to maintain additional portfolio holdings information on their websites, such as the past two or five years of information?

168. As funds would be required to file their portfolio holdings information as of the close of their second and fourth fiscal quarters on Form N–CSR as part of their financial statements, should we also require funds to file the portfolio holdings information as of the close of their first and third fiscal quarters on Form N–CSR? Would it be useful for investors or any other market participants—for example, data aggregators—to have historical holdings data for all of a fund's fiscal quarters filed on a single Commission form (as opposed to having to aggregate this information either from information filed on Form N–CSR and the portfolio holdings filed as exhibits to Form N–PORT, or from information that funds would otherwise be required to make available online on websites other than EDGAR)? Is it easier for data aggregators to collect information from a single Commission form? Does easier access to information by data aggregators increase the flow of information to investors?

169. Instead of requiring complete portfolio holdings information, should we require funds only to disclose a subset of holdings, such as the top ten largest holdings, for each quarter on their websites and/or in the proposed annual report?

b. Accessibility and Presentation Requirements

Under our proposal, funds also would have to comply with certain conditions designed to ensure the accessibility of information that is required to appear online.[463] First, the website address where the required information appears must be specified on the cover page or beginning of the shareholder report and could not be the address of the Commission's electronic filing system.[464] Second, the materials required to appear online would have to be presented in a format convenient for both reading online and printing on paper, and persons accessing the materials would have to be able to retain permanently (free of charge) an electronic copy of the materials in this format.[465] These conditions are designed to ensure that information appearing online pursuant to the proposed rule is user-friendly and allows shareholders the same ease of reference and retention abilities they would have with paper copies of the information.

The rule as proposed also would include a safe harbor provision providing that a fund shall have satisfied its obligations to transmit shareholder reports even if it did not meet the posting requirements of the rule for a temporary period of time.[466] In order to rely on this safe harbor, a fund would have to have reasonable procedures in place to help ensure that the required materials appear on its website in the manner required by the rule and take prompt action to correct noncompliance with these website availability requirements.[467] The proposed rule would require prompt action as soon as practicable following the earlier of the time at which the fund knows, or reasonably should have known, that the required documents are not available in the manner prescribed by the proposed rule.

We are proposing this safe harbor because we recognize that there may be times when, due to events beyond a fund's control, such as system outages or other technological issues or natural disasters, a fund may temporarily not be in compliance with the web posting requirements of the proposed rule.[468] Providing for this safe harbor by rule may obviate the need to provide exemptive relief from the proposed rule's conditions under these very limited and extenuating circumstances, as we have done from time to time.[469]

Finally, we are proposing to provide funds with some flexibility on how online information is presented. Under our proposal, funds would have the option to satisfy the website availability requirement for the information that the fund would newly have to file on Form N–CSR by posting its most recent report

[463] Proposed rule 30e–1(b)(2). These requirements are similar to the accessibility requirements of rule 30e–3 and rule 498 under the Securities Act (permitting funds to use a summary prospectus to satisfy prospectus delivery obligations) and rule 14a–16 under the Securities Exchange Act (requiring issuers and other soliciting persons to furnish proxy materials by posting these materials on a public website and notifying shareholders of the availability of these materials and how to access them).

[464] Proposed rule 30e–1(b)(2)(i) through (iii). The Commission's electronic filing system for fund documents is EDGAR. Rule 498 under the Securities Act includes a similar requirement. *See* 17 CFR 230.498(b)(1)(v)(A).

[465] Proposed rules 30e–1(b)(2)(iv) and (v); *see also infra* footnote 529 (discussing similar provisions in proposed rule 498B(e)(2)(ii) and parallel provisions in current rule 498(f)(3)(ii)).

[466] *See* proposed rule 30e–1(b)(2)(vi). The rule provides that the requirements in paragraphs (b)(2)(i) through (v) of the rule (*i.e.,* the posting requirements) shall be deemed to be met, notwithstanding the fact that the materials required by paragraphs (b)(2)(i) and (ii) of the rule are not available for a period of time in the manner required by the posting requirements, so long as certain conditions are met. *See id.*

[467] *See* proposed rule 30e–1(b)(2)(vi)(A) and (B).

[468] *Compare* rule 30e–3 (providing a similar safe harbor provision for funds that rely on rule 30e–3 for the same reasons) and rule 498(e)(4) of the Securities Act (providing a similar safe harbor under the summary prospectus rule for the same reasons) *with* proposed rule 30e–1(b)(2)(vi).

[469] *See, e.g.,* Exchange Act Release No. 81760 (Sept. 28, 2017) [82 FR 46335 (Oct. 4, 2017)] (exemptive relief for individuals and entities affected by Hurricanes Harvey, Irma, or Maria); Securities Act Release No. 10416 (Sept. 27, 2017) [82 FR 45722 (Oct. 2, 2017)] (Regulation Crowdfunding and Regulation A relief and assistance for individuals and entities affected by Hurricanes Harvey, Irma, or Maria); *see also* Rule 30e–3 Adopting Release, *supra* footnote 14, at n.135.

on Form N–CSR, free of charge, on the website specified on the cover page or beginning of the shareholder report.[470] The proposed rule also provides funds flexibility to post the online information separately for each series of the fund or grouped by types of materials and/or by series.[471] If a fund were to group the information on its website by type of materials and/or by series, the grouped information would have to meet certain presentation requirements, including that the grouped information: (1) Is presented in a format designed to communicate the information effectively, (2) clearly distinguishes the different types of materials and/or each series (as applicable), and (3) provides a means of easily locating the relevant information (including, for example, a table of contents that includes hyperlinks to the specified materials and series).[472] This proposed provision is designed to allow funds to tailor the presentation of information on their websites to the unique aspects of their funds, while presenting the information in a manner that facilitates shareholder access. For example, for a fund complex that includes several funds, each with multiple classes, the fund complex's website could include a master table of contents that contains hyperlinks to the specific materials for each fund and each class.

We seek comments on the proposed website availability requirements, including:

170. The rule as proposed would require that the materials required to be accessible online be publicly accessible, free of charge, at the website specified at the cover page or beginning of the shareholder report, and does not expressly require that the website be the fund's website. Should the rule require that the materials be accessible at the fund's website? Why or why not?

171. The rule as proposed would require that the website information be presented in a format or formats that are convenient for both reading online and printing on paper. Are these proposed format requirements appropriate? Should we instead require that the materials be presented in a format or formats that are human-readable and capable of being printed on paper in human-readable format? Why or why not?

172. Are there any additional presentation or formatting requirements that we should adopt to facilitate investor access to the information that would appear online? For example, should we require that each item appear separately on the fund's website under a relevant header instead of permitting, as proposed, a fund to post its Form N–CSR to satisfy the requirement to make certain information that the fund would file on Form N–CSR available online?

173. The proposed rule would contain a safe harbor for instances in which the online materials are not available for a temporary period of time. Is the safe harbor as proposed appropriate, or should we modify it in any way? For example, should the rule be more prescriptive as to the period of time in which a fund must take action to resolve any issues?

174. Should we, as proposed, provide funds the flexibility to either post the online information separately for each series of the fund or to group the information by types of materials? Why or why not? Should we, as proposed, allow funds to group the material by type or by series? Are there other type of groupings that we should allow? If we allow funds to group the information posted online, should we require the grouped information to meet the presentation requirements discussed above? Are there any additional presentation requirements that we should consider?

3. Proposed Delivery Upon Request Requirements

We are proposing to require funds to send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials discussed above to any person requesting such a copy within three business days[473] after receiving a request for a paper copy.[474] A fund must also send, at no cost to the requestor by email or other reasonably prompt means, an electronic copy of any of the materials discussed above within three business days after receiving a request for an electronic copy.[475] These requirements would apply also to any financial intermediary through which shares of the fund may be purchased or sold. We understand that some investors continue to prefer to receive information in paper format, and therefore our proposal is designed to allow shareholders to have ready access to the fund information that appears online in print format, if they so prefer, or to receive electronic copies of this same information.[476]

We seek comment on our proposal to require funds to provide shareholders, upon request, paper or electronic copies of the information that the proposed rule would require to appear online, including the following issues:

175. Are the proposed delivery upon request provisions appropriate? Is the delivery time frame that the provisions would require appropriate? For example, would a fund experience challenges sending a paper copy of the information to a requesting shareholder within three business days, and if so what would these challenges be? Would other time frames for sending a paper copy be more appropriate, and if so, what should these time frames be?

176. Do funds require additional clarity regarding what would qualify as a ''reasonably prompt means'' of delivering an electronic copy of any of the materials discussed above? If so, what type of guidance should the Commission provide?

177. Should we incorporate a provision in rule 30e–1 that would permit investors the option to notify the fund (or the shareholder's financial intermediary) that the investor wishes to receive paper copies of reports on a going forward basis? Why or why not?

H. Disclosure Item Proposed To Be Removed From Shareholder Report and Not Filed on Form N–CSR

In general, we are proposing that the disclosure items that funds currently have to include in their annual and

[470] *See* proposed rule 30e–1(b)(2)(i).

[471] *See* proposed rule 30e–1(b)(2)(vii).

[472] *See id.*

[473] The three-business-day timeframe also appears in similar existing conditions with respect to requests for copies of other similar documents. Based on staff experience in these other contexts, we believe that three business days generally is an appropriate time frame to send shareholders paper copies of information. *See, e.g.,* rule 498(f)(1) (parallel delivery upon request requirements for funds and intermediaries relying on rule 498); *see also* Instruction 3 to Item 1 of Form N–1A (requiring the SAI and shareholder reports to be sent within three business days of receipt of a request).

[474] *See* proposed rule 30e–1(b)(3)(i); *see also supra* Section II.C. This information includes: The fund's most recent financial statements and financial highlights; changes in and disagreements with fund accountants; matters submitted for a shareholder vote; remuneration paid to directors, officers, and others; a statement regarding the basis for the board's approval of the fund's investment advisory contract; and portfolio holdings information as of the close of the most recent first and third fiscal quarters.

[475] *See* proposed rule 30e–1(b)(3)(ii). The proposed requirement to send an electronic copy of materials may be satisfied by sending a direct link to the online materials; provided that a current version of the materials is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and that, if the recipient desires to retain a copy of the materials, he or she should access and save the materials.

[476] *See supra* footnote 71 (discussing the 2012 Report on Investing Testing of Fund Annual Reports, which stated that there was a lack of consensus among shareholders who participated in the survey regarding their preferences for receiving information about their fund investments in print or electronically).

semi-annual reports would either be retained in those reports (some items in a simplified form, and some items only in the annual report), or instead filed on Form N–CSR and made available online. However, with respect to the management information table that currently appears in funds' annual reports, we are proposing to remove this disclosure item from the shareholder report without requiring its disclosure elsewhere.[477]

Currently, a fund is required to disclose certain information about each of the fund's directors and officers in the annual report (''management information table'').[478] This information is also included in the fund's SAI.[479] The Commission adopted these requirements in order to provide shareholders with basic information about the identity and experience of the fund's directors and to highlight for shareholders any potential conflicts of interests that the fund's directors and officers may have that would be relevant to shareholders.[480]

While we continue to believe that shareholders should have access to information regarding fund directors, we believe it is unnecessary to include this disclosure in multiple disclosure documents. We also preliminarily believe that the management information table is not well suited to the fund's shareholder report because it pertains less directly to retail shareholders' understanding of the operations and performance of the fund and does not lend itself to the type of focused disclosure that the proposed annual and semi-annual reports are designed to include.[481]

We considered whether we should propose to require funds to file the management information table on Form N–CSR or to post it online. We determined, however, not to propose such a requirement because the information included in the management information table does not frequently, or significantly, change from year to year. The most significant changes to this information usually occur when the fund has an election of directors, which would require disclosure of this information for the candidates standing for election in the relevant fund proxy statement. The results of such an election would be reflected in the fund's SAI, which is updated annually. Therefore, we believe that it would be unnecessarily duplicative for funds to also include this information on Form N–CSR.

We seek comment on our proposal to remove the management information table from the annual report, and specifically on the following issues:

178. Should we require funds to include the management information table in the proposed annual report? If so, why? Should this information also be included in the proposed semi-annual report? Is the management information table useful to shareholders to monitor and assess their ongoing investment in a fund? Why or why not?

179. Rather than removing this disclosure entirely from the shareholder report, should we require funds to provide certain data points regarding fund management (for example, any subset of the disclosure about directors and officers that funds currently have to include in the management information table) in their shareholder reports? If so, what information and why, and should it be included in the semi-annual report as well as the annual report? For example, should we require disclosure of other directorships held by the director? Should we require disclosure of information in the management information table only with respect to interested directors? Or should we require a fund to disclose in its shareholder reports only if any changes have occurred during the reporting period with respect to management information (other than changes that the proposed rules already would require funds to disclose in the annual report's discussion of fund changes)?

180. Should we require funds to file the management information table on Form N–CSR? Should we require funds to post this table online? Should we require funds to do both? Would shareholders benefit from having the information in one or both locations? What benefit would this provide to shareholders and other market participants, in light of the fact that this disclosure already appears in the SAI and in proxy statements for the election of directors?

I. Proposed Rule 498B and Treatment of Annual Prospectus Updates Under Proposed Disclosure Framework

1. Overview

In addition to the changes we are proposing to the requirements for fund shareholder reports, we are also proposing new rule 498B, which would address shareholders' continued receipt of annual prospectus updates following their initial investment in an open-end fund. Like the proposed new requirements for funds' shareholder reports, proposed rule 498B uses layered disclosure concepts to tailor funds' required disclosures to the informational needs of different types of investors. Under the proposed rule, investors would continue to receive a prospectus in connection with their initial fund investment, as they do today. Thereafter, a shareholder would no longer receive annual prospectus updates, in light of the fact that the fund's current prospectus would be available online, and the shareholder would be receiving (1) tailored shareholder reports (which would include a summary of material fund changes in annual reports), and (2) timely notifications regarding material fund changes as they occur. This new rule is designed to further the disclosure goals discussed above, including improving fund disclosure by tailoring it to the needs of new versus existing investors, addressing concerns about duplicative and overlapping disclosure materials, and responding to investors' expressed preferences for simplified, layered disclosure that highlights key information.[482]

Legal Operation of Proposed Rule 498B

Specifically, proposed rule 498B would allow a fund to satisfy any obligations under section 5(b)(2) of the Securities Act to have a statutory prospectus precede or accompany the carrying or delivery of a security to the fund's existing shareholders to be satisfied under specific conditions. Those conditions would be: (1) The existing shareholders have been

[477] We are also proposing to remove the requirement that a fund provide a statement in the annual report that the SAI includes additional information about fund directors. This requirement would be replaced by a more general statement on the cover page of the proposed shareholder report that describes how a shareholder can obtain additional information about the fund. *See supra* footnote 137 (discussing this proposed requirement) and proposed Item 27A(b)(4) of Form N–1A.

[478] *See* Item 27(b)(5) of Form N–1A. For each director and officer, a fund must disclose: (1) Name, address, and age; (2) position(s) held with the fund; (3) term of office and length of time served with the fund; (4) principal occupation(s) during the past five years; (5) number of portfolios in the fund complex overseen by the director; and (6) other directorships held by the director.

[479] *See* Item 17(a)(1) of Form N–1A (requiring the inclusion of the management information table in the fund's SAI).

In addition, when a fund solicits a shareholder vote with respect to the election of directors or executive officers, the fund must provide shareholders with a proxy statement that includes information regarding the candidates for election similar to the management information table. *See* Item 22(b) of Schedule 14A.

[480] *See* Independent Directors Release, *supra* footnote 86 at text following n.69.

[481] *See* ICI Comment Letter I (recommending that the management information table not be included in the annual report because it is technical in nature).

[482] *See generally supra* Section II.A.

previously sent or given a prospectus in order to satisfy any obligation under section 5(b)(2) of the Securities Act, such as in connection with their initial investment in the fund; (2) certain specified disclosure materials (including, among other things, current summary and statutory prospectuses) appear online; and (3) existing shareholders receive notices of certain material changes to the fund when those changes occur.[483] The proposed rule also includes delivery upon request and website presentation requirements (which are not conditions of reliance on the proposed rule to satisfy prospectus delivery obligations), including that a fund must: (1) Deliver, in a manner consistent with the requester's delivery preference, a copy of any of the fund documents that the rule would require to be made available online, at no charge to the requester, subject to certain additional conditions; and (2) ensure that those fund documents required to appear online are presented in a format convenient for both reading online and printing on paper, and can be permanently retained in such a format by persons accessing those materials, free of charge.[484]

Proposed Rule 498B and the Legal Responsibility for Misleading Disclosures

The proposed rule would not relieve funds of any legal responsibility for misleading disclosures with regard to the fund documents required to be made available online. In particular, a fund that relies upon the layered disclosure framework in proposed rule 498B would be subject to the same prospectus and registration statement liability and anti-fraud provisions as if the fund had sent or given those prospectuses to existing shareholders.[485] Those liability provisions would apply to the summary and statutory prospectuses required to appear online, together with information incorporated therein by reference.

2. Scope of Proposed New Rule 498B

Delivery Obligations for New Investors and Existing Shareholders

The proposed new rule is designed to tailor delivery obligations for new investors and existing shareholders in open-end funds registered on Form N–1A, to match their respective informational needs. For this reason, proposed rule 498B would continue to require that investors receive a fund prospectus in connection with their initial fund investment, and would affect funds' prospectus delivery obligations only as they apply to existing shareholders. The prospectus provides forward-looking information and acts as the principal selling document for potential investors. It provides certain key information, including disclosures regarding the fund's: (1) Investment objectives; (2) costs; (3) principal investment strategies, principal risks, and performance; (4) investment advisers and portfolio managers; (5) purchase and sale of fund shares; (6) tax information; and (7) financial intermediary compensation.[486] We believe it is important for new investors making an initial investment decision to receive a prospectus that includes this information to inform their investment decisions and facilitate fund comparisons. The proposed shareholder reports would contain similar information to some of those prospectus disclosures where we believe that both new investors and existing shareholders would benefit from receiving this information to make informed decisions about whether to buy, sell, or hold fund shares.[487]

Definition of ''Existing Shareholder'' Under Proposed Rule 498B

For the purposes of proposed rule 498B, an ''existing shareholder'' would generally be a shareholder to whom a summary or statutory fund prospectus was sent or given to satisfy any obligation under section 5(b)(2) of the Securities Act and who has held fund shares continuously since that time.[488] This definition is designed to ensure that after an investor has received a prospectus, that investor would have received notice regarding all subsequent material changes to the fund. The investor would have received notice of these changes either through prospectus amendments or supplements that would be sent or given per current practice to investors that hold fund shares (before the fund relies on proposed rule 498B), or via notices of material changes that proposed rule 498B would require (after the fund relies on proposed rule 498B). We believe that the definition's requirement that the shareholder continuously hold the fund shares is necessary because, if the investor purchased fund shares and then subsequently sold these shares, that investor would not receive notification of material fund changes that occurred when he or she did not hold fund shares. In this case, we believe it would be appropriate for such an investor to once again receive a fund prospectus before falling under a disclosure framework that provides information tailored to continuously existing investors.

For purposes of the proposed rule 498B, an ''existing shareholder'' of a money market fund also would generally be a shareholder to whom a summary or statutory fund prospectus was sent or given to satisfy any obligation under section 5(b)(2) of the Securities Act. However, the requirement that the shareholder must have continuously held fund shares since that time would differ under the proposed rule with respect to shareholders in a money market fund. This difference would recognize the manner in which money market funds are used by investors and practices that we understand are generally common with money market funds. Money market funds are often used as cash vehicles with frequent withdrawals and deposits, and thus a money market fund investor who has sold all shares may often purchase additional shares shortly thereafter. For this reason, we understand that money market funds generally send or give prospectus

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[483] *See* proposed rule 498B(b) and (c). Under our proposal, existing shareholders would also receive annual and semi-annual reports pursuant to proposed rule 30e–1 and proposed Item 27A of Form N–1A.

[484] *See* proposed rule 498B(d).

[485] *See, e.g.,* sections 11, 12(a)(2), and 17(a)(2) of the Securities Act. Under section 11 of the Securities Act, purchasers of an issuer's securities have private rights of action for untrue statements of material facts or omissions of material facts required to be included in the registration statement or necessary to make the statements in the registration statement not misleading. Under section 12(a)(2) of the Securities Act, sellers have liability to purchasers for offers or sales by means of a prospectus or oral communication that includes an untrue statement of material fact or omits to state a material fact that makes the statements made, based on the circumstances under which they were made, not misleading. Section 17(a)(2) of the Securities Act is a general antifraud provision which makes it unlawful for any person in the offer and sale of a security to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. *See also infra* footnotes 514 and 658.

[486] *See* Items 2 through 8 of Form N–1A; *see also* proposed rule 498(b)(2) (requiring a summary prospectus to contain disclosures required by Items 2 through 8 of Form N–1A); 2009 Summary Prospectus Adopting Release, *supra* footnote 10 (stating that the information required in the summary prospectus is key information that is important to an investment decision).

[487] For example, both the proposed annual and semi-annual reports and the prospectus would include fund fee information (the shareholder reports in the form of the expense example, and the prospectus in the form of the fee table). *See supra* Section II.B.2.b and *infra* Section II.H.1.

[488] *See* proposed rule 498B(a)(2).

supplements and amendments to former shareholders who maintain accounts in those funds. Similarly, we understand that money market funds generally apply the same treatment to beneficial owners of such accounts opened through financial intermediaries, such as brokerage clients who have their cash deposited in a money market fund sweep account maintained in the name of the broker but for which the brokerage client is a beneficial owner. Therefore the definition of ''existing shareholder'' would also include a shareholder in a money market fund who has continuously maintained (or been a beneficial owner of) an account with that fund because a fund prospectus has been sent or given to that shareholder.[489]

Scope Excludes Variable Annuity and Variable Life Insurance Contracts

Proposed rule 498B would be available only with respect to funds registered on Form N–1A.[490] Proposed rule 498B would not apply to investors that hold the fund through a separate account funding a variable annuity contract offered on Form N–4 or a variable life insurance contract offered on Form N–6.[491] The Commission recently adopted 17 CFR 230.498A [rule 498A], which provides that prospectus delivery requirements under section 5(b)(2) of the Securities Act are satisfied with respect to those investors if the fund's current prospectuses and certain other documents appear online and certain other conditions are met.[492] Rule 498A, like the disclosure framework for funds that we are proposing, relies on a layered disclosure approach that tailors the disclosure that investors receive to the informational needs of both new and ongoing investors in variable contracts. The conditions associated with the satisfaction of prospectus delivery requirements pursuant to rule 498A are tailored to the unique nature of variable annuity and variable life insurance contracts, and provide disclosures and protections that we believe are more appropriate for investors in those contracts (compared to disclosures and protections associated with the satisfaction of prospectus delivery requirements pursuant to proposed rule 498B).[493] Accordingly, we are not proposing to make proposed rule 498B available for those products.

We seek comment on the scope of our proposed new rule 498B and specifically on the following issues:

181. Is the way that the proposed new rule would address existing fund shareholders' continued receipt of annual prospectus updates appropriate, in light of the other aspects of the rules and rule amendments we are proposing? Would existing shareholders be receiving the right set of information under the proposal, and would such information be delivered or made available in an appropriate manner?

182. Should we make proposed rule 498B mandatory for all funds (instead of a permissive rule, as proposed)? If so, why? Would a permissive rule result in confusion for fund shareholders (because existing shareholders in funds that choose not to rely on the rule would continue to receive annual prospectus updates year over year), or produce any other detrimental effects? What would be funds' primary considerations in determining whether to rely on proposed rule 498B?

183. Would the proposed rule's layered disclosure approach adequately protect existing shareholders who have no or limited internet access or who prefer not to receive information about their investments over the internet?

184. Should we modify the proposed scope of the rule in any way? For example, should the scope be extended to include new investors, or investors that hold the fund through a separate account funding a variable insurance contract? Why or why not?

185. Is the definition for ''existing shareholder'' under the proposed rule appropriate? If not, how should we revise this definition? Is it appropriate that, as proposed, the definition of ''existing shareholder'' includes a shareholder in a money market fund who has continuously maintained (or been a beneficial owner of) an account with that fund because a fund prospectus has been sent or given to that shareholder? Do commenters agree that money market funds generally continue to send or give prospectus supplements to former shareholders, so long as those shareholders maintain (or are beneficial owners of) an account with the money market fund? Are there any general limitations on this industry practice or other limitations that we should add with regard to this provision in the proposed rule? Should the proposed definition of ''existing shareholder'' also include specific provisions for certain types of funds other than money market funds, and if so, what types of funds, and what should these provisions be, and why? For example, should the rule generally reference funds used for cash management purposes, as opposed to (or in addition to) simply referencing money market funds?

186. Proposed rule 498B's layered disclosure framework for existing shareholders would only apply to open-end management investment companies. To what extent, if any, should we extend this aspect of our proposal to other types of investment companies? If we were to do this, should we modify any of the conditions to rely on proposed rule 498B, and if so, how? For example, proposed rule 498B is designed to work in conjunction with our proposed amendments to funds' shareholder reports. How should we modify the rule to apply in contexts where other types of investment companies (for example, registered closed-end funds and BDCs, and ETFs that are organized as unit investment trusts) have different shareholder report requirements than those we propose for open-end management investment companies? Please address the utility and policy implications of implementing a layered disclosure framework for existing shareholders, similar to that which proposed rule 498B would create, in the context of other types of investment companies.

187. If we were to adopt proposed rule 498B, how should we evaluate the effectiveness of the new framework? What methods or approaches should we use to evaluate it, and what areas of the new framework should we focus on in any such review?

3. Conditions To Rely Upon Proposed New Rule 498B

A fund would have to satisfy certain conditions in order to rely on the proposed new layered disclosure framework for existing shareholders, as outlined below. Failure to satisfy any of these conditions would mean that the fund could not rely on proposed rule

[489] *See* proposed rule 498B(a)(2). The proposed rule would further define ''account'' as any contractual or other business relationship between a person and a fund to effect transactions in securities issued by the fund, including the purchase or sale of securities.

[490] *See* proposed rule 498B(a)(2) and (3).

[491] *See* proposed rule 498B(a)(2); *see also generally* Form N–4 [17 CFR 239.17b and 274.11c] and Form N–6 [17 CFR 239.17c and 274.11d].

[492] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27 (adopting rule 498A under the Securities Act); rule 498A(j) (providing a new option to satisfy prospectus delivery requirements for mutual funds available through separate accounts funding a variable contract).

[493] For example, rule 498A permits prospectus delivery requirements for funds serving as underlying investment options under a variable contract to be satisfied if, among other things, an initial summary prospectus is used that provides investors with certain key summary information about those funds. *See* rule 498A(j)(1)(i). This condition is designed to further the use of initial summary prospectuses for variable contracts, and is tailored to enhance the ability of variable contract investors to make informed investment decisions regarding how to allocate their investments in the variable contract. *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27, at Section II.B.2.

498B to satisfy prospectus delivery obligations to existing shareholders.

a. Website Availability of Certain Fund Documents

To rely on rule 498B, a fund would have to make certain materials publicly accessible, free of charge, at the website address specified on the cover page or at the beginning of the fund's annual and semi-annual reports.[494] These materials would include: The fund's current summary and statutory prospectus, SAI, and most recent annual and semi-annual shareholder reports (collectively, the ''rule 498B online fund documents'').[495] This set of documents would be identical to the set of documents that are publicly accessible online for funds currently relying on rule 498. This proposed condition is designed to implement the contemplated layered disclosure approach by ensuring that current versions of the fund's summary prospectus, statutory prospectus, and SAI would be available online so that existing shareholders who did not receive those documents would have ready access to them in a convenient, centralized location, together with other relevant documents for existing shareholders such as the most recent annual and semi-annual shareholder reports.

The reference to ''current'' versions is designed to ensure that amendments or supplements to those documents are included in the rule 498B online fund documents as a condition of reliance on proposed rule 498B. Because funds generally continuously offer and sell shares, funds effectively must continuously maintain a current prospectus to satisfy their ongoing obligations to deliver the fund's prospectus to new investors.[496] Thus, a fund relying on proposed rule 498B would be required to maintain current versions of the rule 498B online fund documents so long as the fund is engaged in a continuous offering.

Proposed rule 498B would not specify a time frame for maintaining current versions of these documents online, but when the document is no longer ''current,'' a fund would have to replace it with the current version.[497]

Under the proposal, a fund would be required to include a summary prospectus as one of the rule 498B online fund documents.[498] While funds' use of a summary prospectus is optional under rule 498, we estimate that currently 93% of all funds use a summary prospectus.[499] Without requiring a summary prospectus, proposed rule 498B's new layered disclosure framework for existing shareholders could result in funds having less incentive to use a summary prospectus.[500] We believe it is important to make available both a summary prospectus and the statutory prospectus to continue the current approach for funds, which gives investors the option to choose the amount and type of information to review.[501] To the extent that existing shareholders might find it useful to review a fund prospectus (for example, in connection with a prospective additional investment in the fund), this condition would continue to make summary information about the fund available online, which we believe investors may be more likely to use and understand than the lengthier statutory prospectus.[502]

Although funds would be required to prepare a summary prospectus to comply with the conditions of rule 498B, a statutory prospectus could still be used to satisfy prospectus delivery obligations under section 5(b)(2) of the Securities Act. We understand that some funds that prepare summary prospectuses still choose to deliver a statutory prospectus under certain circumstances. For example, we understand that certain funds that prepare summary prospectuses still choose to send or give a statutory prospectus when investors are invested in multiple series covered by a single statutory prospectus. Likewise, certain funds may choose to send or give a statutory prospectus for certain product lines where the fund believes it would be helpful for investors to see the full suite of fund options (*e.g.,* target date funds, sector funds, or target risk funds), to the extent that multiple series of the fund are described in a single statutory prospectus.[503]

The proposed rule would include additional conditions regarding the format, or formats, in which the rule 498B online fund documents would be presented on the website. First, the format must be human-readable and capable of being printed on paper in human-readable format.[504] This requirement is designed to help ensure that the information provided will be user-friendly, both online and when printed. This would impose a standard of usability on the online information that is comparable to the readability of a paper document.

Second, the format must provide persons with the ability to move back and forth within documents and between certain documents. Specifically, the format must permit persons accessing the statutory prospectus or SAI to move directly back and forth between each section heading in a table of contents of such document and the corresponding section of the document.[505] Similarly, the format must permit persons accessing the summary prospectus to move directly back and forth between: (1) Each section of the

[494] *See* proposed rule 498B(c)(1); *see also* proposed rule 498(e) (providing requirements regarding website availability of certain fund documents).

[495] The rule 498B online fund documents would not include information required to be filed on Form N–CSR and made available online on a semi-annual basis, as discussed above. *See supra* Section II.D.2. However, this and other information (including information provided in Form N–CSR) that the proposed amendments to rule 30e–1 would require a fund to make available online would have to be made available at the same website address where the rule 498B online fund documents would appear (*e.g.,* the website specified on the cover page or at the beginning of the fund's annual and semi-annual shareholder reports). *See supra* footnote 464 and accompanying text.

[496] *See generally supra* footnotes 11 through 13.

[497] *But see* rule 498(e) (specifying the time frame for posting current versions of the documents it requires to appear online (*i.e.,* on or before the time that the summary prospectus is sent or given and until 90 days after the date the fund security is carried or delivered (in the case of reliance on rule 498(c)) or the date that the communication is sent or given (in the case of reliance on rule 498(d))).

[498] The proposed rule specifies that the current summary prospectus that the fund makes available online must comply with the requirements described in rule 498(b). *See* proposed rule 498B(a)(7).

[499] *See supra* footnote 82.

[500] For example, the option that proposed rule 498B would provide would reduce—or possibly fully eliminate—the cost savings currently associated with printing and mailing a summary prospectus as opposed to the statutory prospectus, because those summary prospectuses would be made available online instead of being printed and mailed. *See also* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at nn.400 and 401 (discussing the cost savings associated with printing and mailing a mutual fund summary prospectus).

[501] The layered disclosure framework represented by the summary prospectus was designed to provide investors with ''ready access to the information that investors need, want, and choose to review in connection with a mutual fund purchase decision.'' *See* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at Section III.B.1. In adopting the summary prospectus framework, the Commission stated: ''We believe that the new rule will result in funds providing investors with more useable information than they receive today in a format that investors are more likely to use and understand.'' *Id.*

Further, commenters have expressed an overall preference for concise, layered summary disclosure. *See supra* footnotes 27 through 30 and accompanying text.

[502] *See* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at paragraph accompanying n.195; Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27, at text accompanying and following n.1038.

[503] *See* rule 498(a)(3) and (b)(4) under the Securities Act (collectively limiting the scope of a summary prospectus to a single fund, or series).

[504] Proposed rule 498B(c)(1)(ii)(A).

[505] Proposed rule 498B(c)(1)(ii)(B).

summary prospectus and any section of the statutory prospectus and the SAI that provides additional detail concerning that section of the summary prospectus; or (2) links located at both the beginning and end of the summary prospectus, or that remain continuously visible to persons accessing the summary prospectus, and tables of contents of the prospectuses and the SAI.[506] These requirements are designed to result in online information that is in a better and more usable format than the same information when provided in paper. Being able to move directly within and between documents would be more efficient than the equivalent task in a paper document (*i.e.,* flipping through multiple pages).

Additionally, documents required to appear online would be subject to retention requirements that would require that persons accessing the rule 498B online fund documents would have to be able permanently to retain, free of charge, an electronic version of such materials in a format that is human-readable and permits persons accessing the statutory prospectus or SAI to move directly back and forth between each section heading in a table of contents and the corresponding section of the document.[507] This condition would provide shareholders with the same retention capabilities they would have with paper copies of the information, while still maintaining the technological enhancements associated with the electronic versions of the materials.

Further, there would be a safe harbor available if the rule 498B online fund documents were temporarily unavailable at the specified website, provided that the fund meets certain conditions.[508] Those conditions would be substantially similar to the conditions associated with the proposed safe harbor provision addressing the website availability of the materials that the fund files on Form N–CSR.[509] As with that safe harbor, we recognize that there may be times when, due to events beyond a fund's control, a fund may temporarily not be in compliance with the web posting requirements of proposed rule 498B. Providing for this safe harbor by rule may obviate the need to provide exemptive relief from the proposed rule's conditions under extenuating circumstances, as we have done from time to time.[510]

These website availability conditions are modeled on the parallel conditions that rule 498 includes, requiring funds that wish to rely on that rule's summary prospectus option to make certain materials available online.[511] We believe that this would create efficiencies for funds that wish to rely on proposed rule 498B, because many of these funds would likely be familiar with these conditions and would already have compliance processes in place pursuant to rule 498 to the extent that these funds choose to send or give summary prospectuses to new shareholders.

We generally seek comment on the proposed website availability requirements, and specifically on the following issues:

188. Are the proposed website availability requirements an appropriate condition to rely on proposed rule 498B? Why or why not?

189. Are the proposed rule 498B online fund documents—the fund's current summary and statutory prospectus, SAI, and most recent annual and semi-annual shareholder reports—an appropriate set of materials for funds to have to make available online in order to rely on the proposed rule? Why or why not? Should this set of materials include any additional materials? Should we modify the proposed rule to reduce in any way the set of materials funds would have to make available online? Are there any revisions or simplifications that we should make to account for the information that the proposed amendments to rule 30e–1 would require a fund to post online? If so, should we make any conforming changes to proposed rule 30e–1? In addition to requiring the fund's most recent annual and semi-annual shareholder report to appear online, should we also include a requirement that the fund (or a financial intermediary through which shares of the fund may be purchased or sold) must have provided existing shareholders with a paper or electronic copy of the fund's most recent annual and semi-annual report as a condition of reliance on the proposed rule? Alternatively, should we include as a condition of reliance that the fund must adopt policies and procedures reasonably designed to ensure delivery of the fund's most recent annual and semi-annual shareholder reports?

190. Is it appropriate effectively to require funds that wish to rely on proposed rule 498B to prepare a summary prospectus that complies with the requirements outlined in rule 498(b)? To what extent is it important to make summary prospectuses available to investors? Should we, as proposed, include a summary prospectus among the list of rule 498B online fund documents? If we do not require a summary prospectus to be included, what would be the effects on investors? Would funds continue to prepare summary prospectuses, and if not, what would be the effects on investors? Under proposed rule 498B, updated prospectuses would generally be posted online instead of being printed and mailed to existing shareholders, and therefore there would be fewer economic incentives for funds to prepare and use a shorter summary prospectus in addition to the required statutory prospectus. If funds cease to prepare summary prospectuses, should we rescind rule 498 since that rule would essentially be moot? If so, what would be the effects on investors?[512]

191. The website availability conditions in proposed rule 498B are modeled on the parallel conditions in rule 498. If we modify any of the website availability conditions in proposed rule 498B that have parallel conditions in rule 498 (and rule 498A), should we similarly modify the parallel conditions of rule 498 and/or rule 498A? Should proposed rule 498B include parallel provisions to any other conditions in rule 498 and, if so, which ones and why? For example, should proposed rule 498B include a provision similar to that in rule 498(b)(3)(iii) specifying when information is conveyed to a person for purposes of 17 CFR 230.159 [rule 159 under the Securities Act]? Are there provisions not included in current rule 498 that we should include in rule 498B?

192. Although we estimate that 93% of funds currently use a summary prospectus, are there significant issues that could prevent a fund from preparing a summary prospectus and that would therefore prevent the fund from relying on the proposed prospectus delivery option? If not, and to the extent that a summary prospectus would provide investors with summary information that they might be more likely to use and understand relative to the broader (and potentially more complex) disclosures in a statutory prospectus, should we require funds relying upon proposed rule 498B to use

[506] Proposed rule 498B(c)(1)(ii)(C).

[507] Proposed rule 498B(c)(1)(iii).

[508] Proposed rule 498B(c)(1)(iv).

[509] *See* proposed rule 30e–1(b)(2)(vi); *see supra* footnotes 479 through 481 and accompanying text.

[510] *See also supra* footnote 469 (discussing similar safe harbor in the context of proposed rule 30e–1).

[511] *See* rule 498(e).

[512] *See, e.g., supra* footnote 501 and accompanying text.

a summary prospectus to satisfy prospectus delivery obligations (as opposed to allowing satisfaction of such obligations via a statutory prospectus)?

193. Are there any aspects of the proposed website availability provisions of proposed rule 498B that should be harmonized, modified or clarified to reflect the different purposes of or interactions between rule 498 and proposed rule 498B? For example, to the extent that proposed rule 498B(c)(1) largely restates the web posting framework reflected in proposed rule 498(e), should proposed rule 498B instead reference, in whole or in part, the requirements of proposed rule 498(e)? If so, how should we address the fact that the website availability requirements of rule 498 are based upon the assumption that a summary prospectus will be sent or given to shareholders, which would not necessarily be the case under proposed rule 498B (because the rules would operate independently of one another, and a fund relying on rule 498B would not also have to rely on rule 498)? For example, rule 498 provides that the documents required to be made available online must appear at the website address specified in the summary prospectus sent or given to investors, whereas under proposed rule 498B existing shareholders would not be sent or given a summary prospectus.

194. Rule 498 specifies the time frame for posting current versions of the documents it requires to appear online.[513] Proposed rule 498B, on the other hand, specifies that ''current'' versions of the required online materials must appear online, and we envision that this requirement would in effect dictate the required time frame for posting (*i.e.,* when the prospectus, SAI, or annual or semi-annual shareholder report is no longer current, it would be replaced online with a current version). Should we revise proposed rule 498B to parallel the provisions in rule 498(e) regarding when the required online materials must be accessible and when they must be removed? If so, how should we address the fact that no prospectuses would be delivered to existing investors under proposed rule 498B (whereas under rule 498, the time frame for web posting is triggered by the delivery of a summary prospectus)?

195. Are there alternate website posting frameworks that would be more appropriate for us to incorporate into rule 498B, rather than—as proposed—a framework that reflects the website posting requirement of rule 498?

b. Notice of Material Changes

Funds generally maintain current prospectuses by filing annual post-effective amendments to their registration statement and, as necessary, supplementing or ''stickering'' the prospectus or SAI to reflect material or other changes to the information disclosed.[514] Rather than bearing the expense of sending a prospectus with each confirmation of an investor's purchase of additional shares, which often occurs on a periodic basis (*e.g.,* monthly), most registrants instead send copies of the new prospectus (or prospectus supplement or sticker) to all investors each time it is updated (or whenever the supplement or sticker is issued).

Under the layered disclosure framework that proposed rule 498B would create, existing shareholders would receive shareholder reports to keep them informed about their ongoing fund investments in lieu of receiving annual prospectus updates. Consequently, existing shareholders would no longer be required to have prospectus supplements or amended prospectuses delivered to them. Therefore, proposed rule 498B includes a requirement that is designed to help ensure that existing shareholders would continue to be informed in a timely manner regarding material changes to the fund (which, for shareholders in funds that are not relying on rule 498B, would otherwise be disclosed in updates to the prospectus). Absent this condition, existing shareholders potentially would not receive notice of a material change to the fund until the next annual shareholder report.[515]

Specifically, if there is a material change with respect to certain topics that the proposed rule specifies, a fund relying on proposed rule 498B would have to send or give existing shareholders notice of that change.[516] This provision would not apply to changes previously disclosed in the fund's most recent annual report to shareholders. The particular topics would be the same types of material changes in the proposed annual report.[517] We believe this approach would have certain benefits over a more principles-based approach, such as a more general requirement that a fund must send notice of ''any material change'' to the fund. Specifically, we believe that the proposed approach would provide more certainty to funds about the types of changes that would necessitate notice to shareholders, and would enhance consistency of such disclosures across funds and across disclosure documents. These types of material changes also generally align with the prospectus disclosure items the Commission requires in summary prospectuses (and in the summary section of statutory prospectuses) and that we understand investors typically use to make investment decisions.[518]

[513] The time frame for posting current versions of the documents is on or before the time that the summary prospectus is sent or given and until 90 days after the date the fund security is carried or delivered (in the case of reliance on rule 498(c)) or the date that the communication is sent or given (in the case of reliance on rule 498(d)).

[514] *See* section 10(a)(3) of the Securities Act (requiring, among other things, that a prospectus used more than nine months after the effective date of a registration statement be updated so that the information contained therein shall not be more than 16 months old); *see also* section 11 of the Securities Act (providing a civil remedy for a registration statement that contains ''an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading.''); rule 408 under the Securities Act [17 CFR 230.408(a)] (requiring registrants to include, in addition to the information expressly required to be included in a registration statement, such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading).

Additionally, funds may supplement or ''sticker'' their prospectus or SAI. *See generally* rule 497 under the Securities Act.

[515] As discussed above, the proposed annual shareholder report would include a discussion of any material changes that have occurred since the beginning of the fund's last fiscal year, or that the fund plans to make in connection with updating its prospectus under section 10(a)(3) of the Securities Act for the current fiscal year, with regard to certain topics. *See supra* Section II.B.2.f. Under our proposal, such disclosure of material changes could be optionally included in semi-annual shareholder reports, but would not be required. *See supra* text accompanying footnote 365.

[516] The fund also would have to file a post-effective amendment to its prospectus or a prospectus supplement with the Commission. *See* rules 485 and 497 under the Securities Act (providing requirements for filing post-effective amendments and prospectus supplements).

[517] *See* proposed rule 498B(c)(2) (referencing Item 27A(g) of Form N–1A with regard to the scope of topics for which notice of material changes would be required (and permitted) to be provided to existing shareholders); *see also* Item 27A(g) of proposed Form N–1A, which would require disclosure of any material changes with regard to:

(1) The fund's name;

(2) The fund's investment objectives or goals;

(3) With respect to material increases, the fund's ongoing annual fees, transaction fees, or maximum account fee;

(4) The fund's principal investment strategies;

(5) The principal risks of investing in the fund;

(6) The fund's investment adviser(s); and

(7) The fund's portfolio manager(s).

The fund also may describe other material changes that it would like to disclose to its shareholders under Item 27A(g) of proposed Form N–1A.

[518] For example, among other things, the proposed notice would require disclosure of changes in the fund's investment objectives or goals, ongoing annual fees, principal investment strategies, and principal risks of investing in the fund, which generally align with summary and

Continued

We understand that investors often use information about these topics to inform initial investment decisions, and similarly we believe that material changes to these items may affect an existing shareholder's assessment of whether to continue to hold, buy, or sell fund shares. In addition funds could disclose other material changes on a discretionary basis, which we believe would provide flexibility to funds to highlight changes that they believe would be of significance to existing shareholders.

To help ensure shareholders receive notice in a timely manner, the proposed rule would require the notice to be provided within three business days of either the effective date of the fund's post-effective amendment filing or the filing date of the prospectus supplement filing, by first-class mail or other means designed to ensure equally prompt receipt.[519] Further, the proposed rule would not specify the form of this notice. Therefore, a fund could satisfy this requirement, for example, by sending existing shareholders the prospectus supplement filed with the Commission, an amended prospectus which reflects the material change, or another form of notice that discusses the change.[520]

Proposed rule 498B would allow ''householding'' of notices of material changes if the notice satisfies rule 154 under the Securities Act.[521] Rule 154 generally provides that funds may deliver a single copy of a prospectus to investors who share the same address, pursuant to certain other requirements.[522] Accordingly, funds that wish to household notices of material changes, based on implied consent, would send a notice to each investor at a shared address stating, among other things, that the investors at the shared address would receive one notice of material change(s) in the future unless the investors provide contrary instructions. In addition, at least once a year, funds relying on the householding provision would be required to explain to investors who have provided written or implied consent how they can revoke their consent, and this explanation must be reasonably designed to reach these investors. We anticipate that a fund would generally choose to provide this explanation in the notices of material changes that it provides under proposed rule 498B, and/or in the annual shareholder report.

We generally seek comment on the proposed condition regarding notice of material changes, and specifically seek comment on the following issues:

196. Is the proposed requirement regarding notices of material changes to the fund an appropriate condition to rely on proposed rule 498B? Why or why not?

197. Are the conditions that would necessitate a notice of material changes appropriate? For example, are the categories of topics identified in proposed rule 498B for which material changes would require notice to existing shareholders appropriate? Are those the topics that are most relevant to fund shareholders and their investment decisions? Does the proposed provision allowing funds to disclose additional material changes on a discretionary basis provide funds with appropriate flexibility to address their individual facts and circumstances? To the extent that the Commission adopts rules that include changes to the conditions that would necessitate disclosure of fund changes in shareholder reports, should the Commission adopt those same changes to the corresponding notice of fund changes that would be required pursuant to proposed rule 498B? In contrast, are there any considerations with regard to the disclosure of fund changes that apply uniquely to the notice contemplated by proposed rule 498B, as opposed to the proposed disclosure of fund changes in shareholder reports?

198. Are the requirements for sending the notice of material changes appropriate? Should the rule, as proposed, require the notice to be provided within three business days of either the effective date of the fund's post-effective amendment filing or the filing date of the prospectus supplement filing? Would a longer or shorter period be appropriate? Should the rule, as proposed, require the notice be provided by first-class mail or other means designed to ensure equally prompt receipt? Is this requirement sufficiently clear, or should additional delivery methods be specified in the rule? Would these requirements, together with the requirements to post online updated prospectuses and other additional information, provide sufficient notice to investors of material fund changes? As an alternative to the proposed requirements for sending the notice of material changes, should the rule instead require a fund to post notices of material changes on its website? Would this approach provide investors with sufficient notice of material fund changes, if notice were not sent (either in paper or electronically) directly to investors?

199. Are there any revisions the Commission should make to this aspect of the proposal? For example, instead of allowing flexibility regarding the form of this notice, should the Commission specify a particular format or presentation? If so, what format and why? Likewise, instead of identifying specific topics that would necessitate notice of material changes to existing shareholders, should the Commission adopt a more principles-based approach (that, for example, only requires a fund to send notices of ''material changes'')? If so, why, and what should the alternative approach require?

4. Other Requirements

a. Delivery Upon Request of Certain Fund Documents

We are proposing to require a fund (or financial intermediary through which shares of the fund may be purchased or sold) to deliver, in a manner consistent with the person's delivery preference, a copy of the rule 498B online fund documents to any person requesting such a copy. The fund or intermediary must send requested paper documents at no cost to the requestor, by U.S. first class mail or other reasonably prompt means, within three business days after receiving the request for a paper copy.[523] The proposed rule would also require a fund or intermediary to send electronic copies of these documents upon request within three business

statutory prospectus disclosures required by Items 2, 3, and 4 respectively of Form N–1A. *Compare* Item 27A(g) of proposed Form N–1A *with* Items 2 through 8 of proposed Form N–1A.

[519] *See* proposed rule 498B(c)(2). If the shareholder does not specify a delivery preference, the proposed rule would require that the notice be provided in paper. However, notices of material changes could also be delivered electronically, consistent with current Commission guidance, if a shareholder elects electronic delivery. *See, e.g., supra* footnote 21.

[520] If a fund sends a separate notice to existing shareholders, the fund must file that notice with the Commission as an attachment to the post-effective amendment or prospectus supplement filed with the Commission regarding that change. *See* rules 485 and 497 under the Securities Act (providing requirements for filing post-effective amendments and prospectus supplements).

[521] *See* proposed rule 498B(c)(2).

[522] Rule 154 provides, among other things, that prospectus delivery obligations may be satisfied if a person delivers a prospectus to investors at the same address, the prospectus is delivered to the investors as a group, and the investors consent to such group delivery. Rule 154 provides certain conditions under which consent may be implied, and further provides that the investors must receive annual notice regarding how they may revoke their consent.

[523] Proposed rule 498B(d)(1)(i); *see also* rule 498(f)(1) (parallel requirements for funds and intermediaries relying on rule 498). The three-business-day timeframe also appears in similar existing conditions with respect to requests for copies of other similar documents. *See, e.g.,* Instruction 3 to Item 1 of Form N–1A (requiring the SAI and shareholder reports to be sent within three business days of receipt of a request).

days.[524] The proposed rule would provide that the requirement to send an electronic copy of a document may be satisfied by sending a direct link to the online document, so long as certain conditions are met.[525] First, a current version of the document would have to be directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent. Second, the email would have to explain both how long the link will remain useable and that, if the recipient desires to retain a copy of the document, he or she should access and save the document.

Collectively, these requirements are designed to help ensure that an investor has prompt access to the required information in a format that he or she prefers. Under our proposal, an existing shareholder would no longer receive annual prospectus updates, or supplements or updates to the prospectus that the fund makes between annual updates, but would be able to review those and other relevant documents online and also receive those documents directly, in paper or electronic format, upon request. Rule 498 would continue to require a fund to send specified fund documents to shareholders upon request, if the fund relies upon rule 498 to satisfy its prospectus delivery obligations or to send communications after the effective date of the fund's registration statement.[526] However, the delivery upon request obligations of rule 498 would not apply with respect to existing shareholders if the fund were to rely on proposed rule 498B.[527] Thus, under our proposal, we are including delivery upon request provisions as conditions of proposed rule 498B that are parallel to the delivery upon request provisions of rule 498.

We seek comment on the delivery upon request provisions of proposed rule 498B, and specifically on the following issues:

200. Are the delivery upon request provisions of proposed rule 498B appropriate? Are they necessary in light of the parallel provisions in rule 498? Is it necessary to have delivery upon request provisions in proposed rule 498B, in light of the fact that the materials subject to these provisions would be required to be available online? Why or why not? Are these considerations different than in rule 498 and/or rule 498A, and should the delivery upon request provisions be retained in rule 498 and/or rule 498A? Why or why not?

201. Should we modify the delivery upon request provisions of proposed rule 498B in any way, and if so, how? For example, should any of the terminology or concepts in the proposed requirement to deliver an electronic copy of a requested document be revised to reflect technological developments or to ensure that they are consistent with the goal of technological neutrality (*e.g.,* email, direct link)? Should persons relying on proposed rule 498B be required to send the rule 498B online fund documents to any requestor within three business days of such request, as proposed? Likewise, if persons relying on proposed rule 498B send a direct link to an online document in response to a request for electronic delivery of that document, should we require a current version of that document to be directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent, as proposed? In either case, would a different time period be appropriate? If we do modify any of the delivery upon request provisions of proposed rule 498B, should we similarly modify the parallel provisions in rule 498 and/or rule 498A?

202. How does the proposed rule affect shareholders' ability to request paper copies of the rule 498B online fund documents? Are there any changes to the proposed rule that we should consider to make the process for requesting paper copies more convenient for shareholders? Should we require funds to make available to shareholders a way to opt into automatic annual delivery of future summary or statutory prospectuses in a paper format without having to specifically request them each year? What would the operational challenges of this approach be? Should we allow funds to give shareholders the option of automatic delivery in paper?

203. The delivery upon request provisions of proposed rule 498B would not apply to the information funds must post online pursuant to proposed rule 30e–1, because proposed rule 30e–1 has its own delivery upon request provisions. Should we revise proposed rule 498B's delivery upon request provisions in any way to account for the information that proposed rule 30e–1 would address, and if so, are there any conforming changes that we should make to proposed rule 30e–1?

b. Convenient for Reading and Printing

In addition, the proposed rule would require the rule 498B online fund documents to be presented in a format that is convenient for both reading online and printing on paper.[528] This requirement is designed to ensure that the information appearing online would be user-friendly, both online and when printed. In addition, the proposed rule would require persons accessing the rule 498B online fund documents to be able to retain electronic versions permanently, free of charge, in a format that is convenient for both reading online and printing on paper.[529] Collectively, these requirements impose on the online information a standard of usability that is comparable to the readability and retention of a paper document.

We seek comment on these ''convenient for reading and printing'' provisions of proposed rule 498B and specifically on the following issues:

204. Are the ''convenient for reading and printing'' provisions of proposed rule 498B appropriate? Are they necessary in light of parallel provisions in rule 498? Should we modify these provisions in any way? If so, how, and should we also modify the parallel provisions of rule 498 and/or rule 498A? Is the phrase ''convenient for reading and printing'' sufficiently clear or should we provide additional guidance or rule text?

205. How would the proposed rule affect shareholders' ability to read and print rule 498B online fund documents? Are there any changes to the proposed rule that we should consider to make reading and printing such documents more convenient for shareholders?

206. The ''convenient for reading and printing'' provisions of proposed rule 498B would not encompass the information funds would be required to post online pursuant to proposed rule

[524] Proposed rule 498B(d)(1)(ii); *see also* rule 498(f)(2) (parallel requirements for funds and intermediaries relying on rule 498).

[525] Proposed rule 498B(d)(1)(ii); *see also* rule 498(f)(1) (parallel requirements for funds and intermediaries relying on rule 498).

[526] The delivery upon request provisions in proposed rule 498 would be essentially identical to the parallel provisions in proposed rule 498B, including the scope of the documents that would be subject to those provisions. *Compare* proposed rule 498(f)(1) *with* proposed rule 498B(d).

[527] *See* proposed rule 498(f)(1).

[528] Proposed rule 498B(d)(2)(i); *see also* rule 498(f)(3)(i) (parallel provision in the rule governing the use of mutual fund summary prospectuses). We recognize that a format that is convenient for reading online might not be the same format that is convenient for printing on paper. A fund could comply with the proposed requirement by presenting the online fund documents on a website in a format that is convenient for reading online, and, separately, making these same documents available on the website in a format that is convenient for printing on paper (*e.g.,* by making a ''printer-friendly version'' available). We understand that funds commonly use this approach in complying with rule 498.

[529] Proposed rule 498B(d)(2)(ii); *see also* rule 498(f)(3)(ii) (parallel provision in the rule governing the use of mutual fund summary prospectuses).

30e–1, because proposed rule 30e–1 contains similar ''convenient for reading and printing'' provisions that would cover that information. Should we revise proposed rule 498B's ''convenient for reading and printing'' provisions in any way to account for the information that proposed rule 30e–1 would require funds to make available online and, if so, are there any conforming changes that we should make to proposed rule 30e–1?

c. Compliance With Other Requirements

The delivery upon request and ''convenient for reading and printing'' requirements would not be conditions of reliance on proposed rule 498B. We are proposing that failure to comply with these requirements would not negate a person's ability to rely on proposed rule 498B to satisfy its delivery obligations under section 5(b)(2) of the Securities Act.[530] Such failure would, however, constitute a violation of proposed rule 498B.

We recognize that a fund could inadvertently violate the delivery upon request and ''convenient for reading and printing'' requirements of the rule. For example, weather issues or other forces outside of the fund's control could present challenges for compliance with the three-business-day deadline. Likewise, whether a particular format is convenient for reading online and printing depends on a number of factors and must be decided on a case-by-case basis.[531] In order to provide greater certainty to market participants and funds who seek to rely upon the rule, these requirements would not be conditions to rely upon proposed rule 498B, as discussed in the paragraph above. We seek comment on this provision of proposed rule 498B and specifically on the following issues:

207. Should compliance with any or all of the proposed delivery upon request or ''convenient for reading and printing'' requirements be a condition of reliance on proposed rule 498B? That is, should failure to comply with these requirements result in a violation of section 5(b)(2) of the Securities Act? Alternatively, should the failure to comply with these requirements be a violation of Commission rules that does not result in an inability to rely on the rule or a violation of section 5(b)(2)?

J. Amendments Narrowing Scope of Rule 30e–3

Subject to conditions, rule 30e–3 generally permits investment companies to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of that availability instead of directly mailing the report (or emailing an electronic version of the report) to shareholders.[532] We are proposing to amend the scope of rule 30e–3 to exclude investment companies registered on Form N–1A, which would be sending tailored annual and semi-annual reports under the proposal. We are also proposing conforming amendments to Form N–1A that would remove the current statement that rule 30e–3 requires to appear on a fund's summary and statutory prospectus and annual and semi-annual reports informing investors of the change in delivery format options if the fund intends to rely on rule 30e–3 prior to January 1, 2022.[533]

When the Commission adopted rule 30e–3 in 2018, it stated that the rule's new ''notice and access'' option for transmitting shareholder reports was intended to modernize the manner in which funds deliver periodic information to investors.[534] The Commission also stated that it believed that the new rule would improve investors' ability to access and use this information (for example, by providing investors with access to at least a full year of complete portfolio holdings information in one location), while reducing expenses associated with printing and mailing that are borne by funds, and ultimately, by their investors.[535] Furthermore, the Commission stated that it continues to search for better ways of providing investors with the disclosure that they need to evaluate funds in which they are considering investing or currently hold shares.[536] As part of these general efforts, the Commission noted that it was issuing—at the same time that it adopted rule 30e–3—the Fund Investor Experience RFC, which was directed at investors regarding ways in which fund disclosure, including shareholder reports, may be improved.[537]

As discussed above, the new proposed disclosure framework considers feedback that commenters provided in response to the Fund Investor Experience RFC and reflects the Commission's continuing efforts to search for better ways of providing investors with the disclosure that they need. The proposed movement away from a notice and access model for open-end fund shareholder report transmission—and towards a model that contemplates direct transmission of concise shareholder reports—reflects our understanding based on responses to the Fund Investor Experience RFC, prior investor testing and surveys, and other disclosure reform initiatives that shareholders strongly prefer layered disclosure.[538] It also reflects a model that certain commenters to the Fund Investor Experience RFC specifically suggested fund investors would find to be useful.[539] Furthermore, the proposed approach reflects the Commission's recent experience with tailoring investment company disclosure requirements to the needs of new versus existing investors.[540] In light of all of these considerations, we preliminarily believe that the proposed disclosure approach represents a more-effective means of improving investors' ability to access and use fund information, and of reducing expenses associated with printing and mailing, than continuing to permit open-end funds to rely on rule 30e–3.[541]

Although funds can generally begin relying on rule 30e–3 on January 1, 2022, funds may rely on rule 30e–3 prior to that date if they include certain legends on fund prospectuses and shareholder reports stating that shareholder reports will eventually be available online and no longer will be sent to shareholders.[542] We required an extended transition period and related disclosures in connection with implementation of rule 30e–3 to alert

[530] *See* proposed rule 498B(d)(3); *see also* rule 498(f)(5) (parallel provision in the rule governing the use of mutual fund summary prospectuses).

[531] *See* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at nn.272 and 273 and accompanying text (relevant factors include the manner in which the online version renders charts, tables, and other graphics; the extent to which the online materials include search and other capabilities of the internet to enhance investors' access to information and include access to any software necessary to view the online version; and the time required to download the online materials).

[532] Rule 30e–3 Adopting Release, *supra* footnote 14.

[533] *See* proposed Form N–1A; *see* rule 498(b)(1)(vi) and (vii); paragraph (a)(5) to Item 1 of Form N–1A; paragraph (d)(8) to Item 27 of Form N–1A.

[534] *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at paragraph accompanying n.18.

[535] *Id.*

[536] *Id.* at paragraph accompanying nn.20 and 21.

[537] *Id.* at n.20 and accompanying text; *see also* Fund Investor Experience RFC, *supra* footnote 8.

[538] *See supra* Section I.B.1.

[539] *See supra* footnote 44 and accompanying text; *see also supra* footnote 100 and accompanying and following text (discussing Investor Advisory Committee recommendation that the Commission develop an approach to funds' shareholder reports that would rely on summary disclosure and layered disclosure principles).

[540] *See supra* footnote 99 and accompanying text.

[541] *See infra* Section III.C.2.d (discussing the estimated reduction of printing and mailing costs under the proposed approach).

[542] *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at text following n.257.

investors that they would no longer be receiving reports in the mail and to provide time for affected investors to tell their fund or financial intermediary that they wished to continue receiving reports in paper, if that was their preference. Under this proposal, in contrast, investors would be receiving this information directly, and so there would not be a need to provide time for investors to express a different preference. Shareholders receiving the annual and semi-annual reports that this proposal contemplates would be receiving tailored information more directly than they would via the rule 30e–3 notice. However, if this proposal is adopted, a fund that has previously relied on rule 30e–3 might wish to communicate to investors the change and could, for example, do so in an annual report sent to investors.[543]

We generally seek comment on the proposed amendments to rule 30e–3, and specifically seek comment on the following issues:

208. The proposed amendments would exclude investment companies registered on Form N–1A from relying on rule 30e–3. Is such exclusion appropriate, in light of our goals of ensuring that all investors in these funds experience the anticipated benefits of the new tailored disclosure framework? Is the proposed approach to the transmission of shareholder reports preferable to the optional shareholder report transmission method that rule 30e–3 currently provides, in terms of the goal of improving investors' ability to access and use fund information, and reducing expenses associated with printing and mailing? Does the proposed approach more closely align with shareholders' preferences than the approach under rule 30e–3? Does the proposed approach represent a better way of providing investors with the disclosure they need to monitor their fund investments and make informed investment decisions? Are there any other considerations we should take into account in evaluating whether to adopt the proposed approach in lieu of continuing to permit open-end funds to rely on rule 30e–3's notice and access model?

209. If we were to adopt the proposed rules and amendments for tailored shareholder reports, should we also allow open-end funds to continue to rely on rule 30e–3?[544] Why or why not? If we were to permit funds to continue relying on rule 30e–3, are there any changes we should make to the proposed rules and amendments in light of this? For example, should we prohibit funds that are relying on rule 30e–3 from also relying on proposed rule 498B?

210. To what extent, if any, should the scope of these amendments be extended to exclude other types of investment companies from relying on rule 30e–3? If we were to do this, how should we modify the rule to apply (or not) in contexts where other types of investment companies (for example, registered closed-end funds and BDCs, and ETFs that are organized as unit investment trusts) have different shareholder report requirements and would not have the layered disclosure framework for existing investors that we propose for open-end management investment companies?

211. Under our proposal, funds planning to rely or currently relying on rule 30e–3 would not be required to provide notice to investors of the proposed amendments to rule 30e–3 because the amendments would result in those investors directly receiving information tailored to their informational needs. Should we require such notice to investors and, if so, to what extent should we specify the form, timing, and substance of such notice?

212. Are there any difficulties that funds that have already begun to rely on rule 30e–3 would encounter in complying with the proposed changes to the scope of rule 30e–3? What difficulties would these be, and what Commission actions could help mitigate these difficulties? Should the Commission, for example, provide a longer compliance period in connection with any adoption of the proposed amendments to rule 30e–3? If so, should we delay the effectiveness of rule 498B for the same period of time to avoid a period where existing shareholders do not directly receive either a shareholder report or an annual prospectus update?

K. Proposed Amendments To Fund Prospectus Disclosure Requirements

We are also proposing several amendments to the content of funds' prospectuses. Specifically, two of the critical elements in prospectus disclosure relate to (1) fees and (2) risks, and we are proposing certain changes that we believe will improve disclosure regarding these topics. Our goal is to provide greater clarity and more comparable information with regard to fees and risks and by doing so, improve investor comprehension and facilitate investors' ability to make informed investment decisions.[545]

1. Improved Prospectus Fee Disclosures

In addition to proposing amendments to fee presentation in shareholder reports, we are proposing improvements to prospectus disclosure about fund fees. These fee presentations are different because the annual report expense presentation is designed to help fund shareholders assess and monitor their ongoing fund investments looking back over the prior period, while the prospectus disclosure helps investors assess a prospective fund investment and is based on the fund's current estimated fees.

When considering investing in a fund, fees and expenses are an important factor investors should consider. Fees and expenses can significantly affect a fund's returns. For example, a fund with higher costs must have higher returns than a fund with lower costs to generate the same performance. In addition, differences in costs that appear to be small, for example on an annual basis, may have a large impact when comparing returns of funds over time. Funds disclose their fees in the prospectus and the annual and semi-annual reports. The presentations in each of these contexts disclose information about fees and expenses in a standardized format to help investors compare that information across funds. Despite these existing disclosure requirements and educational efforts, the degree to which investors understand fund fees and expenses remains a significant source of focus and attention, and the Commission and staff have continually sought to improve investors' understanding in this area.[546]

We are proposing revisions to simplify the presentation of fees and expenses in the prospectus and help increase investor comprehension.[547] These proposed amendments respond to feedback that commenters provided in response to the Fund Investor Experience RFC.[548] We are proposing to

[543] *See supra* footnote 275 and accompanying text.

[544] *See generally* Sections II.B through II.D and requests for comment in *supra* Section II.C.3.b.

[545] *See supra* Section II.A.

[546] *See, e.g.,* Investor Bulletin: Mutual Fund Fees and Expenses (May 12, 2014), *available at https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-mutual-fund-fees-expenses*; How to Read a Mutual Fund Shareholder Report, *supra* footnote 316.

[547] *See* Items 3, 8A, and 27A of proposed Form N–1A. Similarly, we are proposing revisions to simplify fee and expense presentations in annual and semi-annual reports. *See supra* Sections II.B.2.b and II.C.1.

[548] The Fund Investor Experience RFC Feedback Flier solicited feedback on the presentation of fees. In response to the question, ''Do you think funds clearly disclose their fees and expenses?'' 21 of 34 commenters (or 62%) responded that fund fees are

Continued

replace the current fee table in the summary section of the statutory prospectus with a ''fee summary.'' [549] The goal of this simplified fee summary would be to streamline the presentation of fees and provide an easier-to-understand presentation that includes fewer data points to help provide a clearer picture of the total costs of investing in a fund. The current fee table, which includes additional detail, would be moved to the statutory prospectus, where it could be used by investors who want additional details about fund fees to supplement the fee summary.[550] In addition, we are proposing to replace certain terms in the current fee table with terms that we believe investors would more easily understand (these terms would also be used in the fee summary, as applicable).

We are also proposing to permit funds that make limited investments in other funds to disclose AFFE, the fees and expenses associated with those investments, in a footnote to the fee table and fee summary instead of reflecting AFFE as a line item in the fee table and fee summary (as all funds do today).[551] This proposed amendment is designed to enhance consistency of funds' prospectus fee disclosure in recognition that, for funds whose investments in other funds are limited, the fees and expenses of the underlying funds may more closely resemble other costs of investment that are not currently reflected in the prospectus fee table.

a. Current Prospectus Fee Disclosure

Currently, funds must provide two separate presentations of fee information in the prospectus: (1) A table under the heading ''Fees and Expenses of the Fund,'' (the ''fee table'') which shows shareholder transaction fees and annual fund operating expenses, generally in terms of a percentage of the amount invested in the fund; and (2) an example, which is a hypothetical calculation that shows the estimated expenses, in dollars, that an investor will pay for investing in a fund over different time periods.[552]

The fee table currently includes two categories of fees: ''shareholder fees'' and ''annual fund operating expenses.'' Shareholder fees are charges that investors pay directly—they are deducted from the amount that an investor invests in the fund. These charges typically appear as a percentage of the amount invested, and include:

• Sales charges (also known as ''loads''), which generally pay investment professionals compensation for selling shares of a fund to an investor; and

• Other applicable fees related to redemptions, exchanges, and account fees.

Some shareholder transaction fees appear as a dollar amount in the fee table.

Annual fund operating expenses are charges that an investor pays indirectly, because these charges are deducted from fund assets. Annual fund operating expenses appear as a percentage of net assets and generally include:

• ''Management fees,'' which a fund pays to its investment adviser for deciding which investments the fund buys and sells and for providing other related services;

• ''Rule 12b–1 fees,'' which pay for marketing and selling fund shares;

• ''Other expenses,'' which represent various categories, such as auditing, legal, custodial, transfer agency fees, and interest expense; and

• For funds that invest in other funds, AFFE (the fees and expenses of acquired funds).[553]

A fund may also reflect certain waivers that may reduce the fund's total fees.[554]

The example is a hypothetical calculation that shows the estimated expenses that an investor will pay for investing in a fund over different time periods. The goal of the example is to provide a means for investors to compare expense levels of funds with different fee structures over varying investment periods.[555] The example appears in dollar amounts, based on a hypothetical investment of $10,000, and assumes a 5% annual return over the course of 1, 3, 5, and 10 years.[556]

Funds must also include brief disclosure regarding portfolio turnover immediately following the fee table example.[557] Portfolio turnover measures how often a fund buys and sells its investments. A higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes when fund shares are held in a taxable account. The portfolio turnover rate will vary depending on the fund's investment strategy. This disclosure is designed to help investors understand the effect of portfolio turnover, and the resulting transaction costs, on fund expenses and performance.[558]

b. Proposed Fee Summary

We propose to require a simplified fee summary that would streamline the presentation of fees and focus on the total costs or ''bottom line'' of an investment in the fund.[559] The fee summary would be included in the summary section of the statutory prospectus (or, for funds that rely on rule 498, the summary prospectus), which funds provide investors at their initial purchase. The full fee table would be included in the statutory prospectus for those who want the additional level of detail. This is a layered disclosure approach designed to provide investors with concise, key information relating to the fund in the summary fee disclosure, with access to more detailed information elsewhere.[560] The information in the fee summary would incorporate a subset of the information that appears in the fee table, and the fees that appear in the fee

not clearly disclosed. In response to the question ''How could funds improve the disclosure of fees and expenses?'' 21 of 27 commenters (or 78%) responded that fund fee presentations should be simplified.

See also Recommendation of the Investor Advisory Committee Regarding Mutual Fund Disclosure (Apr. 14, 2016), *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-mf-fee-disclosure-041916.pdf* (''Through testing, the Commission could identify ways to simplify and clarify the fee table'').

[549] *See* proposed Item 3 to Form N–1A.

[550] *See* proposed Item 8A of Form N–1A.

[551] *See supra* footnote 148 and accompanying text (noting that a fund's shareholder expense presentation does not reflect AFFE because this is not included in a fund's financial statements); *see also infra* footnotes 605 and 606 and accompanying text (discussing current AFFE disclosure requirements).

[552] *See* Item 3 of Form N–1A.

[553] *Id., see also* 17 CFR 270.12b–1 [rule 12b–1 under the Investment Company Act].

[554] Instruction 3(e) to Item 3 Form N–1A.

[555] *See* Consolidated Disclosure of Mutual Fund Expenses, Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192 (Feb. 4, 1988)].

[556] The example does not reflect purchase charges on reinvested dividends and other distributions (as applicable).

If a fund imposes a fee or other charge when an investor sells (redeems) his or her shares, the fund must disclose two expense examples. The first example shows the estimated expenses of investing in the fund if the investor continues to hold his or her shares throughout the 1-, 3-, 5- and 10-year periods. The second example shows an investor's estimated investment expense if he or she sells (redeems) shares at the end of the 1-, 3-, 5- or 10-year periods.

[557] Item 3 of Form N–1A.

[558] Summary Prospectus Adopting Release, *supra* footnote 10, at Section III.A.3.d.

[559] Proposed Item 3 of Form N–1A; *see also* 2009 Summary Prospectus Adopting Release, *supra* footnote 10, at 41–42 (commenters suggest an abbreviated fee presentation and the Commission stated, ''this idea deserves further consideration, and we will consider it for possible future rulemaking'').

[560] The statutory prospectus, which would include the full fee table, would be available online if the fund relies on rule 498 and delivers a stand-alone summary prospectus. In cases where the fund does not rely on 498, the investor would receive the statutory prospectus on paper and could flip from the fee summary to the full fee table.

summary would be the same as any corresponding fees in the fee table.

We are proposing that the fee summary begin with a narrative statement that the fee summary shows amounts the investor could pay to buy, hold, and sell shares of the fund and that these costs reduce the value of the investment. The narrative statement also would state that the investor may pay other fees, such as brokerage commissions and other fees to financial intermediaries. This would occur, for example, in the case of ETFs or ''clean shares.'' [561] The narrative must state that these charges are not reflected in the fee summary and example. We are not proposing to require that the fee summary and example include these fees, because we understand that financial intermediaries that distribute the fund typically determine such fees, and that the amount may vary across financial intermediaries and distribution channels.

[561] Clean shares are share classes offered without sales loads or any asset-based distribution or sales fees. Investors purchasing and selling clean shares may be required to pay a commission to a broker.

The body of the fee summary would consist of two sections: (1) A summary fee table showing the fund's transaction fees, maximum account fee (if applicable), and ongoing annual fees, and (2) a simplified version of the example. The proposed requirements for the fee summary are shown in the following chart, with current fee table line items shown on the left and corresponding items in the fee summary on the right. We discuss the proposed changes in more detail below.

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Table 5: Comparison of Current Fee Table and Proposed Fee Summary

Current Form N-1A Fee Table	Proposed Form N-1A Fee Summary
Shareholder Fees (fees paid directly from your investment)	***Transaction Fees*** (fees paid each time you buy or sell)
Maximum Sales Charge (Load) Imposed on Purchases (as a percentage of offering price) _____%	Purchase Charge (as a percentage of your investment) [Up to] _____% (Or [up to] $___, if you invest $10,000)
Maximum Deferred Sales Charge (Load) (as a percentage of _____) _____%	Exit Charge (as a percentage of______) [Up to] _____% (Or [up to] $___, if you invest $10,000)
Maximum Sales Charge (Load) Imposed on Reinvested Dividends [and other Distributions] (as a percentage of _____) _____%	Maximum Purchase Charge Imposed on Reinvested Dividends [and Other Distributions] (as a percentage of ______)__ [Up to] _________% (Or [up to] $___ , if you invest $10,000)
Maximum Sales Charge (as a percentage of _____) _____%	Maximum Combined Purchase and Exit Charge (as a percentage of _____) _____%
Redemption Fee (as a percentage of amount redeemed, if applicable) _____%	Early Exit Fee (as a percentage of amount redeemed) [Up to] _________% (Or [up to] ____, if you invest $10,000)
Exchange Fee _____%	Exchange Fee [Up to] __________% (Or [up to] ____, if you invest $10,000)
Maximum Account Fee _____%	[This item moved to its own heading, see immediately below.]
	Maximum Account Fee [Up to] _________% (Or [up to] ____, if you invest $10,000)
Annual Fund Operating Expenses (expenses that you pay each year as a percentage of the value of your investment) Management Fees _____% Distribution [and/or Service] (12b-1) Fees _____% Other Expenses _____% ______________________________ _____% ______________________________ _____% ______________________________ _____%	***Ongoing Annual Fees*** (estimated expenses you pay each year as a percentage of the value of your investment) Ongoing Annual Fees __________ % (Or $___, if you invest $10,000) Ongoing Annual Fees with Temporary Discount _________% (Or $___, if you invest $10,000) *Discount expected to end on [date].

<table>
<tr><td>Acquired Fund Fees and Expenses _____%

Total Annual Fund Operating Expenses _____%</td><td>[Funds that invest 10% or less of their total assets in acquired funds may omit AFFE from the Ongoing Annual Expenses and instead disclose this amount in a footnote.]</td></tr>
<tr><td>Example

This Example is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds. The Example assumes that you invest $10,000 in the Fund for the time periods indicated and then redeem all of your shares at the end of those periods. The Example also assumes that your investment has a 5% return each year and that the Fund's operating expenses remain the same.</td><td>Example

This example may help you understand the costs of investing in the Fund. The example assumes that: (1) you invest $10,000 in the Fund; (2) your investment has a 5% return each year; and (3) the Fund's operating expenses are based on the table above.</td></tr>
<tr><td>1 year 3 years 5 years 10 years
Although your actual costs may be higher or lower, based on these assumptions your costs would be: $___ $___ $___ $___</td><td>1 year 10 years
Although your actual costs may be higher or lower, based on these assumptions, your costs would be: $___ $___</td></tr>
<tr><td>1 year 3 years 5 years 10 years
You would pay the following expenses if you did not redeem your shares: $___ $___ $___ $___</td><td>1 year 10 years
If you sold your shares at the end of the relevant period, your costs would be: $___ $___</td></tr>
</table>

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We seek comment on the proposed new fee summary, and specifically on the following issues:

213. Is the proposed new fee summary appropriate? If so, is it also appropriate for the current full fee table to appear in the fund's prospectus outside the summary section of the prospectus (or, for funds that rely on rule 498, outside of the fund's summary prospectus)? Is this "layered" format appropriate for fee disclosure?

c. Proposed Summary Fee Table

We propose to require a simplified fee summary in the summary section of the prospectus that is designed to improve investor understanding of fees and expenses. The proposed summary fee table would change the current fee table heading "Shareholder Fees" to "Transaction Fees," which we believe is a more plain-English term to describe fees paid each time an investor buys or sells shares of the fund. The line items under the heading "Transaction Fees" would generally encompass the same types of fees that currently appear as line items under the "Shareholder Fees" heading. However, we propose to re-title the line items with more plain-English descriptions, to increase investor comprehension. The proposed line items under the heading "Transaction Fees" that are parallel to line items currently appearing under the heading "Shareholder Fees" include:

- Any "Purchase Charge" to purchase shares, and any "Exit Charge" to sell shares; [562]
- The "Maximum Purchase Charge Imposed on Reinvested Dividends [and Other Distributions]"; [563]
- Any "Early Exit Fee," which would show the redemption fee charged for exiting the fund early (and is distinguished from sales charges, which are covered under the "Exit Charge" line item); [564]
- Any "Exchange Fee," which is a charge that may be imposed on an investor who wishes to move assets from one fund in a fund group to another.[565]

The one line item that currently appears under the heading "Shareholder Fees" that would not appear under the proposed "Transaction Fees" heading is the "Maximum Account Fee." This fee is not a transaction fee, so we are proposing to include it as its own separate heading in the summary fee table.[566]

[562] These line items are currently titled "Maximum Sales Charge (Load) Imposed on Purchases" and "Maximum Deferred Sales Charge (Load)," respectively. *See* Item 3 of Form N–1A; *see also supra* Table 5.

[563] This line item is currently titled "Maximum Sales Charge (Load) Imposed on Reinvested Dividends [and Other Distributions]." *See* Item 3 of Form N–1A; *see also supra* Table 5.

[564] This line item is currently titled "Redemption Fee." *See* Item 3 of Form N–1A; *see also supra* Table 5.

[565] This line item title is the same as the line item title that currently appears in Form N–1A under the heading "Shareholder Fees." *See* Item 3 of Form N–1A; *see also supra* Table 5.

[566] Proposed Instruction 3 to Item 3 of Form N–1A; *see also supra* Table 5.

The fee summary is designed to be a focused presentation of transaction costs and, consequently, we are proposing to instruct funds that any transaction fee equaling $0 should not be included in the summary fee table (and the applicable line item that would appear in Form N–1A should be omitted from the summary fee table).[567] We understand that certain of these fees are not common in practice (*e.g.,* account fees, and increasingly, exit charges). Therefore, even though there are a number of line items that would appear under ''Transaction Fees'' in Form N–1A, we do not expect that most funds would have to include all of these line items in their fee disclosure. As a result, we do not anticipate that the proposed amendments to the form would detract from the focused nature of the fee summary. While we are proposing to consolidate the line items that currently appear under ''Annual Fund Operating Expenses,'' as we discuss in more detail below, we are not similarly proposing to consolidate the corresponding line items that would appear under ''Transaction Fees.'' The imposition of transaction fees depends on whether an investor buys or sells shares of a fund, and will therefore be different for each investor. Accordingly, consolidation of transaction fees would be confusing to an investor who would be unable to determine whether and when he or she would bear those fees.

For each of the line items under the ''Transaction Fees'' heading, and the ''Maximum Account Fee,'' a fund would have to indicate the maximum amount that the fee could be (and state that the fee is ''up to'' the stated amount), if the fund offers sales charge discounts.[568] This presentation would indicate to the reader that the actual sales charge may in fact be lower than the maximum fee disclosed in the fee summary.

The proposed fee summary would change the current fee table heading ''Annual Fund Operating Expenses'' to ''Ongoing Annual Fees.'' This new heading is designed to convey, in plain English, that there are charges that an investor will have to pay each year. The ''Ongoing Annual Fees'' entry in the proposed summary fee table would consist of one line item showing the total amount that the investor would pay annually. Rather than an itemized list of Ongoing Annual Fees, this proposed fee presentation would show a total, ''bottom line'' figure that investors can expect to pay. This is a figure that investors could compare across funds in evaluating the ongoing annual fees associated with each fund.

The proposed summary fee table would, like the current prospectus fee presentation, address expense reimbursements and fee waiver arrangements. If the fund's full fee table in the statutory prospectus were to show an expense reimbursement or fee waiver arrangement (a ''discount''), our proposal would permit an additional line item in the proposed summary fee table: ''Ongoing Annual Fees with Temporary Discount.'' [569] This line item would reflect the amount of ongoing annual fees after any discount, which would more precisely reflect the fees that the investor will pay while the discount is in place.[570] This line item would appear after the ''Ongoing Annual Fees'' line item that does not reflect the discount, because we believe that the ''gross'' figure should be the most prominent, given that expense reimbursement and fee waivers are generally only temporary. Further, we are proposing that this optional Ongoing Annual Fees line item be accompanied by a footnote stating the expected termination date of the discount.[571]

We propose to require that each line item in the summary fee table show the cost investors could pay in dollars assuming a $10,000 investment, as well as the same charge shown as a percentage of assets.[572] Research suggests that investors may better appreciate the impact of costs when expressed as a dollar amount rather than a percentage of assets.[573] While this proposed addition would add some marginal length to the fee summary, we do not believe the length is inappropriate when balanced against the need to communicate the impact of costs to investors effectively. Also, we believe that the proposed tabular presentation of the fee summary is an efficient way to present fee information, including the new dollar-based presentation, in a manner that investors can easily read and understand.[574]

Under the proposal, the ''Ongoing Annual Fee'' amount generally would be the same figure that funds currently report as ''Total Annual Fund Operating Expenses'' (*i.e.,* the fund's expense ratio).[575] In addition to direct and fixed fees, such as management fees, this expense ratio figure currently includes certain performance expenses that are not operating costs reflected in a fund's statement of operations but rather are indirect expenses paid by the fund to generate performance and excludes other such expenses. Performance expenses currently reflected in a fund's expense ratio include AFFE, interest expense, and dividends paid on short sales (although AFFE is not included in the fund's statement of operations).[576] However, the expense ratio does not currently reflect all or even most of the material performance expenses that similarly affect the fund's performance. These include costs associated with the fund's securities lending activities and transaction costs. For example, funds that lend securities generate income from securities lending that is included in the fund's performance. To generate that income, the fund incurs certain expenses, such as fees to the securities lending agent. Further, it is our understanding that the income generated is used to offset the fund's

[567] Proposed Instruction 2 to Item 3 of Form N–1A. However, a multiclass fund that shows a charge and line item because one class imposes a charge may show 0 as the charge for other classes. *Id.*

[568] Proposed Instruction 2 to Item 3 of Form N–1A.

[569] Proposed Instruction 4(b) to Item 3 of Form N–1A.

[570] *See* current Instruction 3(e) to Item 3 of Form N–1A. Based on XBRL data filed on the EDGAR system as of June 1, 2019, of the more than 32,000 fund classes, approximately 53% described a fee waiver in the prospectus fee table.

The proposed line item would be permitted, not required, just as the current provision on expense reimbursements or fee waivers is also permissive. *Id.* We believe that, as a practical matter, a fund would likely choose to disclose the ongoing annual fees with the expense reimbursements or fee waivers because that would be a lower amount than ongoing annual fees without those reductions.

[571] Instruction 4(b) to Item 3 of proposed Form N–1A; *see also supra* Table 5.

[572] Proposed Instruction 2, proposed Instruction 3, and proposed Instruction 4(c) to Item 3 of Form N–1A.

[573] *Cf.* Numerical Information Format and Investment Decisions: Implications for the Disposition Effect and the Status Quo Bias, Rubaltelli et al., The Journal of Behavioral Finance, 2005, Vol. 6, No. 1, 19–26); *see also* Government Accountability Office, Statement of Richard J. Hillman, Director, Financial Markets and Community Investment before the U.S. Senate Committee on Governmental Affairs Subcommittee on Financial Management, the Budget and International Security, ''Mutual Funds: Additional Disclosures Could Increase Transparency of Fees and Other Practices,'' (Jan. 27, 2004), *available* at *http://www.gao.gov/assets/120/110547.pdf*; Justine S. Hastings & Lydia Tejeda-Ashton, Financial Literacy, Information, and Demand Elasticity: Survey and Experimental Evidence from Mexico, NBER Working Paper 14538 (Dec. 2008), *available at https://www.nber.org/papers/w14538* (finding that providing fee disclosures to Mexican investors in peso rather than percentage terms caused financially inexperienced investors to focus on fees).

[574] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27 (requiring a tabular presentation of fees in variable contract summary prospectuses).

[575] The ''Ongoing Annual Fee'' amount may differ from the currently reported ''Total Annual Fund Operating Expenses'' figure to the extent that a fund discloses AFFE in a footnote instead of reflecting that amount in the ''Ongoing Annual Fee'' figure under the proposed amendments. *See infra* Section II.H.1.g.

[576] *See infra* Section II.H.1.g (proposing certain amendments to the scope of AFFE disclosure).

operating costs.[577] Transaction costs are the costs a fund incurs when it buys or sells portfolio investments. These costs include commissions, spread costs, market impact costs, and opportunity costs.[578]

Although a fund's fee table does not reflect securities lending costs and fund transaction costs, a fund's prospectus and SAI include, in locations other than the fee table, other information about these costs. For example, a fund's total return in the prospectus performance presentation reflects these costs.[579] However, an investor reviewing a fund's total return cannot identify whether the fund's securities lending or trading activity had a positive or negative effect on the fund's returns, or the overall costs associated with these activities. In fact, an investor would likewise not be able to ascertain the effect of the performance expenses currently included on the fund's return. However, beyond inclusion in the total return, funds also provide certain information about securities lending income, expenses, and services in their SAIs.[580] Funds also report information about their securities lending activities on Form N–CEN.[581] On transaction costs, prospectuses provide a fund's portfolio turnover rate, and SAIs include the amount of brokerage commissions the fund paid.[582] This information can help investors understand how fund transaction costs may vary among different funds.[583]

While we require funds to provide some information related to their securities lending costs and transaction costs, we understand that there could be benefits in providing investors a more complete or focused disclosure in one location regarding performance expenses. Among other benefits, this could include more transparent cost information that would allow investors to better compare funds. At the same time, there are complexities associated with requiring funds to disclose this information in their prospectus fee tables and in the proposed summary fee table. For instance, what is the best way to include the information in a manner that reflects the corresponding income (or loss) to the fund from the particular activity? Moreover, there are some challenges associated with measuring certain performance expenses, such as transaction costs, including the potential for inconsistent or inaccurate measurements that may confuse or mislead investors.[584] While we are not, at this time, proposing to modify fund prospectus disclosure to address these performance expenses, we are soliciting input on whether and how to include these performance expenses in the fund's prospectus. We note, in particular, our modifications of the shareholder report expense presentation that would take a new approach to the presentation of fees and expenses designed to reflect both the direct, fixed fees as well as the material performance expenses by requiring disclosure of the fund's net performance together with qualitative disclosure on the material expenses to performance.[585]

We seek comment on the proposed summary fee table and on the scope of costs and performance expenses it would reflect, and specifically on the following issues:

214. Is it helpful to investors to require simplified, ''bottom line'' disclosure of the ongoing annual fees they will pay with their fund investment in the fee summary, and more-detailed disclosure about the components of the ongoing annual fees in the full fee table? Is it investor-friendly to provide for one total figure for ongoing annual fees and not permit a fund to include subcategories of such expenses in the fee summary? Should we also consolidate any or all of the transaction fees reported in the proposed fee summary? If so, how should Form N–1A instruct funds to consolidate this information?

215. Is it appropriate, as proposed, that the summary fee table show the fund's transaction fees, maximum account fee, and ongoing annual fees? Are there any other general types of fees and charges that the summary fee table should include? If so, which ones?

216. Is it appropriate not to require in the proposed summary or full fee table or example disclosure of brokerage commissions and other fees to financial intermediaries? Do commenters agree with our approach not to require such fees because financial intermediaries that distribute the fund typically determine such fees, and the amount may vary among financial intermediaries and distribution channels? Are there reasons such fees should be disclosed?

217. Some investors commenting on the Fund Investor Experience RFC expressed interest in a single, ''all-in'' presentation of investment costs (or in personalized fee disclosure more generally) that would reflect both fund and intermediary costs.[586] Other

[577] Funds typically engage a securities lending agent to administer their securities lending programs and compensate these agents with a share of the revenue generated by the lending program. Some funds use securities lending agents that are affiliated with the fund's investment adviser and so this additional revenue may be used to defray some of the fund's direct costs, such as advisory fees. The portion of securities lending revenue paid to the securities lending agent is not reflected in the fund's fee table. Thus, using this revenue to reduce other costs of investing in the fund (where that reduction is reflected in the fee table) may make the fund appear to be less expensive.

[578] Commissions generally refer to charges that a broker collects to act as agent for a customer when executing and clearing trades. Spread costs are incurred indirectly when a fund buys a security from a dealer at the ''asked'' price (which is above current value) or sells a security to a dealer at the ''bid'' price (which is below current value). Market impact costs are incurred when the price of a security changes as a result of the effort to purchase or sell the security. Opportunity cost is the cost of missed trades. For more information about these categories of costs, *see* Concept Release: Request for Comments on Measures to Improve Disclosure of Mutual Fund Transaction Costs, Investment Company Act Release No. 26313 (Dec. 18, 2003) [68 FR 74820 (Dec. 24, 2003)] (''Transaction Costs Concept Release''), at Section II.

[579] Transaction costs are included in a fund's total return because, under generally accepted accounting principles, they are either included as part of the cost basis of securities purchased or subtracted from the net proceeds of securities sold and ultimately are reflected as changes in the realized and unrealized gain or loss on portfolio securities in the fund's financial statements.

[580] *See* Item 19(i)(1) of Form N–1A. Among other things, this includes the dollar amount of fees or compensation paid by the fund for securities lending activities and related services, including fees paid to the securities lending agent from a revenue split, other fees that are not included in the revenue split (such as fees paid for cash collateral management services, administrative fees, and indemnification fees), and rebates paid to the borrower.

[581] *See* Item C.6 of Form N–CEN (requiring a fund to report certain information about its securities lending activity, including: (1) Whether it is authorized to engage in securities lending transactions; (2) whether it lent its securities during the relevant period; (3) certain information about its securities lending agent(s); (4) certain information about any cash collateral manager (who is not also the fund's securities lending agent); (5) types of payments made to securities lending agents or cash collateral managers; (6) the monthly average of the value of the portfolio securities on loan during the relevant period; and (7) net income from securities lending activity).

[582] *See* Item 3 of current Form N–1A; Items 3 and 8A of proposed Form N–1A; and Item 21(a) of Form N–1A. Money market funds are not required to provide annual portfolio turnover rates because many of their investments would already be excluded from the portfolio turnover rate calculation (which excludes securities whose maturities or expiration dates at the time of acquisition were one year or less). *See, e.g.,* Instruction 4(d) to Item 13 of Form N–1A (providing calculation instructions for portfolio turnover rates); *see also* MDFP Adopting Release, *supra* footnote 180, at n.3.

[583] *See, e.g.,* Transaction Costs Concept Release, *supra* footnote 578, at paragraph accompanying n.4.

[584] *See supra* footnote 157 (discussing commenters' views on the challenges associated with transaction cost disclosure in certain jurisdictions).

[585] *See supra* Section II.B.2.b.

[586] *See, e.g.,* Waranowski Comment Letter: Wilhelm Comment Letter; Fowler Comment Letter; Balke Comment Letter; Hague Comment Letter; Woods Comment Letter; Lee Comment Letter. Some commenters did not want to receive more personalized information, including personalized fee information, with a few of these commenters

Continued

commenters indicated that preparing combined or personalized expense information could present some challenges, including the potential need for coordination and information-sharing between funds and intermediaries.[587] Should funds provide more comprehensive fee and expense presentations that account for both fund and intermediary costs? If so, how? For example, are there ways we could better integrate information an investor receives about fund costs in fund prospectuses and information an investor receives about intermediary costs in a Form CRS relationship summary?[588] If so, how? Should any integrated presentation of costs provide illustrative, standardized information about fund and intermediary costs, or should it provide investor-specific information? As another example, if a fund is only or primarily offered through one or more known wrap fee programs, should fund disclosure materials recognize the wrap fee program costs?[589] Would this approach present challenges to funds or intermediaries? If so, what are those challenges, and how could we address them? If we modify fee and expense presentations to account for both fund and intermediary costs, should we also require performance information that recognizes both sets of costs? Would the proposed presentation of fees in terms of dollar amounts, in addition to the currently required percentage amounts, be useful to investors? Should an investment amount other than $10,000 be used? If so, what would be the appropriate amount?

218. Is the narrative statement that we are proposing to precede the fee summary useful and appropriate? Is it helpful to note that fees reduce the value of an investment? Is it helpful to include the statement, as proposed, that investors may pay other fees, such as brokerage commissions and other fees to financial intermediaries, which are not reflected in the summary fee table or the expense example? What changes, if any, should the Commission make to the proposed narrative statement?

219. As proposed, the ''Transaction Fees'' heading in the summary fee table would include specified line items: Purchase Charge, Exit Charge, Maximum Purchase Charge Imposed on Reinvested Dividends, Early Exit Fee, and Exchange Fee. Should the ''Transaction Fees'' heading include all of these line items, or should the Commission limit this fee presentation in any way (*e.g.,* by only permitting a fund to include the purchase charge and exit fee in the summary fee table)? Would the proposed inclusion of all of these line items detract from a focused presentation of transaction costs? Do commenters agree with our expectation that most funds would not include all of these line items, given the proposed instruction that any transaction fee equaling $0 should not be included?

220. Is it appropriate to move the current ''Maximum Account Fee'' line item to its own section in the summary fee table in light of the proposed change of the headings in the fee table from ''Shareholder Fees'' to ''Transaction Fees''?

221. Is it appropriate to require a fund to indicate the highest amount that the fee could be (and to state in its disclosure, as proposed, that a particular fee is ''up to'' that amount if the fund offers fee discounts)? Is this an effective means of indicating that charges may be lower than the maximum fee that the fund discloses in the summary?

222. Is the proposed optional ''Ongoing Annual Fees with Temporary Discount'' line item appropriate? If so, is it also appropriate to require a fund to disclose the gross figure before any such waivers, as proposed? Should these two line items appear adjacent to one another in the summary fee table, as proposed?

223. Should we modify the types of fund costs that funds currently must include in their expense ratios, which funds would disclose in the proposed summary fee table and the full fee table? For example, should the reported expense ratio include any performance expenses—such as securities lending costs or fund transaction costs—that it does not currently include? If so, how should funds measure each newly disclosed category of performance expenses? For example, should securities lending costs be disclosed as a percentage of net assets in the prospectus, based on current disclosure of these costs in the SAI? Alternatively, should performance expenses that are currently included in the expense ratio, such as interest expense or dividends paid on short sales, not be included as a component of the expense ratio?[590] Should the presentation distinguish between direct fees and expenses (*i.e.,* operating expenses) versus performance expenses associated with portfolio management activities that detract from fund performance (such as interest expenses, dividends paid on short sales, AFFE, securities lending costs, and fund transaction costs) and, if so, how?

224. Should a fund's prospectus include additional disclosure about performance expenses, in lieu of including these expenses in the fund's expense ratio? If so, should the disclosure be quantitative or qualitative? If quantitative, how should funds measure each newly disclosed category of fund cost?[591] If qualitative, how should funds concisely describe the fee or expense? Where should the additional information appear? For instance, should funds disclose these costs in a footnote accompanying the fee table and fee summary? As one example, should a fund that qualitatively or quantitatively discloses these costs, if material to the fund, in a footnote to its shareholder report expense presentation under the proposal also qualitatively or quantitatively disclose these costs in a footnote to its prospectus fee table and fee summary?[592] Why or why not? Alternatively, should funds disclose these costs in connection with the prospectus's presentation of fund performance under Item 4 of Form N–1A given they can detract from performance? If so, should they, for example, be required to disclose the top three—or some other number—types of costs that detracted from fund performance?

225. If funds were to provide additional disclosure of securities

expressing particular concern about sharing personal information. *See, e.g.,* Grano Comment Letter; Wilhelm Comment Letter.

[587] *See* ICI Comment Letter I.

[588] *See, e.g.,* Item 3.A of Form CRS (requiring a relationship summary to include summary information about principal fees and costs, a description of other fees and costs, and specific references to more detailed information about fees and costs); Form CRS Adopting Release, *supra* footnote 27.

[589] A wrap fee program generally involves an investment account where an investor is charged a single, bundled, or ''wrap'' fee for investment advice, brokerage services, administrative expenses, and other fees and expenses.

[590] *See, e.g.,* ICI Comment Letter I; Comment Letter of Teachers Insurance and Annuity Association of America (Oct. 31, 2018). These two commenters suggested that funds should no longer be required to disclose interest expense and dividends paid on short sales in prospectus fee tables to: (1) Enhance consistency with the approach to other investing costs, such as transaction costs; (2) provide a more stable measure of ongoing operating expenses; and (3) address concerns that fee table disclosure may focus investors on these costs without explaining that the strategy leading to these costs may also lead to higher net returns. These commenters suggested that disclosure about these costs should appear in fund financial statements and the SAI. AFFE is another type of performance expense currently included in the expense ratio. We discuss and request comment on AFFE disclosure more specifically below. *See infra* Section II.H.1.g.

[591] Unlike a fund's direct costs, many performance expenses are not reported in a fund's financial statements and therefore are not included in the fund's expense ratio.

[592] *See supra* paragraph accompanying footnote 164 (discussing the proposed shareholder report requirement).

lending costs, should they also be permitted and/or required to explain that these costs may improve a fund's performance or, in certain cases, permit a fund to reduce its fees? If so, how could this information best be presented to help investors understand these potential considerations without adding unnecessary length or complexity to the prospectus?

226. If funds were to provide additional disclosure about securities lending costs or fund transaction costs in prospectuses, would this disclosure complement existing disclosure requirements in the prospectus, SAI, and Form N–CEN? Or should we remove or modify those existing disclosure requirements?

227. How would modifying prospectus disclosure to reflect securities lending costs, fund transaction costs, or other performance expenses of a fund's portfolio management activities affect investors? What disclosure modifications would help investors better understand these costs, and conversely, are there any disclosure modifications that would contribute to investor confusion or potential misinterpretation? For example, how would reflecting additional costs in the proposed summary fee table or other quantitative presentation affect investment decisions? If we were to modify the fee presentation in a way that might change a fund's fees, how should we inform investors of the changed requirements or transition to the new requirements in a way that minimizes investor confusion? For example, if a fund's fee under current requirements is 0.50%, but under any new requirements that same fund, operating in the same manner, might have a fee of 0.75%. How can we help investors understand this change?

228. Do investors need more information about how a fund's adviser and its affiliates may receive compensation from a fund, either to better understand fund costs or to understand potential conflicts of interest? For example, some funds use securities lending agents that are affiliated with the fund's investment adviser, which can result in the adviser and its affiliates receiving compensation from a fund in a way that the prospectus fee table does not reflect.[593] As another example, some funds use affiliated broker-dealers when transacting in portfolio investments, which can result in the costs associated with these transactions accruing to affiliated persons of the fund. However, affiliated parties also could be less expensive or provide better services than those provided by unaffiliated parties. If investors would benefit from additional information about compensation that the fund's adviser and its affiliates may receive from the fund, where should this disclosure appear? Should it be quantitative or qualitative? For instance, should funds disclose any revenue paid to the fund's adviser or its affiliates that the fee table does not reflect (*e.g.,* outside of the management fee), as a percent of fund assets or a percent of the fund's total expenses? If so, where should this disclosure appear (*e.g.,* in the prospectus fee table, a discussion accompanying the table, or elsewhere)? Should a fund be permitted or required to disclose why it selected an affiliated service provider instead of an unaffiliated third party?

229. Do investors need additional information to help them compare the fees and expenses of different classes of a fund, or other aspects of a fund investment that differ between classes (*e.g.,* fund performance)? For instance, do investors need more information to help them determine whether they are eligible to invest in a particular class or to compare fees, performance, or other aspects of different classes? If so, how should funds provide this information? How could we help investors better understand class eligibility, particularly when a prospectus (or shareholder report) could only cover a subset of a fund's classes?

230. Are there ways we could reduce complexities associated with funds offering multiple share classes with different fee structures? For example, should funds more clearly present their classes based on investor eligibility? What are the challenges of such an approach?

231. Are there ways we could facilitate an investor's ability to calculate costs and compare different funds? For instance, are there steps we could take to improve investors' familiarity with, or access to, interactive calculators or fund comparison tools?[594]

d. Proposed Simplified Example

In addition, we propose to simplify the example in the fee summary. We are proposing to modify the current narrative that precedes the example slightly, to enhance clarity and brevity.[595] We are also proposing to decrease the number of time periods that the expense example must show. While the current example shows expenses over 1, 3, 5, and 10-year periods, the proposed example would show costs over 1 year and 10 years (or 1 year and 3 years in the case of a new fund).[596] We believe that having fewer time periods would help to simplify the example. At the same time, we believe that requiring a fund to present expenses over 1 and 10 years would provide meaningful disclosure regarding the effect of fees in both the short-term and long-term.[597] We understand that investors typically hold mutual fund shares for a relatively long term. For example, one commenter estimated that two-thirds of fund investors have owned their funds for at least 10 years, and 80% of fund investors have held their fund investments for 5 years or more.[598] The 10-year time frame is addressed to the long-term nature of many fund investments. Investors wishing information for the interim 3 and 5 year periods could find that information in the full fee table.

We considered proposing to incorporate elements of the proposed shareholder report expense presentation into the prospectus in lieu of simplifying the current fee example. As discussed above, the proposed shareholder report expense presentation would disclose costs directly deducted from the fund's assets alongside the fund's return, which in turn would reflect direct costs as well as any performance expenses associated with the fund's portfolio management

[593] *See supra* footnote 577.

[594] For example, FINRA's Fund Analyzer tool can help investors compare the costs of different fund investments. This tool is available at *https://tools.finra.org/fund_analyzer/.*

[595] The current narrative states, ''This Example is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds.'' The proposed narrative states, more simply, ''This example may help you understand the costs of investing in the Fund.'' *See supra* Table 5.

The assumptions in the proposed example relating to the amount invested in the fund, investment return, and the fund's operating expenses are substantively identical to those in the current form, with slight changes designed to state them more simply. In addition, the current form shows, first, expenses if the investor redeems shares at the end of the period, and, second, expenses if the investor does not redeem. The proposal reverses this order because we believe that most investors treat these as long-term investments and so are less likely to redeem their shares.

[596] Instruction 5(a) to Item 3 of proposed Form N–1A; *see also* Item 3 of Form N–1A and Item 8A of proposed Form N–1A; *supra* Table 5.

[597] We are not proposing similar changes for the performance presentation (average annual returns), *see* Items 4(b)(2) and 27(b)(7)(ii) of Form N–1A; Item 27A(d)(2) of proposed Form N–1A) which, in addition, presents information over an interim period (five years), because unlike the expense example where the fees reflected are consistent over the period shown, performance information changes from year-to-year, and we believe it is important to illustrate this variability of returns over an interim period.

[598] *See* Broadridge Comment Letter II.

activities.[599] While the shareholder report expense presentation would not itemize these performance expenses, funds would be required to discuss them qualitatively if material to the fund, in a footnote to the expense presentation.[600] In addition to helping investors understand that a fund has performance expenses that are in addition to a fund's direct costs, the proposed shareholder report presentation has other benefits. For example, the shareholder report presents a fund's fees alongside its performance to help shareholders understand how costs and performance each affect the value of his or her investment.

However, unlike the shareholder report presentation, the prospectus fee table, fee summary, and example reflect hypothetical future expenses (*i.e.,* forward-looking expenses). The prospectus fee presentation—while also based on a fund's financial statements—reflects sales loads, the expenses associated with the fund's investments in other funds, material changes to fund expenses, estimated expenses for new funds, and only certain fee waiver arrangements. These additional fee elements make it difficult to import a presentation similar to the backward-looking shareholder report expense presentation into the prospectus. Also, a shareholder report-type approach based on backward-looking information would be difficult to implement for new funds with short or no performance history. Moreover, because the proposed shareholder report presentation shows expenses for the past fiscal year only, it would not illustrate the long-term effect of fund fees for investors. Given these considerations, we are not proposing to incorporate elements of the proposed shareholder report presentation into the prospectus.

We seek comment on the proposed simplified example, and specifically on the following issues:

232. Is the proposed simplified example presentation appropriate, and would it be useful to investors? Would restricting the example to including expense information for 1- and 10-year periods accomplish the goal of streamlining the fee summary, while providing meaningful disclosure? Should the simplified example include different time periods, and if so, which ones? Is the proposal to require new funds to present expense information for 1- and 3-year periods appropriate?

233. Instead of providing an expense example in the prospectus that shows estimated costs over set intervals of time based on an assumed 5% annual return, should funds base their expense example on the fund's actual historic performance? For example, should the expense example be based on the fund's gross performance over the past 1, 5 and 10 years? If so, how should funds that do not have a long-enough performance history be treated? Would investors benefit from a presentation based on actual rather than hypothetical investment returns? If not, why not?

234. If we were to require using an assumed annual return, as is the case today, would the assumed 5% annual return continue to be appropriate? If not, what is a more appropriate assumption and why? Should the assumption be different for different fund types? For example, should a money market fund have a lower assumed investment return than an equity fund? What are the benefits and drawbacks of using a higher or lower assumed annual return?

235. Instead of the current fee table example and the proposed simplified example in the prospectus, should the examples more closely resemble the expense presentation in the proposed shareholder report? If so, how should the proposed annual report presentation be modified to show the impact of transaction fees (such as purchase and exit charges)? Should the presentation be based only on costs that are directly deducted from fund assets, or all of the fees reflected in the fee table (which may include AFFE)? How should the longer-term impact of fees be reflected? For example, certain fund share classes may be intended for investors with a short time horizon and have higher ongoing annual expenses while other classes may be intended for longer-term investors and have higher up-front charges but over the long run may be less expensive. How should the proposed annual report presentation be modified for use in the prospectus to help distinguish the differences in share classes over both the short and long term? How should new funds that do not have any performance history present an example?

236. Do the different presentations of fund fees and expenses in prospectuses and shareholder reports currently contribute to investor confusion? Would our proposed amendments to fee and expense presentations in both documents increase, reduce, or have minimal effect on the potential for investor confusion? How could we modify the presentations to reduce the potential for investor confusion? For instance, one difference is that the prospectus fee table may reflect the costs associated with investments in other funds (*i.e.,* AFFE) while the annual report does not directly reflect these expenses. For example, a fund of funds may show an expense ratio of 0.20% in its annual report but reflect expenses of 1.00% in its prospectus fee table because the prospectus presentation also reflects the costs associated with investment in other funds. How can we address these differences to minimize the potential for investor confusion?

e. Proposed Fee Summary Formatting Requirements

We are proposing that a fund generally would not be permitted to include footnotes and other extraneous disclosure in the fee summary. We believe this is consistent with the goal of the proposed simplified fee table, which is to streamline the presentation of fees and to provide an easier-to-understand presentation with fewer data points and a clearer picture of the total costs of investing in the fund. We are proposing an exception if omitting a footnote would cause the disclosure to be materially misleading such that the fees borne by investors would be materially higher than presented in the fee summary.[601] For example, if a fund charges a ''fulcrum fee,'' by which the advisory fee varies depending on the performance of the fund, the fee in the current year could be greater than the fee reflected in the fee summary.

We seek comment on the proposed fee summary formatting requirements, and specifically on the following issues:

237. Is it appropriate to limit the use of footnotes in the fee summary, as proposed? Are there circumstances where footnotes would be useful to investors that the proposed instruction would not permit?

f. New, Simplified Fee Terminology

In addition to proposing to create the fee summary, we are also proposing changes in some terminology that funds would use to describe fees in the prospectus. These changes are designed to enhance the presentation of fees and investors' understanding of these fees. The changes we are proposing in the terminology used in the fee table would flow through to the fee summary, as applicable. Plain language plays an important role in investors' ability to use and understand fund disclosures.[602] The terminology changes we propose

[599] *See supra* Section II.B.2.b.

[600] *See supra* footnote 164 and accompanying text.

[601] *See* proposed Instruction 1(c) to Item 3 of Form N–1A.

[602] *See* Fund Investor Experience RFC, *supra* footnote 8, at Section II.C.1.

are designed to be more consistent with everyday language and to effectively communicate the nature of the fees the fund charges. Unless otherwise discussed in this release, although we are proposing to substitute some terms that would appear in Form N–1A and funds' prospectuses, we intend the meaning of these terms to remain unchanged. Below is a chart showing captions and terms that the current fee table references, along with their replacements.[603]

TABLE 6

Current caption or term, and Form N–1A location	Proposed caption or term, and Form N–1A location
Shareholder Fees (Item 3)	Transaction Fees (Items 3 and 8A).
Annual Fund Operating Expenses (Item 3)	Ongoing Annual Fees (Items 3 and 8A).
Maximum Sales Charge (Load) Imposed on Purchases (Item 3)	Purchase Charge (Items 3 and 8A).
Maximum Deferred Sales Charge (Load) (Item 3)	Exit Charge (Items 3 and 8A).
Redemption Fee (Item 3)	Early Exit Fee (Items 3 and 8A).
Total Annual Fund Operating Expenses (Item 3)	Ongoing Annual Fees (Items 3 and 8A).
Distribution [and/or Service] (12b–1) Fees (Item 3)	Selling Fees (Item 8A).
Fee Waiver [and/or Expense Reimbursement] (Item 3)	Temporary Discount (Items 3 and 8A).
Total Annual Fund Operating Expenses After Fee Waiver [and/or Expense Reimbursement] (Item 3).	[Total] Ongoing Annual Fees with Temporary Discount (Items 3 and 8A).

We seek comment on the proposed fee terminology, and specifically on the following issues:

238. Are the proposed changes to the current terminology helpful? Are there other terms currently used in the form that could be simplified? Would our proposed changes in terminology contribute to more understandable disclosure?

g. Acquired Fund Fees and Expenses

We are also proposing to modify the current prospectus fee table requirements by refining the scope of funds that must disclose AFFE as a component of bottom-line annual fund operating expenses. Specifically, the amendments we are proposing would permit funds that invest 10% or less of their total assets in acquired funds to omit the AFFE line item in the fee table and instead disclose the amount of the fund's AFFE in a footnote to the fee table and fee summary. Funds that invest more than 10% of their total assets in acquired funds would continue to present AFFE as a line item in the prospectus fee table and include AFFE in the bottom-line expense figure, as they do today.

Currently, any fund that invests in acquired funds—which include investments in other investment companies and in private funds that would be investment companies but for sections 3(c)(1) or 3(c)(7) of the Investment Company Act—must disclose the amount of fees and expenses the fund indirectly incurs from these investments in the fund's fee table.[604] This disclosure generally appears as a separate AFFE line item in the fee table, although a fund may reflect AFFE in the ''other expenses'' fee table line item (without separately identifying the AFFE amount) if AFFE does not exceed 0.01 percent, or one basis point, of the fund's average net assets.[605] As a result, regardless of the size of a fund's investments in acquired funds, AFFE currently is a component of the line items that, summed together, produce the fund's bottom-line annual fund operating expenses (which we propose to rename to ''total ongoing annual fees'') in its fee table. AFFE disclosure is designed to provide investors with a better understanding of the costs of investing in a fund that invests in other funds, which have their own expenses that may be as high as—or higher than—the acquiring fund's expenses.[606] As recognized above, AFFE is a performance expense that is not an operating cost reflected in a fund's statement of operations. Instead, it is an indirect expense paid by the fund to generate performance.[607]

Some commenters on the Fund Investor Experience RFC and on the Commission's 2018 proposal related to fund of funds arrangements have expressed certain concerns about current AFFE disclosure requirements.[608] For example, several commenters have suggested that fee table disclosure should focus on a fund's operating expenses and should not incorporate AFFE.[609] Some of these commenters have expressed concern that combining operating expenses with indirect AFFE costs may confuse investors by over-emphasizing AFFE costs and that combining expenses in this way does not align with a fund's financial statements.[610] Several commenters have also expressed particular concern about treating BDCs as acquired fund investments and have recommended excluding BDC investments from AFFE.[611] One of these

[603] This chart shows proposed captions or terms for the fee tables in Items 3 and 8A of proposed Form N–1A. These changes in terminology flow through to other sections of the proposed form. *See* Items 4, 12, 13, 17, 23, 26, 27A.

[604] The AFFE amount is composed of the following types of fees and expenses attributable to the fund's investment in acquired funds over the relevant period: Each acquired fund's total annual operating expense ratio, any transaction fees the fund paid to acquire or dispose of shares in any acquired fund (*e.g.,* sales loads or redemption fees), and incentive allocations where the fund allocates capital to the adviser of the acquired fund (or its affiliate) based on a percentage of the fund's income, capital gains, and/or appreciation in the acquired fund. Form N–1A provides calculation instructions for determining the AFFE amount. *See* Instruction 3(f) to Item 3 of current Form N–1A.

[605] See id.

[606] *See* Fund of Funds Investments, Investment Company Act Release No. 27399 (June 20, 2006) [71 FR 36640 (June 27, 2006)], at text accompanying n.67.

[607] *See supra* Section II.H.1.c.

[608] *See* Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) [84 FR 1286 (Feb. 1, 2019)] (''Fund of Funds Proposing Release''), at nn.176–179 and accompanying text. Comments on the Fund of Funds Proposing Release cited in this release are available at *https://www.sec.gov/comments/s7-27-18/s72718.htm*.

[609] *See, e.g.,* Comment Letter of Investment Company Institute (Apr. 30, 2019) on File No. S7–27–18; Comment Letter of PIMCO (May 1, 2019) on File No. S7–27–18; Comment Letter of Invesco Ltd. (Apr. 30, 2019) on File No. S7–27–18 (''Invesco Fund of Funds Comment Letter''); Comment Letter of Chapman and Cutler LLP (May 2, 2019) on File No. S7–27–18 (''Chapman and Cutler Fund of Funds Comment Letter''); Comment Letter of SIFMA Asset Management Group (May 2, 2019) on File No. S7–27–18.

[610] *See, e.g.,* Chapman and Cutler Fund of Funds Comment Letter; Invesco Fund of Funds Comment Letter.

[611] *See, e.g.,* Comment Letter of Small Business Investor Alliance (Apr. 30, 2019) on File No. S7–27–18 (stating that AFFE disclosure distorts an acquiring fund's expense ratio and has disproportionately harmed BDCs because this disclosure requirement has led to funds no longer investing in BDCs and several index providers dropping BDCs from their indexes); Comment Letter of TPG Specialty Lending, Inc. (May 2, 2019) on File No. S7–27–18; Comment Letter of Coalition for Business Development (May 2, 2019) on File No.

Continued

commenters suggested that the Commission remove AFFE from the prospectus fee table and require funds to disclose AFFE amounts in an accompanying footnote to address these concerns.[612] On the other hand, other commenters have expressed general support for AFFE disclosure.[613] Two commenters stated that AFFE disclosure provides investors with necessary information to understand the layering of fees in a fund of funds arrangement and to compare similar funds.[614]

We agree that AFFE information is valuable and can help investors to understand the layered fees and expenses associated with a fund of funds arrangement and to compare similar funds. We believe this information is particularly important when a fund substantially invests in other funds such that the fund is, in essence, managed significantly at the acquired fund level. At the same time, we are sensitive to the concern that requiring every fund to include AFFE in its fee table as a component of the fund's ongoing annual fees reduces consistency with the fund's financial statements and may in some cases magnify the presentation of AFFE by requiring fee table disclosure of this discrete category of performance expenses even though the fund does not invest significantly in acquired funds and may incur other indirect costs that are not reflected in the fee table. We understand these factors may contribute to investor confusion.

As a result of these considerations, we are proposing to permit funds that invest 10% or less of their total assets in acquired funds to omit the AFFE line item in the fee table that is a component of the fund's bottom line ongoing annual fees, and instead disclose the amount of the fund's AFFE in footnotes to the fee table and fee summary. The proposed amendments are designed to maintain the benefits of transparent AFFE disclosure for investors and to provide more consistent disclosure of information related to indirect costs. Where a fund invests in other funds to a limited extent—10% or less of its total assets (consistent with statutory limits on funds' investments in other funds)—the fees and expenses of the acquired funds may more closely resemble other indirect costs, such as transaction costs, and these types of indirect costs each would not be reflected in the prospectus fee table.[615] Specifically, the proposal would provide for more consistent treatment with other indirect costs by removing AFFE as a line item that represents a component of the bottom line ongoing annual fees figure in such a fund's fee table and fee summary, while retaining information about the amount of AFFE in footnotes accompanying the fee table and fee summary.

Conversely, under the proposal, a fund that invests more than 10% of its total assets in acquired funds would continue to be required to disclose AFFE as a line item in its prospectus fee table and would continue to reflect this amount in its bottom line ongoing annual fees. We believe it is appropriate to retain the current AFFE disclosure requirement for this category of funds because, when investing in acquired funds is a significant component of a fund's investment strategy, AFFE can represent a significant part of the fund's ongoing annual fees and is more akin to an ongoing operating expense the fund would incur if it were managing the acquired fund's underlying portfolio investments directly. For example, we understand that certain funds, such as certain target date funds, have no, or very low, management fees at the acquiring fund level, with the majority of fees borne at the acquired fund level. For these funds, a fee table with no AFFE line item has the potential to confuse investors in that it could show 0 or close to 0 ongoing annual fees.

To determine whether a fund may omit AFFE from its prospectus fee table, the proposal would use a 10% threshold based on the average of the fund's investments in acquired funds (excluding money market funds) divided by the fund's total assets.[616] To calculate the 10% threshold, a fund would:

• Divide the fund's investments in acquired funds (excluding money market funds) by the fund's total assets at the end of each of the 12 months that make up the prior fiscal year. This will produce 12 data items (or fewer if the fund has not been in operation for a full fiscal year).

• Calculate the average of the 12 data items. If this figure is 10% or less, the fund may omit AFFE from its prospectus fee table and instead include the prescribed footnote.

The 10% threshold is based on an average of month-end holdings, rather than holdings as of the end of the fiscal year or another single date, to smooth fluctuations, such as those related to market events and investor flows. It also would help mitigate any gaming concerns by limiting funds' ability to reduce their investments in other funds to stay below the 10% threshold only on a given date. The month-end calculation is also aligned with Form N–PORT requirements for month-end portfolio data, which may reduce the need for funds to collect new data under the proposal and facilitate verifications that a fund may disclose AFFE in a footnote.[617] We also propose to omit all money market fund investments from the 10% calculation.[618] We understand

S7–27–18; Comment Letter of Alternative Credit Council (May 2, 2019) on File No. S7–27–18 (stating that AFFE disclosure overstates the costs of a fund investing in a BDC because it essentially requires double-counting of a BDC's operating expenses and that because AFFE disclosure has effectively resulted in funds no longer investing in BDCs, it has restricted the market for BDCs, limited institutional ownership of BDCs, and reduced investor choice); ICI Comment Letter I.

[612] *See* Comment Letter of Dechert LLP (May 2, 2019) on File No. S7–27–18.

[613] *See, e.g.,* Comment Letter of Anonymous (Dec. 28, 2018) on File No. S7–27–18; Comment Letter of Kauff Laton Miller LLP (May 13, 2019) on File No. S7–27–18 (''Kauff Laton Fund of Funds Comment Letter''); Comment Letter of Law Office of William Coudert Rand on File No. S7–27–18 (May 14, 2019) (''Rand Fund of Funds Comment Letter'').

[614] *See* Kauff Laton Fund of Funds Comment Letter; Rand Fund of Funds Comment Letter.

[615] *See* section 12(d)(1)(A)(iii) of the Investment Company Act [15 U.S.C. 80a–12(d)(1)(A)(iii) (10% limit on total assets of an acquiring fund that may be invested in all acquired funds); *see also supra* paragraph accompanying footnote 577 (discussing indirect costs that the prospectus fee table does not reflect). Congress established the 10% limit in part based on a concern about the potential for excessive fees when one fund invests in another. *See* Fund of Funds Proposing Release, *supra* footnote 608, at n.14 and accompanying text. While funds may under certain circumstances invest more than 10% of their total assets in acquired funds under other statutory provisions, Commission rules, or exemptive orders, we are proposing to use the 10% figure from section 12(d)(1)(A)(iii) as a threshold for determining when a fund's investments in acquired funds is a significant component of its investment strategy such that fee table disclosure of AFFE is needed.

[616] *See* proposed Instruction 4(f)(ii) to proposed Item 8A of Form N–1A. We are also proposing to remove the language in current Instruction 3(f)(i) to Item 3 of Form N–1A that provides, ''In the event the fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Fund, the Fund may include these fees and expenses under the subcaption 'Other Expenses' in lieu of this disclosure requirement.'' We believe that our proposal to permit funds that hold limited acquired fund investments to disclose AFFE in a footnote instead of the fee table would result in funds never, or very rarely, qualifying to disclose AFFE under the ''other expenses'' line item under this instruction.

[617] Because a new fund would not have this monthly data, a new fund should base the 10% threshold on assumptions of the percent of acquired funds in which the new fund expects to invest. *See* proposed Instruction 4(f)(vii) to proposed Item 8A of Form N–1A. Currently, new funds make similar assumptions about expected acquired fund investments for purposes of disclosing the amount of AFFE. *See* Instruction 3(f)(vi) to Item 3 of current Form N–1A.

[618] The Commission previously has determined that money market funds, which did not exist in 1940, do not raise the concerns underlying section 12(d)(1) of the Investment Company Act and has permitted funds to invest an unlimited amount of

that funds, including funds that invest significantly in other funds, typically invest in money market funds for cash management purposes rather than to pursue the fund's investment objective through an investment in another fund.[619]

While the calculation of the 10% threshold would be based on monthly data, the proposal would not require a fund to assess whether it may disclose AFFE in a footnote to the fee table on a monthly basis or to update its prospectus fee table based solely on such monthly assessments. Instead, a fund would assess whether it is below the 10% threshold when it otherwise must update its prospectus fee table (*e.g.,* at the time of its annual prospectus update) based on information as of its prior fiscal year.[620] However, if there is a material change to the amount a fund invests in other funds (such as due to a change to the fund's strategies) or its AFFE, we would expect the fund to update its prospectus to reflect the change just as it would for any other material changes to its annual ongoing fees.[621] We propose to permit, rather than require, a fund with limited acquired fund investments to disclose AFFE in a footnote to limit burdens on funds that would prefer to consistently disclose AFFE in the fee table instead of monitoring the amount of acquired fund investments to determine eligibility for the footnote-based approach. Moreover, we recognize that a fund that tends to maintain acquired fund investments close to the 10% threshold may prefer to disclose AFFE in the fee table each year instead of moving the disclosure back and forth between the footnote and the fee table, which could lead to investor confusion.

The footnote that a fund eligible to use the new AFFE presentation would be permitted to use would have to include: (1) The amount of the fund's AFFE, and (2) a statement that the fund's total ongoing annual fees in the table and fee summary would be higher if these fees and expenses were included.[622] We believe this requirement would provide investors with AFFE information they could use to compare funds and would help them understand the relevance of a fund's AFFE amount. The footnote to the fee table would be tagged using XBRL, so the AFFE amount would continue to be available not only to investors viewing the prospectus and summary prospectus, but also to data aggregators and other market participants.[623]

In addition to amending the scope of funds that must disclose AFFE in the prospectus fee table and fee summary, we are proposing two technical amendments to AFFE disclosure requirements. First, we propose to correct the manner in which a fund that has been in operation for less than a full year calculates AFFE. Specifically, rather than calculating this figure using the number of days in the fund's fiscal year, we propose to require such a fund to use the number of days since the date the fund made its first investment.[624] We believe this would result in a more accurate calculation for new funds. For example, if a fund made its first investment six months ago and owned other funds for that entire period, the current AFFE calculation would provide a figure that is half of the actual fees attributable to the underlying funds. This is because the numerator would be based on the six-month holding period (*e.g.,* 182 days) and the denominator would be based on the full fiscal year (*i.e.,* 365 or 366 days). Under our proposed revision, both the numerator and denominator would be based on the same period of time. We understand that some new funds already use the number of days since the fund made its first investment in the denominator.

Second, we propose to amend an optional footnote instruction. This instruction permits a fund to explain that the total ongoing annual fees in the fee table do not correlate to the ratio of expenses to average net assets provided in the fund's financial highlights.[625] We propose to amend this instruction to permit funds to explain that the total ongoing annual fees in the fee table do not correlate to the expense presentation in the fund's shareholder reports.[626] We believe the shareholder report would be a better point of comparison under the proposal because shareholders would receive the shareholder report directly, while a fund's financial highlights would be available online and delivered upon request.

We request comment on the proposed amendments to AFFE disclosure, including the following:

239. Should we amend AFFE disclosure requirements to allow funds that invest 10% or less of total assets in acquired funds to omit the AFFE amount from the fee table and instead disclose the amount of a fund's AFFE in a footnote to the fee summary and fee table, as proposed? If not, why not? Instead of permitting funds with limited acquired fund investments to disclose the amount of a fund's AFFE in a footnote, should we require all such funds to disclose AFFE in a footnote? Would a mandatory approach reduce, increase, or have no effect on the potential for investor confusion relative to the proposed approach? Should we permit or require all funds, regardless of the magnitude of their acquired fund investments, to include AFFE in a footnote?

240. Should we modify the proposed method for determining whether a fund may disclose AFFE in a footnote instead of in its bottom line ongoing annual fees in the fee table and fee summary? If so, how? Should we modify the 10% threshold? For example, instead of requiring a fund to measure the monthly average of its investments in acquired funds (excluding money market funds) during the prior fiscal year, should we base the 10% calculation on the amount of acquired fund investments as of the end of the fiscal year, at the time of acquiring a security issued by an acquired fund, at the time the fund amends its prospectus, or on some other basis? What are the advantages and disadvantages of these different approaches? Is it appropriate to exclude money market funds from the 10% threshold? If not, why not? Should we reduce or increase the 10% threshold? For example, should the threshold be 5%, 25%, or 50% of total assets? Alternatively, instead of using a

their uninvested cash in money market funds rather than directly in short-term instruments. *See* 17 CFR 270.12d1–1 (rule 12d1–1).

This proposed instruction does not change the current treatment of money market funds with respect to the calculation of AFFE.

[619] Some funds, such as target date funds, may hold money market funds consistent with stated asset allocation objectives (particularly when they reach or pass their stated target date). However, these same funds tend to invest significantly in other funds as well, making them ineligible to move AFFE disclosure to a footnote under the proposal.

[620] This is consistent with the calculation of ongoing annual fees which is also based on amounts incurred during the fund's most recent fiscal year. *See* proposed Instruction 4(d) to Item 3 of Form N–1A and proposed Instruction 4(d) to proposed Item 8A of Form N–1A.

[621] *See* proposed Instruction 4(d)(ii) to Item 3 of Form N–1A and proposed Instruction 4(d)(ii) to proposed Item 8A of Form N–1A.

[622] *See* proposed Instruction 4(d) to Item 3 and proposed Instruction 4(f)(ii) to proposed Item 8A of Form N–1A.

[623] *See infra* Section II.H.1.i (discussing structured data requirements for the prospectus fee table).

[624] *See* Instruction 4(f)(ii) to proposed Item 8A of Form N–1A.

[625] *See* Instruction 3(f)(vii) to Item 3 of current Form N–1A.

[626] *See* Instruction 4(f)(viii) to proposed Item 8A of Form N–1A. Under the proposal, funds could still refer to the financial highlights in this optional footnote if they chose to do so.

See also discussion at *supra* footnote 430 and accompanying text (stating that Item 13 of Form N–1A requires a fund to include financial highlights information in its prospectus, and discussing funds' ability to incorporate this information into the prospectus by reference so long as the fund delivers the shareholder report with the prospectus (*i.e.,* for new shareholders)).

threshold based on the percent of assets invested in acquired funds, should we use a different approach? Please explain.

241. Are there any gaming concerns associated with the proposed approach to AFFE disclosure that may potentially harm investors? For example, are there concerns that funds would hold large investments in acquired funds, but engineer their investments so that they are below the proposed 10% threshold at the time of calculation? If so, how would this harm investors, and how could we modify the proposed approach to mitigate gaming concerns?

242. Should we, as proposed, instruct new funds to base the 10% threshold on assumptions of the percent of acquired funds in which the new fund expects to invest? If not, what would be a more appropriate approach for new funds, and why?

243. Should the proposed footnote to the fee table and fee summary provide different or additional information than the amount of the fund's AFFE and a statement that the fund's total ongoing annual fees in the table and fee summary would be higher if these fees and expenses were included? If so, what information should the footnote provide? Should we require funds to provide quantitative or qualitative information about other performance costs, including securities lending costs and transaction costs of the fund buying and selling portfolio investments, in the same or similar footnotes (for example, taking an approach that is the same as or similar to the approach we are proposing for the shareholder report expense presentation)? Why or why not?

244. Should we amend the scope of acquired fund investments that AFFE reflects? Instead of requiring a fund to include fees and expenses from any investment in an investment company or a company that would be an investment company but for section 3(c)(1) or (c)(7) of the Investment Company Act, should we broaden or narrow the scope? For example, we understand that currently funds do not treat investments in the following vehicles that may rely on the exclusion in section 3(c)(7) as acquired fund investments: Structured finance vehicles, collateralized debt obligations, or other entities not traditionally considered pooled investment vehicles. Should some or all of these investment types be treated as acquired fund investments for purposes of AFFE disclosure requirements? Are there other categories of investments that AFFE should or should not include?

245. Instead of permitting funds that invest 10% or less of their total assets in acquired funds to omit the AFFE amount in the fee table and replace it with a footnote, should we permit or require all funds to exclude 10% of their total assets in acquired funds from the AFFE calculation in order to treat all funds consistently?

246. As another alternative, should we permit a fund to disclose AFFE in a footnote to the fee table, instead of in the fee table itself, if the amount of the fund's AFFE is below a certain threshold? If so, what threshold should we use for determining when a fund's AFFE is sufficiently small, relative to its other expenses, such that the fund does not need to include AFFE in the fee table? For example, should we permit a fund to disclose AFFE in a footnote to the fee table if the amount of its AFFE was less than a specific percentage of its annual ongoing fees (excluding AFFE) or average net assets? If so, what specific threshold should we use, and why? Would this approach improve the utility of the disclosure for investors? How would this approach affect the consistency of the fee table disclosure, relative to the proposed approach? For example, would it result in AFFE amounts moving in and out of the fund's ongoing annual fee figure at a greater or lesser frequency than the proposal?

247. Commenters have expressed particular concern about AFFE disclosure's impact on BDC investments.[627] Would our proposed amendments address these concerns? Why or why not? If not, how could we address these concerns? Should we, as some commenters suggested, allow funds to exclude fees and expenses from BDC investments in AFFE disclosure? If so, why should BDC fees and expenses be excluded when other types of acquired funds that may have similar strategies, nature of expenses, and portfolio holdings are included?

248. Should we amend AFFE disclosure requirements in Forms N–2, N–3, N–4, and N–6 for other types of investment companies? If so, should we modify these requirements in the same manner as the proposed amendments to Form N–1A, or are there changes we should make to recognize differences between registrant types?

249. As proposed, should we remove the current instruction allowing funds to disclose AFFE under the ''other expenses'' line item of the fee table if the fund's AFFE does not exceed 0.01 percent of average net assets? If not, under what circumstances would this instruction be useful?

250. Would the proposed amendments to AFFE disclosure result in any unintended consequences for investors, funds, or other market participants? Please explain.

251. As proposed, should we modify the AFFE calculation for funds that have been in operation for less than a year to use the number of days since the date the fund made its first investment instead of the number of days in the fund's fiscal year? Is there a different approach we should use to improve the accuracy of the AFFE calculation for these funds? Should we similarly amend the AFFE instructions in Forms N–2 and N–3?

252. As proposed, should we permit funds that disclose AFFE in their fee tables to include a footnote distinguishing the fund's ongoing annual fees from its shareholder report expense presentation? Consistent with the proposal, should funds continue to be able to refer to differences between the prospectus fee table and financial highlights in this optional footnote as well? If not, why not?

h. Portfolio Turnover

In addition, we propose to include portfolio turnover disclosure in both the fee summary and the full fee table and to modify the narrative that accompanies the portfolio turnover rate to enhance clarity and provide for more concise disclosure.[628] We believe that this disclosure helps investors understand the effect of portfolio turnover, and the resulting transaction costs, on fund expenses and performance. However, we believe the current disclosure is too lengthy, and that this length does not contribute to (and may detract from) investor understanding. Therefore, we propose to reduce the length of the prescribed disclosure without changing its meaning. We believe this change will make the portfolio turnover disclosure more inviting and usable by investors. We are including this disclosure in both the fee summary and the fee table because we continue to believe this information is necessary to understand the full context of fund fees and should therefore accompany any prospectus fee presentation. Below is a chart showing the current disclosure, along with its replacement.

[627] *See supra* footnote 611.

[628] *See* proposed Items 3 and 8A of Form N–1A.

Current disclosure and Form N–1A location	Proposed disclosure and Form N–1A location
Portfolio Turnover The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes when Fund shares are held in a taxable account. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was % of the average value of its portfolio. (Item 3).	*Portfolio Turnover.* Portfolio turnover measures how often a fund buys and sells its investments. A higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes. The Fund's annual portfolio turnover rate is ___%. (Items 3 and 8A).

We seek comment on the proposed approach to portfolio turnover disclosure, and specifically on the following issues:

253. Are the proposed changes to the portfolio turnover disclosure helpful? If not, what improvements, if any, would commenters recommend?

i. Structured Data Requirements

Finally, we are proposing minor amendments to the Form N–1A General Instructions regarding the requirements for funds to submit interactive data files (formatted XBRL) containing their risk/return summary information, which includes objectives, fees, principal strategies, principal risks, and performance disclosures.[629] Because, as discussed above, we are proposing to move the current full fee table from Item 3 of Form N–1A to new Item 8A of Form N–1A, we are proposing a conforming change requiring funds to tag the data elements in Item 8A instead of in Item 3 (as they currently do). We continue to believe that market participants should have access to the full fee table in structured data format. We are not proposing to require that funds tag the proposed fee summary in addition to the full fee table because the fee summary is derived from the full fee table, so requiring funds to tag both presentations would be redundant.

We seek comment on the proposed amendments to the Form N–1A General Instructions regarding funds' structured data requirements, and specifically on the following issues:

254. Are the proposed amendments to the Form N–1A General Instructions regarding the use of structured data appropriate? Given that the full fee table in the fund's statutory prospectus would continue to be tagged, and the information included in the summary fee table would be the same as that in the statutory fee table, would it also be necessary to require a fund to tag the summary fee table? If so, why?

255. Funds must submit their prospectus fee tables in a structured format, but other fee information generally is not in a structured format. Is there any other fee-related information in fund disclosure, including in financial statements, that funds should submit in a structured format (such as in Form N–CEN)? If so, what are these items and what are the benefits of structured disclosure for these items?

2. Improved Prospectus Risk Disclosures

We are proposing to revise the current provisions and instructions in Form N–1A requiring that a fund disclose in its prospectus the principal risks of investing in the fund.[630] Funds' prospectus disclosure requirements are designed to help promote informed investment decisions by providing investors with information that is easy to use and readily accessible. The revisions and additions we are proposing are designed to further improve fund prospectus risk disclosure by making this disclosure clearer and more specifically tailored to a fund.

Items 4 and 9 of Form N–1A address disclosure of the principal risks of investing in the fund. Both of these items are designed to provide user-friendly, clear and succinct disclosures. Item 4 requires that the fund summarize the principal risks in the summary section of the statutory prospectus (or the summary prospectus, to the extent the fund is relying on rule 498).[631] The information that a fund currently provides in response to Item 4 must be based on the information that the fund provides in response to Item 9(c) of Form N–1A, which requires that the registrant disclose the principal risks of the fund. Item 9 was designed to allow for fuller information about fund risks, but still requires that a fund only disclose principal risks.

We believe that some funds are providing risk information in their prospectuses and summary prospectuses that is often long, but does not achieve the policy goals of these current disclosure requirements.[632] This length may not contribute to (and may sometimes detract from) investors' understanding of the principal risks of an investment in a particular fund. Because of its length, this disclosure also may not be user-friendly, particularly to retail investors. Commission staff has recently published its observations regarding some of the issues that the staff has observed with respect to funds' risk disclosures.[633] The staff document would be withdrawn if the Commission's proposal is adopted. The amendments that we are proposing are designed to respond to the issues that we have observed in some funds' prospectus risk disclosure and to promulgate additional requirements that we believe would be beneficial to funds and investors.

We are proposing to add to the General Instructions to Form N–1A a provision that would preclude a fund from disclosing non-principal risks in the prospectus.[634] While Items 4 and 9 of Form N–1A currently specify that funds describe "principal risks," there is not a requirement that risk disclosure appearing in the statutory prospectus be

[629] *See* General Instruction C.3.g(i), (iv) to Form N–1A (requiring funds to submit an Interactive Data File for any registration statement or post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2, 3, or 4); *see also* General Instruction C.3.g to proposed Form N–1A.

[630] *See* Item 4(b)(1)(i) of Form N–1A; proposed Item 4(b)(1)(i) of Form N–1A; proposed Item 9(c) of Form N–1A.

[631] For purposes of the discussion in this section, the term "summary prospectus" refers both to the summary section of the statutory prospectus, as well as a summary prospectus prepared by a fund in reliance on rule 498. *See supra* footnote 6.

[632] For example, researchers have found that investment company risk disclosure in the summary prospectus has nearly doubled in length since 2010. These researchers state that the principal risk section accounted for 31% of the disclosure in 2010 and steadily climbed to 48% in 2018 (with more than double the average word count from 2010). Anne M. Tucker and Yusan Xia, Investing in the Dark: Investing Company Disclosure Qualities, Content and Compliance, 27–28 (2019), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3436952.*

[633] *See* ADI 2019–08, *supra* footnote 67. This document encourages funds to order their risks by importance and better tailor their principal risk disclosure.

[634] *See* General Instruction C.3.(a) to proposed Form N–1A.

limited to the fund's principal risks.[635] We believe that including this disclosure in the prospectus may overwhelm other important information. The proposed provision is designed to streamline risk disclosure in the prospectus, focus on essential information, and clarify current form requirements that emphasize the disclosure of ''principal'' risks. Funds would remain free to disclose non-principal risks in the SAI.

We are proposing several new requirements for principal risk disclosure that appears in the summary prospectus. First, we are proposing to insert the term ''briefly'' before the current requirement that the fund summarize the principal risks.[636] This proposed change is designed to address the concern that, for some funds, principal risk disclosure in the summary prospectus is overly lengthy. We have observed significant variations in funds' approaches to principal risk disclosures in the summary. For example, some funds describe just a few principal risks in less than 200 words, while other funds in the same category list 20 or more principal risks using more than 2,500 words. Some of the longest disclosures the staff has seen in the summary section exceed 7,000 words. Indeed, the staff has observed that some funds simply repeat risk information that appears later in the statutory prospectus instead of summarizing it.[637] The proposed change is designed to emphasize that principal risk disclosure that appears in the summary prospectus should be concise and succinct, with more detailed risk information to appear later in the statutory prospectus.

We are proposing an additional new instruction to the summary prospectus principal risk disclosure requirement stating that funds should describe principal risks in order of importance, with the most significant risks appearing first.[638] We believe that this presentation would highlight for investors the risks that they should consider most carefully. We have observed that it is currently common for funds to describe their principal risks in alphabetical order.[639] However, we believe that this approach could obscure the importance of key risks, especially when a fund discloses many principal risks. For example, a real estate fund that describes principal risks alphabetically may describe a number of less-relevant risks before describing the key risks of real estate investments. In some extreme cases, this presentation format could result in a fund's key risks being obscured to such an extent that it could render the disclosure potentially misleading. We understand that there are different ways of determining the relative significance of principal risks. The proposed new instruction therefore specifies that a fund may use any reasonable means of determining the significance of risks. For example, a fund could take an approach to ordering its principal risks in a way that considers the likelihood and possible severity of any loss resulting from each risk. This proposed new instruction would include an explicit statement that a fund should not describe principal risks in alphabetical order.

Finally, we are proposing an additional instruction to the summary prospectus principal risk disclosure requirement that instructs a fund to, where appropriate, tailor its risk disclosures to how the fund operates rather than rely on generic, standard risk disclosures.[640] We have observed that some prospectuses for funds within a fund group commonly include generic, standardized risk disclosures for every fund in the group. Such standardized disclosure may be appropriate under certain circumstances. For example, ''market risk,'' could be a principal risk for all funds in a complex. However, there are other circumstances in which generic, across-the-board risk disclosures for all funds in a fund complex may not be appropriate. For example, we do not believe it would be appropriate for a fund to include credit risk disclosure that discusses the heightened risks associated with below-investment-grade or distressed securities when the fund does not hold, or expect to hold, these types of investments.

We are also proposing amendments that would affect funds' principal risk disclosures in the statutory prospectus, as well as the summary prospectus. Specifically, we are proposing to add three new instructions relating to Form N–1A Item 9(c), which requires a fund to disclose the principal risks of investing in the fund in its statutory prospectus.[641] Because Item 4 of Form N–1A requires a fund to summarize the principal risks of investing in the fund, based on the information the fund provides in response to Item 9(c), the proposed new instructions to Item 9(c) would also affect the disclosure that a fund provides in the summary prospectus in response to Item 4.

Proposed Instruction 1 states that in determining whether a risk is a principal risk, a fund should consider both whether the risk would place more than 10% of the fund's assets at risk (''10% standard'') and whether it is reasonably likely that a risk will meet this 10% standard in the future. Today, funds may be using varying standards to determine whether a risk is a principal risk. This makes it difficult for an investor to compare risks among funds. This proposed instruction is designed to clarify the meaning of the term ''principal risk'' by providing quantitative guidance as to what a fund should consider when it determines whether a risk is a principal risk. For example, a fund that invests 10% or more of its assets in a particular sector, such as financial services or consumer staples, could determine that it should disclose a ''principal risk'' relating to its investments in that sector. A fund also could determine that it should disclose a ''principal risk'' in some circumstances when the fund uses less than 10% of its assets to make investments, when those investments may subject the fund to risk of loss of more than 10% of its assets, for example, a fund that engages in short sales or derivatives trading.

The ''reasonably likely'' language is designed to reflect that a risk may not be a principal risk when first disclosed but may become a principal risk over time, due to changing conditions or the fund changing its strategies.[642] For example, interest rate risk for a fixed income fund could increase depending on government action that affects interest rates. As another example, a fund investing in U.S. equities may change its strategy to include foreign investments and thus may introduce foreign investment risk. Therefore, if the fund considers it reasonably likely that a risk will become a principal risk in the future, it should consider whether to

[635] *See* ADI 2019–08, *supra* footnote 67. The Form N–1A General Instructions currently prohibit the disclosure of non-principal risks in the summary prospectus (or summary section of the statutory prospectus), but no instructions currently prohibit this disclosure from appearing in other parts of the statutory prospectus. *See* General Instruction C.3.(b) to Form N–1A (''A Fund may include, except in response to Items 2 through 8, information in the prospectus or the SAI that is not otherwise required.'').

[636] *See* Item 4(b)(1)(i) of proposed Form N–1A. In both the current item and the proposed item, the summary of principal risks is based on information that the fund provides in response to Item (9).

[637] *See* Fund Investor Experience RFC, *supra* footnote 8, at Section II.D.2.

[638] *See* Instruction 2 to Item 4(b)(1) of proposed Form N–1A.

[639] *See* ADI 2019–08, *supra* footnote 67.

[640] *See* Instruction 3 to Item 4(b)(1) of proposed Form N–1A.

[641] *See* Instructions 1 through 3 to Item 9(c) of proposed Form N–1A.

[642] The ''reasonably likely'' standard is a standard already used to describe principal risks in Items 4(b)(1)(i) and 9(c) of Form N–1A.

include it in the prospectus to help ensure that when it becomes a principal risk, investors will be informed. On the other hand, the proposed ''reasonably likely'' language reflects our view that risks that are not likely to become principal risks should be excluded from a fund's principal risk disclosure, consistent with the purpose of streamlining the prospectus.

Proposed Instruction 2 is addressed to a fund investing in other funds (an ''acquiring fund'' and an ''acquired fund,'' respectively), commonly known as a ''fund of funds.'' [643] We have observed that many acquiring funds disclose all of the principal risks of each of their acquired funds as part of their principal risk disclosure. In some cases, acquiring funds list over 70 principal risks. The proposed instruction states that, in the case of acquiring funds, risks should be included only if they are principal risks of the acquiring fund, and that a principal risk of an acquired fund should not be included unless it is a principal risk of the acquiring fund. In the case of an acquiring fund, disclosing the risks of acquired funds could obscure information relating to principal risks of the acquiring fund. We believe that the key consideration for an investor relates to the principal risks of the fund in which the investor is actually buying shares, *i.e.,* the acquiring fund, and the proposed instruction is therefore designed to help an investor focus on principal risks that are most applicable to his or her investment. A principal risk of an acquired fund might be a principal risk of the acquiring fund when, for example, the acquiring fund invests a substantial portion of its assets in an acquired fund (or the risk is shared by multiple acquired funds).[644]

Proposed Instruction 3 is addressed to funds whose strategy provides the freedom to invest in different types of assets at the manager's discretion. This could occur if, for example, the manager has discretion to change the fund's strategy. These funds are commonly known as ''go anywhere'' funds. This instruction would provide that, if the fund's strategy permits the manager discretion to invest in different types of assets, such fund must disclose that an investor may not know—and has no way to know—how the fund will invest in the future and the associated risks. This proposed instruction would make that principal risk explicit in the fund's disclosure.

We seek comment on the proposed amendments to prospectus disclosure requirements regarding funds' principal risks, and specifically on the following issues:

256. Is the proposed amendment in the General Instructions to Form N–1A to preclude disclosure of non-principal risks in the statutory prospectus appropriate? Would the proposed amendment further the goal of streamlining risk disclosure in the prospectus and focusing on essential information? Should the proposed amendment to the General Instructions instead use another standard in precluding the disclosure of certain less-central risks in the fund's prospectus, such as prohibiting the disclosure of ''non-material'' risks? If so, what should this alternative standard be and how should we define it?

257. Is the proposed amendment to Form N–1A Item 4(b)(1)(i), which specifies that a fund should ''briefly'' summarize principal risks, appropriate? Would this proposed amendment help emphasize the Commission's goal of making the principal risk disclosure in the summary prospectus concise and succinct?

258. Is the proposed new instruction to Item 4(b)(1)(i), providing that a fund in a complex should describe principal risks in order of importance, appropriate? Is it helpful to expressly provide in the proposed instruction that a fund may use any reasonable means to determine the significance of the risk? Should the proposed instruction be more prescriptive as to how a fund should determine the significance of risk, and if so, what method for determining risks' significance should the instruction specify (for example, should the proposed instruction specify ways in which a fund could—or must—quantify likelihood and severity of risk, and if so what methods for quantification should the instruction specify)? Should additional guidance be provided? Is it appropriate to expressly state in the proposed instruction that a fund should not list its principal risks in alphabetical order? Are there circumstances where an alphabetical order presentation may be appropriate and if so which ones?

259. Should the number of principal risks that funds disclose in the summary prospectus be subject to any limits? Should we require a minimum number of risks to be disclosed? For example, would five be sufficient? Should we impose a maximum number of risks that may be disclosed in the summary? For example, would more than twenty-five be too many?

260. Is the proposed new instruction to Item 4(b)(1)(i), providing that a fund should tailor its risk disclosure to how each particular fund in the complex operates, appropriate? Does this proposed instruction provide adequate guidance as to tailoring risk disclosure? Should additional guidance be provided?

261. With regard to Form N–1A Item 9(c), is the proposed new instruction on the factors a fund should consider in determining whether a risk is a principal risk useful and appropriate? Would it give investors adequate information regarding the risks they should consider in determining whether to purchase shares of the fund? Is the proposed standard for considering whether a risk is a principal risk—that the risk is one that would place more than 10% of the fund's assets at risk (or it is reasonably likely that it would place more than 10% of the fund's assets at risk in the future)—appropriate? Should the proposed 10% be more or less? For example, should the standard be 5% or 20% of the fund's assets at risk? If so, why? Should there be a numerical standard associated with the instruction for determining whether a risk is a principal risk, and if so, what quantitative or other criteria should inform this standard? Is the applicability of the 10% standard to the fund's assets appropriate? Would a 10% standard help achieve the goal of providing user-friendly, clear and succinct disclosures? If not, why not? Is the ''assets at risk'' standard clear and appropriate? If not, why not? Would the proposed instruction providing that a fund should consider whether it is ''reasonably likely'' that a risk will become a principal risk in the future give adequate notice of future risks? Is this provision sufficiently clear? Is the term ''reasonably likely'' clear? Should we provide guidance or a definition regarding this term? Are there other means of determining principal risks that would be more effective? Should there be guidance regarding consideration of non-investment related risks, such as cybersecurity risk and new fund risk, as principal risks?

262. Is the proposed instruction that addresses risk disclosure in fund-of-funds arrangements appropriate? Would this proposed instruction be effective in promoting the policy goal of helping investors focus on the principal risks of the fund in which the investor is purchasing shares?

[643] While the Commission recently proposed rules relating to fund of funds arrangements, this proposal did not address risk disclosure by funds investing in other funds. *See* Fund of Funds Proposing Release, *supra* footnote 608.

[644] For example, if a particular risk of the acquired funds in the aggregate places more than 10% of the acquiring fund's assets at risk, that risk is a principal risk of the acquiring fund. *See also* Instruction 1 to Item 9(c) of proposed Form N–1A.

263. Is the proposed instruction addressing the principal risks of ''go-anywhere'' funds appropriate? Would this instruction effectively convey the uncertainty of the fund's investments and the associated principal risks? If not, what amendments would improve the instruction?

264. Are there other changes we can make to risk disclosure to make this information more investor-friendly, clear and succinct?

265. The Commission recently adopted amendments to rule 8b–16(b) under the Investment Company Act, which would require registered closed-end funds that rely on this rule to include—among other things—new disclosure about their principal risks in their annual reports.[645] Should we extend any of the proposed amendments to open-end funds' prospectus risk disclosure to closed-end fund prospectus disclosures or the new annual report risk disclosures required for certain closed-end funds? If so, how should we amend the risk disclosure requirements for these closed-end funds?

3. Prospectuses and SAIs Transmitted Under Rule 30e–1(d)

We are proposing to rescind rule 30e–1(d), which permits a fund to transmit a copy of its prospectus or SAI in place of its shareholder report, if it includes all of the information that would otherwise be required to be contained in the shareholder report.[646] Shareholder report and prospectus disclosures have historically served different purposes, with each catering to the different informational needs of prospective fund investors and current shareholders.[647] We understand that funds very rarely rely on rule 30e-1(d) to transmit a prospectus or SAI in place of a shareholder report. Additionally, we believe that allowing funds to consolidate their prospectus, SAI and shareholder report disclosures into a single document would result in shareholders receiving long, complex, and overlapping fund disclosures which could cause shareholder confusion and fatigue. This result would not be consistent with the goals of this rulemaking proposal.

We seek comment on our proposal to rescind rule 30e–1(d):

266. Do funds currently rely on rule 30e–1(d)? If so, which funds, and why?

267. Would investors benefit from receiving in the fund's prospectus or SAI the disclosure that would otherwise have to appear in the shareholder report? Would this cause investor confusion and/or overwhelm investors? If so, is there any way to preserve the ability of funds to rely on rule 30e-1(d) while mitigating these potential negative effects?

L. Investment Company Advertising Rule Amendments

As part of our proposed improvements to fund fee and expense information for investors, we are proposing to amend the Commission's investment company advertising rules (for purposes of this release, Securities Act rules 482, 156, and 433 and Investment Company Act rule 34b–1) to promote transparent and balanced presentations of fees and expenses in investment company advertisements.[648] As investment companies increasingly compete and market themselves on the basis of costs, we are concerned that investment company advertisements may mislead investors by creating an inaccurate impression of the costs associated with an investment.[649] The proposed advertising rule amendments would generally apply to all investment companies, including mutual funds, ETFs, registered closed-end funds, and BDCs.[650] Under the proposed amendments, investment company fee and expense presentations in advertisements would have to include timely and prominent information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, based on the methods of computation that the company's Investment Company Act or Securities Act registration statement form prescribes for a prospectus.[651] We also are proposing to amend rule 156 to provide factors an investment company should consider to determine whether representations in its advertisements about the fees and expenses associated with an investment in the fund could be misleading.[652]

Investment company advertisements, including advertisements regarding registered investment companies and BDCs, typically are prospectuses for purposes of the Securities Act.[653] These advertisements are typically subject to rule 482, which provides a framework in which investment company advertisements are deemed to be ''omitting prospectuses'' that may include information the substance of which is not included in a fund's statutory or summary prospectus.[654] Rule 482 establishes certain content, legend, and filing requirements for investment company advertisements. Many of the rule's content requirements focus on advertisements that include performance data of certain types of funds, including mutual funds, ETFs, certain separate accounts, and money market funds.[655] For example, the rule

[645] *See* Closed-End Fund Offering Reform Adopting Release, *supra* footnote 128, at Section II.I.5; *see also supra* footnote 132 and accompanying text.

[646] *See* rule 30e–1(d). When the Commission initially adopted rule 30e–1(d), it allowed a fund to send a copy of its prospectus or SAI, or both, instead of a shareholder report, so long as such prospectus or SAI included certain financial information and information about director's compensation. *See* Standardized Financial Statement Requirements in Management Investment Company Registration Statements and Reports to Shareholders, Investment Company Act Release No. 11490 (Dec. 15, 1980) [45 FR 83517 (Dec. 19, 1980)]. However, when the Commission expanded the required shareholder report disclosures, it simultaneously amended rule 30e–1(d) to limit a fund's ability to use a prospectus or SAI in place of a shareholder report by requiring that a fund include in such a prospectus or SAI *all* the information that would otherwise be required in the shareholder report. *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 14, 1999) [64 FR 59826 (Nov. 3, 1999)].

[647] *See supra* Section II.A.2 (discussing the differences between shareholder report and prospectus disclosures and noting that the shareholder report provides information to a fund's current shareholders about the fund's operations and performance during the past fiscal period, while the prospectus acts as the principal selling document for investors to inform investment decisions and facilitate fund comparisons).

[648] For purposes of this release, we generally refer to the types of investment company communications covered by rules 482, 156, 433, and 34b–1 as ''advertisements,'' unless otherwise noted. Although the Commission recently proposed rule amendments relating to investment adviser advertisements, that proposal did not address investment company advertising rules. *See* Investment Adviser Advertisements; Compensation for Solicitations, Investment Advisers Act Release No. 5407 (Nov. 4, 2019) [84 FR 67518 (Dec. 10, 2019)].

[649] *See supra* Section I.C.

[650] As a result, for purposes of this Section II.I, the term ''fund'' is not limited to mutual funds and ETFs registered on Form N–1A. Instead, we use this term more broadly in this Section to refer to any investment company that is subject to the Commission's investment company advertising rules, including registered closed-end funds and BDCs.

[651] *See* proposed rule 482(i) and (j); proposed rule 34b–1(c); proposed rule 433(c).

[652] *See* proposed rule 156(b)(4).

[653] *See* section 2(a)(10) of the Securities Act (defining the term ''prospectus'' to mean any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security, subject to certain exceptions, including an exception for a communication that generally was accompanied or preceded by a statutory prospectus).

[654] *See* section 10(b) of the Securities Act; rule 482(a) under the Securities Act (stating that the rule applies to an advertisement or other sales material with respect to securities of a registered investment company or BDC that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Securities Act, unless the advertisement is excepted from the definition of prospectus by section 2(a)(10) of the Securities Act or rule 498(d), or is a summary prospectus under rule 498).

[655] *See* rule 482(b)(3), (d), (e), and (g).

provides a standardized formula for these funds to calculate performance data included in their advertisements.[656] Instead of relying on rule 482, registered closed-end funds and BDCs may use free writing prospectuses in accordance with rule 433 and certain other Commission rules for advertising purposes.[657] Because both rule 482 advertisements and free writing prospectuses are treated as prospectuses under section 10(b) of the Securities Act, they are subject to liability under section 12(a)(2) of the Securities Act—which imposes liability for materially false or misleading statements in a prospectus or oral communications—as well as the antifraud provisions of the Federal securities laws.[658]

Rule 34b–1 applies to supplemental sales literature (*i.e.,* sales literature that is preceded or accompanied by a prospectus) by any registered open-end company, registered unit investment trust, or registered face-amount certificate company.[659] Rule 34b–1 includes many of the same requirements as rule 482, including the same performance-related requirements.[660] The Commission adopted rule 34b–1 to ensure that performance claims in supplemental sales literature would not be misleading and to promote comparability and uniformity among supplemental sales literature and rule 482 advertisements.[661] Supplemental sales literature is subject to the general antifraud provisions of the Federal securities laws.

Rule 156 states that whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. The rule discusses several pertinent factors that should be weighed in considering whether a particular statement involving a material fact is or might be misleading in investment company sales literature, including rule 482 advertisements and supplemental sales literature.[662] Rule 156 applies to sales literature used by any person to offer to sell or induce the sale of securities of any investment company, including registered investment companies and BDCs.[663]

Currently, the investment company advertising rules largely focus on performance-related information.[664] Among other things, the performance-related provisions of these rules are designed to: (1) Address concerns that investors would be unable to compare fund performance when funds use different calculation methods in their advertisements;[665] and (2) highlight areas that, based on the Commission's experience with investment company advertisements, have been particularly susceptible to misleading statements.[666] The investment company advertising rules do not presently require information about an investment company's fees and expenses or limit how fee and expense information is presented, with one exception. Under the current rules, if an advertisement provides performance data of an open-end management investment company or a separate account registered as a unit investment trust offering variable annuity contracts, it also must include the maximum amount of the fund's sales load (*i.e.,* purchase charge or exit charge) or any other nonrecurring fee that it charges.[667]

Separately, FINRA rule 2210 requires fee and expense information in certain non-money market fund open-end management investment company advertisements that provide performance information.[668] This includes: (1) The fund's maximum sales charge (*i.e.,* purchase charge or exit charge); and (2) the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements (*i.e.,* ongoing annual fees). Under FINRA's rule, a fund's standardized performance information, sales charge, and total annual fund operating expense ratio (gross of any fee waiver or expense reimbursement) must be set forth prominently.

To promote more consistent and transparent presentations of investment costs in investment company advertisements, we are proposing to amend rules 482, 433, and 34b–1 to require that investment company advertisements providing fee or expense figures for the company include certain standardized fee and expense figures.[669] The proposed amendments would apply to advertisements of any registered investment company or BDC. We are not proposing to limit the scope of the proposed amendments to a subset of investment companies because we believe investors in any registered investment company or BDC would benefit from advertisements that provide consistent, standardized fee and expense information that is generally aligned with prospectus fee and expense information.

With respect to rule 482, we are proposing to amend the rule to require that investment company advertisements providing fee and expense figures include: (1) The maximum amount of any sales load, or any other nonrecurring fee; and (2) the total annual expenses without any fee waiver or expense reimbursement arrangement (collectively, the "required fee and expense figures").[670] Because we believe that these are important figures for assessing the fees and expenses of a fund investment, the proposal would require any advertisement presenting fee and expense figures to include these items. This proposed requirement would only apply if an investment company advertisement includes fee or expense *figures,* and therefore an advertisement

[656] *See* rule 482(d) and (e).

[657] *See* Closed-End Fund Offering Reform Adopting Release, *supra* footnote 128, at Section II.F.1; 17 CFR 230.164 [rule 164 under the Securities Act] and rule 433 under the Securities Act [17 CFR 230.164 and 17 CFR 230.433].

[658] *See, e.g.,* section 12(a)(2) of the Securities Act [77*l*]; section 17(a) of the Securities Act [15 U.S.C. 77q]; section 10(b) of the Exchange Act [15 U.S.C. 78j]; section 34(b) of the Investment Company Act [15 U.S.C. 80a–33]; section 206 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6].

[659] *See* rule 34b–1 under the Investment Company Act; section 24(b) of the Investment Company Act.

[660] *See* rule 34b–1(b)(1)–(2) under the Investment Company Act.

[661] *See* Advertising by Investment Companies, Investment Company Act Release No. 16245 (Feb. 2, 1988) [53 FR 3868 (Feb. 10, 1988)], at Section III; Advertising by Investment Companies; Proposed Rules and Amendments to Rules, Forms, and Guidelines, Investment Company Act Release No. 15315 (Sept. 17, 1986) [51 FR 34384 (Sept. 26, 1986)], at nn.77 and 78 and accompanying text.

[662] *See* Mutual Fund Sales Literature Interpretive Rule, Investment Company Act Release No. 10915 (Oct. 26, 1979) [44 FR 64070 (Nov. 6, 1979)] ("Rule 156 Adopting Release").

[663] For purposes of rule 156, investment company sales literature includes any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of securities of any investment company. *See* rule 156(c) [17 CFR 230.156(c)]. Communications between issuers, underwriters and dealers are included in this definition of sales literature if such communications, or the information contained therein, can be reasonably expected to be communicated to prospective investors in the offer or sale of securities or are designed to be employed in either written or oral form in the offer or sale of securities.

[664] Rule 433 does not include performance-related requirements for registered closed-end fund or BDC free writing prospectuses. Currently, most rule 482 content requirements, including the performance-related requirements, do not apply to registered closed-end funds and BDCs.

[665] *See* Rule 156 Adopting Release, *supra* footnote 662, at Section I.2.

[666] *See* Rule 156 Adopting Release, *supra* footnote 662; Investment Company Sales Literature Interpretive Rule, Investment Company Act Release No. 10621 (Mar. 8, 1979) [44 FR 16935 (Mar. 20, 1979)], at paragraph accompanying n.5.

[667] *See* rule 482(b)(3)(ii); rule 34b–1(b)(1)(i).

[668] FINRA rule 2210(d)(5). This provision only applies to retail communications and correspondence that present non-money market fund open-end management investment company data as permitted by rule 482 and rule 34b–1.

[669] *See* proposed rule 482(i)(1).

[670] In an expense reimbursement arrangement, the adviser reimburses the fund for expenses incurred. In a fee waiver arrangement, the adviser agrees to waive a portion of its fee in order to limit fund expenses.

would not need to include the required fee and expense figures if it only included general, narrative information about fee and expense considerations and did not include any numerical fee or expense amounts.[671]

The proposed required fee and expense figures would be based on the methods of computation that the fund's Investment Company Act or Securities Act registration statement form prescribes for a prospectus. This proposed requirement is designed to promote consistent fee and expense computations across investment company advertisements, particularly within the same fund category, and to facilitate investor comparisons. We are proposing to require consistency with prospectus requirements because, like a fund's summary or statutory prospectus, advertisements are often designed for prospective investors and may influence an investment decision. Further, similar to associated prospectus requirements, if an advertisement covers only a subset of a fund's share classes, the advertisement could provide the required fee and expense information for those classes only.[672]

While investment company advertisements could include other figures regarding a fund's fees and expenses, the advertisement would have to present the required fee and expense figures at least as prominently as any other included fee and expense figures. For example, under the proposed amendments, an advertisement could include a fund's fees and expenses net of certain amounts, such as a fee waiver or expense reimbursement arrangement, as we understand some fund advertisements do today. However, an advertisement could not present the net figure more prominently than the required fee and expense figures. In addition to meeting the proposed content and presentation requirements, advertisements that include a fund's total annual expenses net of fee waiver or expense reimbursement arrangement amounts would also need to include the expected termination date of the arrangement.[673] We believe this proposed requirement would help investors better understand how a fee waiver or expense reimbursement arrangement may affect their investment costs by providing information about how long the arrangement would likely be in place (including that it may be terminated at any time).[674]

The proposed amendments would also include timeliness requirements for fee and expense information in investment company advertisements.[675] The proposed timeliness requirement would apply to fee and expense *information* and, thus, it would apply to fee and expense figures as well as relevant narrative information. Under the proposal, fee and expense information would need to be as of the date of the fund's most recent prospectus or, if the fund no longer has an effective registration statement under the Securities Act, as of its most recent annual report.[676] A fund would, however, be able to provide more current information, if available. The proposed timeliness requirement is designed to prevent investment company advertisements from including stale, outdated information about a fund's fees and expenses. For instance, a registered open-end fund that maintains an effective Securities Act registration statement on Form N–1A would need to provide its maximum sales load (or other nonrecurring fee) and gross total annual expenses, as of the date of the fund's most recent prospectus.[677] As another example, a registered closed-end fund that includes fee and expense figures in a rule 482 advertisement and that does not maintain an effective Securities Act registration statement would need to provide its gross total annual expenses, as of the date of the fund's most recent annual report.[678]

We also are proposing to amend rules 34b–1 and 433 so that those rules incorporate rule 482's proposed content, presentation, and timeliness requirements for fees and expenses. This would help ensure that the same fee and expense-related requirements are applied consistently across all registered investment company and BDC advertisements and sales literature. The proposed amendments to rule 34b–1 would provide that any sales literature of a registered investment company or BDC would have omitted to state a fact necessary in order to make the statements therein not materially misleading unless the sales literature meets rule 482's proposed content, presentation, and timeliness requirements for investment company fees and expenses.[679] That is, sales literature that would not otherwise be subject to rule 482 would have to meet rule 482's fee and expense requirements. The proposed amendments to rule 34b–1 would, for example, apply to sales literature that is excluded from the definition of ''prospectus'' in section 2(a)(10) of the Securities Act and thus is not subject to rule 482.[680] Additionally, we propose to

[671] This might be the case if, for example, the advertisement only refers to the fund's fees and expenses in the context of the disclosure required by rule 482(b)(1), which requires a statement advising an investor to consider the investment objectives, risks, and charges and expenses of the fund carefully before investing.

[672] *See, e.g.,* Instruction 1(d)(ii) to Item 3 of current Form N–1A; Instruction 1(e) to proposed Item 3 of Form N–1A; Instruction 1(d)(ii) to proposed Item 8A of Form N–1A.

[673] *See* proposed rule 482(i)(2).

[674] This also is similar to information that funds generally must include in their prospectuses when including total annual expenses net of a fee waiver or expense reimbursement arrangement. *See* Instruction 3(e) to Item 3 of Form N–1A; Instruction 4(b) to proposed Item 3 of Form N–1A; Instruction 4(e) to proposed Item 8A of Form N–1A; Instruction 15(f) to Item 4 of Form N–3; Instruction 17 to Item 4 of Form N–4.

[675] *See* proposed rule 482(j).

[676] In the case of a new fund that does not yet have an effective registration statement, fee and expense information would need to be as of the date of the fund's most recent prospectus filed with the Commission.

[677] The registered open-end fund's maximum sales load (or other nonrecurring fee) and gross total annual expenses would be computed using the method in proposed Item 8A of Form N–1A. Proposed Item 3 of Form N–1A also requires these figures in a fund's prospectus, but proposed Item 8A contains more complete computational instructions for these figures.

[678] Under these circumstances, the registered closed-end fund would not have a maximum sales load to report in its advertisement because it does not have an effective Securities Act registration statement and cannot presently sell the fund's securities. The registered closed-end fund's gross total annual expenses would be computed using the method in Item 3 of Form N–2.

[679] *See* proposed rule 34b–1(c). The proposed amendments would apply to any registered investment company or BDC advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors in connection with a public offering (collectively, ''sales literature''). The current provisions of rule 34b–1, which largely relate to performance information, would continue to apply only to sales literature that is required to be filed with the Commission by section 24(b) of the Investment Company Act.

[680] Like the current scope of rules 34b–1 and 482, the proposed fee and expense requirements in these rules and in rule 433 would not apply to any quarterly, semi-annual, or annual shareholder report under section 30 of the Investment Company Act. We also propose to provide similar treatment to other reports pursuant to section 13 of section 15(d) of the Exchange Act (*e.g.,* Form 10–K, 10–Q, and 8–K reports filed by BDCs). *See* proposed rule 34b–1(c)(2).

Consistent with the current provision in rule 34b–1, the amendments are designed to provide that shareholder reports and similar periodic reports that might otherwise constitute sales literature or advertisements under the rules are not covered by the proposed amendments to rules 482, 34b–1, and 433 because those reports serve to inform shareholders of recent developments relating to their investment. *See* 1988 Advertising Rules Release, *supra* footnote 88, at n.40 and accompanying text (explaining that the current provision is necessary because of the breadth of the definition of ''sales literature''). We believe the proposed expansion of this provision to cover fee and expense information in fund advertisements is warranted because, among other things: (1) Investors are likely to understand that the fee and expense information in an annual or other periodic report is only as current as the report; and (2) the proposed content requirements for funds' annual and semi-annual reports are designed to amend rule 433, which establishes conditions for the use of post-filing free writing prospectuses, to require a registered closed-end fund or BDC free writing prospectus to comply with the proposed content, presentation, and timeliness requirements of proposed rule 482, as applicable, if the free writing prospectus includes fee and expense information.[681] As a result, regardless of whether a registered closed-end fund or BDC advertisement uses rule 482 or rule 433, the advertisement would be subject to the same requirements regarding fee and expense information. While the proposed amendments to rules 482, 34b–1, and 433 are similar to requirements that currently apply to a subset of fund advertisements under FINRA rule 2210 (*i.e.,* certain non-money market fund open-end management investment company advertisements that provide performance information), our proposed amendments would apply more broadly to all investment company advertisements and supplemental sales literature.

In addition, we are proposing to amend rule 156 to address statements and representations about a fund's fees and expenses that could be materially misleading. Specifically, we would provide that, when considering whether a particular statement involving a material fact is or might be misleading, weight should be given to representations about the fees or expenses associated with an investment in the fund that could be misleading because of statements or omissions involving a material fact. As funds are increasingly marketed on the basis of costs, we are concerned that investment companies and intermediaries may in some cases understate or obscure the costs associated with a fund investment. The new proposed factor in rule 156 would provide that representations about the fees or expenses associated with an investment in the fund could be misleading because of statements or omissions involving a material fact, including situations where portrayals of such fees and expenses omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.[682] Consistent with the current framework in rule 156, whether a particular description, representation, illustration, or other statement involving a fund's fees and expenses is materially misleading depends on evaluation of the context in which it is made.[683] In addition, like current rule 156, the proposed amendments would apply to all investment company sales literature.[684] We are not proposing to limit the scope of these amendments to a subset of investment companies because our concerns regarding materially misleading statements about fees and expenses are not limited to certain types of investment companies.

The proposed amendments to rule 156 are designed to address concerns that investment company advertisements may present a fund's fees and expenses in a way that materially misleads an investor to believe that the costs associated with a fund investment are lower than the actual investment costs. For example, we understand that it has become increasingly common for funds to market themselves, or attempt to market themselves, as ''zero expense'' or ''no expense'' funds based solely on information in their prospectus fee tables and without also disclosing that investors or the fund may incur other costs. However, in some cases a fund's prospectus fee table shows no transaction fees and no ongoing charges only because its adviser, the adviser's affiliates, or others are collecting fees elsewhere from these investors.[685] For instance, an investor in a so-called ''zero expense'' fund may encounter other investment costs that can effectively reduce the value of his or her investment in a fund. For example, an investor may incur intermediary costs, such as wrap fees that an investor pays to the sponsor of a wrap fee program (which may be the fund's adviser or its affiliates) for investment advice, brokerage services, administrative expenses, or other fees and expenses. As another example, if a fund engages in securities lending, it generally pays certain fees or compensation to a securities lending agent (which may be affiliated with the fund's adviser), including through revenue sharing arrangements. Additionally, a fund may appear to be a ''zero expense'' fund because its adviser is waiving fees or reimbursing expenses for a period of time, but the fund will incur fees and expenses once that arrangement expires. In these and other cases where an investor may encounter other investment costs, we are concerned that, absent appropriate explanations or limitations, investors in these cases may believe incorrectly that there are no expenses associated with investing in the fund.

Similar issues can arise with respect to investment company advertisements that advertise low investment costs, based solely on a fund's prospectus fee table, and that do not reflect or recognize other categories of costs that may, for instance, be supplementing or replacing a more traditional management fee (*e.g.,* intermediary costs, securities lending costs). As another example, an advertisement might be materially misleading if it presents one component of a fund's total operating expenses, such as the fund's management fee, without stating that there are other costs associated with a fund investment or providing the total operating expense figure.

Under certain circumstances, statements in advertisements about a fund's fees and expenses that would be materially misleading on their own may not be misleading if the advertisement includes appropriate explanations, qualifications, limitations, or other statements. To use this approach effectively to avoid materially misleading statements, we believe it would be appropriate for funds to avoid using lengthy and technical disclaimers in small font sizes.

These proposed content-related restrictions in rules 482, 433, and 34b–1 and the proposed amendments to rule 156 are designed to work together to promote balanced and transparent presentations of fee and expense information in investment company sales literature. We request comment on the proposed amendments to the Commission's investment company advertising rules, including the following:

268. Should the advertising rule amendments apply to all investment companies, as proposed? If not, what types of investment companies should the amendments cover? Are there fee and expense-related issues that are specific to certain types of investment company advertisements that we should take into account?

269. Should we amend rule 482 to require that an advertisement providing fee or expense figures for an investment company also include the maximum sales load (or any other nonrecurring

independently recognize the types of fee and expense information a fund shareholder may need.

[681] *See* proposed rule 433(c)(3).

[682] *See* proposed rule 156(b)(4).

[683] *See* rule 156(b).

[684] *See* rule 156(c) (defining ''sales literature'' for purposes of the rule).

[685] In addition to considering whether statements in fund sales literature about fees and expenses associated with a fund investment are materially misleading, a fund should also consider whether the fee table in its prospectus may be materially misleading unless the fund includes additional material information as may be necessary to make the information and statements expressly required to be in the registration statement, in light of the circumstances under which they are made, not misleading. *See* rule 8b–20 under the Investment Company Act [17 CFR 270.8b–20].

fee) and the total annual expenses without any fee waiver or expense reimbursement arrangement, as proposed? If not, why not? Should we require investment company advertisements to include other fee and expense information, such as the fund's management fee? If so, what information should we require, and why? Should we, for example, require the same fee and expense information as the fund's prospectus fee table (or, in the case of mutual funds and ETFs, the proposed fee summary)?

270. As proposed, should we require that investment company advertisements present the required fee and expense figures using the methods of computation that the fund's Investment Company Act or Securities Act registration statement form prescribes for a prospectus? Should we allow some or all funds to use different computational methods? As another example, should registered closed-end funds that do not maintain an effective registration statement be able to show expense figures from their shareholder reports (*e.g.,* financial highlights expense ratios) rather than computing total annual expenses in the manner required for a prospectus fee table? Why or why not? Are the shareholder report figures, which represent backward-looking information for the last fiscal year and do not include AFFE, appropriate for advertising materials absent other information? Instead should the required expense figure reflect estimated expenses for the current fiscal year and AFFE (as required in prospectus fee tables)? If we permit different computational methods among investment company advertisements, are there other ways we could promote more consistent fee and expense presentations and facilitate investor comparisons?

271. Beyond the required fee and expense figures, should we require an investment company advertisement to present any other fees or expenses the advertisement may include using the same computational method identified in a Commission form or rule, such as the relevant Investment Company Act or Securities Act registration statement form (*e.g.,* for a prospectus or shareholder report), where available? If so, should this apply to particular fee or expense figures, or should it apply to all fee and expense figures that have identified computations in Commission forms or rules? Do funds already use standardized computational methods in advertisements that include fee information (*e.g.,* for administrative ease or due to antifraud concerns)?

272. Should we require an investment company advertisement to present the required fee and expense figures at least as prominently as any other fee and expense figures, as proposed? If not, why not? Are there circumstances in which it would be appropriate for an advertisement to present a different fee or expense figure more prominently than the required fee and expense figures? Please explain.

273. Beyond the proposed prominence requirements, should we impose other presentation standards for fee and expense information in fund advertisements? For example, should we require advertisements to present fee and expense information in a format that aligns with the fee table (or fee summary) presentation the fund's registration form requires for prospectuses?

274. Should we require investment company advertisements to use specified terms to describe the required fee and expense figures? For example, should we require advertisements to use the same terms as those prescribed for prospectus fee tables in the fund's registration form? Alternatively, should we require all fund advertisements to use consistent, plain English terminology (such as ''ongoing annual fees'')?

275. As proposed, should we allow investment company advertisements to include other fee and expense figures, beyond the required fee and expense figures? If not, why not? Alternatively, should we require advertisements that include fee and expense figures to include only figures that appear in the fee table of the fund's prospectus (or, additionally, in the fund's shareholder reports)? If so, how should we address the fact that these presentations do not reflect all potential investment costs, including intermediary costs, transaction costs, and securities lending costs? Should we, for instance, require that a legend or footnote accompany the presentation to explain that it may not reflect all costs associated with an investment?

276. As proposed, should we require an investment company advertisement to include the expected termination date of a fee waiver or expense reimbursement arrangement if the advertisement provides a fund's total annual expenses net of fee waiver or expense reimbursement arrangements? Is there other information we should require about a fee waiver or expense reimbursement arrangement, such as who can terminate the arrangement? Should we permit an advertisement to reflect any fee waiver or expense reimbursement arrangement, or should the arrangement have to meet certain conditions to appear in an advertisement? For example, should we allow such arrangements to appear in investment company advertisements only if they can appear in a fund's prospectus fee table (*e.g.,* in the case of a registered open-end fund registered on Form N–1A, if the fee waiver or expense reimbursement arrangement would be in place for at least 1 year from the effective date of the fund's registration statement)? As another alternative, because prospectus-related requirements currently vary among different types of funds, should we require an arrangement to be in place for the same period of time for any fund that wishes to disclose its total annual expenses net of a fee waiver or expense reimbursement in an advertisement? If so, what period of time (*e.g.,* 1 year), and how should we measure it (*e.g.,* from the date the advertisement is first submitted for publication, published, or used; from the effective date of the fund's registration statement; or from the date of the fund's most recent annual report)? What are the advantages and disadvantages of any such approach? Are there other conditions that should determine when a fund may include fee waiver or expense reimbursement amounts in investment company advertisements and if so, what should these be?

277. Should we, as proposed, include timeliness requirements in rule 482 for fee and expense information in an investment company advertisement? Should fee and expense information be as of the fund's most recent prospectus or, if the fund no longer has an effective Securities Act registration statement, as of its most recent annual report, as proposed? If not, what baselines should we use to measure the timeliness of fee and expense information? Should the baseline differ among different types of funds, or is there a single baseline that would work for all funds? Should we allow advertisements to include fees and expenses that are more current than the fund's most recent prospectus (or as of the fund's most recent annual report), as proposed? Alternatively, should we require a fund with a current prospectus to always present the same fees and expenses in its advertisements as those shown in its current prospectus? Should the proposed timeliness requirement apply to any fee and expense information, as proposed, or should it apply more narrowly to particular subsets of fee and expense information (*e.g.,* fee and expense figures)?

278. Should rule 34b–1 include the same fee and expense-related requirements as rule 482, as proposed?

If not, why should different fee-related requirements apply to rule 482 advertisements and rule 34b–1 sales literature? What fee and expense-related requirements should rule 34b–1 include?

279. As proposed, given the breadth of the definition of ''sales literature'' in proposed rule 34b–1, should we amend rule 34b–1 to provide that the proposed fee and expense-related requirements for investment company advertisements in rules 34b–1, 482, and 433 do not apply to shareholder reports under section 30 of the Investment Company Act or to other reports pursuant to section 13 or 15(d) of the Exchange Act? [686] If not, why not? Are there circumstances in which the proposed fee and expense-related content or timeliness requirements should apply to these reports?

280. As proposed, should we amend rule 433 to require registered closed-end fund or BDC free writing prospectuses that include fee and expense information to comply with applicable fee and expense-related requirements in rule 482? If not, why should we treat free writing prospectuses differently from rule 482 advertisements? Are there other amendments we should make to the free writing prospectus rules to more effectively implement the proposed requirements? For example, should we amend Securities Act rule 164 to provide that an immaterial or unintentional failure to comply with the proposed fee and expense requirements would not result in a violation of section 5(b)(1) of the Securities Act or the loss of the ability to rely on the free writing prospectus rules, similar to the provision that currently applies to the legend condition in rule 433? [687] If so, why should we treat the substantive requirements regarding fee and expense information in the same manner as the required legend? Are the proposed amendments to rule 34b–1—which apply to any registered investment company or BDC advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors—sufficiently broad such that the proposed amendments to rule 433 would not be necessary?

281. Should we amend Securities Act rule 163 to apply fee and expense-related requirements to free writing prospectuses that a registered closed-end fund or BDC that is a well-known seasoned issuer may use before filing a Securities Act registration statement? If so, what requirements should apply to these pre-filing communications? Should we require such a fund to compute the required fee and expense figures in the manner required for a prospectus fee table before the fund has filed a registration statement? What are the advantages and disadvantages of such an approach?

282. Should the content requirements of rule 482, rule 34b–1, and rule 433 apply differently based on the audience for the advertisement (*e.g.,* retail versus institutional investors)? [688] For example, after filing a registration statement, do new funds or existing funds that are planning to conduct a new offering of securities need flexibility to rely on rule 482, rule 34b–1, or rule 433 to communicate with certain parties, such as intermediaries or institutional investors, about potential fee or expense amounts to determine the appropriate fee structure for a new fund or security? If so, why would a fund need to rely on rule 482, rule 34b–1, or rule 433 for these purposes instead of the Commission's new rule allowing test-the-water communications with certain institutional investors? [689] If the content requirement should differ based on the audience, how should they differ, and what is the basis for these differences? How should we define the different categories of investors?

283. Should the amendments to rule 482, rule 34b–1, and rule 433 apply equally to new and existing funds? If not, why not? For example, do any of the proposed amendments present particular challenges for a new fund that has filed a registration statement but that does not have an effective registration statement? If so, what are those challenges, and how could we address them?

284. Should we amend rule 156 to address statements and representations about a fund's fees and expenses that could be materially misleading, as proposed? If not, why not? Are the proposed amendments overly broad or overly narrow? What impact would the proposed amendments have on current investment company marketing practices? Should the proposed amendments be requirements rather than a factor for consideration?

285. Is the proposed factor in rule 156 appropriately tailored to address potential materially misleading statements or representations regarding a fund's fees and expenses? [690] If not, how could we modify the proposed factor to address potential materially misleading statements or representations without negatively affecting a fund's ability to provide the types of fee and expense information that investors want in fund advertisements?

286. Should we provide additional factors an investment company should consider to avoid potentially materially misleading statements regarding a fund's fees and expenses? If so, what factors and why? For instance, are there circumstances in which a fund might include statements in its advertisements that suggest or imply present or future levels of fees and expenses that would not be justified under the circumstances and that might be materially misleading to investors? Could this potentially occur, for example, if a fund that has performance fees or fulcrum fees advertises its current fees and expenses in a manner that suggests or implies that the fund's fees and expenses would remain the same in the future, even though the fund's fee and expenses could be significantly higher if the fund's future performance triggers the performance fee or fulcrum fee? What are the advantages or disadvantages of including a new factor in rule 156 related to statements that suggest or imply present or future levels of fees and expenses that would not be justified under the circumstances? Would the proposed amendments to rule 156 already appropriately address this concern?

287. Should we provide additional guidance on the types of explanations, qualifications, limitations, or other statements that funds that have zero-expenses (or close to zero expenses) based solely on information in their prospectus fee tables could include in their advertisements to address concerns about materially misleading statements or provide standardized statements for advertisements or prospectuses? For example, should such a statement provide that the fund, its adviser, or its affiliates may receive compensation from the fund that is not disclosed? Should the statement instead provide that there are other costs that will reduce the value of an investment

[686] *See supra* footnote 680.

[687] *See* rule 164(c) under the Securities Act [17 CFR 230.164(c)].

[688] *See, e.g.,* Investment Adviser Advertisements; Compensation for Solicitations, Investment Advisers Act Release No. 5407 (Nov. 4, 2019) [84 FR 67518 (Dec. 10, 2019)], at Section II.A.5; FINRA rule 2210.

[689] Securities Act rule 163B allows funds to engage in test-the-waters communications with qualified institutional buyers and institutional accredited investors to determine whether such investors might have an interest in a contemplated registered securities offering. These communications may occur either before or after a fund has filed a Securities Act registration statement. *See* 17 CFR 230.163B; Solicitations of Interest Prior to a Registered Public Offering, Securities Act Release No. 10699 (Sep. 25, 2019) [84 FR 53011 (Oct. 4, 2019)].

[690] *See* proposed rule 156(b)(4).

in the fund? Are there other statements that would explain the issue more clearly to investors or that would be more accurate for different types of funds? Would standardized language be appropriate for different types of funds with zero expenses (or close to zero expenses) based solely on information in their prospectus fee tables, or should funds have discretion to tailor the language to address a particular fund's facts and circumstances? Would guidance of the type that this request for comment describes be appropriate for other scenarios related to the presentation of fees and expenses in fund advertisements, and if so, what other types of scenarios should the guidance address?

288. Would the proposed amendments to the investment company advertising rules create unintended incentives or results, such as an incentive for funds to no longer include fee and expense information in fund advertisements? If so, how could we reduce the impact of those unintended incentives or results while still promoting more balanced and transparent presentations of fund fees and expenses in advertisements?

M. Technical and Conforming Amendments

We are proposing technical and conforming amendments to various rules and forms. As discussed above, our proposal would revise rule 30e–3 to exclude investment companies registered on Form N–1A from the scope of the rule. As a conforming amendment, we propose to revise Form N–1A and rule 498 under the Securities Act to remove legends required by rule 30e–3.[691] Likewise, as another conforming amendment, we propose to withdraw previously adopted amendments to Form N–1A and rule 498 that are scheduled to become effective on January 1, 2021 and that would reference requirements of rule 30e–3.[692] As technical amendments, we also propose to update certain terminology in Form N–1A to reflect modern usage and presentation and to remove references to collect phone calls.

As discussed above, we are also proposing new rule 498B to address shareholders' continued receipt of annual prospectus updates in the years following their initial investment in a fund. As a conforming amendment, we propose to amend 17 CFR 200.800 to display control numbers assigned to information collection requirements for rule 498B by the Office of Management and Budget pursuant to the Paperwork Reduction Act. As discussed further below, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.[693]

Our proposal would also simplify the fee table currently included in Form N–1A and move the full fee table to a different location in Form N–1A.[694] To ensure that forms cross-referencing the current fee table in Form N–1A continue to reference that same table, we propose to update cross-references in Schedule 14A and Form N–14.[695]

Finally, as technical amendments, we also propose to update the current SAI requirement to provide the age and length of service for a fund's officers and directors to allow funds to instead disclose for each officer and director the birth year and the year their service began.[696] We also are proposing a similar instruction for the length of service for portfolio managers that must be disclosed in the prospectus to permit a fund to disclose the year the portfolio manager's service began.[697] We believe that permitting a fund to use a static date rather than updating this information annually will reduce a burden on funds that can arise in updating a previously disclosed age, for example, while providing investors equivalent information. We also have observed that some funds already disclose each officer and director's year of birth and the date the services of the officers, directors and portfolio managers began.

We request comment generally on these technical and conforming amendments, and specifically on the following issues:

269. Are these technical and conforming amendments appropriate in light of the other changes contemplated by our proposal?

270. Are there any additional technical or conforming amendments that should be made in order to fully implement the proposed changes in this rulemaking? For example, should we update cross-references in Forms N–4 and N–6 to the current fee table in Form N–1A (which would be revised under our proposal to become a summary table), even though those cross-references are with regard to the line-item ''Total Annual Fund Operating Expenses'' which would not be changed under our proposal and thus would be identical in both the summary fee table and the full fee table? If so, why?

271. Are there any proposed technical or conforming amendments that we should not make, or should modify? For example, should forms cross-referencing the current fee table in Form N–1A continue to reference that same fee table, even though that fee table would be revised under our proposal to become a summary fee table? If so, why?

N. Compliance Date

We propose to provide a transition period after the effective date of the amendments to give funds sufficient time to adjust their prospectus and shareholder report disclosure practices and to provide sufficient time to comply with the new fee and expense requirements for investment company advertisements, as described below. We are proposing generally a compliance date of 18 months after the amendments' effective date. Based on our experience, we believe the proposed compliance dates would provide an appropriate amount of time for funds to comply with the proposed rules.[698]

- *Shareholder reports and related requirements.* All shareholder reports for funds registered on Form N–1A would have to comply with Item 27A of Form N–1A if they are transmitted to shareholders 18 months or more after the effective date. These funds also would have to comply with the amendments to rule 30e–1 and Form N–CSR no later than 18 months after the effective date by, among other things, meeting the website availability requirements for the new Form N–CSR items.
- *Rule 30e–3 and related amendments.* We propose that the amendments to the scope of rule 30e–3, and conforming amendments to Form N–1A and rule 498 to remove legends required by rule 30e–3, would be effective 18 months after final rules are adopted to provide time for funds relying on rule 30e–3 to transition to the proposed disclosure framework.
- *Rule 498B.* Funds could rely on rule 498B to satisfy prospectus delivery requirements for existing shareholders beginning on the effective date of the rule, provided the fund is also in compliance with the amendments to

[691] *See* Item 1(a)(5) and Item 27(d)(7) of Form N–1A; rule 498(b)(1)(vii).

[692] *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at amendatory instructions 5, 6, and 16.

[693] *See infra* Section IV.

[694] *Compare* proposed Item 3 (Risk/Return Summary: Fee Summary) *with* proposed Item 8A (Fee Table).

[695] *See* proposed Schedule 14A [14a–101 under the Securities Act] and Form N–14 [17 CFR 239.23].

[696] *See* proposed Item 17(a)(1) of Form N–1A.

[697] *See* proposed Item 5(b) of Form N–1A.

[698] For example, the proposed compliance dates are generally consistent with the compliance dates the Commission has provided for similar disclosure-based amendments. *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27, at section II.G.

Item 27A of Form N–1A, rule 30e–1, and Form N–CSR.

- *Amended prospectus disclosure.* We propose that funds would have 18 months after the effective date to comply with the amendments to prospectus disclosure in Form N–1A, including the fee summary and revised principal risk disclosure.
- *Amended advertising rules.* We propose to provide 18 months after the effective date for investment company advertisements to comply with the amendments to rules 482, 433, and 34b–1. We do not propose to provide an additional compliance period for the amendments to rule 156 after the amended rule is effective.

We request comment on the proposed compliance and effective dates, including the following:

272. Are the proposed compliance dates appropriate? If not, why not? Is a longer or shorter period necessary to allow registrants to comply with one or more of these particular amendments? If so, which proposed amendments, and what would be an appropriate compliance date?

273. Is the proposed effective date for the rule 30e–3 amendments appropriate? Should the effective date of the rule 30e–3 amendments align with the proposed compliance date for the other shareholder report-related amendments, as proposed? If not, why not?

274. Should we allow funds to begin to rely on proposed rule 498B as soon as the rule is effective, provided they comply with the amendments to Item 27A of Form N–1A, rule 30e–1, and Form N–CSR? If not, why not?

III. Economic Analysis

O. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 3(f) of the Exchange Act, section 2(b) of the Securities Act, and section 2(c) of the Investment Company Act state that when the Commission is engaging in rulemaking under such titles and is required to consider or determine whether the action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, the Commission shall consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. Further, section 23(a)(2) of the Exchange Act requires the Commission to consider, among other matters, the impact such rules would have on competition and states that the Commission shall not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The following analysis considers, in detail, the potential economic effects that may result from the proposed rule and amendments, including the benefits and costs to investors and other market participants as well as the broader implications of the proposal for efficiency, competition, and capital formation.

The proposed rule would affect the provision of information by funds to investors, including existing fund shareholders and new or prospective fund investors.[699] For example, under the proposal funds would provide existing shareholders with more concise and visually engaging shareholder reports that highlight key information, including fund expenses, performance, and holdings.[700] The proposed rule would also affect how funds transmit shareholder reports. Under the proposal, funds would not be permitted to deliver paper notices regarding the online availability of shareholder reports in reliance on rule 30e–3. Instead, funds would deliver the more concise shareholder report in full.[701] Through a layered disclosure framework, additional information that may be of interest to market professionals and some shareholders, such as fund financial statements, would be available online and delivered in paper or electronic format upon request, free of charge.[702] Further, instead of delivering annual prospectus updates to existing shareholders, funds would have the option to notify shareholders promptly of certain material changes to the fund, provided the prospectus is available online and delivered upon request, free of charge.[703]

In addition to amendments that would primarily affect existing fund shareholders, the proposed rule would amend prospectus disclosure regarding fees and expenses and principal risk, which we expect to primarily affect new or prospective investors in a fund.[704] Finally, to improve fee and expense information that is available to investors more generally, we propose to amend the investment company advertising rules to require that investors receive more transparent and consistent fee and expense information.[705]

We expect the proposed rule to benefit investors by permitting them to make more efficient use of their time and attention, and by facilitating informed investment decisions and choice among financial products. We expect some funds to experience lower costs of delivering materials under the proposal, which may be passed on to investors as a further benefit of the proposal, while other funds may experience increased delivery costs that would be a cost of the proposal to the shareholders of those funds.

P. Economic Baseline and Affected Parties

1. Descriptive Industry Statistics

The proposed rule would affect funds and investors who receive fund disclosure under the current rules.[706] Approximately 101.6 million individuals own shares of registered investment companies, representing 57.2 million (or 44.8%) of U.S. households. An estimated 99.5 million individuals own shares of mutual funds in particular, representing 56.0 million (or 43.9%) of U.S. households.[707] The assets of all registered investment companies exceeded $21 trillion at year-end 2018, having grown from about $5.8 trillion at the end of 1998.[708] Based on staff analysis of Form N–CEN filings, we estimate that, as of March 2020, the number of funds that could be affected by the proposed amendments to disclosure and delivery requirements for prospectuses and shareholder reports is 12,410, including 10,310 mutual funds and 2,100 ETFs that register on Form N–

[699] The term ''fund'' in this proposal includes all Form N–1A filers, except where otherwise indicated.

[700] *See supra* Sections II.B and II.C.

[701] *See supra* Section II.G.

[702] *See supra* Section II.D.

[703] *See supra* Section II.F.

[704] *See supra* Section II.H.

[705] *See supra* Section II.I.

[706] The vast majority (89%) of mutual fund shares are estimated to be held through retail accounts. *See* 2019 ICI Fact Book, *available at https://www.ici.org/pdf/2019_factbook.pdf.* Based on staff analysis of Form 13F data, the mean institutional holding is estimated to be approximately 48% for exchange-traded funds. We calculated ''institutional holding'' as the sum of shares held by institutions (as reported on Form 13F filings) divided by shares outstanding (as reported in CRSP). Year-end 2018 Form 13F filings were used to estimate institutional ownership. We note that there are long-standing questions around the reliability of data obtained from Form 13F filings. *See* Covered Investment Fund Research Reports, Investment Company Act Release No. 33311 (Nov. 30, 2018) [83 FR 64180, 64199 (Dec. 13, 2018)], at n.223; *see also* Reporting Threshold for Institutional Investment Managers, Exchange Act Release No. 89290 (July 10, 2020) [85 FR 46016] (July 31, 2020), at n.63 (proposing certain technical amendments to Form 13F that the Commission believes may reduce filer mistakes and data inaccuracies).

[707] *See* 2019 ICI Fact Book, *supra* footnote 706. Among mutual fund-owning households, 63% held funds outside employer-sponsored retirement accounts, with 20% owning funds only outside such plans.

[708] See id.

1A.[709] As of March 2020, the 10,310 mutual funds (*i.e.,* series of trusts registered on Form N–1A) had average total net assets of $25 trillion and 33,785 authorized share classes.[710] The 2,100 ETFs (*i.e.,* series, or classes of series, of trusts registered on Form N–1A) had average total net assets of $3.2 trillion as of March 2020.

Funds may invest in other funds under section 12(d)(1) of the Act and the rules thereunder.[711] We estimate that approximately 30% of funds invest in such acquired funds.[712] Most acquiring funds invest 10% or less of their total assets in acquired funds (excluding money market funds).[713] For funds with more than 10% of their total assets in acquired funds, the majority invest more than 20% of their total assets in the acquired funds. We estimate that approximately 32% of funds that invest in acquired funds invest more than 10% of their total assets in acquired funds, and that approximately 28% invest more than 20% of their total assets in acquired funds. Thus, a large share (88%) of the funds with more than 10% invested have more than 20% of their total assets invested in acquired funds.[714]

The scope of the proposed advertising rule amendments is broader than that of the other elements of the proposal. The advertising rule amendments would apply to other registered investment companies and to BDCs, in addition to mutual funds and ETFs. As of March 2020, there were 1,388 other registered investment companies, including 665 registered closed-end funds, 14 funds that could file registration statements or amendments to registration statements on Form N–3, and 709 UITs.[715] As of March 2020, there were 87 BDCs with $139 billion in total assets.[716]

The proposal would also affect financial intermediaries and other third parties that are involved in the distribution and use of the prospectus and shareholder reports, such as broker-dealers and third-party information providers. We understand that most fund investors are not direct shareholders of record, but instead engage an investment professional and hold their fund investments as beneficial owners through accounts with intermediaries such as broker-dealers.[717] As a result, intermediaries commonly distribute fund materials to beneficial owners, including shareholder reports and annual prospectus updates. In the case of broker-dealers, self-regulatory organization (''SRO'') rules provide that broker-dealer member firms are required to distribute annual reports, as well as ''interim reports,'' to beneficial owners on behalf of issuers, so long as an issuer (*i.e.,* the fund) provides satisfactory assurance that the broker-dealer will be reimbursed for expenses (as defined in SRO rules) incurred by the broker-dealer for distributing the materials.[718] Based on information reported on Form BD, we estimate that 2,016 broker-dealers sell registered investment companies' shares and may deliver prospectuses or shareholder reports that would be affected by the proposal.

2. Fund Prospectuses

The prospectus is the main selling document of the fund and is designed to provide forward-looking information and certain historical information to new shareholders and prospective shareholders with no existing investment in the fund. Funds deliver a prospectus to new shareholders in connection with the initial purchase, and prospectuses are designed to inform investment decisions and help investors compare funds. Funds typically update their prospectuses annually within 120 days of fiscal year-end.[719] Funds also may supplement or ''sticker'' their prospectuses to update the disclosure at other times during the year when material or other changes occur.[720]

Funds (or intermediaries) are generally required to deliver a fund prospectus to an investor in connection with a purchase of fund shares. Rule 498 enables funds to deliver the summary prospectus rather than the statutory prospectus if they meet certain conditions.[721] We estimate that 93 percent of funds deliver a summary prospectus in reliance on rule 498, and the remaining seven percent of funds deliver the statutory prospectus. According to one academic study, the average summary prospectus is 6.77 pages.[722] Based on a review of fund websites, the staff has found similar page lengths in summary prospectuses. In a sample from 2020, for example, the staff found that summary prospectus page lengths varied around an average of 8 pages at the mean and median, and that summary prospectuses were shorter than statutory prospectuses, which varied in length around a mean of 128 pages and median of 75 pages. We estimate that currently the average summary prospectus length is 8 pages and the average statutory prospectus length is 128 pages.

In addition to sending prospectuses to new investors, funds typically send an annual prospectus update to ongoing shareholders each year, and may deliver prospectus stickers to shareholders to update the disclosure at other times.[723] The form (*i.e.,* summary prospectus or statutory prospectus) and length of the annual prospectus update a fund delivers to ongoing shareholders is the same as that of the prospectus it delivers to new investors. The annual prospectus update provides continuing shareholders with access to information about material fund changes, such as in the fund's fees or principal investment strategy.[724] The disclosure format of the

[709] These estimates are based on staff analysis of Form N–CEN filings received through March 2020 and Bloomberg data.

[710] The estimate of the number of authorized share classes is based on responses to Form N–CEN, Item C.2.a., and includes non-ETF share classes of multi-class ETFs.

[711] 15 U.S.C. 80a–12(d)(1); *see also* 17 CFR 270.12d1–1 through 270.12d1–3.

[712] *See* Fund of Funds Proposing Release, *supra* footnote 608, at paragraph accompanying n.242.

[713] This analysis excludes money market fund holdings from acquired fund investments because the proposed amendments to prospectus AFFE disclosure exclude money market fund holdings from the calculation of a fund's investments in acquired funds. Thus, for purposes of this discussion, an ''acquired fund'' does not include a money market fund. *See also supra* footnote 619. The estimates of acquired fund holdings are based on staff's analysis of Form N–PORT filings received through early June 2020.

[714] $0.28 = 0.32 \times 0.88$. We further estimate that approximately 4% of acquiring funds invest between 10% and 20% of their total assets in acquired funds ($0.04 = 0.32 - 0.28$).

[715] We estimate that all registered investment companies would be affected by the advertising rule amendments. Based on staff analysis of Form N–CEN filings received through March 2020, this includes all mutual funds and ETFs; 665 closed-end funds registered on Form N–2, with average total net assets of $335 billion; 14 variable annuity separate accounts registered as management investment companies on Form N–3, with total assets of $234 billion; and 709 UITs, with total assets of $2.0 trillion (including 5 ETFs that are registered as UITs with total assets of $338 billion).

[716] To estimate the number of BDCs, we use data from Form 10–K and Form 10–Q filings from the first quarter of 2020. Our estimates exclude BDCs that may be delinquent, wholly owned subsidiaries of other BDCs, and BDCs in master-feeder structures.

[717] By one estimate, approximately 75% of accounts are held through brokers and other intermediaries, excluding positions held in employer-sponsored plans. *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at n.275.

[718] *See* NYSE rule 465(2); NYSE rules 451(a)(1) and (2); FINRA rule 2251(e)(1)(C); FINRA rule 2251.01.

[719] *See supra* footnote 20 and accompanying text.

[720] *See supra* footnote 13 and accompanying text.

[721] Rule 498 has been in place since 2009. Funds delivered the statutory prospectus to all investors before that time.

[722] *See* Anne M. Tucker & Yusen Xia, *Investing in the Dark: Investment Company Disclosure Qualities, Content & Compliance* (SSRN, Sept. 1, 2019) (''Tucker and Xia''), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3436952* (estimating that, in 2018, the summary prospectus was 6.77 pages, based on estimated page number lengths from mean and median counts by year).

[723] *See supra* footnote 11 and accompanying text.

[724] Funds are required to update the prospectus at or before the time their financials are 16 months

prospectus, however, does not highlight or explain the material changes. We estimate that funds, on average, deliver one annual prospectus update each year and one prospectus sticker every other year to disclose material changes to the fund.[725] Funds also are required to file their prospectuses on EDGAR. In addition, funds often provide their prospectuses on their websites. The extent to which funds currently publish prospectuses to their public websites is influenced by Commission rules. If a fund delivers a summary prospectus under rule 498 (which an estimated 93 percent of funds do), then its summary and statutory prospectuses and its SAI must be available on the website identified at the beginning of the summary prospectus.[726] As for the SAI, in addition to its typical availability online, funds must file it on EDGAR. Funds generally do not deliver SAIs to investors (although a fund must deliver it to an investor on request).

Among other things, prospectuses include information about a fund's investment objective, principal investment strategy, fees and expenses, principal risks, performance, investment adviser, and portfolio managers. Funds must provide certain of this information—including investment objectives, fees and expenses, principal investment strategies, principal risks, and performance—in a structured data format.[727] With respect to principal risk disclosure in particular, the length of this disclosure has been growing over time, and funds sometimes order their risks alphabetically instead of by importance. One academic study found that fund risk disclosure in the summary prospectus had nearly doubled in length between 2010 and 2018.[728] Based on staff analysis, the median number of principal risks listed in fund prospectuses grew from 11 in 2016 to 13 in 2018, and almost half of the principal risk disclosures generally were in alphabetical order.[729]

Funds disclose their fees and expenses in the prospectus fee table. Some fees and expenses are directly attributed to the fund's operations, while others are indirect. For example, some fees and expenses are attributable to the fund only through its investments in other funds). These indirect fund expenses generally appear in a separate AFFE line item in the fee table.[730] Currently, regardless of the size of a fund's investments in the acquired funds, AFFE is a component of the line items that, summed together, produce the fund's bottom-line annual fund operating expenses in its fee table. Differences in the operating expense disclosures of different funds may thus reflect differences in their operations or differences in the operations of their acquired funds.

3. Fund Shareholder Reports

Funds provide information about their past operations and activities to investors through periodic shareholder reports. Funds send shareholder reports to ongoing shareholders twice-annually. Thus, shareholders receive both a semi-annual and an annual report from the fund. Shareholder reports provide backward-looking information about a fund's performance (in the case of an annual report), expenses, holdings, and other matters (*e.g.,* statements about the fund's liquidity management program, the basis for approval of an investment advisory contract, and the availability of additional information about the fund). These reports also include financial statements, which include audited financials in the annual report. Shareholder reports can be quite long. The average length of a shareholder report exceeds 100 pages. Based on staff analysis of shareholder reports available on fund websites, we estimate that the average annual report length is 134 pages and the average semi-annual report length is 116 pages, or 86% of the average length of a fund's annual report.[731] The length and complexity of these materials can make them difficult for some shareholders to use and understand.

Funds must deliver the shareholder reports to shareholders. Funds also must file the shareholder reports on EDGAR on Form N–CSR. In addition, funds often provide their shareholder reports on their websites. The extent to which funds currently publish shareholder reports on public websites is influenced by Commission rules. All funds that rely on rule 498 to deliver summary prospectuses are required to make their shareholder reports available online at the website address identified at the beginning of the summary prospectus; as a result, we estimate that at least 93% of funds currently provide their shareholder reports on websites.[732] Form N–CSR filings include information other than shareholder reports. This information is filed on EDGAR but is not required to be delivered or otherwise available online.

4. Delivery of Fund Prospectuses and Shareholder Reports

Under Commission rules and guidance, delivery of fund prospectuses and shareholder reports occurs by paper or email, depending on the investor's expressed preference. The Commission has provided guidance permitting electronic delivery of required disclosure materials under certain circumstances.[733] Under this guidance, funds can transmit shareholder reports, prospectuses, or other materials electronically in lieu of paper delivery if they satisfy certain conditions relating to investor notice, access, and evidence of delivery. Funds (or intermediaries) relying on this guidance typically obtain an investor's informed consent to electronic delivery to satisfy the ''evidence of delivery'' condition. Fund investors that have elected electronic delivery typically receive an email that contains a link to where the materials are available online. The proportion of shareholders who elect to receive fund disclosure by email varies among funds. By one estimate, the average enrollment rate for electronic delivery is 19.35% for direct-held positions (*i.e.,* shares purchased directly through an account

old under section 10(a)(3) of the Securities Act. In addition, Investment Company Act rule 8b–16(a) requires funds to amend their Investment Company Act registration statements within 120 days after the close of each fiscal year.

[725] This estimate is based on the average number of summary prospectuses funds filed in 2018 and 2019, excluding multiple summary prospectuses filed on the same day and adjusted to recognize that funds may not deliver prospectus stickers to notify shareholders of certain changes. *See, e.g.,* ICI Comment Letter II; Fidelity Comment Letter. This estimate is an average, and funds may deliver more or fewer prospectus-related disclosures to shareholders in a given year.

[726] *See supra* footnote 12.

[727] *See* General Instruction C.3(g) of current Form N–1A.

[728] *See* Tucker and Xia, *supra* footnote 722, at 27 and 28.

[729] These figures are based on staff analysis of a sample of 485BPOS, 485APOS, and 497 filings on EDGAR in XBRL format. Analysis of whether funds tend to list principal risks in alphabetical order is based on normalized inversion counts. We recognize that the length and the ordering of risks varies across funds. The average number of principal risks for funds in this sample is 12.7 in 2016 and 13.9 in 2018.

[730] *See supra* Section II.H.1.g.

[731] According to one estimate, the annual report was 114 pages long on average in 2016. *See* Comment Letter of Investment Company Institute (Mar. 14, 2016) on File No. S7–08–15, at n.49, *available at https://www.sec.gov/comments/s7-08-15/s70815-581.pdf.*

[732] In addition, a fund relying on rule 30e–3 would be required to make its shareholder reports publicly accessible on a website. In the case of rule 30e–3, the shareholder report must be available at the website address specified in the notice the fund would send to shareholders under the rule. Funds that rely on rule 30e–3 would also be required to make their complete portfolio holdings for each quarter available online. To the extent that any funds not currently relying on rule 498 to deliver summary prospectuses start to rely on rule 30e–3 beginning as early as January 1, 2021, the number of funds providing their shareholder reports on websites would be greater than 93%.

[733] *See supra* footnote 21.

with the fund) and 55% for beneficial positions (*i.e.,* shares purchased through an account with an intermediary).[734]

With respect to shareholder reports, there is also an alternative means of delivery. On June 5, 2018, the Commission adopted rule 30e–3 to provide an optional method for satisfying obligations to transmit shareholder reports by making them accessible online. Starting in 2021, under rule 30e–3, fund shareholders who would otherwise receive shareholder reports in paper may instead receive a short paper notice that a semi-annual or annual report is available online. Rule 30e–3 does not modify the delivery method for shareholders who request to receive reports in paper or elect to receive reports electronically.[735] Funds that intend to rely on rule 30e–3 before 2022 must provide notice to shareholders in their prospectuses and shareholder reports. Under rule 30e–3, what shareholders see when they access the report does not vary in substance or length according to whether they view the report online or request a paper copy of the report.[736] Yet delivery of the report tends to be less costly for funds that choose to rely on rule 30e–3 than funds that do not choose to rely on rule 30e–3 because printing and mailing costs are lower for a short paper notice as opposed to a full-length report.[737]

We estimate that 86 percent of funds registered on Form N–1A plan to rely on rule 30e–3 before 2022.[738] We understand that the number could increase or decrease over time, depending on fund and investor experience with the new practice. The Commission previously estimated aggregated costs of $11 million during the transition period for funds to add statements to their shareholder reports and prospectuses notifying shareholders of the fund's intent to rely on rule 30e–3. This includes costs of approximately $7.1 million in the first year and approximately $4.3 million in the second year.[739] In addition, funds may have incurred costs in anticipation of relying on rule 30e–3 that include costs of tracking how many investors request continued delivery by paper mail under rule 30e–3. This is because rule 30e–3 allows shareholders to elect—at any time—to receive all future reports in paper, or request particular reports in paper on an *ad hoc* basis.

In adopting rule 30e–3, the Commission understood that it would reduce the allocation of resources to printing and mailing of reports, depending on how many funds choose to rely on the rule. At that time, the Commission estimated that annual printing and mailing costs (inclusive of processing fees) for shareholder reports were approximately $20,707.33 per fund absent rule 30e–3.[740] Based on the current number of funds, the aggregate costs would be approximately $257.0 million.[741] At the time of adoption, the Commission estimated that 90 percent of funds would choose to rely on rule 30e–3. Based on the current number of funds, this would result in reduced printing and mailing costs for funds of approximately $231.3 million.[742] Under our current estimate of the proportion of funds relying on rule 30e–3, which is 86%, the annual savings in printing and mailing costs for funds will decline from approximately $231.3 million to $221.0 million.[743] The estimated aggregate printing and mailing costs for funds' shareholder reports in 2021 depends on whether and how fully funds achieve the projected savings for rule 30e–1 by that year. We expect the aggregate printing and mailing costs (inclusive of processing fees) to range between $36.0 million and $257.0 million in 2021, without the proposal, depending on how fully funds have realized the projected savings from reliance on rule 30e–3.[744] For example, we would expect the costs to be closer to the lower end of the range if most or all of the 86% of funds are able to rely on the rule to transmit annual and semi-annual reports in 2021, while we would expect the costs to be closer to the higher end of the range if many of these funds are still subject to rule 30e–3's transition period for some or all of 2021.[745]

A summary of the delivery scenarios that would occur without the proposal, along with typical delivery outcomes, appears in table 7 below. As indicated, the baseline delivery outcomes vary across funds and shareholders, according to their expressed preferences and circumstances:

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[734] *See* Putnam Comment Letter.

[735] Rule 30e–3 requires the fund to deliver shareholder reports in paper to those shareholders who expressly opt in to paper delivery. For funds that rely on rule 30e–3, other shareholders who have not consented to electronic delivery would receive a link to the shareholder report in a paper notice from the fund.

[736] *See supra* Section III.B.3.

[737] Shareholders of funds that rely on rule 30e–3 may request paper copies of the full report, which may reduce the cost savings associated with rule 30e–3 if many shareholders make these requests. We previously estimated that registered investment companies relying on rule 30e–3 would incur approximately $70.6 million per year to print and mail notices and approximately $5.7 million per year to print and mail shareholder reports upon request. *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at nn.414 and 415 and accompanying text.

[738] Our estimate reflects the percent of open-end funds registered on Form N–1A that included a statement notifying investors of their intent to rely on rule 30e–3 in annual or semi-annual reports filed on Form N–CSR in 2019. The estimate excludes any funds that may plan to rely on rule 30e–3 after the rule's extended transition period ends on January 1, 2022 and, thus, are not required to provide this notice to investors. In a June 2019 survey, ICI found that 97 percent of member funds responding to the survey planned to rely on rule 30e–3. *See* ICI Comment Letter II.

[739] *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at nn.419 and 420 and accompanying text (estimating costs of $7,144,872 associated with amendments to rule 498 and Form N–1A in the first year and costs of $4,286,980 associated with amendments to rule 498 and Form N–1A in the second year).

[740] *See id.* at n.353.

[741] $20,707.33 × 12,410 funds = $256,977,965 = $257.0 million.

[742] *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at n.372 and accompanying text (using an approach to estimate gross aggregate annual savings of printing and mailing costs as the aggregate annual printing and mailing costs multiplied by the percentage of funds expected to rely on rule 30e–3). $256,977,965 × 90% = $231.3 million.

[743] $256,977,965 × 86% = $221,001,050.

[744] $256,977,965 − $221,001,050 = $35,976,915.

[745] *See* rule 30e–3(i) (generally requiring funds to include required statements about rule 30e–3 in their prospectuses and shareholder reports for a period of two years prior to relying on the rule).

Table 7. Delivery scenarios without the proposal (baseline).

Table 7.1 – Semi-annual report delivery, baseline – by fund and shareholder choice			
Fund relies on rule 30e-3?	**Shareholder requests electronic delivery**	**Shareholder requests paper delivery**	**Shareholder makes no delivery election**
Yes	Email (with link to 116 page report)	Paper mail (116 page) report	Paper notice (1 page) with link to 116 page report
No	Email (with link to 116 page report)	N/A[1]	Paper mail (116 page) report

Table 7.2 – Annual report delivery, baseline – by fund and shareholder choice			
Fund relies on rule 30e-3?	**Shareholder requests electronic delivery**	**Shareholder requests paper delivery**	**Shareholder makes no delivery election**
Yes	Email (with link to 134 page report)	Paper mail (134 page) report	Paper notice (1 page) with link to 134 page report
No	Email (with link to 134 page report)	N/A[1]	Paper mail (134 page) report

Table 7.3 – Annual prospectus update delivery, baseline – by fund and shareholder choice[2]		
	Shareholder requests electronic delivery?	
Fund uses summary prospectus (rule 498)?	*Yes*	*No*
Yes	Email with link to 8 page summary prospectus update, annual	Paper mail (8 page) summary prospectus update, annual
No	Email with link to 128 page statutory prospectus update, annual	Paper mail (128 page) of statutory prospectus update, annual

Table 7.4 – Other prospectus update delivery, baseline – by fund and shareholder choice		
Fund uses summary prospectus (rule 498)?	**Shareholder requests electronic delivery?** *Yes*	*No*
Yes	Email with link to summary prospectus update or sticker (sometimes may be combined with shareholder report delivery)	Paper mail of summary prospectus update or sticker (sometimes may be combined with shareholder report delivery)
No	Email with link to statutory prospectus update or sticker (sometimes may be combined with shareholder report delivery)	Paper mail of statutory prospectus update or sticker (sometimes may be combined with shareholder report delivery)

Notes:
1. "N/A" reflects the fact that, if a fund does not rely on rule 30e-3, paper delivery of the full report is the default delivery mechanism. If the fund relies on rule 30e-3, however, delivery of a paper notice with a link to the online location of the shareholder report becomes the default, as the table indicates.
2. This table assumes that the fund delivers annual prospectus updates to all shareholders because we understand the majority of funds follow this practice. If a fund instead delivered prospectuses only to those shareholders who purchase additional shares of the fund during the year, receipt of a prospectus may not be an annual occurrence for some shareholders.

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5. Investor Use of Fund Disclosure

Based on responses to the Fund Investor Experience RFC and results of prior investor testing and surveys,[746] the Commission understands that investors find that the information currently provided to them is overly long and difficult to understand. Investors have expressed concern about the length of the materials.[747] Many investors have also suggested that fund disclosure is too complex or technical.[748] For example, one survey reported that 67% of surveyed investors found shareholder reports difficult to understand, and another found the number to be higher, 72%.[749] Some investor surveys suggest that many investors review little, if any, of funds' shareholder reports.[750]

In addition, some investors have expressed concern about the fee information that funds disclose.[751] Many investors responding to the Fund Investor Experience RFC expressed the view that funds do not clearly disclose their fees and expenses. This may indicate that they do not make effective use of the fee information that is provided under the current requirements. Several of these investors expressed support for simplifying fee presentations by, for example, reducing the number of line items in the prospectus fee table or providing only one ''bottom-line'' number showing the fees associated with an investment in the fund. Some commenters suggested that funds should disclose fees in terms of dollars rather than percentages to make the disclosure more understandable to investors.[752] Some commenters have suggested that disclosing AFFE in the fee table may confuse investors because the fee table does not reflect similar indirect expenses of the fund and combining the fund's operating expenses with indirect AFFE does not align with the fund's financial statements.[753]

Investors also indicate that prospectus risk disclosures are difficult to understand,[754] and this may mean that such disclosures currently are difficult to incorporate into investment decisions. For example, many investors responding to the Fund Investor Experience RFC suggested that disclosure about a fund's risks is too long. Some investors suggested that funds should order risks by importance or otherwise better focus their risk disclosures.

6. Fund Advertisements

The Commission rules on investment company advertising apply to all registered investment companies and BDCs. These rules largely focus on how certain types of funds present their performance in advertisements. This focus reflects the Commission's acknowledgement that investors use information about performance to choose among funds and concern that, absent requirements to standardize how funds present performance in advertisements, investors may be susceptible to basing their investment decisions on information that is inaccurate or creates an inaccurate impression of the fund's performance.[755]

In recent years, many funds have reduced their fees they impose on investors. The staff has observed that some funds have highlighted low fees in their advertising materials as a salient factor for investors to consider when choosing among funds. For example, we understand that some funds are advertised as ''zero expense'' or ''no expense'' funds based on the information included in their prospectus fee tables, potentially leading investors to believe these funds impose no costs even though the adviser or an affiliate may be collecting fees (*e.g.,* securities lending costs) from the investor's fund investment. As a result, investors may be more likely today to consider a fund's fees when making their investment choices than they were when the Commission last updated the investment company advertising rules.[756] Also as a result, funds may face increased incentives to understate or obscure fees in their advertising materials.

Advertising can reduce information asymmetries with implications for investor search costs and effects on investor choices and investment outcomes. Lower search costs can lead to more efficient matches between investor preferences and choices. Advertising can also make investors worse off, however.[757] It depends on the abilities of investors to make effective use of the information that the advertising conveys. On the one hand, a fund advertisement can convey information that reduces information asymmetry between the fund and the investor. The effects can be lower search costs for the investor and a lesser chance of a mismatch between the investor's preferences and the fund that is ultimately chosen. However, investors may respond to advertising in ways that are not consistent with their own interests. The effectiveness of the advertising in lowering search costs and improving match efficiency depends on the investor's ability to understand the information. For example, a positive relation between funds' marketing efforts and investor flows (cash investment from investors) is well-documented among mutual funds.[758] In that context, the adviser to the fund bears marketing expenses as part of its total operating cost, and fund shareholders are found to bear some of that cost in the form of fund expenses—unless shareholders react by switching to a similar fund that has lower expenses. One study observed that funds charge higher fees to cover the marketing cost as they engage in an ''arms race'' for similar pools of

[746] *See supra* Section I.B.

[747] *See, e.g.,* Rojas Comment Letter (''I receive too much information. It is too long and too complex.); Franco Comment Letter; Nevin Comment Letter; Woods Comment Letter; David Comment Letter (stating that fund disclosures are too overwhelming to be useful).

[748] *See supra* footnotes 32 through 36 and accompanying text.

[749] *See* Broadridge Comment Letter I (stating that 72% of surveyed investors that review mutual fund or ETF disclosures do not find them easy to understand); ICI Investor Testing (stating that 67% of surveyed mutual fund investors who recalled receiving fund shareholder reports indicated that the reports are difficult to understand).

[750] *See supra* footnote 40 and accompanying text.

[751] *See supra* Section I.B.2.

[752] *See supra* footnote 63 and accompanying text.

[753] *See, e.g.,* Chapman and Cutler Fund of Funds Comment Letter; Invesco Fund of Funds Comment Letter.

[754] *See supra* Section I.B.2.

[755] *See* Rule 156 Adopting Release, *supra* footnote 662; Investment Company Sales Literature Interpretive Rule, Investment Company Act Release No. 10621 (Mar. 8, 1979) [44 FR 16935 (Mar. 20, 1979)], at paragraph accompanying n.5.

[756] See, e.g.,Michael Goldstein, Issues Facing the U.S. Money Management Industry: Presentation to SEC Asset Management Advisory Committee, at 27–28, available at *https://www.sec.gov/files/Empirical-Research-Issues-Facing-US-MM.pdf;* Ben Phillips, ≤ Remarks and Discussion: U.S. Securities and Exchange Commission, Asset Management Advisory Committee, at 2, 8, and 15 (Jan. 14, 2020), available at*https://www.sec.gov/files/BenPhillips-CaseyQuirk-Deloitte.pdf.*

[757] *See, e.g.,* Nikolai Roussanov, Hongxun Ruan, & Yanhao Wei, *Marketing Mutual Funds,* Nat'l Bureau of Econ. Research, Working Paper No. 25056 (2018) (developing and estimating a structural model of the effects of mutual fund marketing with costly investor search).

[758] *See, e.g.,* Prem Jain & Joanna Wu, *Truth in Mutual Fund Advertising: Evidence on Future Performance and Fund Flows,* 2 J. FIN 937 (2000) (finding that advertising in funds increases flows (comparing advertised funds with non-advertised funds closest in returns and with the same investment objective)); Gallaher, Kaniel & Starks (2006) and Kaniel & Parham (2016) (finding a significant and positive impact of advertising expenditures and the resulting media prominence of the funds on fund inflows). Steven Gallaher, Ron Kaniel & Laura T. Starks, *Madison Avenue Meets Wall Street: Mutual Fund Families, Competition and Advertising* (SSRN, Jan. 2006) *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=879775*; Ron Kaniel & Robert Parham, *WSJ Category Kings—The Impact of Media Attention on Consumer and Mutual Fund Investment Decisions,* 123 J. Fin. Econ. 1 (2016).

investors.[759] Some of this cost is passed on to investors according to their abilities to distinguish among funds. The authors suggest that as fees increase, investors with a high search cost would be more likely to be made worse off by the increase in fees and related marketing expenditures than those with low search costs. This is because the investors with the high search costs would be more likely to match with asset managers of poor ability, and because the higher fees would reduce returns.

Under current rules, fund advertising may influence investor choice in ways that depend on the ability of the investor to make effective use of the information in the advertisement. When the investor is able to make effective use of the information, advertising can reduce the investor's search cost and thereby improve the efficiency of the match between the investor's choices and preferences.

Q. Costs and Benefits

Where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed rule. We are providing both a qualitative assessment and quantified estimates of the potential economic effects of the proposed amendments where feasible. As explained in more detail below, because we do not have, and in certain cases do not believe we can reasonably obtain reliable quantitative evidence to use as a basis for our analysis, we are unable to quantify certain economic effects. For example, because the proposed rule would provide fund investors with more tailored, concise disclosure than they currently receive, it is possible that readership of fund disclosure may increase. We do not have reliable quantitative estimates of the extent to which the use of more concise disclosure would enhance readership compared to the baseline scenario in which funds continue to deliver the materials that investors now receive. Similarly, the format and content of the proposed annual and semi-annual reports could reduce the amount of time and effort shareholders require to monitor their fund investments and make portfolio decisions (that is, whether to buy additional shares, continue to hold, or sell a fund investment). We also do not have reliable quantitative estimates of the extent to which the delivery of these more concise, tailored reports would reduce the amount of time and effort investors require to make portfolio decisions, or the value of that time and effort to investors. Nor do we have such estimates for the baseline conditions without the proposed rule. In those circumstances in which we do not have the requisite quantitative evidence, we have qualitatively analyzed the economic impact of the proposed rule and the baseline environment. Our inability to quantify these costs, benefits, or other effects does not imply these effects are less significant from an economic perspective. We request that commenters provide any information, including relevant data or supporting quantitative evidence, that may help inform our analysis and understanding of the economic consequences of the proposed rule and amendments.

1. Broad Economic Considerations

In addition to the comments we received in response to the Fund Investor Experience RFC, discussed in Section I.B, academic studies have documented potential benefits of providing more concise and tailored disclosure. While some of these studies apply only to certain elements of our proposal, others apply broadly to the framing of our analysis of the economic impacts of the proposed rule. In particular, some of this research has identified characteristics that may increase the effectiveness of a disclosure document to consumers, as discussed below.[760]

Research suggests that, because individuals can exhibit limited ability to absorb and understand the implications of the disclosed information, for example due to limited attention or low level of financial sophistication,[761] more targeted and simpler disclosures may be more effective in communicating information to investors than more complex disclosures. Academic studies suggest that costs, such as from increased investor confusion or reduced understanding of the key elements of the disclosure, are likely to increase as disclosure documents become longer, more complex, or more reliant on narrative text.[762] Consistent with such findings, other empirical evidence suggests that disclosure simplification may benefit consumers of disclosed information.[763] In general, academic research appears to support the notion that shorter and more focused disclosures could be more effective at increasing investors understanding than longer, more complex disclosures. For example, a concise shareholder report or a prospectus fee summary could more effectively communicate information to investors than current shareholder reports or prospectus fee tables.

Another characteristic of effective disclosures documented in academic research is disclosure salience. Salience detection is a key feature of human cognition allowing individuals to focus their limited time and attention on a subset of the available information and causing them to over-weight this information in their decision-making processes.[764] Within the context of disclosures, information disclosed more saliently, such as information presented in bold text, or at the top of a page, would be more effective in attracting attention than less saliently disclosed information, such as information presented in a footnote. Limited attention also increases the importance of an individual's focusing on salient disclosure signals. Some research finds that more visible disclosure signals are associated with stronger stakeholder response to these signals.[765] Moreover, research suggests that increasing signal salience is particularly helpful to consumers with lower education levels and financial literacy.[766] There is also empirical evidence that visualization improves individual perception of

[759] *See* Roussanov, Ruan, & Wei, *supra* footnote 757.

[760] *See* George Loewenstein, Cass R. Sunstein, & Russell Golman, *Disclosure: Psychology Changes Everything,* 6 Ann. Rev. Econ. 391 (2014) (''Lowenstein Paper''). The paper provides a comprehensive survey of the literature relevant to disclosure regulation.

[761] See, *e.g.,* David Hirshleifer & Siew Hong Teoh, *Limited attention, information disclosure, and financial reporting,* 36 J. Acct. & Econ. 337 (2003) (''Hirshleifer & Teoh Study'') and L.E. Willis, *Decision making and the limits of disclosure: The problem of predatory lending: Price,* 65 Md. L. Rev. 707 (2006).

[762] See, *e.g.,* Samuel B. Bonsall & Brian P. Miller, The Impact of Narrative Disclosure Readability on Bond Ratings and the Cost of Debt, 22 Rev. Acct. Stud. 608 (2017) and Alistair Lawrence, Individual Investors and Financial Disclosure, 56 J. Acct. & Econ. 130 (2013).

[763] *See, e.g.,* Sumit Agarwal, et al., *Regulating Consumer Financial Products: Evidence from Credit Cards,* Nat'l Bureau of Econ. Research, Working Paper No. 19484 (Jun. 2014), *available at https://www.nber.org/papers/w19484* (finding that a series of requirements in the Credit Card Accountability Responsibility and Disclosure Act (CARD Act), including several provisions designed to promote simplified disclosure, has produced substantial decreases in both over-limit fees and late fees, thus saving U.S. credit card users $12.6 billion annually).

[764] *See* Daniel Kahneman, Thinking, Fast and Slow (2013); Susan Fiske & Shelley E. Taylor, Social Cognition: From Brains to Culture (3rd ed. 2017).

[765] *See* Hirshleifer and Teoh Study, *supra* footnote 761.

[766] See, *e.g.,* Victor Stango & Jonathan Zinman, Limited and Varying Consumer Attention: Evidence from Shocks to the Salience of Bank Overdraft Fees, 27 Rev. Fin. Stud. 990 (2014).

information.[767] For example, one experimental study shows that tabular reports lead to better decision making and graphical reports lead to faster decision making (when people are subject to time constraints).[768] Overall these findings suggest that problems such as limited attention may be alleviated if key information in shareholder reports is emphasized, is reported closer to the beginning of the document, and is visualized in some manner (*e.g.,* tables, graphs, bullet lists). However, it is also important to note that given a choice, registrants may opt to emphasize elements of the disclosure that are most beneficial to themselves rather than investors, while deemphasizing elements of the disclosure that are least beneficial to them. The proposed instructions for shareholder reports include requirements that are designed to mitigate this risk. For example, the proposed instructions require disclosure items to appear in a prescribed order, which mitigates funds' ability to provide disclosure opportunistically.[769]

There is also a trade-off between allowing more disclosure flexibility and ensuring disclosure comparability (*e.g.,* through standardization). Greater disclosure flexibility potentially allows the disclosure to reflect more relevant information, as disclosure providers can tailor the information to firms' own specific circumstances. Although disclosure flexibility allows for disclosure of more decision-relevant information, it also allows registrants to emphasize information that is most beneficial to themselves rather than investors, while deemphasizing information that is least beneficial to the registrants. Economic incentives to present one's operations and performance in better light may drive funds to deemphasize information that may be relevant to retail investors. Moreover, although standardization makes it harder to tailor disclosed information to a firm's specific circumstances, it also comes with some benefits. For example, people are generally able to make more coherent and rational decisions when they have comparative information that allows them to assess relevant trade-offs.[770] The proposed rule is intended to strike a balance between the relative benefits and costs of disclosure standardization versus disclosure flexibility; for example, by requiring a prescribed order of disclosure topics and providing standardized instructions for each of those disclosures but allowing some flexibility for certain disclosure presentations (*e.g.,* fund statistics, graphical representation of holdings) to account for different fund types.

In addition, studies have found that the structure or format of disclosure may improve (or decrease) investor understanding of the disclosures being made. Every disclosure document not only presents new information to retail investors but also provides a particular structure or format for this information that affects investors' evaluation of the disclosure.[771] This ''framing effect'' could lead investors to draw different conclusions depending on how information is presented. For example, if the liquidity risk management program information is presented first in a shareholder report, it could affect the way investors perceive all subsequent disclosures in the shareholder report and, possibly, discount more heavily the information provided by funds that disclose issues regarding liquidity risk management over the period. If, instead, liquidity risk management information were provided near the end of the shareholder report, the effect of the information could be moderated because it would no longer frame the other information provided to investors. Because of such framing effects, it is important that the structure of a disclosure document supports the intended purpose of the disclosure.

2. Modified Disclosure Framework for Existing Fund Shareholders

a. Summary of Economic Effects

The proposal would provide fund shareholders with more concise disclosure that highlights information that is key to retail shareholders for the purpose of monitoring fund investments and informing portfolio decisions, while providing layered access to other information that shareholders now receive that may be of interest to market professionals and some fund shareholders. To promote disclosure that highlights key information for shareholders further, the proposal would permit funds to notify shareholders promptly if certain material changes occur to the fund (provided the summary prospectus, statutory prospectus, and additional information is available online and delivered upon request), instead of delivering annual prospectus updates and prospectus stickers each year. Funds (and intermediaries) would have the option to continue sending the annual prospectus update under the rule.

The following sections discuss the potential costs and benefits of the proposed modifications to the disclosure framework. In summary, we expect the proposed rules to benefit retail shareholders by providing information that is easier to use and that highlights key information for purposes of monitoring fund investments and making informed portfolio decisions. As a result, the proposed amendments could result in shareholders making more informed investment decisions by reducing obstacles that the Commission believes have limited readership of fund shareholder reports—namely, that the reports are too lengthy and not sufficiently tailored for retail shareholders. The proposed rules are also likely to reduce expenses associated with delivering disclosures for some funds, and to the extent that funds pass these savings on to shareholders, fund shareholders would benefit from these cost savings. We discuss two principal types of costs associated with the proposed approach. First, we expect fund and fund shareholders to incur transition costs of adapting to the new disclosure framework. Second, we anticipate some shareholders may sustain costs beyond the transition period arising from the possibility of mismatch between the preferences of the shareholders and the design of the rule proposal.

b. Benefits to Investors

It is difficult to quantify the effects of the proposed modified disclosure framework on investors. The delivery of more concise disclosures by funds through the proposed layered framework may reduce the investor effort required to monitor existing fund

[767] *See* John Hattie, Visible Learning. A Synthesis of Over 800 Meta-Analyses Relating to Achievement (2008).

[768] See Izak Benbasat & Albert Dexter, An Investigation of the Effectiveness of Color and Graphical Information Presentation Under Varying Time Constraints, 10–1 MIS Q. 59 (1986).

[769] Funds are already required to provide certain disclosure in a required order in the summary section of the statutory prospectus, or in the summary prospectus. *See* General Instruction C.3 of Form N–1A.

[770] *See, e.g.,* JR Kling, et al., *Comparison Friction: Experimental Evidence from Medicare Drug Plans,* 127 Q. J. Econ. 199 (2012) (finding that in a randomized field experiment, in which some senior citizens choosing between Medicare drug plans that were randomly selected to receive a letter with personalized, standardized, comparative cost information (''the intervention group'') while another group (''the comparison group'') received a general letter referring them to the Medicare website; plan switching was 28% in the intervention group, but only 17% in the comparison group, and the intervention caused an average decline in predicted consumer cost of about $100 a year among letter recipients); CK Hsee, et al., *Preference Reversals Between Joint and Separate Evaluations of Options: A Review and Theoretical Analysis,* 125 Psychol. Bull. 576 (1999).

[771] *See* Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice,* 211 Sci. 453 (1981).

investments or to make subsequent portfolio decisions. Key information provided in a concise, user-friendly presentation could allow investors to understand information about a fund's operations and activities or compare information across products more easily or efficiently, and as a result, may lead investors to make decisions that better align with their investment goals.[772]

For example, the proposed rule requires funds to distill certain key information—such as expenses, performance, and holdings—and use graphs, tables, and other more visually engaging presentations in their shareholder reports.[773] As another example, because the proposal would require fund registrants to prepare separate shareholder reports for each series, a shareholder would be able to more quickly identify information about the fund in which she or he invests, instead of having to find his or her fund in a long report that covers multiple funds. Further, by providing additional flexibility for funds to use technology to provide interactive or user-friendly features in electronic versions of their shareholder reports, the proposal may provide shareholders with access to information that is more tailored to their individual needs and circumstances (*e.g.,* performance or expense information based on their individual investment amounts), which may facilitate better monitoring of fund investments or more informed investment decisions.

There is evidence to suggest that consumers benefit from disclosures that highlight key information.[774] One study finds that the use of summary prospectuses helps investors spend less time and effort to make investment decisions without reduction in the quality of those decisions.[775] This research is consistent with the 2012 Financial Literacy Study, which showed that at least certain investors favor a layered approach to disclosure with the use, wherever possible, of tailored disclosures containing key information about an investment product or service.[776] We understand that investors may prefer a layered approach simply to save time in reaching similar investment decisions, or to make better decisions, or both.

Further, investors allocate their attention selectively,[777] and the sheer volume of disclosure that investors receive about funds may discourage investors from reading the materials that are currently delivered to them. For example, in connection with the development of the summary prospectus, the observations of a 2008 telephone survey conducted on behalf of the Commission with respect to mutual fund statutory prospectuses are consistent with the view that the volume of disclosure may discourage investors from reading disclosures.[778] That survey observed that many mutual fund investors did not read statutory prospectuses because they are long, complicated, and hard to understand. Investor surveys submitted by commenters on the Fund Investor Experience RFC similarly suggest that shareholders may be more likely to read more concise shareholder reports.[779] To the extent that the proposed rule would increase readership of fund shareholder reports, they could improve the efficiency of portfolio allocations made on the basis of disclosed information for those shareholders who otherwise would not have read the disclosures that the funds deliver currently.

In addition, other information that shareholders currently receive under the baseline, including financial statements, financial highlights, and annual prospectus updates, would be available online and delivered upon request to those shareholders who are interested in more-detailed information. As a result, shareholders who use this information to monitor their fund investments or inform portfolio decisions could continue to access and use this information.

Further, by allowing funds to deliver prompt notices of material funds changes to existing shareholders instead of annual prospectus updates, the proposed rule would help shareholders focus on information that is designed to meet their needs, rather than the needs of new or prospective investors. This aspect of the proposal would also reduce the amount of duplicative disclosure that fund shareholders currently receive. This is because annual prospectus updates include some of the same types of information as shareholder reports, including expense and performance information. Reducing duplicative disclosure could help shareholders more easily focus on salient information and could reduce the potential for shareholder confusion when a shareholder receives multiple disclosure materials close in time to one another and that include similar information, but with different presentations of that information.

By tailoring the information that funds deliver to shareholders to meet the needs of retail shareholders, the proposed rule could facilitate better or more efficient monitoring of fund investments and overall investment decision-making. The magnitude of this effect will depend on the extent to which investors review the disclosures directly, as a basis for their choices.

In addition, by excluding funds from rule 30e–3, fund shareholders may receive key information to monitor their fund investments or inform their investment decisions more directly as compared to the baseline. To the extent that direct delivery of a concise shareholder report that highlights key information for retail shareholders—

[772] Research suggests that individuals are generally able to make more efficient decisions when they have comparative information that allows them to assess relevant trade-offs. *See, e.g., supra* footnote 770.

[773] *See supra* footnotes 767 and 768 and accompanying text (discussing studies suggesting that visualization improves an individual's perception of information).

[774] *See, e.g., supra* footnote 763; *see also* Robert Clark, Jennifer Maki & Melinda S. Morrill., *Can simple informational nudges increase employee participation in a 401(k) plan?,* Nat'l Bureau of Econ. Research, Working Paper 19591 (2013). The authors find that a flyer with simplified information about an employer's 401(k) plan, and about the value of contributions compounding over a career, had a significant effect on participation rates.

[775] Beshears Paper, *supra* footnote 81. We note, however, that while the authors find evidence that investors spend less time making their investment decision when they are able to use summary prospectuses, there is no evidence that the quality of their investment decisions is improved. In particular, ''On the positive side, the Summary Prospectus reduces the amount of time spent on the investment decision without adversely affecting portfolio quality. On the negative side, the Summary Prospectus does not change, let alone improve, portfolio choices. Hence, simpler disclosure does not appear to be a useful channel for making mutual fund investors more sophisticated . . .'' *Id.* at 13.

[776] *See* 2012 Financial Literacy Study, *supra* footnote 26.

[777] *See, e.g.,* Loewenstein Paper, *supra* footnote 760; Hirshleifer and Teoh Study, *supra* footnote 761.

[778] Prior to the Commission's 2009 adoption of mutual fund summary prospectus rules, the Commission engaged a consultant to conduct focus group interviews and a telephone survey concerning investors' views and opinions about various disclosure documents filed by companies, including mutual funds. During this process, investors participating in focus groups were asked questions about a hypothetical Summary Prospectus. Investors participating in the telephone survey were asked questions relating to several disclosure documents, including mutual fund prospectuses. *See* Abt SRBI, Inc., *Final Report: Focus Groups on a Summary Mutual Fund Prospectus* (May 2008), *available at https://www.sec.gov/comments/s7-28-07/s72807-142.pdf*; *see also supra* footnote 10 and accompanying text.

[779] *See, e.g.,* Broadridge Comment Letter I (discussing the results of a quantitative survey related to fund disclosure in which approximately 39% of investors said they would be more likely to look at or review a summary format of a fund's annual and semi-annual reports); ICI Comment Letter I (discussing an investor survey of a summary shareholder report prototype, in which more than 90% of participants indicated that they would be more likely to read the summary prototype than a full-length shareholder report); Broadridge Comment Letter II.

including annual report disclosure that better identifies material changes to the fund than current annual prospectus update disclosure—may increase how informed shareholders are about funds, this could potentially increase shareholders' ability to allocate capital efficiently across funds and other investments.[780]

The proposed changes are intended to make the disclosures easier to use by highlighting key information for shareholders in a concise, visually appealing format. As described above, shareholders responding to the Fund Investor Experience RFC indicated that shareholder reports are currently too lengthy and technical, and expressed a preference for receiving summary disclosures, including visual tools such as tables and charts.[781] Given this, we expect that the proposed rule could reduce obstacles limiting shareholder readership of fund shareholder reports.

We note that the magnitude of the effect would depend on how many shareholders rely on the reports that are the subject of the proposal to monitor their funds. It would also depend on the extent to which those who use the reports would monitor differently in response to the tailored disclosures and, for other shareholders, how many would choose to rely on the reports under the rule that would not otherwise do so. We are requesting comment on this appraisal, and also comments on what sources might be available for consideration by the Commission of quantitative estimates of the likely future difference in shareholder use of the disclosure under the proposal relative to what would occur in the future under the current framework.

c. Costs to Investors

Fund shareholders could experience certain transition costs under the proposal, and some shareholders may experience other ongoing costs. Transition costs would include the costs of the inconvenience to some shareholders of adapting to the new materials and to the changes in the presentation of information. While the more concise shareholder reports required by the proposal would likely reduce investor comprehension costs, investors would nevertheless bear a one-time cost of the inconvenience of adjusting to the changes in the disclosures they receive. These costs are likely to be relatively lower for less experienced shareholders and relatively greater for the more seasoned shareholders who are accustomed to existing fund practices.

Shareholders in funds that rely on rule 30e–3 to deliver paper notices to notify shareholders that a shareholder report is available online, or shareholders in funds that were planning to rely on rule 30e–3 and that included statements in their shareholder reports and prospectuses notifying shareholders of the upcoming change to shareholder report delivery, may experience greater transition costs. For example, those shareholders who were receiving rule 30e–3 notices or who expected to begin receiving rule 30e–3 paper notices in the future may experience some confusion when a fund begins to deliver concise shareholder reports. However, shareholders receiving the annual and semi-annual reports that this proposal contemplates would be receiving tailored information more directly than they would through the rule 30e–3 notice. We believe the benefit of making this tailored information more accessible to shareholders would justify any potential short-term confusion that may result from the transition. In addition, a fund that relied on rule 30e–3 would be able to communicate to investors about these shareholder report changes.

Beyond transition costs, the proposal would also impose costs on shareholders who prefer to receive the baseline disclosure as opposed to the more concise and tailored disclosure they would receive under the proposal. These shareholders may experience costs associated with locating additional information online or requesting delivery of materials they would no longer automatically receive. Some shareholders may rely on information that is currently included in the annual and semi-annual report but would, under the proposed amendments, be located in other documents, such as Form N–CSR or the SAI. Those shareholders would incur the cost of reviewing multiple disclosure documents to locate the information that was previously located in a single document. The significance of this cost would likely depend on several factors, including the delivery method and relative importance of each piece of information to the individual shareholder. For those shareholders who prefer to receive disclosures in paper, the proposal provides an option for the shareholder to request the mailing of a paper copy of the new Form N–CSR items, such as financial statements, that would no longer appear in shareholder reports.

In addition, for funds that rely on proposed rule 498B, shareholders who prefer paper delivery of the annual prospectus update would face the choice of adjusting to using the online version of the prospectus or making ad hoc requests for paper delivery. For those shareholders, the effect of either of these choices would be a cost of disutility or inconvenience from the loss of the automatic access to their preferred option that they have under the current framework but would not have under the proposal.

To illustrate, we note that, for some shareholders, the cost of making requests for additional information would be small and therefore, the cost of losing their preferred option as the default under the proposal would be small. This is because those shareholders would likely react to the proposal by making the effort to request continued mailing of more-detailed semi-annual information or prospectuses. For those shareholders, the cost of the proposal would include the cost of the inconvenience from having to make the request. Shareholders who find it relatively burdensome to make a request for continued mailing, however, would be migrated over to the new delivery framework and face disutility from migrating to the new tailored disclosures. By providing a mechanism for shareholders to continue to receive the more-detailed information, the proposal would limit the extent to which shareholders who prefer the current disclosures would end up facing disutility from receiving the proposed disclosures instead. Thus, the overall cost of inconvenience or disutility to those shareholders who prefer the delivery framework under the current rules to the proposed framework would depend on how easy it is for shareholders to request continued mailings of more-detailed semi-annual information or prospectuses by funds after the rule goes into effect. We do not have access to reliable estimates of the opportunity cost to investors associated with this effect of the proposed rule; we are therefore requesting comment on this, as well as the effects on the use of investor time and attention, as further described at the end of this section.

In addition to transition costs and information search or request costs, fund shareholders would bear the costs of the proposed modified disclosure framework through the increased expenses that funds would incur to implement the proposal. We discuss those expenses in the section on ''other costs,'' below.

[780] *See supra* Section I.B.1 (discussing investor preferences for concise, layered disclosure).

[781] *Id.*

d. Other Benefits

The proposal would reduce some of the costs to funds of delivering information to shareholders. As the owners of the fund assets, shareholders could benefit from this cost reduction in proportion to their holdings of those assets. The magnitude of this cost savings would be more significant to the extent that a fund would deliver shareholder reports or prospectus updates to investors by paper mail in the absence of the proposed rule. The amount of the cost savings would vary across funds, depending on the expressed preferences of the fund and its shareholders for paper versus electronic delivery under Commission guidance on electronic delivery (and, with respect to shareholder reports, rule 30e–3 notices) and on fund practices between delivery of the summary prospectus under rule 498 versus the statutory prospectus. The scenarios where delivery costs may decline significantly under the proposal, relative to the baseline scenario, are indicated in table 8 and discussed below.

Delivery Cost Savings for Shareholder Reports

The proposal would reduce the cost of delivering a shareholder report by a larger per-fund amount for funds that do not rely on rule 30e–3 (deliver the full report) than for funds that rely on rule 30e–3 (deliver a notice) at the time any final rule goes into effect. Thus, we consider separately the delivery-cost savings from the proposed rule for funds under each of these two baseline delivery scenarios. For funds that do not rely on rule 30e–3, the proposal would reduce delivery costs by replacing the cost of sending current annual and semi-annual reports with the smaller cost of sending concise reports to those shareholders who do not request e-delivery. This is because the cost of printing and mailing (including processing fees) would be lower for the concise reports. We estimate that funds could deliver annual and semi-annual reports as trifold mailings (3–4 pages) under the proposal instead of annual reports that are approximately 134 pages on average and semi-annual reports that are approximately 116 pages on average. One commenter on the Fund Investor Experience RFC estimated that delivering a concise shareholder report instead of current shareholder reports would reduce the per unit cost of delivery from $0.50 to $0.33 annually, which is a decline of $0.17 per unit or 34 percent.[782] The commenter's per unit delivery cost estimates assume that 3 out of 10 fund shareholders receive a shareholder report by mail.[783] We understand that these costs may or may not be representative of the costs for all funds. For example, the commenter's estimates are based on costs for delivering shareholder reports to shareholders who hold their shares in beneficial accounts and may not reflect any differences in costs for direct-held accounts.[784] Nevertheless, we believe that the estimate of 34 percent is a reasonable estimate of the likely decline in the per unit cost of delivering the concise report for funds that do not rely on rule 30e–3 under the proposal.[785] Thus, for these funds, we estimate that the proposed rule would reduce their current shareholder report delivery costs by 34 percent on average, resulting in an average annual cost savings of approximately $7,040 per fund that does not rely on rule 30e–3.[786] For funds that rely on rule 30e–3, the proposal would reduce delivery costs because it would be less costly to deliver the concise report than the rule 30e–3 notice. That is, while the cost of printing the concise report may be greater than the cost of printing the notice (see table 8), the overall cost of delivery that includes the costs of printing, mailing, and processing fees would likely be lower for the concise report.[787] One commenter estimated that delivering a concise shareholder report instead of a rule 30e–3 notice would reduce the delivery cost from $0.36 to $0.33 annually, which is a decrease of $0.03 per unit or approximately 8 percent.[788] This is assuming that 3 out of 10 fund shareholders receive a shareholder report by mail and is based on the commenter's experience processing shares held in beneficial accounts.[789] We understand that this estimate may or may not be representative of the average costs for all funds. For example, the average enrollment rate for electronic delivery may be lower for direct-held accounts, which would result in higher per unit costs than the commenter provided.[790] As another example, to the extent a fund would share a single, consolidated rule 30e–3 notice with other funds to notify a shareholder of the website address(es) for each fund's report, and the fund has many shareholders who are invested in those other funds, the fund may not experience the same extent of cost savings under the proposal.[791] Nevertheless, we believe that the estimate of approximately 8 percent is a reasonable estimate of the likely decline in the per-unit cost of delivering the concise report rather than rule 30e–3 notices.[792] Specifically, for funds that rely on rule 30e–3, we estimate that the proposed rule would reduce their current shareholder report delivery costs by approximately 8 percent, on average, and that the average annual cost savings would be approximately $1,243 per fund that relies on rule 30e–3.[793]

The total shareholder report delivery cost savings from the proposal would be a weighted combination of the savings in delivery costs for funds that rely on rule 30e–3 and the savings for funds that do not rely on rule 30e–3. For example, if 86 percent of funds deliver

[782] *See* Broadridge Comment Letter II.

[783] *See id.* We understand that the commenter's cost estimates are not limited to shareholder reports that are delivered by mail and, instead, the cost per unit averages the costs of different delivery mechanisms (including paper and electronic delivery). *See, e.g.,* Comment Letter of Broadridge Financial Solutions, Inc. (Oct. 31, 2018) on File No. S7–13–18, *available at https://www.sec.gov/comments/s7-13-18/s71318-4593946-176328.pdf* (estimating that the average cost of paper, printing, and postage of a mailed shareholder report is $0.94).

[784] For instance, we understand that the average enrollment rate for electronic delivery may be lower for direct-held accounts, which would result in higher per unit costs for delivering current shareholder reports than the commenter provided. *See supra* footnote 734 and accompanying text. In addition, the cost of delivering the current and proposed shareholder reports vary by individual funds based on a number of factors. For example, we understand that printing and mailing costs vary depending on the length of the fund's shareholder reports and the number of reports it delivers by mail.

[785] $0.17 estimated reduction in shareholder report delivery costs associated with summary shareholder reports/$0.50 estimated costs of delivering current shareholder reports = 34 percent.

[786] *See supra* footnote 740 and accompanying text (noting that the Commission estimated annual printing and mailing costs (inclusive of processing fees) of $20,707.33 absent rule 30e–3). $20,707.33 × 34 percent = $7,040.49.

[787] *See, e.g.,* ICI Comment Letter I (stating that processing fees on average would be $0.20 for rule 30e–3 notices and $0.15 for concise shareholder reports); Broadridge Comment Letter II.

[788] *See* Broadridge Comment Letter II.

[789] See id.

[790] *See supra* footnote 734 and accompanying text.

[791] *See* Rule 30e–3 Adopting Release, *supra* footnote 14, at paragraph accompanying n.211 (discussing consolidated rule 30e–3 notices).

[792] $0.03 average reduction in delivery costs for summary shareholder reports/$0.36 average cost of delivering rule 30e–3 notices = 8.33 percent.

[793] Based on one commenter's estimate, delivering the concise report instead of the rule 30e–3 notice would reduce the per-unit delivery cost from $0.36 to $0.33, or $0.03 per unit. *See* Broadridge Comment Letter II. This is $0.03/$0.17 or approximately 17.65 percent of estimated per-unit reduction in the shareholder report delivery costs for funds that do not rely on rule 30e–3. We thus estimate that the savings from delivering the concise report instead of the notice is 17.65 percent of the estimated $7,040.49 cost savings from delivering the concise report instead of the full report, or 17.65 percent × $7,040.49 = $1,242.65.

rule 30e–3 notices before the proposal is in effect, the delivery cost savings from the proposal would be an estimated $13.26 million from those funds.[794] In addition, if 14 percent of funds do not rely on rule 30e–3 before any final rules are in effect, the delivery cost savings would be $12.23 million from those funds.[795] Thus, the aggregate delivery costs savings for shareholder reports from the rule would be $25.49 million.[796]

We understand that the estimated cost savings for shareholder reports would depend on factors in addition to those discussed above. These include the fraction of funds that would deliver notices under rule 30e–3 before any final rules are in effect and the extent to which those funds actually experience a delivery cost savings under the proposal. For example, if the cost of delivering a concise shareholder report were about the same as the cost of delivering a notice under rule 30e–3, then our estimated cost savings would decline from $25.49 million to $12.23 million. As another example, if fewer than 86 percent of funds began to deliver notices under rule 30e–3 before any final rules are in effect, then our estimated aggregate cost savings would be greater than $25.49 million. This is because a larger number of funds would experience higher delivery cost savings in that instance.

Delivery Cost Savings for Prospectuses

Funds that rely on rule 498B would experience cost savings from delivering prompt notices of certain material changes to existing shareholders instead of the annual prospectus updates and interim prospectus stickers that they delivery currently. The proposal would allow funds to consolidate some of their current disclosures so that they would generally deliver fewer disclosure materials to shareholders.

We estimate that, on average, funds make 1.5 material changes per year that they currently disclose in annual prospectus updates and interim prospectus stickers and that the proposal would require them to disclose in their annual reports or through prompt notices under rule 498B.[797] Of these material changes, we estimate that an average of 1 material change is made in the annual prospectus update. Under the proposal, a fund would disclose this material change in its annual report and generally would not need to send a separate notice under proposed rule 498B. We estimate that the remaining average of 0.5 material changes per year would be disclosed separately in rule 498B notices.

As a result, we estimate that proposed rule 498B would reduce fund delivery costs by reducing the number of separate prospectus-related deliveries to existing shareholders from an average of 1.5 deliveries to an average of 0.5 deliveries per year. The total cost savings would depend on factors that include: (1) Whether a fund currently delivers annual prospectus updates to all shareholders or tracks which shareholders purchase additional shares during the year; (2) how many shareholders have elected electronic delivery and how many shareholders receive prospectus materials in paper; (3) how many material changes a fund makes each year; and (4) whether a fund delivers prospectus stickers separately or consolidates this delivery with delivery of other materials, such as semi-annual reports. We are unable to estimate the aggregate cost savings across all funds. However, we are able to estimate that the current costs of printing and mailing summary prospectus annual updates is approximately $0.55 per summary prospectus and that the proposal would eliminate at least part of this cost.[798] That is, under proposed rule 498B, funds would no longer incur the costs of delivering annual prospectus updates by mail. Additionally, funds would no longer incur processing fees for delivering annual prospectus updates electronically such as by email currently.[799]

We understand funds that currently deliver statutory prospectuses to existing shareholders would likely experience greater delivery cost savings if they were to rely on proposed rule 498B because of higher printing and mailing costs for statutory prospectuses than for shorter summary prospectuses. However, we assume that only funds that deliver summary prospectuses would rely on proposed rule 498B. We believe that funds that deliver summary prospectuses are more familiar with using layered disclosure concepts to satisfy prospectus delivery obligations and would incur fewer transition costs to comply with proposed rule 498B, as discussed in Section III.C.2.e.

Benefits of Proposed Form N–CSR Requirements

Beyond delivery-related cost savings from the proposal, there are benefits associated with the proposed requirement that funds continue to file on Form N–CSR certain information, such as financial statements and financial highlights, that would no longer appear in shareholder reports, relative to the alternative of not continuing to require such filings. The continued availability of this information, including on a historical basis on EDGAR, would allow financial professionals and other market participants to continue to analyze this information over time. This historical information also may facilitate the Commission's performance of fund monitoring responsibilities that benefit investors. Finally, a fund's principal executive and financial officer(s) would continue to be required to certify the financial and other information included on Form N–CSR and would be subject to liability for material misstatements or omissions on Form N–CSR, so there would be no change in this contribution to the maintained accuracy and completeness of this information for investors, market professionals, and others who use this information.

e. Other Costs

Some of the proposed changes in delivery would cause fund shareholders to face greater fund expenses than without the proposal. The likelihood and extent of these increases would depend on the fund's baseline delivery scenario, as follows. For funds that rely on rule 30e–3, the costs of printing and mailing shareholder reports would be

[794] 12,410 funds × 86 percent × $1,242.64 estimated savings in delivery costs per fund that delivers a rule 30e–3 notice = $13.26 million.

[795] 12,410 funds × 14 percent × $7,040.49 estimated savings per fund that delivers the full report (and does not rely on rule 30e–3) = $12.23 million.

[796] The weighted average savings in delivery cost per fund is (86 percent × $1,242.64) + (14 percent × $7,040.49) = $1,068.67 + $985.67 = $2,054.34. Multiplying this across all 12,410 funds yields an estimated delivery cost savings from the proposal of 12,410 funds × $2,054.34 per fund = $25.49 million. That is, the aggregate cost savings is $13.26 million + $12.23 million = $25.49 million.

[797] *See supra* footnote 725.

[798] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27, at n.1077 and accompanying text (estimating that 9-page updating summary prospectus for variable insurance contracts would cost $0.55 to print and mail); *see also supra* paragraph accompanying footnote 721 (estimating that funds' summary prospectuses are, on average, 8 pages long).

[799] For example, a fund may pay a type of processing fee (referred to as a preference management fee and, formerly, as an incentive fee) of up to 10 cents per distribution per account where a shareholder holds shares in a fund through an account with an intermediary and the shareholder has elected to receive fund disclosures electronically. *See* NYSE rule 451.90(4); Supplementary Material .01(a)(5) to FINRA rule 2251. *See also* Comment Letter of Investment Company Institute (Oct. 31, 2018) on File No. S7–13–18, at 14, *available at https://www.sec.gov/comments/s7-13-18/s71318-4594882-176335.pdf.*

higher under the proposal.[800] We generally believe these additional printing and mailing costs would be small. For example, we anticipate that funds may be able to deliver the proposed shareholder reports as a trifold mailing, which would only incrementally increase the printing and mailing costs of a rule 30e–3 notice. One commenter estimated that a concise shareholder report would be approximately $0.01 more expensive to print than a rule 30e–3 notice.[801] We estimate that this cost increase would be less than the estimated decline in the cost of processing fees, as discussed in Section III.C.2.d, above. Moreover, to the extent a fund shareholder invests in multiple of a registrant's funds and these funds would use a single shareholder report absent the proposal, the amendments may increase printing and mailing costs a negligible amount in some instances if certain disclosures across the funds otherwise are the same. In addition, some funds that choose to rely on proposed rule 498B may send more notices of material changes to certain prospectus items in some years than the number of annual prospectus updates and stickers they would deliver to shareholders without the proposal. Since funds would have the option to rely on proposed rule 498B, however, we expect that funds would likely rely on 498B where it would reduce their average annual costs. That is, we understand that cost is a consideration for funds and that the cost differences may be sufficient in this instance to influence their choice.

TABLE 8—POTENTIAL EFFECTS ON DELIVERY OF SHAREHOLDER REPORTS AND PROSPECTUS UPDATES UNDER THE PROPOSAL VARY ACCORDING THE BASELINE PREFERENCES AND REQUESTS OF THE AFFECTED FUNDS AND FUND SHAREHOLDERS *

Table 8.1—Semi-annual report. (Effect of proposal to modify the semi-annual report delivery)

Fund relies on rule 30e–3?	Shareholder requests electronic delivery	Shareholder requests paper delivery under rule 30e–3	Shareholder makes no delivery election
Yes	Email (with link to 3–4 page trifold tailored report) replaces email (with link to 116 page report).	Paper mail (3–4 page) trifold tailored report replaces paper mail of 116 page semi-annual report (Printing and mailing cost decrease).	Paper mail (3–4 page) trifold tailored report replaces paper (1 page) of notice with link to 116 page semi-annual report (Printing and mailing cost increase and processing fee decrease).
No	Email (with link to 3–4 page report) replaces email (with link to 116 page report).	N/A	Paper mail (3–4 page) trifold replaces paper mail (116 page) report (Printing and mailing cost decrease).

Table 8.2—Annual report. (Effect of proposal to modify the annual report delivery)

Fund relies on rule 30e–3?	Shareholder requests electronic delivery	Shareholder requests paper delivery under 30e–3	Shareholder makes no delivery election
Yes	Email (with link to 3–4 page report) replaces email (with link to 134 page report).	Paper mail (3–4 page) trifold replaces paper mail (134 page) report (Printing and mailing cost decrease).	Paper mail (3–4 page) trifold replaces paper (1 page) notice with link to 134 page report (Printing and mailing cost increase and processing fee decrease).
No	Email (with link to 3–4 page report) replaces email (with link to 134 page report).	N/A	Paper mail (3–4 page) trifold replaces paper mail (134 page) report (Printing and mailing cost decrease).

Table 8.3—Annual prospectus update. (Effect of proposal to permit funds to replace the delivery of annual prospectus updates and prospectus stickers with notices of certain material changes (proposed rule 498B), assuming that they exercise this option)

Fund uses summary prospectus (rule 498)?	Shareholder requests electronic delivery?	
	Yes	*No*
Yes	Eliminate email (with link to 8 page summary prospectus update, annual) (Processing fee decrease).	Eliminate paper mail (8 page) summary prospectus update, annual (Printing and mailing cost decrease).
No	No change expected but, if a fund relies on rule 498B under these circumstances, it would eliminate email with link to statutory prospectus update (annual), which would decrease processing fees for the fund.	No change expected but, if a fund relies on rule 498B under these circumstances, it would eliminate paper mail (128 page) statutory prospectus update, (annual), which would decrease printing and mailing costs for the fund.

Table 8.4—Other prospectus updates. (Effect of proposal to permit funds to replace the delivery of other prospectus updates or prospectus stickers, with notices of certain material changes (proposed rule 498B), assuming that they exercise this option)

Is fund change material, as described in rule 498B?	Shareholder requests electronic delivery?	
	Yes	*No*
Yes	Email with notice of a material change delivered within 3 business days replaces potentially less timely email of prospectus update or sticker in some instances.	Paper mail of notice of a material change delivered within 3 business days replaces potentially less timely paper mail of prospectus update or sticker in some instances.

[800] As discussed below, funds that rely on rule 30e–3 or plan to rely on rule 30e–3 would also incur transition costs under the proposal.

[801] *See* Broadridge Comment Letter II.

Table 8.4—Other prospectus updates. (Effect of proposal to permit funds to replace the delivery of other prospectus updates or prospectus stickers, with notices of certain material changes (proposed rule 498B), assuming that they exercise this option)

Is fund change material, as described in rule 498B?	Shareholder requests electronic delivery?	
	Yes	*No*
No	May eliminate email of prospectus update or sticker in some instances.	May eliminate paper mail of prospectus update or sticker in some instances.

Notes: The costs and benefits of the proposed modification to shareholder report and prospectus delivery under the proposed rules would vary across the baseline delivery scenarios—*i.e.,* the scenario that would be in place at the time of the proposed rule implementation if the current rules were to remain in place—that are shown in the table. Some of the cost and benefits would be transitional and others would be sustained, and each would depend on factors beyond what appears in the table, as discussed in Sections III.C.2.c and III.C.2.e, below. In addition, under the proposal, shareholders may request delivery of paper or electronic copies of the documents that funds would be required to make available online.

As a further delivery-related cost, funds would incur costs under the proposed requirements in rule 30e–1 and rule 498B to deliver certain materials to shareholders upon request. The extent of these costs would depend on how many shareholders prefer the current delivery framework in which they receive additional shareholder report information or annual prospectus updates, how many of these shareholders would prefer to request these materials directly (*e.g.,* in paper) instead of accessing them online, and whether the shareholders request paper or electronic copies of these materials. We estimate that funds would incur average annual printing and mailing costs of $500 per fund to deliver materials upon request under the proposed amendments to rule 30e–1.[802] For funds that choose to rely on proposed rule 498B, we estimate average annual printing and mailing costs of $500 per fund to deliver prospectuses and related materials upon request under that rule.[803]

In addition to delivery-related costs, fund would experience other costs under the proposal, including both transition costs and ongoing costs. These other costs would result from proposed changes to the scope and contents of shareholder reports, new Form N–CSR items, new website availability requirements, amendments to the scope of rule 30e–3, and preparation of notices of material changes under proposed rule 498B. The compliance costs associated with proposed rule 498B would only affect funds that choose to rely on that rule, and the compliance costs associated with the amendments to rule 30e–3 would only affect funds that rely on that rule or were planning to rely on that rule. The other categories of compliance costs would affect all funds. These different categories of costs could be reflected in fund expenditures that funds could pass on to shareholders, likely in proportion to their participation in the fund. The expenditures could be to procure the services of third parties for the purpose of implementing the changes to fund disclosure and delivery practices under the proposal, as we understand some funds utilize outside providers for these compliance responsibilities.

Funds would experience transition costs to modify their current shareholder report disclosures. Specifically, funds would incur costs to modify their shareholder reports to comply with the proposed scope and content requirements. We estimate that the initial costs to funds of modifying their annual shareholder report disclosure would be $150,111,360 in aggregate costs and $41,697,600 annually thereafter.[804] We estimate that the initial costs to funds of modifying their semi-annual shareholder report disclosure would be $75,055,680 in aggregate costs and $20,848,800 annually thereafter.[805] Initial costs would include costs associated with designing the concise shareholder reports, amending the scope of shareholder reports to cover a single fund series, implementing any operational changes needed to prepare and deliver separate shareholder reports for different fund series, revising existing disclosure practices for shareholder report items that the proposal would amend (*e.g.,* management's discussion of fund performance, including the proposed clarification of the term ''appropriate broad-based securities market index,'' as well as the expense presentation), and developing disclosures for the proposed new shareholder report items (*i.e.,* fund statistics and material fund changes). The ongoing costs would largely be attributed to the costs of preparing new shareholder report disclosure items under the proposal, since funds already incur the costs of preparing the other shareholder report disclosures today. To the extent that the proposed clarification of the term ''appropriate broad-based securities market index'' causes funds to select a new index for this disclosure purpose, this could result in additional costs to funds in the form of index-licensing fees. Funds also would incur costs of complying with the new Form N–CSR disclosure items. As funds already prepare the disclosure that the proposed N–CSR items would cover for purposes of current shareholder reports and disclose that information on Form N–CSR as part of their shareholder reports, we do not believe the costs of the new N–CSR disclosure would be significant. However, we recognize that funds may face some costs of rearranging their disclosures within Form N–CSR. We estimate that the costs of the proposed new Form N–CSR items would initially

[802] *See infra* Section IV.C. Because we do not have specific data regarding the cost of printing and mailing the materials that must be provided on request, for purposes of our analysis we estimate $500 per year for each fund to collectively print and mail such materials upon request. Investors could also request to receive these materials electronically. We estimate that there will be negligible external costs associated with emailing electronic copies of these documents.

[803] *See infra* Section IV.D; *see also supra* footnote 802.

[804] The estimated initial cost for the proposed annual reports is based on the following calculations: 36 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $12,096 per fund. 12,410 funds × $12,096 = $150,111,360. The estimated annual cost for the proposed annual reports is based on the following calculations: 10 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $3,360 per fund. 12,410 funds × $3,360 = $41,697,600. *See infra* Section IV.C.

[805] The estimated initial cost of the proposed semi-annual reports is based on the following calculation: 18 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $6,048 per fund. 12,410 funds × $6,048 = $75,055,680. The estimated annual cost for the proposed semi-annual reports is based on the following calculations: 5 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $1,680 per fund. 12,410 funds × $1,680 = $20,848,800. *See infra* Section IV.C.

be $75,055,680 and $20,848,800 annually thereafter.[806]

In addition, funds would be required to provide additional information online under the proposed amendments to rule 30e–1 and under proposed rule 498B. With respect to rule 30e–1, this would include online availability of the disclosure that the proposal would remove from shareholder reports, including financial statements and financial highlights, as well as quarterly portfolio holdings. In addition, funds that rely on proposed rule 498B would be required to provide certain information online, including summary and statutory prospectuses, SAIs, and shareholder reports. While the vast majority of funds already provide fund information on websites, they may not currently provide the same information that the proposed rule would require.[807]

For instance, under the proposed amendments to rule 30e–1, funds would likely incur costs associated with providing online access to the new Form N–CSR disclosure items (*i.e.,* the information that the proposal would remove from shareholder reports). Funds that do not rely on rule 30e–3 would also incur costs to provide their quarterly portfolio holdings online. We estimate that the initial costs of complying with the website availability requirements in rule 30e–1 would be $35,591,880, with ongoing annual costs of $11,863,960.[808]

With respect to the online information that proposed rule 498B would require, we estimate that funds generally would not incur additional transition or ongoing costs associated with these requirements. This is because we anticipate that only funds that rely on rule 498 to deliver summary prospectuses—and that are already required under that rule to provide the same information on websites—would rely on proposed rule 498B.[809] Only these funds are likely to choose to rely on proposed rule 498B because, unlike other funds, they already deliver summary prospectuses under rule 498 and so have experience using layered disclosure. In addition, they are already subject to similar website availability requirements under rule 498. Therefore, they would be more likely than other funds to experience overall cost savings under rule 498B.

However, if a fund that does not deliver summary prospectuses under rule 498 chose to rely on proposed rule 498B, the fund would be required to begin providing the relevant information on a website and to continue to update the website materials as needed. We estimate that the compliance costs of proposed rule 498B for funds that do not currently rely on rule 498 to deliver summary prospectuses initially would be $12,948 per fund to begin to comply with the relevant requirements in proposed rule 498B and would reduce to annual costs of $4,316 per fund thereafter.[810]

In addition to website availability requirements, funds that choose to rely on proposed rule 498B could incur costs to prepare prompt notices of material changes that the rule would require. The proposed rule does not specify the form of this notice. Therefore, a fund could satisfy this requirement, for example, by sending existing shareholders the prospectus supplement filed with the Commission, an amended prospectus which reflects the material change, or another form of notice that discusses the change. The costs of preparing a notice under proposed rule 498B would depend on the approach a particular fund uses. For example, we expect that preparation costs would be fairly minimal if a fund delivers a prospectus supplement or amended prospectus, which the fund would have already prepared for other purposes. However, funds that choose to prepare separate notices under the proposed rule would likely experience higher preparation costs. We estimate that the average annual costs of preparing notices of material changes under proposed rule 498B would be $1,344 per fund, after an initial compliance cost of $4,032 per fund.[811] If 90 percent of funds rely on proposed rule 498B, this would result in aggregate ongoing annual costs of $15,011,136 and initial costs of $45,033,408.[812]

Further, to the extent that affected funds have changed their operations in anticipation of relying on rule 30e–3, those funds would bear the costs associated with the proposed amendment's prohibition on open-end funds relying on rule 30e–3. These costs could include, among others, changes to internal systems and adjustments to agreements with third-party vendors contracted to provide relevant services. In addition, if the proposed amendments to rule 30e–3 are implemented by certain funds before January 1, 2022, funds that were planning to rely on rule 30e–3 would experience transition costs associated with removing statements in their shareholder reports and prospectuses indicating that the fund would be transitioning to the rule 30e–3 framework for transmitting shareholder reports. Moreover, funds that choose to take additional steps to inform their shareholders about the modified approach to delivering shareholder reports under the proposal would likely incur additional transition costs. We lack data to quantify these costs because we do not have information about how many funds would provide discretionary notices or other

[806] The initial costs of the proposed Form N–CSR requirements are based on the following calculations: 18 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $6,048 per fund. 12,410 funds × $6,048 = $75,055,680. The annual cost of the proposed new Form N–CSR requirements are based on the following calculations: 5 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $1,680 per fund. 12,410 funds × $1,680 = $20,848,800. *See infra* Section IV.D. These PRA burden estimates do not account for the fact that funds are currently required to prepare the same general disclosure for purposes of their shareholder reports. Thus, these PRA-related estimates may over-estimate the costs of the proposed Form N–CSR disclosure items, particularly the transition costs.

[807] *See supra* Section III.B.2 and III.B.3.

[808] *See infra* Section IV.C. The estimated initial cost of complying with rule 30e–1's website availability requirements is based on the following calculations: 12 hours × $239 (wage rate for webmaster) = $2,868 per fund. 12,410 funds × $2,868 = $35,591,880. The estimated ongoing annual cost is based on the following calculations: 4 hours × $239 (wage rate for webmaster) = $956 per fund. 12,410 funds × $956 = $11,863,960.

[809] Absent the proposed requirement in rule 498B to provide summary prospectuses online, we recognize some funds that currently use summary prospectuses may have less incentive to do so under rule 498B. This is because rule 498B would have the effect of reducing a fund's delivery costs for the annual prospectus update, regardless of whether it uses a summary prospectus or statutory prospectus. Proposed rule 498B would require funds to provide summary prospectuses and other materials online because we believe investors benefit from concise summary prospectus disclosure, along with access to more detailed information, to help inform their investment decisions and compare fund investments.

[810] *See infra* Section IV.D. The estimate of initial costs is based on the following calculation: (30 hours to begin to prepare summary prospectuses × $336 (blended wage rate for compliance attorney and senior programmer)) + (12 hours to begin to comply with website availability requirements × $239 (wage rate for webmaster)) = $12,948. The estimate of annual costs is based on the following calculation: (10 hours to prepare summary prospectuses × $336 (blended wage rate for compliance attorney and senior programmer)) + (4 hours to comply with website availability requirements × $239 (wage rate for webmaster)) = $4,316.

[811] *See infra* Section IV.D. The estimated annual cost of preparing notices under proposed rule 498B is based on the following calculation: 4 hour × $336 (blended wage rate for compliance attorney and senior programmer) = $1,344. The estimated initial cost of this proposed requirement is based on the following calculation: 12 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $4,032.

[812] The estimated aggregate annual costs of preparing notices under proposed rule 498B is based on the following calculations: (12,410 funds × 90 percent) × $1,344 = $15,011,136. The estimated aggregate initial costs of preparing notices under proposed rule 498B is based on the following calculation: (12,410 funds × 90 percent) × $4,032 = $45,033,408.

information to their shareholders to explain the proposed changes to shareholder report delivery.

3. Prospectus Disclosure Amendments

a. Summary of Economic Effects

The proposal would simplify the initial prospectus disclosure to investors in a layered approach where other information would continue to be available online and delivered upon request, free of charge. The proposal requires a new fee summary that includes bottom-line numbers from the current prospectus fee table, and would appear in the summary section of the prospectus (as well as in a summary prospectus if a fund uses that form of prospectus).[813] The fee summary would also express the bottom-line numbers in dollar terms, in addition to the current presentation of an amount in terms of fund net assets, and describe fee and expense items in plain English.[814] In addition, funds would simplify their disclosures of principal risk, ranking them by importance and highlighting those that are truly principal to the particular fund.

The following sections discuss the potential costs and benefits of these proposed modifications to prospectus disclosures. In summary, the benefits of the proposal would accrue through better use of the prospectus disclosure materials by investors. The tailored disclosures would enable investors to make more efficient use of their scarce time and attention and, potentially, more informed investment decisions. The costs of the proposal would accrue to fund shareholders through a short-term, transition-related increase in fund expenses required to prepare the new disclosures, and to fund investors in adapting to the new style of prospectus disclosure.

b. Benefits to Investors

The direct effect of the proposed amendments to fund prospectuses would be to simplify the presentation of fee- and risk-related information that funds deliver to investors. This would improve investors' understanding of key information, and this improved understanding could result in more efficient investment decisions.[815] Also the proposed amendments may improve investor understanding with respect to funds that invest 10% or less of total fund assets in acquired funds by reducing emphasis on AFFE as a discrete category of performance expenses where the fund does not invest significantly in acquired funds and by improving consistency between the fund's prospectus fee table disclosures and financial statement disclosures under these circumstances, while also retaining investors' access to information about the potential layering of fees through a fund's investments in acquired funds.[816]

The proposal would enable investors to locate and use key information more easily, requiring less time and attention to process key available information than under current rules. For example, rather than listing different expense types that comprise a fund's total annual operating expenses and then presenting the total annual figure, the fee summary would only provide the total. This would make it easier for retail investors to locate the total amount in the prospectus quickly. Similarly, the proposal would shorten the principal risk disclosure to focus on risks that are truly principal to the particular fund; this would make information about those risks easier to locate and use. We believe that making information easier to locate and use can make the information easier to understand.

In addition, the proposed amendments would result in disclosure that is easier for investors to understand. By providing clearer descriptions of certain fee and expense concepts, the proposal would reduce the chance of retail investors misinterpreting this key information. For example, a fund would describe a charge an investor incurs when purchasing a fund's shares as a ''purchase charge'' instead of as a ''maximum sales charge (load) imposed on purchases.'' Further, by providing fee and expense information in dollar terms, the effect of the fees and expenses may be more understandable to investors.[817] In addition, providing principal risks in order of importance would help investors more readily identify and understand a fund's principal risks relative to the baseline, where funds may order risks alphabetically or in other ways that do not show a risk's relative importance.

Providing more user-friendly and concise information in the prospectus can lower the cost to the investor of gathering key information needed to make choices among funds. The proposal may thus enable investors more easily to evaluate and monitor fund investments and make choices among competing funds than under the current requirements. Some investors may read disclosures that they would not otherwise have read. Others may consider the information they receive more carefully. In each instance, the consequence may be choices among investment alternatives that reflect a better alignment between the circumstances of the investor and the available products. The ultimate impact on investment outcomes depends on the extent to which investors find the amended disclosure easier to access and use and the extent to which they rely on the amended disclosure to inform their investment decisions and actions. As discussed above, there is evidence to suggest that consumers benefit from disclosure that highlights key information.[818]

The proposal to allow funds with limited investments in acquired funds to move the disclosure of AFFE into a footnote, and eliminate it from the bottom-line total expense disclosure in the prospectus fee table and fee summary, may benefit some investors by making it easier for them to compare and choose among funds to meet their investment objectives. That is, the proposal may enhance the salience of disclosures in the prospectus fee table and fee summary that reflect the fund's main investment strategy relative to the disclosure of its AFFE. As the information on the AFFE amount would be retained in a footnote, investors' access to AFFE information would not change under the proposal. In addition, investors would continue to see a bottom-line number that reflects AFFE where the fund substantially invests in other funds such that the fund is, in essence, managed significantly at the acquired fund level. Maintaining this requirement for these funds is designed to prevent investors from being confused by expense ratios that do not fully reflect the cost of the fund's investments.

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[813] For example, instead of listing different expense types that comprise a fund's total annual operating expenses and then providing the bottom-line total annual operating expenses, the fee summary would only provide the bottom-line total.

[814] For example, a fund would describe a charge an investor incurs when purchasing a fund's shares as a ''purchase charge'' instead of as a ''maximum sales charge (load) imposed on purchases.''

[815] Existing research notes that individuals exhibit limited ability to absorb and process information. *See* Richard E. Nisbett & Lee Ross, Human Inference: Strategies and Shortcomings of Social Judgment (1980) (''Nisbett & Ross''); Hirshleifer and Teoh Study, *supra* footnote 761.

[816] Some commenters have suggested that the disclosure of AFFE in the fee table provides investors with the necessary information to understand the potential layering of fees in a fund of funds arrangements. *See* Kauff Laton Fund of Funds Comment Letter; Rand Fund of Funds Comment Letter.

[817] *See supra* footnotes 63 and 573.

[818] *See supra* footnotes 774 to 778 and accompanying text.

c. Costs to Investors

We understand that some investors may prefer the current level of detail about a fund's fees or principal risks, and therefore, the advantages associated with tailored disclosure, as described in this section, may not apply to those investors. For example, if the fund uses a summary prospectus, and an investor would prefer to see the breakdown of fees and expenses among various line items (or wants longer narrative discussions about principal risks), the proposal would require the investor to take the additional step of finding the statutory prospectus online or requesting a copy of it. The rule would make it more difficult for the investor who prefers the more detailed information to obtain and use that information than under the current rule baseline. We recognize that, under these circumstances, the proposal would impose some costs of inconvenience to these investors in the form of requiring more time and attention to find the statutory prospectus online or to request a copy of the statutory prospectus.

For investors who prefer the current disclosure format and are aware that a fund has moved the AFFE disclosure into a footnote, there may be some inconvenience even without any change in access to information. For example, the investor would need to take an extra step of obtaining the AFFE amount from the footnote and combining it with the expense information from the fee table to recover the same total expense information that is disclosed currently. However, investors would have access to the information necessary to recover this information under the proposal.[819]

We also recognize that some investors may not recognize that certain funds' AFFE disclosures have moved into a footnote of the fee table under the proposal. If an investor does not realize that the expense disclosure in these funds' prospectus fee tables (*i.e.,* funds that have 10% or less of their total assets invested in acquired funds) no longer includes these indirect fund expenses, such an investor could underestimate the expenses of these funds. Such underestimation could lead to a distortion of some investors' choices relative to their preferences and investment objectives. Relatedly, an investor may be less able to compare funds under the proposal to the extent that any funds continue to include AFFE amounts in their bottom line ongoing annual expenses even though they are eligible to disclose their AFFE in a footnote. Because reliance on the AFFE amendment would be optional, investors may receive expense disclosures from the same types of funds (*i.e.,* those that have 10% or less of their total assets invested in acquired funds) that treat AFFE differently. This could make it more difficult for investors to compare these expenses between funds.

The costs from any potential underestimation of AFFE would depend on how many funds rely on the AFFE amendment. This number would depend, in turn, on fund incentives and on whether funds believe that any benefit from relying on the AFFE amendment would outweigh any costs incurred in moving AFFE disclosure into a footnote. Funds that believe that relying on the amendment would be beneficial by, for example, providing a more consistent fee and expense presentation for investors, may have a greater incentive to rely on the amendment than other funds. In addition, some funds that are slightly above the 10% threshold may have an incentive to reduce their investments in acquired funds to the extent that they believe there would be sufficient benefit from providing AFFE disclosure in a footnote. We believe that few funds would do so. As discussed above, we estimate that approximately 88% of the funds with more than 10% of their total assets invested in acquired funds invest more than 20% of their total assets in acquired funds. Based on this estimate, we would expect that any incentive to reduce investments in acquired funds that is driven by the proposed AFFE amendment would be limited to the other 12% of funds, which is 4% of acquiring funds.[820]

In addition, fund investors could bear the costs of the prospectus amendments through the increased expenses that funds would incur to implement the proposal. We discuss those expenses in the section on ''other costs,'' below.

d. Other Costs

The proposed amendments would impose costs on funds (which they may pass on to their shareholders) to amend their disclosure practices. For example, the proposal would require funds to review their principal risk disclosure and assess whether the risks they are currently disclosing are principal to the fund under the proposed amendments. Among other things, this may require fund groups to modify their current practices for principal risk disclosure, including where they use many of the same risk disclosures across various funds in the fund group. Funds also would need to determine an appropriate method for ordering a fund's principal risks by importance and implement this approach. We estimate that the proposed amendments to principal risk disclosure would result in initial aggregate costs of $75,055,680 and $16,679,040 annually thereafter.[821] In addition, funds would need to modify their disclosure templates to revise the terms they currently use in prospectus fee tables and to add fee summaries to their disclosure, although the content of the fee summary would largely consist of information that funds already disclose in their prospectus fee tables. We estimate that the costs of the proposed amendments to prospectus fee and expense disclosure would be $37,527,840 initially and $8,339,520 annually thereafter.[822]

Some of these costs would be incurred by funds that make limited investments in other funds as a result of our proposal to allow such funds to disclose AFFE in a footnote to the fee table and fee summary. While only funds that invest 10% or less of their total assets in acquired funds would be allowed to rely on this proposal, we believe that these costs would also be incurred by funds with investments slightly above 10% in other funds because such funds would likely spend time considering whether they would qualify for the proposal. Therefore, for purposes of our analysis, we assume that the bulk of the costs associated with this proposal would be incurred by funds that invest less than 20% of their total assets in other funds.[823] These

[819] For example, this could be done by simple addition (*e.g.,* expense ratio of 0.50 + AFFE expense of 0.03 = total expenses of 0.53). The inputs to this addition would be readily available under the proposal to all investors, including in XBRL format.

[820] *See supra* footnote 714 and accompanying text.

[821] *See infra* Section IV.B. The estimated initial cost of the proposed amendments to principal risk disclosure is based on the following calculations: 18 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $6,048 per fund. 12,410 funds × $6,048 = $75,055,680. The estimated ongoing annual cost of these proposed amendments is based on the following calculations: 4 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $1,344 per fund. 12,410 funds × $1,344 = $16,679,040.

[822] *See infra* Section IV.B. The estimated initial cost of the proposed amendments to prospectus fee and expense disclosure is based on the following calculations: 9 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $3,024 per fund. 12,410 funds × $3,024 = $37,527,840. The estimated ongoing annual cost of these proposed amendments is based on the following calculations: 2 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $672 per fund. 12,410 funds × $672 = $8,339,520.

[823] We believe that funds that invest more than 20% of their total assets in other funds would not choose to exert this effort because it is unlikely that

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funds would incur costs of (1) establishing and implementing procedures they may choose to adopt to monitor the percent of the fund's acquired fund investments relative to total assets; (2) calculating their investments in acquired funds to determine whether they would be permitted to modify their disclosure pursuant to the proposal; and (3) updating their prospectus fee table to modify their AFFE disclosure if they choose to present AFFE in accordance with the proposal, and they are eligible to do so. We estimate that approximately 30%, or 3,723 open-end funds, have investments in other funds. Of those, we estimate that approximately 70%, or 2,606 open-end funds, invest less than 20% of their total assets in other funds (excluding money market funds).[824] Therefore, we estimate that the transition costs associated with this proposed amendment would be $4,378,080.[825]

We understand that changes in the prospectus also could affect data aggregators that rely on the information in the prospectus fee table as a basis for the services they provide to investors and other parties. We have considered that changes in the prospectus can make it easier or more difficult for them to provide this service. In this instance, the proposal is unlikely to have an effect on data aggregators because the full fee table would still be structured.[826] We believe that the information available to data aggregators about the current line items would not change under the proposal accordingly.

4. Advertising Rule Amendments

a. Summary of Economic Effects

The proposed advertising rule amendments would enhance the transparency of the fees and expenses that are associated with investing in a particular investment company. To obtain this improvement in transparency, the proposal would require specific changes to how mutual funds, ETFs, other registered investment companies, and BDCs present information about fund fees and expenses in fund advertisements. That is, the proposed amendments would require that the fee and expense presentations prominently include timely information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, computed in a manner that is consistent with relevant prospectus requirements. Further, if an advertisement included an investment company's total annual expenses net of a fee waiver or expense reimbursement amount in addition to the required gross annual expense figure, the advertisement would need to disclose the expected termination date of that arrangement. We also propose to provide specific factors an investment company should consider as part of its determination of whether representations in its advertisements about the fees and expenses associated with an investment in the fund could be materially misleading.

Below we discuss the likely effects of the proposed amendments to the advertising rules. We expect that the proposed amendments would lower investor search costs and reduce the risk of a mismatch between investor preferences and investor choice while also imposing certain costs on investors and third parties who participate in the production and delivery of fund advertising to investors. Additionally, we discuss how the effects of the proposed amendments to the advertising rules may vary across investors and funds according to the conditions of their participation in the market for financial products.

b. Benefits to Investors

The effect of the proposal would be to reduce the likelihood that investors misinterpret investment company advertisements. For example, the recent experience of the Commission is that funds sometimes market themselves as ''zero expense'' or ''no expense'' funds based solely on information in their prospectus fee tables. In some cases a fund's prospectus fee table may show no transaction costs and no ongoing charges only because the fund adviser, the adviser's affiliates, or others are collecting fees elsewhere from these investors. In such cases, an investor in a so-called ''zero expense'' fund may encounter other investment costs, including intermediary costs (*e.g.,* through wrap account fees), securities lending costs (*e.g.,* through revenue sharing with a securities lending agent), or future costs associated with the fund once an underlying fee waiver or expense reimbursement arrangement expires. These additional costs and expenses can reduce the value of a shareholder's investment in a fund. As a result, absent appropriate explanations or limitations, referring to such a fund as a ''zero expense'' fund can materially mislead investors and cause them to believe incorrectly that there are no expenses associated with investing in the fund.

More generally, the proposed rules would require more consistent fee and expense presentations across investment company advertisements, and thus facilitate investor comparisons of important fee and expense figures. By reducing the chance of misleading information being presented to investors—*e.g.,* so that useful information faces less competition for investor attention with other information—the proposal may increase the salience of relevant fee and expense figures to investors and reduce the chance of a mismatch between the investor's preferences and their choice of investment product among the various alternatives, thereby increasing the efficiency of investors' investment decisions. The extent to which increasing the salience of fee and expense information in advertisements benefits an investor considering an investment in a fund depends on the importance of this information contained in fund advertising materials relative to the other information that is available to the investor for the purpose of monitoring fund investments and choosing between the fund and other financial products.

To the extent that the advertising rule amendments reduce fund incentives to understate or obscure their fees, they may enable investors more easily to distinguish funds according to their actual fees. In this instance, the indirect effect would be that funds with lower (higher) fees would attract more (less) investor dollars and, in anticipation, the higher-fee funds would have a greater incentive to lower their fees than without the rule amendments. Thus, some funds may put even more effort into lowering their fees and expenses than they would do in the absence of the proposal, and otherwise find ways to differentiate themselves to attract and retain investment business.

c. Costs to Investors

Investment companies and third parties involved in preparing or disseminating investment company advertisements may incur costs to comply with the proposed advertising rule amendments. Investors could bear the costs of these amendments through increased expenses that funds would

they would anticipate being able to rely on the proposal.

[824] For funds that may be eligible for the proposed amendments to AFFE disclosure, we believe that approximately 50% of the burden hours they would incur to comply with all of the proposed fee disclosure amendments would be allocated to complying with these amendments.

[825] 5 hours × $336 (blended wage rate for compliance attorney and senior programmer) = $1,680 per fund. 2,606 funds × $1,680 = $4,378,080.

[826] *See supra* Section II.H.1.i (discussing structured data requirements for fund fee and expense disclosures and proposed amendments to continue to require that funds provide the full fee table in a structured data format).

incur to implement the proposal. We discuss those expenses below.[827]

In addition, if the cost of compliance with these proposed amendments were significant, some advertisers might cease advertising rather than incur the extra costs of compliance, which could affect investors. Investors who rely on advertisements to make investment decisions or compare funds might have less complete information for these purposes. However, we believe this is unlikely because, as discussed below, we do not anticipate that the compliance costs would be significant in general or significant enough relative to the benefit that most funds would expect from continuing to advertise.[828]

d. Other Costs

The cost of our proposal to amend the advertising rules would include the direct cost of modifying advertising materials to bring them into compliance with the proposed advertising rule amendments. This may require internal review and approval of advertisements beyond what occurs under the current rule, particularly where an advertisement is not already required to present certain fee and expense figures under existing FINRA rules. For example, while many investment company advertisements are subject to timeliness requirements related to performance, they currently are not subject to similar timeliness requirements for fee and expense information. We expect some of these costs to be borne in the first year after the rule adoption. That is, they would be transition costs and not sustained beyond the first year. We estimate that the transition costs associated with the proposed advertising rule amendments would be $201,353,040.[829] These costs would be borne by funds (including their shareholders), intermediaries, and other third parties who prepare investment company advertisements.

The overall costs of the proposed advertising rule amendments would be greater for some types of fund advertisements than others. For example, the proposed rule would require the fee and expense figures to be calculated in the manner the registrant's Investment Company Act or Securities Act registration form prescribes for a prospectus. This proposed requirement could make it more burdensome to prepare advertisements for some types of registrants, such as closed-end funds that do not maintain updated prospectuses and, thus, may not currently calculate current fees and expenses in the manner the proposed amendments would require. As a result, it would be more costly to prepare these advertisements (if they include fee and expense information) because of the need to develop new procedures for annually calculating these registrants' fees and expenses in accordance with prospectus fee table requirements. In addition, the cost of compliance would be greater for funds, intermediaries, or others that react to the proposed advertising rule amendments by initiating or enhancing a compliance program after previously having no such program or only a very limited program in place. It would be smaller for those who periodically obtain compliance advice and continually update their advertising materials in response to changing market conditions or changing investor demand. Overall, we estimate that the ongoing annual costs of the proposed advertising rule amendments would be $67,117,680.[830]

R. Effects on Efficiency, Competition, and Capital Formation

This section describes the effects we expect the proposed rule to have on efficiency, competition, and capital formation. Key to this analysis are the concepts of efficiency in the use of investor time and attention and in the use of fund resources from the real economy to meet disclosure delivery obligations. We regard changes and amendments that reduce these costs as increasing economic efficiency, with changes and amendments that increase these costs having the opposite effect. Also key is the concept of ''information asymmetry''—in this case, the lack of information that investors may have about funds and other investment products—and the difficulties that some investors may face in using the information that is available to them in reducing that information asymmetry.

Efficiency. The proposed rules and amendments would enable investors to use their time and attention more efficiently. To investors, the costs of investing in a fund are more than just the dollar cost, and include the value of an individual's time and attention that is spent gaining an understanding of the fund and its fees, expenses, risks, and other characteristics, both before and after the initial fund investment. Further, for those investors who do not gain a full understanding of the fund and its risks, there could be a cost stemming from a potential mismatch between the investor's goals and the fund risk profile and fee structure. Depending on the size of an individual's position in a fund, certain of these additional costs could be considerable in comparison to the monetary costs associated with the investment and could discourage investors from gathering information about different investment alternatives and evaluating existing investments even in circumstances where reviewing prospectuses and available shareholder reports could be beneficial.

The overall efficiency gains from the effect the proposal and amendments have on how investors allocate their time and attention would depend on the extent to which individual investors find it easy to transition from the current framework to the new framework and find disclosure and other materials under the new framework genuinely easier to use. Some individuals may prefer the current framework. Their time and attention may be used less efficiently under the proposed rules, which would require them to go to the trouble of requesting their preferred materials rather than receiving them automatically as would occur in the current framework, and these investors would indeed not find the new framework preferable to current practice. However, despite these potential limitations, we expect the efficiency gain and cost reduction from changes in the use of investor time and attention resulting from the proposed rule to be positive, because the proposed disclosure framework is specifically designed to make the disclosures easier for retail investors to use while continuing to provide access to more detailed information for the market professionals and other investors who wish to access them, as discussed in Section III.C.2.b.[831]

[827] *See infra* Section III.C.4.d.

[828] *See infra* Section III.C.4.d.

[829] *See infra* Sections IV.F through IV.H. We estimate there are 39,951 investment company advertisements (or supplemental sales literature) each year that would be subject to the proposed amendments to rules 482, 34b–1, and 433. This includes 35,514 advertisements subject to rule 482, 337 supplemental sales literature subject to rule 34b–1, and 4,100 advertisements by registered closed-end funds or BDCs used in reliance on rule 433 instead of rule 482. For each of these rules, we estimate an initial burden of 15 hours for relevant advertisements. The estimated transition costs of the proposed advertising rule amendments is based on the following calculation: 15 hours × $336 (blended wage rate for compliance attorney and senior programmer) × 39,951 advertisements = $201,353,040.

[830] *See infra* Sections IV.F through IV.H; *see also supra* footnote 829. The estimated annual costs of the proposed advertising rule amendments is based on the following calculation: 5 hour × $336 (blended wage rate for compliance attorney and senior programmer) × 39,951 advertisements = $67,117,680.

[831] These provisions would thus not have efficiency effects for financial professionals and

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While not the primary source of efficiency gain, changes in the delivery of disclosures to shareholders under the proposed rules would cause a decline in the real-resource costs of delivering disclosures to investors. This could be an efficiency gain from the proposal. Specifically, by effectively consolidating two deliveries—the annual report and the annual prospectus update—into a single delivery of a concise annual report, the proposal would promote efficiency by reducing the cost of printing and delivering disclosures to retail shareholders. Here, efficiency gains would depend on the preferences of individual shareholders, who would have the option of requesting that the two disclosures instead continue to be sent separately. They also would depend on the preferences of funds. We discuss these efficiency gains from reduced delivery costs as benefits of the proposal in Section III.C.2.d.[832]

In addition, efficiency gains may arise from the proposed improvements to prospectus disclosure about fund fees. For example, investors may find it easier to compare the fees and expenses of funds under the proposal. The proposal may therefore contribute to the efficient use of those investors' time and attention, and lead to more efficient matches between investor preferences and the available investments. To the extent the proposed amendments would affect funds' investment behavior, it could result in funds investing in acquired funds where the adviser believes this would contribute to the fund's investment objective and would be in the interest of shareholders. This could result in the fund allocating its investments more efficiently because it would reduce a potential impediment to investments in acquired funds, even while it may result in other funds reducing their investments in acquired funds for the purpose of moving or staying below the proposed eligibility threshold. We discuss the efficiency gains from changes in the prospectus fee table as benefits of the proposal in Section III.C.3.b.

In addition, the proposal may affect economic efficiency through changes in disclosure content. The proposed amendments to the content of shareholder report disclosure and the presentation of advertising materials would increase the consistency of the presentation of their contents across funds (and, in the advertising rule change, across a wider range of investment opportunities) and thereby promote their comparability. This may make it easier for investors to make comparisons across funds, and between funds and other investment products. As a result, investors may face lower information asymmetry and lower search costs in choosing among funds, and among investment opportunities more generally. In addition, investors and other market participants may be more easily able to monitor their fund and other investments. Finally, investors may be more likely to react to actual differences in fund fees, expenses, principal risks, and other fund characteristics than under the current framework to the extent that those differences are more easily identified. Thus, the proposed rules and amendments that reduce information asymmetry and search costs may reduce barriers that funds and intermediaries face in supplying investment opportunities to investors, and that investors may face in comparing and evaluating the suitability of the investments initially and, as fund shareholders, over the period of the investment.[833] The proposed advertising amendments would have similar effects, by deterring potentially misleading statements by funds.

These increases in efficiency and related cost reductions could manifest as a higher likelihood that investors make use of the disclosures that funds provide through their prospectus and shareholder reports, and thus lead to investment decisions that are informationally efficient. First, it may increase the likelihood that investors choose a mix and level of fund investments that are consistent with their overall financial preferences and objectives—a level that may be higher or lower than would occur presently. The proposal may help promote investment in funds by investors who would benefit from them. Second, an increase in the informational efficiency of investor decisions could make it more likely that those investors who choose to invest in funds make choices that are consistent with their preferences and needs and reject those that are not. Third, making it easier for investors to use the information that is disclosed under the rule provisions that require concise, tailored prospectus and shareholder report disclosures could facilitate more efficient investor allocation of assets across funds. These effects on efficiency would be limited, however, to the extent that investors rely on third parties for advice in selecting among financial products, where that third party uses more information than the proposed shareholder reports and amended prospectus disclosure.[834]

Competition. The proposed rules and amendments that affect information asymmetry between investors and funds may, by reducing investor search costs, affect competition. For example, the proposed rules and amendments make changes to shareholder reports, prospectus disclosures, and fund advertisements that would enable investors to compare fees and expenses and other information more easily across funds, and between funds and other financial products, could affect competition among funds by making it easier for lower-fee funds to distinguish themselves from other funds. This could lead investors to shift their assets from higher-fee funds to lower-fee funds. It also could lead funds, in anticipation of this, to lower their fees or otherwise take steps to draw investor flows away from competing funds or avoid outflows to competing funds under the modified disclosure framework. It could lead funds to exit that are not as easily able to compete on the basis of fees and expenses as a result of the modified disclosure framework, and other funds to enter and compete for investor assets more efficiently than would currently occur. The effect on competition among funds may be limited, however, to the extent that investors rely on third parties who are not affected by the rule for advice in selecting among financial products.[835]

other investors who currently rely on more detailed information online that will continue to be accessible.

[832] For example, as discussed above, greater investor understanding of a fund, including its fees and risks, could lead to a better match between investor goals and investor choice among alternative funds and other investment opportunities. In other words, investment efficiency could increase.

[833] As noted above, there may be investors who would prefer the disclosure framework that is now in place and who would under the proposed framework need to take extra steps to continue to use the disclosures that they use in making investment decisions currently. To the extent this occurs, the proposal could lead to additional costs and reduced efficiency for such investors in their evaluation of fund investments.

[834] For example, one investor survey found that 24% of surveyed mutual fund investors agreed with the statement, ''I rely on a financial adviser or broker to look at these sorts of [fund] documents.'' *See* ICI Investor Survey, *supra* footnote 36, at 20. Within subsets of the surveyed investors, 57% of mutual fund investors aged 65 and older, and 58% of mutual fund investors with household incomes less than $50,000, agreed with this statement. *See id.* at nn.19 and 20. A third party adviser, for example, may prefer to access all information that is available about a fund online rather than rely solely on the prospectus and shareholder report information that is the subject of the proposal. Such an adviser would not change its information or advice under the proposal. Funds would not anticipate such a change, and there would be a lesser effect on competition among funds accordingly.

[835] *See also supra* footnote 834.

As discussed above, the proposed clarification of the term ''appropriate broad-based securities market index'' in the management's discussion of fund performance section of the shareholder report could result in additional costs to funds in the form of index-licensing fees. The amount of these costs would depend, among other things, on market competition among index providers. If the proposed clarification were to result in a sufficient reduction in the number of index providers producing indexes that are ''appropriate broad-based securities market indexes'' or increased demand by funds to license indexes from a sufficiently small number of competing suppliers, index-licensing fees could increase.

The proposed amendments to prospectus disclosure requirements could have similar competitive effects as enhanced fee and expense disclosures. If these proposed amendments have the intended effect of making the disclosure of principal risks more usable for investors and cause each fund to highlight those risks that are truly principal to the particular fund, they may also induce funds to compete more intensively on the basis of risk exposures. For example, some funds may choose to hedge certain risks, such as foreign currency risks, or otherwise manage risks, in an effort to offer investors a narrower set of risk exposures.

Finally, we noted earlier in Section III.C.4.c that certain funds may respond to the proposed amendments to the advertising rule by limiting their advertising. Reduced advertising could affect the way in which funds compete for investor assets, causing funds to focus competition more narrowly on dimensions that are disclosed in prospectuses, such as fees, expenses, and principal risks. At the same time, if investors respond to fewer fund advertisements by making fewer comparisons between funds or searching less intensively for funds that match their preferences, the proposed amendments to the advertising rule could blunt competition between funds.

Capital Formation. The proposed rules and amendments could lead to an increase in capital formation. First, to the extent they increase the efficiency of exchange in markets for funds and other financial products, the proposed rules and amendments could lead to changes in fund investment in these products. Greater investment in ETFs, mutual funds, and other products, for example, could lead to increased demand for their underlying securities. The increased demand for those securities could, in turn, facilitate capital formation. Diminished investment could have the opposite effect, although we do not have any reason to believe that the proposal would decrease capital formation. In addition, changes in the prospectus fee disclosure could affect the willingness of index providers to include funds in their indexes or of funds to invest in other funds, as some commenters have indicated.[836] If the proposed amendments increase fund investments in certain other funds, they could in turn result in additional capital formation for the particular types of companies in which the acquired funds invest.[837] For example, to the extent the proposal would result in funds investing more in BDCs, the proposal could enable BDCs to make additional investments in small- and mid-sized companies.[838]

We further note that, to the extent that increased or decreased investment in these financial products reflects substitution from other investment vehicles, the effect on capital formation would be attenuated because this would reduce the net change in the overall amount of investment in the capital markets.

The proposed rules that would lower the cost of delivering disclosures to fund shareholders could have a positive effect on fund performance and attract new investors or additional capital from existing investors. If so, the rule could promote capital formation benefits. We are unable to estimate precisely the magnitude of capital formation effects that may result from our projected cost savings under the rule because the magnitude of such effects may be affected by the extent of pass-through cost savings and by other factors that affect the flow of investor capital into mutual funds and ETFs, including other components of fund returns, overall market returns, and returns on investments other than funds. To the extent that any proposed rule or amendment would increase the delivery cost, we would anticipate the opposite effect.

The proposed rule changes and amendments are designed to make shareholder reports and prospectus disclosures easier for shareholders to use and to help investors better understand fees and expenses through fund prospectuses or advertisements. To the extent that it becomes easier for investors to use fund disclosure or to understand investment fees and expenses, the effect may improve retail investors' understanding about, and confidence in, the market for funds and other investment products, which may increase participation in this market by investors that previously avoided it. Such additional entry by new investors could increase the level of total capital across markets and increase the demand for new investment products and securities, which could lower the cost of capital for operating companies, precipitate capital formation in aggregate across the economy, and facilitate economic growth. These effects on capital formation would be limited, however, to the extent that investors rely on third parties who are not affected by the rule for advice in selecting among financial products.[839] Overall, we do not have reason to believe that the proposed rules or amendments would have significant effects on capital formation.

S. Reasonable Alternatives

1. More or Less Frequent Disclosure

The proposal would maintain a fund's obligation to deliver an annual and a semi-annual report to shareholders. Alternatively, we could consider increasing or reducing the frequency of reports that funds would be required to deliver to shareholders.

As one alternative, the Commission could propose to increase the required frequency of delivery of reports to shareholders beyond what occurs under the current disclosure framework. For example, the Commission could require funds to deliver shareholder reports on a quarterly basis, rather than on a semi-annual basis as would continue to be the case under the proposal. To the extent shareholders review these additional reports, receiving the reports more frequently could keep shareholders better informed about their fund investments and could enhance shareholders' familiarity and comfort with reviewing shareholder report disclosures, since they would encounter such disclosures more frequently. As a result, investors may make more informed investment decisions. However, increasing the frequency of

[836] *See supra* footnote 611 (discussing comments on the effects of AFFE disclosure on BDC investments).

[837] As an example, to the extent BDCs were excluded from indexes as a result of concerns about the effect of BDC investments on funds' fee tables as a result of AFFE disclosure, as commenters have suggested, the proposal may result in BDCs being included in indexes again. This may occur particularly where BDCs and other funds would represent less than 10% of an index, which would permit funds tracking the index to rely on the proposed AFFE amendments. *See id.*

[838] Of the funds that invest in acquired funds, we estimate that approximately 11% currently invest in BDCs. This is based on staff's analysis of Form N–PORT filings received through early June 2020.

[839] *See also supra* footnote 834.

reports would require greater allocation of fund resources to preparing and delivering shareholder reports, which would increase fund (and shareholder) costs. In addition, receiving more frequent shareholder reports would place greater demands on shareholder time and attention compared to the proposal, which could decrease the likelihood that shareholders review the reports and rely on them to inform their investment decisions.[840]

The Commission could also propose alternatives to transmitting the semi-annual report, such as permitting the requirement to transmit semi-annual reports to be satisfied by a fund filing certain information on Form N–CSR or by making information available on a website (either semi-annually or more frequently). Relative to the proposal, funds would benefit from cost savings associated with no longer being required to deliver the semi-annual report. Funds also could experience lower costs associated with preparing disclosures, particularly if the information they were required to provide on websites largely replicated information that many funds already provide online in monthly or quarterly fact sheets.[841] Shareholders could benefit from these cost savings to the extent funds pass them through. However, shareholders who prefer to receive information more frequently than annually, as they currently do, would incur costs associated with the reduced frequency of delivery, such as costs of locating information online instead of in the delivered semi-annual report. In addition, to the extent this was an optional framework (*e.g.,* funds could either provide certain information online or deliver semi-annual reports), the alternative framework may lead to shareholders in some funds receiving less direct information than those in other funds.

2. More or Less Information in Shareholder Reports

The proposal would make the disclosures that funds send to shareholders more concise, without materially changing the overall amount or scope of information that funds provide to their shareholders (either in shareholder reports or separately online). Instead, the Commission could propose to require more (or less) information in fund shareholder reports and less (or more) information online or upon request only, relative to the proposed amendments. We could further propose to reduce the overall amount of disclosure funds are required to prepare and provide, *e.g.,* by no longer requiring funds to provide disclosure regarding the basis for the board's approval of investment advisory contracts.

The benefits of requiring more information to be included in shareholder reports (with less information online or upon request only) are that fewer investors may need to take any additional steps needed to access the information online, which would reduce burdens on those investors. However, this alternative also has certain costs. For example, requiring more information in shareholder reports may reduce the likelihood that shareholders review the reports because they may be more likely to feel overwhelmed by the length of the reports. Shareholder reports that include more information than the proposed content may also make it harder for shareholders to find key information within the report. Moreover, increasing the length of shareholder reports by requiring additional content could also increase delivery costs for funds (which could also be passed on to shareholders), particularly with respect to printing and mailing costs.

As another alternative, we could further limit the content of shareholder reports. This alternative could result in shareholder reports that are easier for shareholders to review and could reduce costs associated with the preparation and delivery of shareholder reports. However, this alternative may reduce the utility of shareholder reports for many if not most shareholders if the reports do not include the key information those shareholders tend to use to monitor their fund investments or make portfolio decisions. If, as part of this alternative, we required funds to provide the information removed from shareholder reports to shareholders upon request or online, those shareholders would face the burden of requesting the information or locating it online. If we instead removed certain disclosure requirements entirely, the costs to funds of preparing disclosure would decline. This approach would, however, reduce access to information for all market participants, which may result in less informed monitoring or investment decisions by shareholders or by the market professionals they rely on for investment advice.

3. Retaining Rule 30e–3 Flexibility for Open-End Funds Registered on Form N–1A

The Commission is proposing to exclude funds registered on Form N–1A from current rule 30e–3. Under the proposal, affected funds would be required to deliver concise shareholder reports directly to shareholders in order to meet their delivery obligations. Funds would not have the flexibility to instead deliver a paper notice with information about the online location of the shareholder report, as is the case under current rule 30e–3.

As an alternative, the Commission could continue to permit these funds to rely on rule 30e–3 to satisfy their shareholder report delivery obligations. This alternative would provide optionality to funds to determine their preferred method for delivering shareholder reports where shareholders have not expressed a clear preference for electronic delivery or paper delivery of the report and could reduce costs for some funds compared to the proposal, such as for those funds that have already begun to prepare to rely on rule 30e–3. It also could reduce the potential for shareholder confusion where funds have notified shareholders of their intent to rely on rule 30e–3 and of the associated upcoming changes to shareholder report delivery. However, given that we do not expect the proposed shareholder reports to be much longer than a paper notice under rule 30e–3, we do not believe that excluding relevant funds from rule 30e–3 as proposed would significantly increase the costs of delivering shareholder reports relative to the baseline.[842] For instance, the proposed amendments may reduce processing fees associated with delivering shareholder reports through intermediaries and should not significantly increase printing and mailing costs. Moreover, we believe that delivering a concise shareholder report to shareholders directly may help them more efficiently monitor their fund investments. This is because shareholders who would otherwise receive paper notices under rule 30e–3 could avoid the additional step of finding the report online.

In addition, we recognize that if a fund could rely on both rule 30e-3 and proposed rule 498B, shareholders may no longer directly receive substantive disclosure about a fund investment, beyond notices of material changes under proposed rule 498B. This could

[840] Existing research notes that individuals exhibit limited ability to absorb and process information. *See supra* Section III.C.1; Nisbett & Ross, *supra* footnote 815; Hirshleifer and Teoh Study, *supra* footnote 761.

[841] *See generally supra* text following footnote 23.

[842] *See supra* footnote 134 and accompanying text (discussing our belief that the proposed shareholder reports could be trifold self-mailers).

result in shareholders being less informed, compared to the proposal. If, instead, funds were provided the option to rely on either rule 30e-3 or proposed rule 498B, a shareholder in a fund that chooses to rely on rule 30e-3 instead of proposed rule 498B would receive direct disclosure that may be less well-suited to his or her needs than a shareholder of a fund that relies on proposed rule 498B (or on neither rule), given that prospectus disclosure is designed more for the needs of new or prospective investors than for the needs of existing shareholders.

4. Limiting the Advertising Rule Amendments to ETFs and Mutual Funds

The proposed advertising rule amendments would apply to all registered investment companies and BDCs. The scope of entities affected by these amendments would therefore be broader than under the proposed rule and other proposed amendments, which apply only to open-end funds, such as mutual funds, and to ETFs. As an alternative, we could also limit the scope of the proposed amendments to the advertising rules to apply only to open-end funds.

Under this alternative, the advertising rule amendments would apply to a narrower class of entities than is proposed. The effect would be to reduce both the cost and benefits of the proposed advertising amendments that are discussed in Section III.C.4, as these costs and benefits would accrue only to shareholders and issuers of the narrowed class of entities, and would no longer accrue to shareholders and issuers of any entities that would be excluded under the alternative. In addition, the alternative could lead to a disparity in the quality of the information that is available to market participants about funds that would be covered by the advertising rule amendments under the alternative and the entities that would be outside its scope. This could lead to reduced comparability and distortions in investor choice across registered investment companies and BDCs, relative to the approach the Commission is proposing, which would apply the standards across all of these entities evenly.

5. Amending Prospectus Fee, Expense, and Principal Risk Disclosure in a Different Manner

The proposed prospectus fee summary disclosure would require funds to provide certain fee and expense information both as a percent of a fund investment and in dollar figures based on a $10,000 investment, while the presentation of those numbers in the full fee table would remain only in percentage figures. Alternatively, we could require funds to express fees and expenses in the fee summary as a percent of a fund investment only, similar to the current fee table presentation. This alternative would streamline the fee summary and could make it more visually appealing by reducing the amount of detail. It also could marginally reduce costs of preparing disclosures for funds. However, as discussed above, a fee summary that excludes dollar-based figures may be more difficult for some investors to understand.[843]

The proposed amendments are designed to promote more concise principal risk disclosure in the summary section of the statutory prospectus (or in summary prospectuses for funds that use summary prospectuses), but the proposal does not limit the number of principal risks a fund may disclose. As an alternative, we could limit the number of principal risks a fund may disclose (*e.g.,* only 25 principal risks). This would streamline principal risk disclosure in a way that may make it easier for investors to digest and understand the most central risks of a fund investment. At the same time, this approach could potentially result in a fund understating its principal risks in some instances, which could mislead investors about the risks associated with an investment in the fund.

The proposed rule would provide that a principal risk is one that would place more than 10% of the fund's assets at risk (or it is reasonably likely that it would place more than 10% of the fund's assets at risk in the future). Alternatively, we could establish different numerical thresholds in the proposed instruction. For example, we could provide a lower percentage threshold of 5% or a higher percentage threshold of 15% for determining whether a risk is principal. Compared to the proposed approach, a higher percentage threshold would result in funds disclosing fewer principal risks and reduce the costs to funds of providing these disclosures, while a lower percentage threshold would result in funds disclosing more principal risks and increase the costs to funds of providing these disclosures. Fewer principal risks being disclosed could lead to disclosure that is overall more concise and that may require less time and resources for investors to understand, while more principal risks being disclosed could lead to disclosure that is overall less concise and that may require more time and resources for investors to understand. At the same time, decreasing the number of principal risks a fund discloses may increase the potential for an investor to be misled about the risks of investing in a particular fund, while increasing the number of principal risks a fund discloses may decrease the potential for an investor to be misled.

As another alternative, we could provide a qualitative standard or a ''materiality'' standard for funds to determine whether a risk is principal instead of a numerical-based standard. These alternatives may allow funds to tailor and adapt their principal risk disclosure better to different facts and circumstances, which could lead to more accurate identification of a fund's principal risks and may better account for non-investment related risks, such as cybersecurity risks and new fund risks. However, these alternatives may be less effective than the proposed approach in promoting more concise and focused principal risk disclosure. These alternatives also could lead to greater variation in principal risk disclosure across funds than the proposed approach, which may make it more difficult for investors to compare funds effectively when making investment decisions. In addition, it may be more costly for funds to evaluate whether a principal risk is material compared to evaluating whether the principal risk meets the proposed quantitative standard.

6. Amending Shareholder Report Requirements for Variable Insurance Contracts or Registered Closed-End Funds

The proposed shareholder report amendments apply only to funds registered on Form N–1A. The proposed amendments to shareholder reports do not apply to other registered management investment companies that transmit annual and semi-annual reports under rule 30e–1.[844] Alternatively, we could extend the shareholder report disclosure amendments to other registered management investment companies, including closed-end funds that register on Form N–2 and variable annuity separate accounts that register on Form N–3. Like shareholders in open-end

[843] *See supra* footnotes 63 and 573.

[844] Although all registered management investment companies are subject to rule 30e-1, the information a registered management investment company must include in its shareholder report is specified in the relevant Investment Company Act registration statement form (*i.e.,* Forms N–1A, N–2, or Form N–3).

funds registered on Form N–1A, shareholders in these other funds could benefit from more concise shareholder reports. However, the Commission has recently amended the disclosures that shareholders in these funds receive. For example, the recently adopted changes to closed-end fund disclosures include multiple changes to these funds' shareholder report disclosure.[845] Similarly, while the recently adopted changes to the variable insurance contract disclosure framework are focused more on prospectus disclosure and not shareholder report disclosure, we anticipate that these amendments would significantly change investors' experience with variable contract disclosure.[846] Because we lack information about shareholders' experiences with these new disclosure requirements, we would like to assess the impact of these changes prior to proposing additional disclosure changes for variable contracts or closed-end funds.

7. Requiring Funds to Comply With Proposed Rule 498B

Proposed rule 498B allows funds the option to deliver a notice of material changes to shareholders in lieu of delivering annual prospectus updates and prospectus stickers. Instead of providing funds with the option to rely on proposed rule 498B, we could require all affected funds to comply with the proposed rule.[847]

This alternative would have the benefit of creating a more consistent disclosure framework across funds and would result in fund shareholders generally receiving the same types of information from all funds. Under the proposal, prospectus delivery practices of funds would vary across funds depending on whether they choose to rely on rule 498B. We believe that the funds that choose not to rely on the rule would generally continue to deliver the annual prospectus update, while the funds that rely on rule 498B would not deliver the annual prospectus update and would instead provide to fund shareholders timely notification of material changes. Under this alternative, all fund shareholders would receive prompt notices of material changes to a fund and would not receive separate annual prospectus updates directly. This may benefit the shareholders of funds that otherwise would decline to rely on rule 498B, to the extent that delivery of the more concise materials may allow them to make better-informed investment decisions.

However, this alternative may impose burdens on funds that would not otherwise choose to rely on the proposed rule. For example, funds that do not currently use summary prospectuses, including some smaller funds, may determine that the benefits of proposed rule 498B do not justify its costs since the rule would require funds to provide summary and statutory prospectuses and other information online. As a result, the alternative approach may impose greater costs on those funds, including some smaller funds, than on other funds. In addition, under the proposed amendments, all fund shareholders would receive information in the annual report about material fund changes. This uniform annual report disclosure would promote more consistent information for fund shareholders and thus facilitate better-informed investment decisions. In addition, we believe this proposed requirement would not lead to increased costs because of the optional nature of rule 498B for two reasons. First, funds currently tend to disclose more material changes in the annual prospectus update, and disclosure of these changes would generally appear in the proposed annual report for all funds. Second, for material changes that funds disclose through prospectus stickers, we expect that funds that do not rely on proposed rule 498B would continue to deliver prospectus stickers to notify shareholders of material changes.

8. Requiring Form N–CSR To Be Tagged in Inline XBRL Format

The proposal would not change the format requirement for Form N–CSR, which is not required to be filed in a structured machine-readable format.[848] Alternatively, we could require management investment companies (including open-end funds, registered closed-end funds, and some variable annuity separate accounts) to tag some or all of Form N–CSR in the structured machine-readable Inline XBRL format.[849] This requirement could include numerical detail tagging of the financial statements that would be included in Form N–CSR, as is currently required for operating company financial statements.[850] The requirement could also include text block tagging for narrative disclosures (such as the discussion of prior-year performance that is proposed to be included in the annual report for open-end funds and would thus be filed as part of Form N–CSR), as is currently required for principal risk disclosures in open-end fund prospectuses.[851]

Compared to the baseline (under which Form N–CSR is not required to be submitted in a structured machine-readable format), an Inline XBRL tagging requirement for Form N–CSR could benefit investors by enabling efficient retrieval, aggregation, and analysis of the information in Form N–CSR and by facilitating comparisons of that information across investment companies and time periods. There are studies suggesting that XBRL requirements increase the information content of prices, reduce the informational advantages held by insiders over public investors, heighten the relevance, understandability, and comparability of financial information for non-professional investors, and enhance the reports and recommendations published by financial analysts, thereby indirectly benefitting retail investors for whom such analysts represent a significant source of investment information.[852]

[845] *See supra* footnote 129.

[846] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27.

[847] Under the proposed rule 498B, investors would continue to receive a prospectus in connection with their initial fund investment, as they do today. Thereafter, a shareholder would no longer receive annual prospectus updates, in light of the fact that the shareholder would be receiving tailored shareholder reports (which would include, in the annual report, a summary of material changes that occurred over the prior year), and timely notifications to shareholders pursuant to proposed rule 498B regarding material fund changes as they occur.

[848] The Instructions to Form N–CSR do not prescribe a format requirement for submission of the Form. As an EDGAR Form without a separate prescribed format, Form N–CSR is typically submitted in HTML (.htm) format. *See* Vol. 2, Sec. 5.1 of the EDGAR Filer Manual (Ver. 53, Jan. 2020).

[849] Such a requirement would be implemented by revising 17 CFR part 232 [Regulation S–T] and adding an Instruction to Form N–CSR which cites to Regulation S–T. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission. Modifying a structured format requirement for a Commission filing or series of filings can generally be accomplished through changes to Regulation S–T, and would not require dispersed changes to the various rules and forms that would be impacted by the format modification.

[850] Under the proposal, open-end funds would be required to file financial statements on Form N–CSR under proposed Item 7(a) of that Form. *See supra* Section II.D.1(a). Closed-end funds and variable annuity separate accounts that are management investment companies would still be required to include financial statements in their shareholder reports, which are filed on Form N–CSR under Item 1 of that Form.

[851] Under the proposal, open-end funds would include a discussion of prior year performance pursuant to Item 27A(d) of Form N–1A. *See supra* Section II.B.2(c). In addition, registered closed-end funds will be required to include a similar discussion in their shareholder reports as of August 1, 2021. *See* Closed-End Fund Offering Reform Adopting Release, *supra* footnote 128, at Sections II.I.2 and II.J.

[852] *See, e.g.,* Yuyun Huang, Yuan George Shan, & Joey Wenling Yang, *Effects of Information Processing Costs on Price Informativeness: Evidence from XBRL Mandate* (SSRN, 2019) *available at*

Requiring Inline XBRL tagging of Form N–CSR would impose additional filing preparation costs on management investment companies compared to the baseline. Currently, management investment companies are not required to tag their Form N–CSR filings in the Inline XBRL format. As such, this alternative would impose on management investment companies the incremental costs of tagging Form N–CSR disclosures, whether implemented using internal staff or external service providers. Such costs would be partially mitigated by the fact that management investment companies will be subject to Inline XBRL tagging requirements in other filings, independent of this proposal.[853] Consequently, the alternative of tagging Form N–CSR would not impose on management investment companies the Inline XBRL implementation costs that are often associated with being subject to an Inline XBRL requirement for the first time (such as the cost of training in-house staff to prepare filings in Inline XBRL, and the cost to license Inline XBRL filing preparation software from vendors).

However, as noted above, the primary objective of the proposed disclosure framework is to promote shareholder reports that assist existing shareholders in monitoring their fund investments, leaving information that is more useful for new and prospective investors to compare funds and make investment decisions to be retained in the fund prospectus.[854] Because facilitating fund comparisons is one of the chief benefits of the Inline XBRL format, Inline XBRL requirements are likely more beneficial to investors in the context of prospectus disclosures rather than disclosures in periodic reports such as Form N–CSR. As such, the Commission has determined not to propose an Inline XBRL tagging requirement for Form N–CSR.

9. Modifying the AFFE Amendment

The proposal would allow some funds to disclose AFFE, the fees and expenses associated with acquired fund investments, in a footnote to the fee table and fee summary instead of reflecting the AFFE in the bottom line annual expenses in the fee table (as funds do today). Funds with investments in acquired funds that are limited to 10 percent or less of their total assets would be eligible to disclose AFFE in a footnote. Moving the AFFE information to a footnote to the fee table would enable the eligible funds to provide disclosures that investors may find easier to use in comparing the fees and expenses of funds with comparable investment strategies.

As alternatives, we could consider allowing more funds to move the AFFE disclosure into a footnote to the fee table by increasing the proposed eligibility threshold above 10%, such as to 50% or some other level, or by allowing all funds to move the AFFE disclosure into a footnote to the fee table, which may improve the salience of the expenses of the acquiring fund to investors. On the other hand, some funds may follow an investment strategy that leads them to incur significant expenses at a lower fund level, even where the fund does not have a majority of its assets invested in acquired funds. For those funds, moving the AFFE expenses into a footnote to the fee table may provide for expense disclosures that are less closely related to the expenses associated with the top-level fund's investment strategy. For example, some funds (such as certain target date funds) follow an investment strategy in which the acquiring fund has very low, or no, management fees. For those funds, a fee table that does not include the AFFE amount may confuse investors as to the expenses associated with investment in the fund.[855] Therefore, we are proposing to limit eligibility for the proposed AFFE amendment to the more limited share of funds with 10% or less invested in acquired funds.

As another alternative, we could consider requiring all eligible funds to rely on the proposed AFFE amendments. This could make it easier for investors to compare similar funds because funds with acquired fund investments below the 10% threshold would all disclose AFFE in a footnote. It also could reduce investor uncertainty about how a fund is disclosing AFFE information. On the other hand, allowing funds to opt into reliance on the amendment would enable funds that have relatively low, or negative, net benefit from migrating to the footnote-based approach to opt out. Moreover, a mandatory approach could require funds that maintain acquired fund investments close to the 10% threshold to move AFFE disclosure back-and-forth between the fee table and an associated footnote over time, which could contribute to investor confusion.[856] Therefore, we are proposing to allow voluntary reliance on the proposed AFFE amendments.

T. Request for Comment

We seek comment on the economic analysis, including whether the analysis has: (1) Identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed rules. We request and encourage any interested person to submit comments regarding the proposed rules, our analysis of the potential effects of the proposed rules, and other matters that may have an effect on the proposed rules. We request that commenters identify sources of data

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3324198 ; Yu Cong, Jia Hao, & Lin Zou, *The Impact of XBRL Reporting on Market Efficiency,* 28 J. INFO. SYS. 181 (2014); Huang, Yuyun, Jerry T. Parwada, Yuan George Shan, and Joey (Wenling) Yang, *Insider Profitability and Public Information: Evidence from the XBRL Mandate* (SSRN, 2019) *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3455105*; Jacqueline Birt, Kala Muthusamy, & Poonam Bir (2017), *XBRL and the Qualitative Characteristics of Useful Financial Information,* 30 ACCT. RES. J 107 (2017); Chunhui Liu, Tawei Wang, & Lee J. Yao, *XBRL's Impact on Analyst Forecast Behavior: An Empirical Study,* 33 J. ACCT. & PUB. POL'Y 69 (2014); Andrew J. Felo, Joung W. Kim, & Jee-Hae Lim, *Can XBRL Detailed Tagging of Footnotes Improve Financial Analysts' Information Environment?,* 28 INT'L J. ACCT. INFO. SYS. 45 (2018); Karam Kim, Doojin Ryu, & Heejin Yang, *Investor Sentiment, Stock Returns, and Analyst Recommendation Changes,* 48(2) INV. ANALYSTS J. 89 (2019); Alastair Lawrence, James Ryans, & Estelle Sun, *Investor Demand for Sell-Side Research,* 92 ACCT. REV. (2017). However, note that the studies listed here which assessed the impact of XBRL were based on operating company financial statement data, not mutual fund risk/return summary data.

[853] In 2009, the Commission adopted rules requiring mutual fund risk/return summaries to be submitted in an XBRL format entirely within an exhibit to a filing. See Interactive Data to Improve Financial Reporting, Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] as corrected by Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)]. In 2018, the Commission refined the requirement to provide information in an XBRL format by requiring that, for fiscal periods ending on or after September 17, 2020 (for fund groups with at least $1 billion in assets under management) and September 17, 2021 (for all other fund groups), mutual fund filers submit this information using the Inline XBRL format, which embeds the tagged information in the document itself, rather than in an exhibit. See Inline XBRL Filing of Tagged Data, Release No. 33–10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)].

In 2020, the Commission adopted rules requiring certain closed-end fund prospectus disclosures to be tagged in Inline XBRL format for filings submitted on or after August 1, 2022 (for short-form eligible closed-end funds) and February 1, 2023 (for all other closed-end funds). *See* Closed-End Fund Offering Reform Adopting Release, *supra* footnote 128, at Sections II.I.1 and II.J. Also in 2020, the Commission adopted rules requiring certain variable insurance account prospectus disclosures to be tagged in Inline XBRL format for filings submitted on or after January 1, 2023. *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27.

[854] *See supra* Section II.A.2.

[855] *See supra* footnote 816 (discussing some commenters' views on the importance of AFFE disclosure).

[856] *See supra* paragraph accompanying footnote 621.

and information as well as provide data and information to assist us in analyzing the economic consequences of the proposed rules and proposed amendments. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. In addition to our general request for comments on the economic analysis associated with the proposed rules and proposed amendments, we request specific comment on the following aspects of the proposal:

275. What effect would the proposal have on funds' delivery costs? Is our assessment correct that funds could use a trifold self-mailer, or a similar approach, to deliver a proposed shareholder report by mail? Why or why not? What alternatives to a trifold self-mailer might funds consider for delivering the proposed shareholder reports in paper to relevant shareholders? How would the planned mailing device affect the estimated benefits and costs of the proposal? Please provide quantitative information, if available.

276. We request comment on the costs to funds of the proposed requirement to prepare separate shareholder reports for each fund series. How would this requirement affect the cost to funds of preparing shareholder reports? Please answer this question separately for the transition cost and the ongoing costs of complying with this proposed requirement. Also please provide information on the additional costs to funds and other parties of delivering separate reports for separate fund series to shareholders, beyond any costs of report preparation.

277. We request comment on the costs of the Commission's proposed clarification of the term ''appropriate broad-based securities market index'' for funds that are required to present their performance in relation to an ''appropriate broad-based securities market index'' in the management's discussion of fund performance section of the shareholder report. Would this proposed clarification result in increased index-licensing fees? To what extent would competition among index providers limit or otherwise affect these fees?

278. What fraction of shareholders currently request electronic delivery of fund disclosure? [857] Would the proposal cause an increase or decrease in this fraction relative to what would occur without the proposal? If so, explain and indicate the likely change. Provide supporting quantitative evidence, if available.

279. The proposal would affect financial intermediaries and other third parties that are involved in the distribution and use of the prospectus and shareholder reports, such as broker-dealers and third-party information providers. For each type of intermediary or third party, we are requesting comment on how many would be affected by the rule, the characteristics of those affected, and the consequences for retail investors. Please provide quantitative information, if available.

280. The effect of changes in disclosure under the proposal would be limited to the extent that retail investors rely on third parties for information and advice in selecting among financial products, where those third parties use more information than the proposed shareholder reports and amended prospectus disclosure. We are requesting comment on how many, or what fraction, of retail investors rely on advice from such third parties in choosing among funds or in monitoring fund investments. We are also requesting comment on whether the presence of third parties whose advice is unaffected by the proposal would reduce the impact of the proposal. Please explain and provide empirical facts to support your response.

281. How frequently do funds currently deliver prospectus stickers to shareholders on average? Do funds typically deliver prospectus stickers separately, or together with other materials (*e.g.,* semi-annual reports)? What effects would proposed rule 498B, including the requirement to deliver prompt notices of certain material changes, have on funds' delivery costs?

282. Are our estimates of the compliance costs associated with the proposed amendments reasonable?

283. Is our assessment of the relative costs and benefits of the proposal to exclude open-end funds registered on Form N–1A from the scope of rule 30e-3 correct? Please provide qualitative or other information about the expected costs of delivering rule 30e-3 notices or complying with that rule more generally in light of funds' additional experience with the rule after its adoption. How do these costs compare to the expected costs of preparing and delivering the proposed shareholder reports?

284. We seek information that would help us quantify or otherwise qualitatively assess the benefits of the proposed rule, particularly the benefits for retail investors. Please provide any data, studies, or other evidence that would allow us to quantify some or all of the benefits.

285. The proposal is designed to conserve the time and attention of retail investors, and other market participants, in using the disclosures that funds provide through prospectuses and shareholder reports. We do not, however, have reliable estimates of the value to investors of being able to use their time more efficiently under the proposal or being able to make more informed investment decisions. We are requesting comment on the effects of the proposal on the use of investor time and attention, the ability of investors to make informed investment decisions, and on the proposal's likely effects on welfare of retail investors. Please provide explanations to support your comments. Please also provide examples, where appropriate, and supporting evidence from analysis of quantitative data, where available.

286. The proposal is designed to increase the use of disclosures by retail investors. We seek comment on whether the benefit in terms of investor comprehension of the disclosures is likely to vary according to the disclosure format and, in particular, according to whether delivery occurs in the form of digital media. What is the empirical evidence? Please explain and provide documentation of any quantitative evidence that includes an explanation of the data sources and analysis methods.

287. We seek comment on whether, and to what extent, funds that have the option would choose to rely on the AFFE amendments that we are proposing. For example, for purposes of the economic analysis, we have assumed that all funds that are eligible for the AFFE amendment would choose to move their AFFE disclosure to a footnote of the fee table, if allowed to do so. It is possible that not all such funds would rely on the amendment, however.[858] Are there conditions under which a fund that could move AFFE out of the fee table would choose not to do so? Please explain. Also please provide data or examples to support your answer.

[857] We understand that the Commission estimated that fifteen percent of investors in variable contracts have requested electronic delivery. *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 27, at n.1030 and accompanying text. There are sufficient differences between the market for investment in variable contracts and the market for investment in ETFs and mutual funds, that we believe the variable contract estimate is not a suitable indicator for the analysis of the present rule proposal.

[858] *See supra* paragraph accompanying footnote 621 (recognizing that funds that tend to hold acquired fund investments near the 10% threshold may prefer to consistently disclose AFFE in the fee table to avoid moving the disclosure back-and-forth between a footnote and the table).

288. The effects on investors of fund reliance on the proposed AFFE amendments would depend on how many funds rely on the AFFE amendment, and under what conditions. For example, we estimate that only funds with investments in acquired funds of less than 20% of total assets would likely spend time considering whether they would qualify for the AFFE amendment. We are requesting comment on the effects of the proposed amendment on funds and investors.

289. The effects on investors of the proposed change in the AFFE disclosure would depend on whether, and under what conditions, investors currently rely on the fund AFFE disclosure information. We are requesting comment on how investors and other market participants use the AFFE information that is disclosed currently. What is the evidence that investors and others rely on AFFE disclosures in making choices among funds? What is the evidence that the proposed changes would cause any difference in the way this information is used or the ease of its use by investors or other market participants? Please explain and provide supporting cites (or other background documentation).

290. We are requesting comments on whether there are any disparities between the likely effects of the advertising rule amendments on different financial products or investments that could lead to differences in the effects of the proposed advertising rule amendments across products. We specifically seek comments on differences in the effects of the proposed advertising rule amendments between ETFs or mutual funds, on the one hand, and other types of registered investment companies, on the other.

291. We are not proposing to require Form N–CSR to be submitted in a structured machine-readable format. Should we require funds to submit some or all of Form N–CSR in a structured machine-readable format such as the Inline XBRL format? What would be the benefits and costs of such a requirement? Would any resulting benefits accrue to all types of investors (*e.g.,* retail investors and institutional investors)? Are there any particular disclosures which investors would benefit most from having access to in structured machine-readable format? Should a structured machine-readable format other than Inline XBRL, such as a custom XML format, be required for Form N–CSR?

292. Form N–CSR currently requires funds to disclose their name and Investment Company Act file number on the Form N–CSR cover page. Unlike the Investment Company Act file number, which is a Commission-specific identifier, the Legal Entity Identifier (''LEI'') is used by numerous domestic and international regulatory regimes and could facilitate collection of information about a fund beyond the information disclosed in Commission filings.[859] Should we require a fund that has an LEI to disclose its LEI on the Form N–CSR cover page? What would be the costs and benefits of such an approach for investors and for funds? If the approach would provide informational benefits for investors, would retail investors realize such benefits? By making additional information available outside of the shareholder reports, would the added LEI requirement contribute to the layered disclosure framework discussed above?

293. Form N–CSR currently requires funds that disclose divested securities under Item 6.b of the Form to include the Committee on Uniform Securities Identification Procedures (''CUSIP'') number for each divested security listed. Should we consider omitting Form N–CSR's requirement to provide a CUSIP number for each divested security? Why or why not? Should we permit funds to provide, in lieu of a CUSIP number, other identifiers such as a Financial Instrument Global Identifier (FIGI) for each security? Why or why not? Would permitting voluntary use of an alternate identifier have a beneficial effect for investors, funds, or users of the data?

IV. Paperwork Reduction Act Analysis

U. Introduction

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[860] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[861] The titles for the existing collections of information are: (1) ''Form N–1A, Registration Statement under the Securities Act and under the Investment Company Act for Open-End Management Investment Companies'' (OMB Control No. 3235–0307);[862] (2) ''Rule 30e–1 under the Investment Company Act, Reports to Stockholders of Management Companies'' (OMB Control No. 3235–0025) (3) ''Form N–CSR, Certified Shareholder Report under the Exchange Act and under the Investment Company Act for Registered Management Investment Companies''(OMB Control No. 3235–0570); (4) ''Rule 30e–3 under the Investment Company Act, internet Availability of Reports to Shareholders'' (OMB Control No. 3235–0758); (5) ''Rule 31a–2, Records to be Preserved by Registered Investment Companies, Certain Majority-Owned Subsidiaries thereof, and other Persons Having Transactions with Registered Investment Companies'' (OMB Control No. 3235–0179); (6) ''Rule 498 under the Securities Act of 1933, Summary Prospectuses for Open-End Management Investment Companies'' (OMB Control No. 3235–0648); (7) ''Rule 34b–1 under the Investment Company Act, Sales Literature Deemed to be Misleading'' (OMB Control No. 3235–0346); (8) ''Rule 433 under the Securities Act of 1933'' (OMB Control No. 3235–0617); and (9) ''Rule 482 under the Securities Act of 1933 Advertising by an Investment Company as Satisfying Requirements of Section 10'' (OMB Control No. 3235–0565). We are also submitting a new collection of information for proposed rule 498B under the Securities Act to allow funds to rely on a new layered disclosure framework for prospectus delivery to existing shareholders, subject to certain conditions. The title for this new collection of information would be ''Delivery of Prospectuses to Existing Shareholders of Open-End Management Investment Companies.''

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We discuss below the collection of information burdens associated with proposed amendments to Form N–1A, rule 30e–1 under the Investment Company Act, and Form N–CSR. We also discuss proposed rule 498B and proposed amendments to rule 482 under the Securities Act, rule 34b–1 under the Investment Company Act, rule 433 under the Securities Act, and rule 30e–3 under the Investment Company Act. The Commission also intends to use two Feedback Fliers to obtain information from investors and funds about the

[859] The LEI is also used by private market participants for risk management and operational efficiency purposes. *See* the LEI ROC's list of LEI uses at *https://www.leiroc.org/lei/uses.htm.*

[860] 44 U.S.C. 3501 through 3521.

[861] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[862] In addition to the amendments discussed below, we also are proposing amendments to Schedule 14A and Form N–14 to update certain cross references to the fee table in Form N–1A.

proposed rule.[863] The Feedback Fliers are included in this proposal as Appendix B and Appendix C hereto.

V. Form N–1A

In our most recent Paperwork Reduction Act submission for Form N–1A, we estimated for Form N–1A a total hour burden of 1,662,190 hours, and the total annual external cost burden is $131,338,208.[864] Compliance with the disclosure requirements of Form N–1A is mandatory, and the responses to the disclosure requirements will not be kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–1A.

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TABLE 9: FORM N-1A PRA ESTIMATES

	Initial hours	Annual hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
Revise fee table and fee and expense terminology	9 hours[3]	5 hours[4]	×	$336 (blended rate for compliance attorney and senior programmer)	$1,680	
Revise risk disclosures	18 hours	10 hours[5]		$336 (blended rate for compliance attorney and senior programmer)	$3,360	
Remove rule 30e-3 legend[6]	-1	-0.33 hours		$336 (blended rate for compliance attorney and senior programmer)	-$110.88	
Total new annual burden per fund		14.67 hours			$4,929.12	
Number of funds		× 12,410 funds[7]			× 12,410 funds	
Total new annual burden		182,054.7 hours			$61,170,379.2	$0
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		+ 1,662,190 hours				+ $131,139,208
Revised burden estimates		1,844,244.7 hours				$131,139,208

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

3. This estimate is an average estimate across all Form N-1A registrants. This average estimate takes into account higher costs for certain funds that make investments in other funds. Additionally, we assume that a subset of such funds would conduct annual calculations to determine if they are eligible to use the proposed new AFFE presentation option.

4. Includes initial burden estimates annualized over a three-year period, plus 2 hours of ongoing annual burden hours. The estimate of 5 hours is based on the following calculation: ((9 initial hours /3) + 2 hours of additional ongoing burden hours) = 5 hours.

5. Includes initial burden estimates annualized over a three-year period, plus 4 hours of ongoing annual burden hours. The estimate of 10 hours is based on the following calculation: ((18 initial hours /3) + 4 hours of additional ongoing burden hours) = 10 hours

6. This amendment will decrease the burdens associated with Form N-1A.

7. Includes all open-end funds, including ETFs, registered on Form N-1A.

[863] The Commission has determined that this usage is in the public interest and will protect investors, and therefore is not subject to the requirements of the Paperwork Reduction Act of 1995. *See* section 19(e) and (f) of the Securities Act. Additionally, for the purpose of developing and considering any potential rules relating to this rulemaking, the agency may gather from and communicate with investors or other members from the public. *See* section 19(e)(1) and (f) of the Securities Act.

[864] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2020.

W. Proposed New Shareholder Report Requirements Under Rule 30e–1

We have previously estimated that it takes a total of 1,028,658 hours, and involves a total external cost burden of $147,750,391, to comply with the collection of information associated with rule 30e–1.[865] Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements are not kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to rule 30e-1.

TABLE 10: RULE 30E-1 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
Prepare annual report pursuant to new Item 27A of Form N-1A	36 hours	22 hours[3]	×	$336 (blended rate for compliance attorney and senior programmer)	$7,392	
Prepare semi-annual report pursuant to new Item 27A of Form N-1A	18 hours	11 hours[4]		$336 (blended rate for compliance attorney and senior programmer)	$3,696	
Website availability requirements	12	8 hours[5]		$239 (webmaster)	$1,912	
Delivery upon request requirements						$500
Total additional burden per fund		41 hours			$13,000	
Number of funds		× 12,410 funds[6]			× 12,410 funds	× 12,410 funds
Total annual burden		508,810 hours			$161,330,000	$6,205,000
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		+1,028,658				+$147,750,391
Revised burden estimates		1,537,468				$153,955,391

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed reporting requirements that we believe otherwise would be involved in preparing and filing shareholder reports. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

3. This estimate assumes that, after the initial 36 hours that a fund would spend preparing an annual report, which we annualize over a 3-year period, the fund would incur 10 additional burden hours associated with ongoing preparation of the shareholder report per year. The estimate of 22 hours is based on the following calculation: ((36 initial hours /3) + 10 hours of additional ongoing burden hours) = 22 hours.

4. This estimate assumes that, after the initial 18 hours that a fund would spend preparing a semi-annual report, which we annualize over a 3-year period, the fund would incur 5 additional burden hours associated with ongoing preparation of the semi-annual report per year. The estimate of 11 hours is based on the following calculation: ((18 initial hours /3) + 5 hours of additional ongoing burden hours) = 11 hours.

5. This estimate assumes that, after the initial 12 hours that a fund would spend complying with these website availability requirements, which we annualize over a 3-year period, the fund would incur 4 additional burden hours associated with ongoing compliance with these website availability requirements per year. The estimate of 8 hours is based on the following calculation: ((12 initial hours /3) + 4 hours of additional ongoing burden hours) = 8 hours.

6. Includes all open-end funds, including ETFs, registered on Form N-1A.

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X. Form N–CSR

In our most recent Paperwork Reduction Act submission for Form N–CSR, we estimated the annual compliance burden to comply with the collection of information requirement of

[865] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2019.

Form N–CSR is 179,443 burden hours with an internal cost burden of $57,723,571, and an external cost burden estimate of $3,129,984.[866] Compliance with the disclosure requirements of Form N–CSR is mandatory, and the responses to the disclosure requirements will not be kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–CSR.

TABLE 11: FORM N-CSR PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours[1]		Wage Rate[2]	Internal Time Costs	Annual external cost burden
PROPOSED ESTIMATES FOR INITIAL N-CSR FILINGS						
Total additional burden per filing (proposed new Items 7-11 of Form N-CSR)	18 hours	11 hours[3]	×	$336 (blended rate for compliance attorney and senior programmer)	$3,696	--
Number of filings		×24,820[4]			× 24,820	
Total additional burden for Form N-CSR		273,020 hours			$91,743,720	–
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		+179,443 hours				$3,129,984
Revised burden estimates		452,463 hours				$3,129,984

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed reporting requirements that we believe otherwise would be involved in preparing and filing Form N-CSR. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

3. This estimate assumes that, after the initial 18 hours that a fund would spend preparing the new items on Form N-CSR, which we annualize over a 3-year period, the fund would incur 5 additional burden hours associated with ongoing preparation of these items per year. The estimate of 11 hours is based on the following calculation: ((18 initial hours / 3) + 5 hours of additional ongoing burden hours) = 11 hours.

4. Funds make two filings on Form N-CSR annually. Therefore, this estimate is based on the following calculation: 12,410 funds x 2 = 24,820 filings.

Y. Proposed Rule 498B

Proposed rule 498B would address shareholders' continued receipt of annual prospectus updates in the years following their initial investment in a fund and uses layered disclosure concepts to tailor funds' required disclosures to the informational needs of different types of investors.[867] Under the proposed rule, investors would continue to receive a prospectus in connection with their initial fund investment, as they do today. Thereafter, a shareholder would no longer receive annual prospectus updates, in light of the fact that the shareholder would be receiving tailored shareholder reports (which would include, in the annual report, a summary of material changes that occurred over the prior year), and timely notifications to shareholders pursuant to proposed rule 498B regarding material fund changes as they occur. Reliance on the rule is voluntary; however, compliance with the rule's conditions is mandatory for funds relying on the rule. Responses to the information collections would not be kept confidential.

Because a fund's reliance on proposed rule 498B would be voluntary, the percentage of funds that would choose to rely on the rule is uncertain. We generally anticipate that the proposed rule would provide costs savings to funds, and so we assume that the vast majority of funds would rely on rule 498B to satisfy their prospectus delivery obligations.[868] For purposes of this estimate, we assume that funds that currently rely on rule 498 generally would rely on proposed rule 498B. We believe this assumption is appropriate because funds that rely on rule 498 are funds that have already chosen to rely on a rule that provides an alternative means of satisfying prospectus delivery obligations, and because certain of the conditions of proposed rule 498B overlap with similar conditions to rely on rule 498.[869] Therefore, we assume that these funds would experience some efficiencies in coming into compliance with proposed rule 498B. Based on

[866] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2018.

[867] *See supra* section II.F.

[868] *See supra* section III.C.2.d (discussing the anticipated cost savings associated with rule 498B).

[869] For example, the set of documents that funds relying on 498B must post online would be identical to the set of documents that are publicly accessible online for funds currently relying on rule 498. Therefore, for funds currently relying on 498, there would be no added burden to comply with this requirement.

these assumptions, we estimate that 90% of mutual funds and ETFs would choose to rely on rule 498B.[870]

The table below summarizes the proposed estimates for internal and external burdens associated with this new requirement under rule 498B:

TABLE 12: RULE 498B PRA ESTIMATES

	Internal initial hour burden	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost
Preparation of notice of material changes	12 hours	8 hours[3]	$336 (blended rate for compliance attorney and senior programmer)	$2,688	
Preparation of summary prospectus[4]	30 hours	20 hours[5]	$336 (blended rate for compliance attorney and senior programmer)	$6,720	
Website availability requirements[6]	12 hours	8 hours[7]	$239 (webmaster)	$1,912	
Delivery Upon Request					$500
Total Burden per Registrant		36 hours		$11,320	$500
Number of registrants		× 11,169 funds8		× 11,169 funds	× 11,169 funds
TOTAL ESTIMATED BURDENS					
Total annual burden		402,084 hours		$126,433,080	$5,584,500

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in preparing these notices that we believe otherwise would be involved in preparing a fund's other regulatory filings. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. This estimate assumes that, after the initial 12 hours that a fund would spend complying with the requirement to prepare the required notices of material changes, which we annualize over a 3-year period, the fund would incur 4 additional burden hour associated with this requirement per year. The estimate of 8 hours is based on the following calculation: ((12 initial hours /3) + 4 additional ongoing burden hours) = 8 hours.
4. For purposes of this PRA, we assume that all funds that chose to rely on rule 498B will incur the costs of preparing a summary prospectus. We recognize, however, that this may be an overestimation to the extent that these funds already prepare a summary prospectus because they rely on rule 498.
5. This estimate assumes that, after the initial 30 hours that a fund would spend preparing its summary prospectus, which we annualized over a 3-year period, the fund would incur an additional 10 burden hours associated with ongoing preparation of a summary prospectus per year. The estimate of 20 hours is based on the following calculation: ((30 initial hours /3) + 10 hours of additional ongoing burden hours) = 20 hours.
6. For purposes of this PRA, we assume that all funds that choose to rely on rule 498B will incur the costs of complying with the website availability requirements. We recognize, however, that this may be an overestimation because the set of documents that funds relying on 498B must post online would be identical to the set of documents that are publicly accessible online for funds currently relying on rule 498. Therefore, for funds currently relying on 498, there would be no added burden to comply with this requirement.
7. This estimate assumes that, after the initial 12 hours that a fund would spend complying with the website availability requirements, which we annualize over a 3-year period, the fund would incur 4 additional burden hours associated with ongoing compliance with these website availability requirements per year. The estimate of 8 is based on the following calculation: ((12 initial hours /3) + 4 hour of additional ongoing burden hours) = 8 hours.
8. We assume that 90% of 12,410 funds registered on Form N-1A will rely on rule 498B. 90% x 12,410 = 11,169.

Z. Rule 482

In our most recent Paperwork Reduction Act submission for rule 482, we estimated the annual burden to comply with rule 482's information collection requirements to be 278,161 hours, with a time cost of $76,702,895, and with no annual external cost burden.[871] Compliance with the requirements of rule 482 is mandatory, and responses to the information

[870] We estimate that 93% of funds use summary prospectuses. *See supra* footnote 12. Funds that use summary prospectuses under rule 498 already meet several of the conditions of proposed rule 498B, which we believe would lead most of these funds to rely on proposed rule 498B due to the lower compliance costs of relying on the new rule. As a result, and to simplify our calculations, we estimate that 90% of funds would rely on proposed rule 498B.

[871] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2017.

collections would not be kept confidential.

We estimate that 36,994 responses to rule 482 are filed annually.[872] We estimate that approximately 96% of the rule 482 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the proposed amendments regarding such information (for example, ensuring that the fee and expense figures are presented in accordance with the prominence and timeliness requirements in the proposed amendments to rule 482). Similarly, we estimate that 96% of the responses to rule 482 provide advertisements that include information regarding a fund's total annual expenses and would, therefore, have to comply with the proposed amendments regarding such information.

The table below summarizes the proposed estimates for internal burdens associated with this new requirement under rule 482:

TABLE 13: RULE 482 PRA ESTIMATES

	Internal initial hour burdens	Internal annual burden[1]	Wage Rate[2]	Internal Time Costs
PROPOSED ESTIMATES FOR RULE 482				
New general requirements re: fee and expense figure disclosure	9 hours	6 hours[3]	$336 (blended rate for compliance attorney and senior programmer)	$2,016
Number of responses to rule 482 that include fee/expense figure disclosure		x 35,514 responses		x 35,514 responses
Total burden of new requirements for fee and expense disclosure		213,084 hours		$71,596,224
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours[4]	$336 (blended rate for compliance attorney and senior programmer) -	$1,344
Number of responses to rule 482 that disclose fee waivers/expense reimbursement arrangements		x 35,514 responses		x 35,514 responses
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements		142,056 hours		$47,730,816
Total annual burden		355,140 hours		$119,327,040
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates		278,161 hours		$76,702,895
Revised burden estimate		633,301 hours		$196,029,935

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in preparing these notices that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. This estimate assumes that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours /3) + 3 hours of additional ongoing burden hours) = 6 hours.
4. This estimate assumes that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours/ 3) + 2 hour of additional ongoing burden hours) = 4 hours

AA. Rule 34b–1

To apply the same fee and expense-related requirements consistently across all registered investment company and BDC advertisements and supplemental sales literature, we are proposing to amend rules 34b-1 in a manner that mirrors our proposed amendments to rule 482.[873]

We estimate that 351 responses to rule 34b–1 are filed annually.[874] We estimate that approximately 96% of the rule 34b–1 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the proposed amendments regarding such information. Similarly, we estimate that 96% of the responses to rule 34b–1 provide advertisements that include information regarding a fund's total annual expenses and would, therefore, have to comply with the proposed amendments regarding such information.

[872] In 2019, there were 41,003 responses to rule 482 filed with FINRA and 262 responses filed with the Commission in 2019. Of those, 4,271 were responses from closed-end funds and BDCs. We assume that, moving forward, closed-end funds and BDCs will choose to use free writing prospectuses under rule 433. Therefore, we excluded closed-end funds or BDCs from the total responses to rule 482.

[873] *See supra* Section II.I.

[874] The estimated number of responses filed with the Commission in 2019.

In our most recent Paperwork Reduction Act submission for rule 34b–1, we estimated the annual compliance burden to comply with the collection of information requirement in rule 34b–1 is 26,008 hours, with an internal cost burden of $7.3 million.[875] There is no annual external cost burden attributed to rule 34b–1. Compliance with the requirements of rule 34b–1 is mandatory and the responses to the information collections would not be kept confidential. The table below summarizes the proposed estimates for internal burdens associated with this new requirement under rule 34b–1.

TABLE 14: RULE 34B-1 PRA ESTIMATES

	Internal initial burden hours	Internal annual hour burden[1]	Wage Rate[2]	Internal Time Costs
PROPOSED ESTIMATES FOR RULE 34B-1				
New general requirements re: fee and expense figure disclosure	9 hours	6 hours[3]		$2,016
Number of responses to rule 34b-1 that include fee/expense figure disclosure		x 337 responses	$336 (blended rate for compliance attorney and senior programmer)	x 337 responses
Total annual burden of new requirements for fee and expense disclosure		2,022 hours		$679,392
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hour	4 hours[4]	$336 (blended rate for compliance attorney and senior programmer)	$1,344
Number of responses to rule 34b-1 that disclose fee waivers/expense reimbursement arrangements		x 337 responses		x 337 responses
Total annual burden of requirements for disclosure of fee waivers/expense reimbursement arrangements		1,348 hours		$452,928
Total annual burden		3,370 hours		$1,132,320
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates		26,008 hours		$7,300,000
Revised burden estimate		29,378		$8,432,320

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. These PRA estimates assume that the same types of professionals would be involved in preparing these notices that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

3. This estimate assumes that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours /3) + 3 hours of additional ongoing burden hours) = 6 hours.

4. This estimate assumes that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours/ 3) + 2 hours of additional ongoing burden hours) = 4 hours.

BB. Rule 433

We are proposing to amend rule 433 to require a registered closed-end fund or BDC free writing prospectus to comply with the proposed content, presentation, and timeliness requirements of proposed rule 482, as applicable, if the free writing prospectus includes fee and expense information.[876] As a result, regardless of whether a registered closed-end fund or BDC advertisement uses rule 482 or rule 433, the advertisement would be subject to the same requirements regarding fee

[875] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2018.

[876] *See supra* Section II.I.

and expense information.[877] Compliance with the requirements of rule 433 is mandatory and the responses to the information collections would not be kept confidential.

In our most recent Paperwork Reduction Act submission for rule 433, we estimated the annual compliance burden to comply with the collection of information requirement rule 433 is 6,391 hours, at a time cost of $7,668,800, and an external cost burden estimate of $7,669,017.[878] As part of that rulemaking, we also estimated that there will be 791 closed-end funds and BDCs filing approximately 4,271 free writing prospectuses.

We estimate that approximately 96% of the 4,271 responses provide fee and expense figures in free writing prospectuses and would, therefore, be required to comply with the proposed amendments regarding such information. Similarly, we estimate that 96% of these responses would include information regarding a fund's total annual expenses and would, therefore, have to comply with the proposed amendments regarding such information.

The table below summarizes the proposed estimates for internal burdens associated with this new requirement under rule 433:

TABLE 15: RULE 433 PRA ESTIMATES

	Internal initial burden hours[1]	Internal annual hour burden	Wage rate[2]	Internal time costs	External costs
PROPOSED ESTIMATES FOR RULE 433					
New general requirements re: fee and expense figure disclosure	9 hours	6 hours[3]	$336 (blended rate for compliance attorney and senior programmer)	$2,016	
Number of responses to rule 433 that include fee/expense figure disclosure		x 4,100 responses		x 4,100 responses	
Total burden of new requirements for fee and expense disclosure		24,600 hours		$8,265,600	
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours[4]	$336 (blended rate for compliance attorney and senior programmer)	$1,344	
Number of responses to rule 433 that disclose fee waivers/expense reimbursement arrangements		x 4,100 responses	-	x 4,100 responses	
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements		16,400 hours		$5,510,400	
Total annual burden		41,000 hours		$13,776,000	
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current burden estimates		6,391 hours		$7,668,800	$7,669,017
Revised burden estimate		47,391 hours		$21,444,800	$7,669,017

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in preparing these notices that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. This estimate assumes that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours /3) + 3 hours of additional ongoing burden hours) = 6 hours.
4. This estimate assumes that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours/ 3) + 2 hour of additional ongoing burden hours) = 4 hours.

CC. Rule 30e–3

We are proposing to amend the scope of rule 30e–3 to exclude investment companies registered on Form N–1A.[879] Because our proposed amendment would decrease the number of funds that would be able to rely on rule 30e–3, we are updating the PRA analysis for rule 30e–3 to account for any burden

[877] *See supra* footnote 872 (noting that, for purposes of the PRA for rule 482, we excluded responses from closed-end funds and BDC).

[878] This estimate is based on the last time the rule's information collection was submitted in 2020. *See* Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33836 (Apr. 8, 2020).

decrease that would result from this decrease in respondents. We are not updating the rule 30e–3 PRA analysis in any other respect. Reliance on the rule is voluntary; however, compliance with the rule's conditions is mandatory for funds relying on the rule. Responses to the information collections would not be kept confidential.

Under current PRA estimates for rule 30e–3, we estimated that complying with the information collection requirements of rule 30e–3 would impose an average total annual hour burden of about 8,866 hours and an external cost burden estimate of $76,038 on funds that choose to rely on rule 30e–3.[880] Of those costs, we estimated that 24,459.4 hours, at a time cost of $8,674,306, and an external cost of $69,965,020, were attributed to the compliance costs of open-end funds registered on Form N–1A. The table below summarizes these revisions to the estimated annual responses, burden hours, and burden-hour costs based on the proposed amendment to the scope of rule 30e–3.

TABLE 16: RULE 30E-3 PRA ESTIMATES

	Previously estimated annual internal hour burden[1]	Updated estimated annual internal hour burden	Previously estimated annual internal burden time cost	Updated estimated annual internal time burden cost	Previously estimated annual external cost burden	Updated estimated annual external cost burden
Total annual burden	28,758 hours	3,298.6 hours	$9.8 million	$1,125,694	$79,031,220	$9,066,200

Notes:
1. The estimated burdens and costs in this table are based on an estimate of 11,367 funds relying on rule 30e-3, of which 10,063 are open end investment companies registered on Form N-1A.

DD. Rule 498

Rule 498 under the Securities Act permits funds to satisfy their prospectus delivery obligations under the Securities Act by sending or giving investors the fund's summary prospectus and providing the statutory prospectus on a website. Reliance on the rule is voluntary; however, compliance with the rule's conditions is mandatory for funds relying on the rule. Responses to the information collections would not be kept confidential.

We are proposing to amend the scope of rule 30e–3 to exclude investment companies registered on Form N–1A. Because our proposed amendments would decrease the number of funds that would be able to rely on rule 30e–3, we are updating the PRA analysis for rule 498 to account for that change. We are not updating the rule 498 PRA analysis in any other respect.

Under current PRA estimates for rule 498, we estimated that complying with the information collection requirements of rule 498 would impose an average total annual hour burden of about 20,327 burden hours, at a time cost of $5.8 million, and an annual external cost burden of $167,458,800. Of those costs, we estimated that the amortized aggregate annual hour burden associated with the rule 30e–3 amendments to rule 498 was 4,529 hours, at a time cost of $1,286,236. We estimated that the external costs of rule 498 did not change as a result of the rule 30e–3 amendments. The table below summarizes our proposed revisions to the estimated burden hours, and burden-hour costs based on the proposed amendment to the scope of rule 30e–3.

TABLE 17: RULE 498 PRA ESTIMATES

	Previously estimated annual internal hour burden[1]	Updated estimated annual internal hour burden[2]	Previously estimated annual internal burden time cost	Updated estimated annual internal time burden cost	Previously estimated annual external cost burden	Updated estimated annual external cost burden
Total annual burden	20,327 hours	15,798 hours	$5.8 million	$4,513,764	$167,458,800	$167,458,800

EE. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through

[880] This estimate is based on the last time the rule's information collection was submitted in connection with the adoption of rule 30e–3 in 2019.

the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov*, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–09–20. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–09–20, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with section 3 of the Regulatory Flexibility Act (''RFA'').[881] It relates to: The proposed amendments to funds' annual and semi-annual report requirements, proposed new Form N–CSR requirements, and proposed new website posting requirements; the treatment of annual prospectus updates for existing fund shareholders under proposed rule 498B; the proposed amendments to fund prospectus disclosure requirements; the proposed investment company advertising rule amendments; and the proposed technical and conforming amendments.

FF. Reasons for and Objectives of the Proposed Actions

The Commission is proposing a new rule, rule amendments, and form amendments that would create a simplified disclosure framework for mutual funds and exchange-traded funds to highlight key information for investors. Under the proposed amendments, fund investors would continue to receive fund prospectuses in connection with their initial investment in a fund, as they do today. On an ongoing basis thereafter, the investors would receive more concise and visually engaging annual and semi-annual reports designed to highlight information that we believe is particularly important for retail shareholders to assess and monitor their ongoing fund investments. The fund's shareholder reports would serve as the primary fund disclosures that existing shareholders receive each year, in addition to notices of certain material changes if they occur during the year. The proposal would promote a layered disclosure framework that would complement the shareholder reports by continuing to make available additional information that may be of interest to some investors, including the fund's financial statements. This information would be available online, reported on Form N–CSR, and delivered to an investor on request, free of charge. We also propose to provide funds the flexibility to make electronic versions of their shareholder reports more user-friendly and interactive. Under the proposal, mutual funds and exchange-traded funds would no longer be permitted to rely on rule 30e–3 to satisfy shareholder report transmittal requirements, in order to promote the provision of consistent disclosure that we believe is best tailored to investors' informational needs. While it is currently common for fund shareholders to receive an updated annual prospectus each year, the proposal's layered disclosure approach would instead rely on shareholder reports (which, in the case of the annual report, would include a summary of material changes that occurred over the prior year), as well as the online availability of the fund prospectus and timely notifications to shareholders regarding material fund changes as they occur, to keep investors informed about their ongoing fund investments. In addition, we are proposing amendments to certain mutual fund and ETF prospectus disclosure requirements, which are designed to improve the presentation of fund fees and expenses and principal risks to help investors better understand this important information. To improve fee- and expense-related information more broadly, we further propose to amend investment company advertising rules to promote more transparent and balanced statements about investment costs. The proposed advertising rule amendments would affect all registered investment companies and BDCs.

GG. Legal Basis

The Commission is proposing the rules and forms contained in this document under the authority set forth in the Securities Act, particularly, section 19 thereof [15 U.S.C. *77a et seq.*], the Exchange Act, particularly, sections 13, 23, and 35A thereof [15 U.S.C. 78a *et seq.*], the Investment Company Act, particularly, sections 8, 24, 30, and 38 thereof [15 U.S.C. 80a *et seq.*], and 44 U.S.C. 3506, 3507.

HH. Small Entities Subject to the Rule

For purposes of Commission rulemaking in connection with the Regulatory Flexibility Act, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[882] Commission staff estimates that, as of June 2019, approximately 50 open-end funds (including 8 ETFs), 33 closed-end funds, and 16 BDCs are small entities.

II. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Annual and Semi-Annual Reports

We propose to tailor the disclosure requirements for funds' annual and semi-annual reports to help shareholders focus on key information that we believe is most useful for assessing and monitoring fund investments on an ongoing basis, including information about a fund's expenses, portfolio holdings, and performance. Among other things, shareholder reports would be revised to include new disclosures (such as material changes and fund statistics in annual reports), simplify certain disclosures (such as the MDFP in annual reports), and remove certain disclosures (such as financial statements currently found in semi-annual and annual reports).[883] We also propose to improve the design of funds' shareholder reports by, for example, encouraging funds to use features that promote effective communications (*e.g.,* tables, charts, bullet lists, question-and-answer formats) and permitting funds to use technology to enhance an investor's understanding of material in electronic versions of shareholder reports.

We estimate that approximately 50 funds are small entities that are required to prepare and transmit shareholder reports under the proposed rules.[884] We expect the proposed amendments would result in some initial implementation costs but, going forward, would reduce the burdens associated with these

[881] 5 U.S.C. 603.

[882] 17 CFR 270.0–10(a). Recognizing the growth in assets under management in investment companies since rule 0–10(a) was adopted, the Commission plans to revisit the definition of a small entity in rule 0–10(a).

[883] *See supra* Sections II.B.2 and II.C.1.

[884] *See* text following *supra* footnote 882.

existing disclosure requirements related to shareholder reports. We estimate that preparing amended annual report disclosure would cost $12,096 for each fund, including small entities, in its first year of compliance, and $3,360 for each subsequent year.[885] We further estimate that preparing amended semi-annual report disclosure would cost $6,048 for each fund, including small entities, in its first year of compliance, and $1,680 for each subsequent year.[886]

2. New Form N–CSR and Website Availability Requirements

We propose a layered disclosure framework that would complement the proposed shareholder report requirements by continuing to make available to investors additional, less retail-focused information, including the fund's financial statements. This additional information, which we believe would primarily benefit financial professionals and other investors who desire more in-depth information, would be available online, reported on Form N–CSR, and delivered to an investor on request, free of charge.[887] This new Form N–CSR disclosure also would need to be available on the website specified on the cover page or at the beginning of the fund's annual report and delivered in paper or electronically upon request, free of charge.[888]

We estimate that approximately 50 funds are small entities that would be required to comply with the proposed new Form N–CSR and website posting requirements.[889] We further estimate that complying with the new Form N–CSR and website posting requirements would cost $8,916 for each fund, including small entities, in its first year of compliance, and $2,636 for each subsequent year.[890]

3. Proposed Rule 498B, and Treatment of Annual Prospectus Updates Under Proposed Disclosure Framework

Proposed rule 498B uses layered disclosure concepts to tailor funds' required disclosures to the informational needs of different types of investors. Under the proposed rule, investors would continue to receive a prospectus in connection with their initial fund investment, as they do today. Thereafter, a shareholder would no longer receive annual prospectus updates, in light of the fact that the shareholder would be receiving a tailored shareholder report (which in the case of the annual report would include a summary of material changes that occurred over the prior year), and timely notifications to shareholders regarding material fund changes as they occur, which would be required under rule 498B.[891]

We estimate that approximately 50 funds are small entities that are required to send or give prospectuses to satisfy prospectus delivery obligations under the Securities Act.[892] A fund's reliance on proposed rule 498B would be voluntary, so the percentage of funds that would choose to rely on the rule is uncertain. Because we generally anticipate that the proposed rule would provide costs savings to funds, we assume that the vast majority of funds would rely on rule 498B to satisfy their prospectus delivery obligations.[893] For purposes of this estimate, we assume that 90% of funds, including small funds, would rely on proposed rule 498B, which is roughly the same percentage of funds that currently rely on rule 498.[894] We believe this assumption is appropriate because funds that rely on rule 498 are funds that have already chosen to rely on a rule that provides an alternative means of satisfying prospectus delivery obligations, and because certain of the conditions of proposed rule 498B overlap with similar conditions to rely on rule 498. Therefore, we assume that these funds would experience some efficiencies in coming into compliance with proposed rule 498B. Based on these assumptions, we estimate that approximately 45 small funds would choose to rely on proposed rule 498B.[895]

We estimate that preparing notices of material changes under proposed rule 498B would cost $4,032 for each fund, including small entities, in its first year, and $1,344 per year for each subsequent year.[896] Further, if a fund does not currently rely on rule 498, we estimate additional compliance costs with the website availability requirements and the requirement to prepare a summary prospectus of $12,948 per fund in its first year and $4,316 per fund for each subsequent year.[897]

4. Amendments to Scope of Rule 30e–3

Subject to conditions, rule 30e–3 generally permits investment companies to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of the reports' online availability instead of directly mailing the report (or emailing an electronic version of the report) to shareholders. We are proposing to amend the scope of rule 30e–3 to exclude investment companies registered on Form N–1A, which would be sending tailored shareholder reports under the proposal. This proposed amendment to the scope of the rule is designed to help ensure that all investors in these funds experience the anticipated benefits of the proposed new disclosure framework.[898]

5. Proposed Amendments To Fund Prospectus Disclosure Requirements

We are proposing amendments to funds' prospectus disclosure that are designed to help investors more readily understand a fund's fees and risks, and that use layered disclosure principles that tailor disclosures of these topics to different types of investors' informational needs. Specifically, we are proposing amendments to Form N–1A that would create a more concise, easier-to-understand presentation of fund fees for the summary prospectus or summary section of the statutory prospectus, while maintaining the existing fee table in the statutory prospectus for investors that would like more detail.[899] We are also proposing changes in some terminology that funds would use to describe fees in the prospectus.[900] In addition, we are proposing Form N–1A amendments that are designed to make it easier for investors to identify and understand the principal risks of a fund investment by requiring funds to briefly disclose principal risks in general order of importance and providing funds with additional guidance for determining whether a risk is a principal risk.[901]

We are also proposing to rescind rule 30e–1(d), which permits a fund to transmit a copy of its prospectus or SAI in place of its shareholder report, if it includes all of the information that would otherwise be required to be

[885] *See supra* footnote 804 and accompanying text.

[886] *See supra* footnote 805 and accompanying text.

[887] *See supra* Sections II.B through II.C.

[888] *See supra* Section II.B.3.

[889] *See* text following footnote 882.

[890] *See supra* footnotes 806 and 808 and accompanying text.

[891] *See supra* Section II.D.

[892] *See* text following footnote 883.

[893] *See supra* footnote 868 and accompanying text.

[894] *See supra* footnote 870 (estimating that 93% of funds currently rely on rule 498).

[895] *See supra* text following footnote 872. Our estimate of 45 funds is based on the following calculation: 50 funds × 90% = 45 funds.

[896] *See supra* footnote 811 and accompanying text.

[897] *See supra* footnote 810 and accompanying text.

[898] *See supra* Section II.F.

[899] *See supra* Section II.H.1.

[900] *See supra* Section II.H.1.f.

[901] *See supra* Section II.H.2.

contained in the shareholder report.[902] We understand that funds very rarely rely on rule 30e–1(d) to transmit a prospectus or SAI in place of a shareholder report. Additionally, we believe that allowing funds to consolidate their prospectus, SAI, and shareholder report disclosures into a single document would result in shareholders receiving long, complex, and overlapping fund disclosures that could cause shareholder confusion and fatigue.[903]

We estimate that approximately 50 funds are small entities that prepare prospectuses pursuant to the requirements of Form N–1A.[904] We estimate that compliance with the proposed Form N–1A amendments affecting funds' prospectus disclosure, in the aggregate, would entail initial costs of $9,072 for each fund, including small entities, and $2,016 per year for each subsequent year.[905]

6. Investment Company Advertising Rules

We are also proposing to amend the Commission's investment company advertising rules (for purposes of this release, Securities Act rules 482, 156, and 433 and Investment Company Act rule 34b–1) to promote transparent and balanced presentations of fees and expenses in investment company advertisements.[906] As investment companies increasingly compete and market themselves on the basis of costs, we are concerned that investment company advertisements may mislead investors by creating an inaccurate impression of the costs associated with an investment.[907] The proposed advertising rule amendments would generally apply to any investment company, including mutual funds, ETFs, registered closed-end funds, and BDCs.

Specifically, we are proposing to amend Securities Act rules 433 and 482 and Investment Company Act rule 34b–1 to promote transparent and balanced presentations of fees and expenses in investment company advertisements. We also are proposing to amend Securities Act rule 156 to provide factors an investment company should consider to determine whether representations about the fees and expenses associated with an investment in the fund could be materially misleading.[908]

We estimate that 50 open-end funds (including 8 registered ETFs), 33 closed-end funds, and 16 BDCs are small entities that would be affected by our proposed amendments to investment company advertising rules. As discussed above, we estimate that compliance with these proposed amendments would cost $5,040 for each advertisement, including small entities, in the first year, and $1,680 per year for each subsequent year.[909]

JJ. Duplicative, Overlapping, or Conflicting Federal Rules

Filing, Posting, and Delivery-Upon-Request of Certain Information That Currently Appears in Funds' Shareholder Reports

Funds currently prepare and transmit annual and semi-annual reports to investors and file those reports, along with other information, on Form N–CSR. Under our proposal, funds would transmit tailored annual and semi-annual reports to investors. Certain information currently contained in funds' shareholder reports would no longer be included in the reports that are transmitted to investors but would instead be included in funds' semi-annual filings on Form N–CSR.[910] Funds would also make that same information available on the website specified on the cover page or at the beginning of the fund's shareholder reports and deliver that information in paper or electronically upon request, free of charge.[911] We acknowledge that filing that information with the Commission, posting it online, and delivering it upon request could result in some investors receiving or being able to access the same information multiple times, which could be duplicative. However, each one of those different requirements would serve a unique purpose. We believe it is important for regulatory disclosures to be filed with the Commission for oversight and compliance purposes. The website posting requirement would provide investors with broad access to the additional information and conforms with evolving investor preferences regarding document delivery.[912] Finally, the delivery-upon-request requirements would allow investors to choose the format in which regulatory disclosures are provided, which could be especially important for investors who might not have reliable access to the internet or who might prefer paper disclosures.

We also considered whether the information regarding remuneration paid to funds' directors and officers, which we propose to remove from funds' shareholder reports and instead require funds to file on Form N–CSR and make available online, would duplicate the detailed disclosures regarding compensation paid to each of the fund's directors, members of any advisory board, and certain officers and affiliates that are required to appear in a fund's SAI. We do not believe that the proposed new Form N–CSR and website availability requirement for remuneration-related information inappropriately duplicates the current SAI requirement. The different disclosure requirements vary in terms of scope and presentation requirements, and thus serve different informational needs.[913]

Prospectus Delivery Requirements

Under proposed new rule 498B, funds would have the option of satisfying prospectus delivery requirements with respect to existing shareholders by making certain information, including summary and statutory prospectuses, publicly accessible on the fund's website; delivering this information in paper or electronically upon request, free of charge; and complying with certain other conditions.[914] This proposed rule is modeled in part on rule 498 and contains certain similar provisions, including website posting and delivery-upon-request requirements with regard to largely the same documents.[915] However, compliance obligations under rules 498B and 498 apply under different circumstances (satisfying prospectus delivery requirements with respect to existing shareholders, and satisfying prospectus delivery requirements by using a summary prospectus, respectively). Furthermore, proposed rule 498B is designed to avoid duplication and instead create efficiencies for funds that currently rely on rule 498, because we believe these funds would already be familiar with the website posting and delivery-upon-request conditions and

[902] *See supra* Section II.H.3.

[903] *See supra* text following footnote 647.

[904] *See supra* text following footnote 862.

[905] *See supra* footnotes 821 and 822 and accompanying text.

[906] *See supra* Section II.I.

[907] *See supra* text accompanying footnote 649.

[908] *See supra* footnote 652 and accompanying text.

[909] *See supra* footnotes 829 and 830 and accompanying text.

[910] *See supra* Section II.B.1.

[911] *See supra* Sections II.B.2 and 3.

[912] *See supra* Section I.B.3.

[913] For example, the required SAI information is disaggregated for each director, whereas the information that would appear on Form N–CSR and on funds' websites would be aggregated. *See supra* Section II.D.1.e.

[914] *See supra* Section II.F.

[915] *See supra* Sections II.F.3.a and II.F.4.

would have compliance processes in place related to these conditions.

Shareholder Report Transmission Requirements

We are proposing to revise rule 30e–3 to exclude investment companies registered on Form N–1A from the scope of the rule. Rule 30e–3 currently allows a fund to satisfy its obligation to transmit the shareholder reports that rule 30e–1 and rule 30e–2 require if the fund complies with certain conditions. These conditions generally relate to: (1) Making the fund's shareholder report and certain other materials available on a website; (2) providing notice to investors of the website availability of the shareholder report; and (3) delivering paper copies of the materials that appear online, upon a shareholder's request.[916] If we do not revise rule 30e–3 to exclude funds from the scope of the rule, a fund (or intermediary) could rely on both rule 30e–3 and proposed rule 498B. In that case, existing shareholders would not receive the shareholder report pursuant to proposed rule 30e–3 and furthermore would not be sent or given prospectus updates pursuant to proposed rule 498B. This would contradict our goal of ensuring consistent disclosure requirements with respect to existing fund shareholders, and also could prevent these investors from experiencing the anticipated benefits of the new tailored disclosure framework. Thus, we are proposing to amend rule 30e–3 to avoid overlapping and conflicting Federal rules.

We are also proposing to rescind rule 30e–1(d), which permits a fund to transmit a copy of its prospectus or SAI in place of its shareholder report, if it includes all of the information that would otherwise be required to be contained in the shareholder report.[917] We believe that allowing funds to consolidate their prospectus, SAI, and shareholder report disclosures into a single document would result in shareholders receiving long, complex, and overlapping fund disclosures which could cause shareholder confusion and fatigue and would conflict with the goals of this rulemaking.

Fee Table

Proposed amendments to Form N–1A are designed to create a more concise, easier-to-understand presentation of fund fees for the summary prospectus or summary section of the statutory prospectus, while maintaining the existing fee table in the statutory prospectus for investors that would like more detail.[918] Although this layered disclosure approach would result in some duplicative information (*i.e.,* certain transaction fees, ongoing annual fees, and an expense example would appear in both the summary prospectus as well as in the statutory prospectus), we believe that both the nature and structure of each of the proposed fee-related disclosures are sufficiently different to justify overlapping information requirements. The goal of the simplified fee summary is to streamline presentation of fees, which would allow investors to more easily and rapidly understand the total costs of investing in a fund. The current, full fee table presentation would be moved to the statutory prospectus, where it could be used by financial professionals or other investors who seek additional details about fund fees to supplement the fee summary.

KK. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish its stated objective, while minimizing any significant economic impact on small entities. The Commission considered the following alternatives for small entities in relation our proposed amendments: (1) Establishing different reporting, recordkeeping, and other compliance requirements or frequency, to account for resources available to small entities; (2) exempting funds that are small entities from the proposed reporting, recordkeeping, and other compliance requirements, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance requirements under the proposal for small entities; and (4) using performance rather than design standards.

As discussed above, our proposal contemplates amendments to shareholder report content and disclosure requirements, proposed new rule 498B to address existing shareholders' receipt of annual prospectus updates, amendments to the scope of rule 30e–3 to exclude funds registered on Form N–1A, amendments to fund prospectus fee and risk disclosures, and rescission of rule 30e–1(d) (which currently permits a fund to transmit a copy of its prospectus or SAI in place of its shareholder report under certain conditions). Collectively, these amendments would tailor the disclosures that funds provide by using layered disclosure principles to create a new disclosure framework designed to meet the informational needs of different investors (*i.e.,* initial investors versus existing shareholders, and retail investors versus those who desire more information). The proposed amendments are designed to focus on key information different investors need to make informed investment decisions and, for existing shareholders, to assess and monitor their fund investments. In addition, our proposal would amend investment company advertising rules to promote transparent and balanced presentations of fees and expenses in investment company advertisements.

We do not believe it would be appropriate to establish different reporting, recordkeeping, and other compliance requirements or frequency, to account for resources available to small entities. Small entities currently follow the same requirements that large entities do when preparing, transmitting, and filing shareholder reports; preparing and sending or giving prospectuses to investors; and preparing investment company advertisements and supplemental sales literature. If the proposal included different requirements for small funds, it could raise investor protection concerns for investors in small funds to the extent that investors in small funds would not receive the same disclosures as investors in larger funds.

For example, to the extent that small funds may have fewer resources to invest in investor education or marketing materials, investors in small funds may have fewer opportunities outside of regulatory disclosures to obtain key information needed to make informed investment decisions and assess and monitor their fund investments. For this reason, it is important that the regulatory disclosures that small funds provide to investors are consistent in terms of content and frequency with the disclosures that larger funds provide to investors, so that all investors have the tools they need to meet their informational needs. More generally, our proposed disclosure requirements are tailored to meet the informational needs of different groups of investors, and to implement a layered disclosure framework that would benefit all investors. Permitting different disclosure requirements for small funds would result in small fund investors not experiencing the anticipated benefits of the new tailored disclosure framework. Furthermore, uniform prospectus fee and risk disclosure requirements would allow all investors to compare funds reporting the same information on the same frequency, and help all investors to make informed investment decisions based upon those comparisons.

[916] *See supra* footnote 532.

[917] *See infra* Section II.H.3.

[918] *See infra* Section II.H.1.

Similarly, we do not believe it would be appropriate to exempt small funds from the proposed amendments. As discussed above, our contemplated disclosure framework would be disrupted if investors in smaller funds received different disclosures than investors in larger funds. We believe that investors in all funds should benefit from the Commission's proposed disclosure amendments, not just investors in large funds.

We do not believe that clarifying, consolidating, or simplifying the compliance requirements under the proposal for small funds would permit us to achieve our stated objectives. Many of the amendments we are proposing are based on existing rules or disclosure frameworks.[919] We anticipate that building on existing regulatory frameworks and concepts should help to ease certain compliance burdens for funds, including small funds. For example, the website availability and delivery-upon-request provisions in proposed rules 498B and 30e–1 are modeled on parallel provisions in rule 498, which we estimate that more than 90% of all funds, including small funds, currently rely on to satisfy prospectus delivery obligations. We believe that this would create efficiencies for small funds relying on proposed rules 498B or 30e–1, because these funds would likely be familiar with these conditions and would already have compliance processes in place pursuant to rule 498.

Finally, we do not believe it would be appropriate to use performance rather than design standards. As discussed above, we believe the regulatory disclosures that small funds provide to investors should be consistent with the disclosures provided to investors in larger entities. Our proposed disclosure requirements are tailored to meet the informational needs of different investors, and to implement a layered disclosure framework. We believe all fund investors should experience the anticipated benefits of the new tailored disclosure framework. Finally, we believe that prospectus fee and risk disclosure requirements should be uniform and standardized in order to allow investors to compare funds reporting the same information on the same frequency, and to help all investors to make informed initial investment decisions based upon those comparisons.

[919] For example, many of our proposed amendments to fund prospectuses, shareholder reports, and Form N–CSR largely reframe existing disclosure requirements to tailor disclosures to the informational needs of different investors, as opposed to requiring new disclosures for which funds would need to generate and develop reporting and compliance procedures for the first time.

LL. General Request for Comment

The Commission requests comments regarding this IRFA. We request comments on the number of small entities that may be affected by our proposed rules and guidelines, and whether the proposed rules and guidelines would have any effects not considered in this analysis. We request that commenters describe the nature of any effects on small entities subject to the rules, and provide empirical data to support the nature and extent of such effects. We also request comment on the proposed compliance burdens and the effect these burdens would have on smaller entities.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[920] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

[920] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

VII. Statutory Authority

The Commission is proposing the rules and forms contained in this document under the authority set forth in the Securities Act, particularly, section 19 thereof [15 U.S.C. *77a et seq.*], the Exchange Act, particularly, sections 13, 23, and 35A thereof [15 U.S.C. 78a *et seq.*], the Investment Company Act, particularly, sections 8, 24, 30, and 38 thereof [15 U.S.C. 80a *et seq.*], and 44 U.S.C. 3506, 3507.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Organization and functions (Government agencies).

17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Form Amendments

For reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

■ 1. The authority citation for subpart N of part 200 continues to read as follows:

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

■ 2. Amend § 200.800 in paragraph (b) by adding an entry in numerical order by section number for ''Rule 498B'' to read as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
* * *	* * *	*
Rule 498B	230.498B	[OMB control number TBD].
* * *	* * *	*

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read in part 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.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended [15 U.S.C. 77f, 77h, 77j, 77s].

* * * * *

■ 4. Amend § 230.156 by adding paragraph (b)(4) to read as follows:

§ 230.156 Investment company sales literature.

* * * * *

(b) * * *

(4) Representations about the fees or expenses associated with an investment in the fund could be misleading because of statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.

* * * * *

■ 5. Amend § 230.433 by adding paragraph (c)(3) to read as follows:

§ 230.433 Conditions to permissible post-filing free writing prospectuses.

* * * * *

(c) * * *

(3) A free writing prospectus with respect to securities of a registered closed-end investment company or a business development company that includes fee or expense information must comply with paragraphs (i) and (j) of § 230.482 (Rule 482), as applicable.

* * * * *

■ 6. Amend § 230.482 by revising paragraph (b)(3)(i) and adding paragraphs (i) and (j) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(b) * * *

(3) * * *

(i) A legend disclosing that the performance data quoted represents past performance; that past performance is not a good predictor of future results; that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data quoted. The legend should also identify a toll-free telephone number or a website where an investor may obtain performance data current to the most recent month-end unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use. An advertisement for a money market fund that is a government money market fund, as defined in § 270.2a–7(a)(16) of this chapter, or a retail money market fund, as defined in § 270.2a–7(a)(25) of this chapter may omit the disclosure about principal value fluctuation; and

* * * * *

(i) *Advertisements including fee or expense figures.* An advertisement that provides fee or expense figures for an investment company must include the following:

(1) The maximum amount of any sales load, or any other nonrecurring fee, and the total annual expenses without any fee waiver or expense reimbursement arrangement, based on the methods of computation prescribed by the company's registration statement form under the 1940 Act or under the Act for a prospectus and presented at least as prominently as any other fee or expense figure included in the advertisement; and

(2) The expected termination date of a fee waiver or expense reimbursement arrangement, if the advertisement provides total annual expenses net of fee waiver or expense reimbursement arrangement amounts.

(j) *Timeliness of fee and expense information.* Fee and expense information contained in an advertisement must be as of the date of the investment company's most recent prospectus or, if the company no longer has an effective registration statement under the Act, as of the date of its most recent annual shareholder report, except that a company may provide more current information if available.

§ 230.498 [Amended]

■ 7. Amend § 230.498 by removing paragraph (b)(1)(vii).

■ 8. Add § 230.498B to read as follows:

§ 230.498B Delivery of prospectuses to existing shareholders of open-end management investment companies.

(a) *Definitions.* For purposes of this section:

Account means any contractual or other business relationship between a person and a Fund to effect transactions in securities issued by the fund, including the purchase or sale of securities.

Existing shareholder means a shareholder to whom a Summary Prospectus or Statutory Prospectus has been previously sent or given in order to satisfy any obligation under section 5(b)(2) of the Act [15 U.S.C. 77e(b)(2)] to have a Statutory Prospectus precede or accompany the carrying or delivery of Fund shares and that has either continuously held Fund shares or, if the Fund is a money market fund as defined in § 270.2a–7 of this chapter has continuously maintained or been a beneficial owner of a Fund Account, since that Summary Prospectus or Statutory Prospectus has been sent or given. This definition excludes investors that hold the fund through a separate account funding a variable annuity contract offered on Form N–4 (§§ 239.17b and 274.11c of this chapter) or a variable life insurance contract offered on Form N–6 (§§ 239.17c and 274.11d of this chapter).

Fund means an open-end management investment company, or any Series of such a company, that has, or is included in, an effective registration statement on Form N–1A (§§ 239.15A and 274.11A of this chapter) and that has a current prospectus that satisfies the requirements of section 10(a) of the Act [15 U.S.C. 77j(a)].

Series means shares offered by a Fund that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with § 270.18f–2(a) of this chapter.

Statement of Additional Information means the statement of additional information required by Part B of Form N–1A.

Statutory Prospectus means a prospectus that satisfies the requirements of section 10(a) of the Act.

Summary Prospectus means the summary prospectus described in § 230.498(b).

(b) *Transfer of the security.* With respect to Existing Shareholders, any obligation under section 5(b)(2) of the Act [15 U.S.C. 77e(b)(2)] to have a Statutory Prospectus precede or accompany the carrying or delivery of a Fund security in an offering registered on Form N–1A is satisfied if the conditions in paragraph (c) of this section are satisfied.

(c) *Conditions*—(1) *website availability of certain Fund documents.* (i) The Fund's current Summary Prospectus, Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders under § 270.30e–1 of this chapter must be publicly accessible, free of charge, at the website address specified on the cover page or at the beginning of its annual and semi-annual reports to shareholders.

(ii) The materials that are accessible in accordance with paragraph (c)(2)(i) of this section must be presented on the website in a format, or formats, that:

(A) Are human-readable and capable of being printed on paper in human-readable format;

(B) Permit persons accessing the Statutory Prospectus or Statement of Additional Information to move directly back and forth between each section heading in a table of contents of such document and the section of the document referenced in that section heading; provided that, in the case of the Statutory Prospectus, the table of contents is either required by § 230.481(c) or contains the same section headings as the table of contents required by § 230.481(c); and

(C) Permit persons accessing the Summary Prospectus to move directly back and forth between:

(*1*) Each section of the Summary Prospectus and any section of the Statutory Prospectus and Statement of Additional Information that provides additional detail concerning that section of the Summary Prospectus; or

(*2*) Links located at both the beginning and end of the Summary Prospectus, or that remain continuously visible to persons accessing the Summary Prospectus, and tables of contents of both the Statutory Prospectus and the Statement of Additional Information that meet the requirements of paragraph (c)(2)(ii)(B) of this section.

(iii) Persons accessing the materials specified in paragraph (c)(1)(i) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet each of the requirements of paragraphs (c)(2)(ii)(A) and (B) of this section.

(iv) The conditions in paragraphs (c)(2)(i) through (iii) of this section shall be deemed to be met, notwithstanding the fact that the materials specified in paragraph (c)(2)(i) of this section are not available for a time in the manner required by paragraphs (c)(2)(i) through (iii) of this section, provided that:

(A) The Fund has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (c)(2)(i) through (c)(2)(iii) of this section; and

(B) The Fund takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (c)(2)(i) through (c)(2)(iii) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (c)(2)(i) through (iii) of this section.

(2) *Material changes to the Fund.* If any material change has been made to the Fund with respect to any of the topics described in Item 27A(g) of Form N–1A, and the Fund files a post-effective amendment to its prospectus pursuant to § 230.485 or files a prospectus supplement with the Commission pursuant to § 230.497 regarding any such material change, the Fund (or a financial intermediary through which shares of the Fund may be purchased or sold) must provide Existing Shareholders notice of that change. Such notice must be provided within three business days of either the effective date of the Fund's post-effective amendment filing or the filing date of the prospectus supplement filing, by first-class mail or other means designed to ensure equally prompt receipt, unless that change is disclosed in the Fund's most recent annual report to shareholders. Such notice will be considered to be provided to investors who share an address if the requirements of section § 230.154 are met with regard to delivery of that notice.

(d) *Other requirements.* If paragraph (b) of this section is relied on with respect to a Fund:

(1) *Delivery upon request of certain Fund documents.* (i) The Fund (or a financial intermediary through which shares of the Fund may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the documents listed in paragraph (c)(2) of this section to any person requesting such a copy within three business days after receiving a request for a paper copy; and

(ii) The Fund (or a financial intermediary through which shares of the Fund may be purchased or sold) must send, at no cost to the requestor, and by email, an electronic copy of any of the documents listed in paragraph (c)(2) of this section to any person requesting such a copy within three business days after receiving a request for an electronic copy. The requirement to send an electronic copy of a document by email may be satisfied by sending a direct link to the online document; provided that a current version of the document is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and that, if the recipient desires to retain a copy of the document, he or she should access and save the document.

(2) *Convenient for reading and printing.* (i) The materials that are accessible in accordance with paragraph (c)(1) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper; and

(ii) Persons accessing the materials that are accessible in accordance with paragraph (c)(1) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that are convenient for both reading online and printing on paper.

(3) *Compliance with this paragraph (d) not a condition to reliance on paragraph (b) of this section.* Compliance with this paragraph (d) is not a condition to the ability to rely on paragraph (b) of this section with respect to a Fund, and failure to comply with this paragraph (d) does not negate the ability to rely on paragraph (b).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 9. The general authority citation for part 239 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78*o*-7 note, 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a-29, 80a-30, 80a-37, and sec. 71003 and sec. 84001, Pub. L. 114–94, 129 Stat. 1321, unless otherwise noted.

* * * * *

■ 10. Amend Form N–14 (referenced in § 239.23) by removing in Item 3(a) ''Item 3 of Form N–1A'' and adding in its place ''Item 8A of Form N–1A''.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 11. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 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, secs. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

§ 240.14a–101 [Amended]

■ 12. Amend § 240.14a–101 by removing the phrase ''Item 3 of Form N–1A'' and adding in its place ''Item 8A of Form N–1A'' in paragraph (a)(3)(iv) and Instruction 4 of Item 22.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 13. The authority for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 270.30e–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78l, 78m, 78n, 78o(d), 78w(a), 80a–8, 80a–29, and 80a–37.

* * * * *

■ 14. Amend § 270.30e–1 by:
■ a. Removing paragraph (d);
■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d);
■ c. Adding a new paragraph (b); and
■ d. Revising newly redesignated paragraphs (c) and (d) and paragraphs (f)(2)(ii)(F) and (f)(4).

The addition and revisions read as follows:

§ 270.30e–1 Reports to stockholders of management companies.

* * * * *

(b)(1) To satisfy its obligations under section 30(e) of the 1940 Act, an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter) also must:

(i) Make certain materials available on a website, as described under paragraph (b)(2) of this section; and

(ii) Deliver certain materials upon request, as described under paragraph (b)(3) of this section.

(2) The following website availability requirements are applicable to an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter).

(i) The company must make the disclosures required by Items 7 through 11 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) publicly accessible, free of charge, at the website address specified at the beginning of the report to stockholders under paragraph (a) of this section, no later than 70 days after the end of the fiscal half-year or fiscal year of the company until 70 days after the end of the next fiscal half-year or fiscal year of the company, respectively. The company may satisfy the requirement in this paragraph (b)(2)(i) by making its most recent report on Form N–CSR publicly accessible, free of charge, at the specified website address for the time period that this paragraph (b)(2)(i) specifies.

(ii) Unless the company is a money market fund under § 270.2a–7, the company must make the company's complete portfolio holdings, if any, as of the close of the company's most recent first and third fiscal quarters, after the date on which the company's registration statement became effective, presented in accordance with the schedules set forth in §§ 210.12–12 through 210.12–14 of this chapter (Regulation S–X), which need not be audited. The complete portfolio holdings required by this paragraph (b)(2)(ii) must be made publicly accessible, free of charge, at the website address specified at the beginning of the report to stockholders under paragraph (a) of this section, not later than 70 days after the close of the of the first and third fiscal quarters until 70 days after the end of the next first and third fiscal quarters of the company, respectively.

(iii) The website address relied upon for compliance with this section may not be the address of the Commission's electronic filing system.

(iv) The materials that are accessible in accordance with paragraph (b)(2)(i) or (ii) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper.

(v) Persons accessing the materials specified in paragraph (b)(2)(i) or (ii) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet the requirements of paragraph (b)(2)(iv) of this section.

(vi) The requirements set forth in paragraphs (b)(2)(i) through (v) of this section will be deemed to be met, notwithstanding the fact that the materials specified in paragraphs (b)(2)(i) and (ii) of this section are not available for a time in the manner required by paragraphs (b)(2)(i) through (v) of this section, provided that:

(A) The company has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (b)(2)(i) through (v) of this section; and

(B) The company takes prompt action to ensure that the specified materials become available in the manner required by paragraphs (b)(2)(i) through (v) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the materials are not available in the manner required by paragraphs (b)(2)(i) through (v) of this section.

(vii) The materials specified in paragraph (b)(2)(i) or (ii) of this section may be separately available for each series of a fund or grouped by the types of materials and/or by series, so long as the grouped information:

(A) Is presented in a format designed to communicate the information effectively;

(B) Clearly distinguishes the different types of materials and/or each series (as applicable); and

(C) Provides a means of easily locating the relevant information (including, for example, a table of contents that includes hyperlinks to the specific materials and series).

(3) The following requirements to deliver certain materials upon request are applicable to an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter).

(i) The company (or a financial intermediary through which shares of the company may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials specified in paragraph (b)(2)(i) or (ii) of this section, to any person requesting such a copy within three business days after receiving a request for a paper copy.

(ii) The company (or a financial intermediary through which shares of the company may be purchased or sold) must send, at no cost to the requestor, and by email or other reasonably prompt means, an electronic copy of any of the materials specified in paragraph (b)(2)(i) or (ii) of this section, to any person requesting such a copy within three business days after receiving a request for an electronic copy. The requirement to send an electronic copy of the requested materials may be satisfied by sending a direct link to the online location of the materials; provided that a current version of the materials is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and that, if the recipient desires to retain a copy of the materials, he or she should access and save the materials.

(c) For registered management companies other than open-end management investment companies registered on Form N–1A, if any matter was submitted during the period covered by the shareholder report to a vote of shareholders, through the solicitation of proxies or otherwise, furnish the following information:

(1) The date of the meeting and whether it was an annual or special meeting.

(2) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

Instruction 1 to paragraph (c). The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this paragraph (c).

(d) Each report shall be transmitted within 60 days after the close of the period for which such report is being made.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(F) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: ''Important Notice Regarding Delivery of Shareholder Materials''. This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

* * * * *

(4) For purposes of this section, *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic materials are transmitted, unless otherwise provided in this section. If the company has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

■ 15. Amend § 270.30e–3 by revising paragraph (h)(2) to read as follows:

§ 270.30e–3 Internet availability of reports to shareholders.

* * * * *

(h) * * *

(2) *Fund* means a registered management company registered on Form N–2 (§§ 239.14 and 274.11a of this chapter) or Form N–3 (§§ 239.17a and 274.11b of this chapter) and any separate series of the management company.

* * * * *

■ 16. Amend § 270.31a–2 by:

■ a. Removing the word ''and'' at the end of paragraph (a)(5);

■ b. In paragraph (a)(6), removing the period and adding ''; and'' in its place; and

■ c. Adding paragraph (a)(7).

The addition reads as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(7) Preserve for a period not less than six years, the first two years in an easily accessible place, any shareholder report required by § 270.30e–1 (including any version posted on a website or otherwise provided electronically) that is not filed with the Commission in the exact form in which it was used.

* * * * *

■ 17. Amend § 270.34b–1 by revising the introductory text and paragraph (b)(3) and adding paragraph (c) to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

Any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act [15 U.S.C. 80a–24(b)] (for purposes of paragraph (a) and (b) of this section, ''sales literature'') will have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature includes the information specified in paragraphs (a) and (b) of this section. Any registered investment company or business development company advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors in connection with a public offering (for purposes of paragraph (c) of this section, ''sales literature'') will have omitted to state a fact necessary in order to make the statements therein not materially misleading unless the sales literature includes the information specified in paragraph (c) of this section.

Note 1 to § 270.34b–1 Introductory Text: The fact that the sales literature includes the information specified in paragraphs (a) and (b) of this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the sales literature under the antifraud provisions of the Federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company sales literature are misleading, *see* § 230.156 of this chapter.

* * * * *

(b) * * *

(3) The requirements specified in paragraph (b)(1) of this section do not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act [15 U.S.C. 80a–29] containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor do the requirements of paragraphs (d)(3)(ii), (d)(4)(ii), and (g) of § 230.482 of this chapter apply to any such periodic report containing any other performance data.

(c)(1) Except as provided in paragraph (c)(2) of this section:

(i) In any sales literature that contains fee and expense figures for a registered investment company or business development company, include the disclosure required by paragraph (i) of § 230.482 of this chapter.

(ii) Any fee and expense information included in sales literature must meet the timeliness requirements of paragraph (j) of § 230.482 of this chapter.

(2) The requirements specified in paragraph (c)(1) of this section do not apply to any quarterly, semi-annual, or annual report to shareholders under

Section 30 of the Act [15 U.S.C. 80a–29] or to other reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 79m or 78o(d)) containing fee and expense information; nor do the requirements of paragraphs (i) and (j) of § 230.482 of this chapter or paragraph (c)(3) of § 230.433 of this chapter apply to any such report containing fee and expense information.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 18. The authority for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a-29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 19. Revise Form N–1A (referenced in §§ 239.15A and 274.11A) to read as follows:

Note: The text of Form N–1A will not appear in the Code of Federal Regulations.

United States

Securities and Exchange Commission

Washington, DC 20549

Form N–1A

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
Pre-Effective Amendment No. ____[ ]
Post-Effective Amendment No. ____[ ]
and/or
REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940
Amendment No. ____[ ]
Registrant Exact Name as Specified in Charter

Address of Principal Executive Offices (Number, Street, City, State, Zip Code)

Registrant's Telephone Number, including Area Code

Name and Address (Number, Street, City, State, Zip Code) of Agent for Service

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Approximate Date of Proposed Public Offering

It is proposed that this filing will become effective (check appropriate box)

[ ] immediately upon filing pursuant to paragraph (b)
[ ] on (date) pursuant to paragraph (b)
[ ] 60 days after filing pursuant to paragraph (a)
[ ] on (date) pursuant to paragraph (a)
[ ] 75 days after filing pursuant to paragraph (a)(2) on (date)
[ ] pursuant to paragraph (a)(2) of rule 485

If appropriate, check the following box:

[ ] This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the ''Approximate Date of Proposed Public Offering'' and ''Title of Securities Being Registered'' only where securities are being registered under the Securities Act of 1933.

Form N–1A is to be used by open-end management investment companies, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The Commission has designed Form N–1A to provide investors with information that will assist them in making a decision about investing in an investment company eligible to use the Form. The Commission also may use the information provided on Form N–1A in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N–1A, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–1A unless the Form displays a currently valid Office of Management and Budget (OMB) control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

Contents of Form N–1A

General Instructions

A. Definitions

References to sections and rules in this Form N–1A are to the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the ''Investment Company Act''), unless otherwise indicated. Terms used in this Form N–1A have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N–1A, the terms set out below have the following meanings:

''Class'' means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f–3 [17 CFR 270.18f–3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a–18(f), 18(g), and 18(i)].

''Exchange-Traded Fund'' means a Fund or Class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order granted by the Commission or in reliance on rule 6c–11 [17 CFR 270.6c–11] under the Investment Company Act.

''Fund'' means the Registrant or a separate Series of the Registrant. When an item of Form N–1A specifically applies to a Registrant or a Series, those terms will be used.

''Market Price'' has the same meaning as in rule 6c–11 [17 CFR 270.6c–11] under the Investment Company Act.

''Master-Feeder Fund'' means a two-tiered arrangement in which one or more Funds (each a ''Feeder Fund'') holds shares of a single Fund (the ''Master Fund'') in accordance with section 12(d)(1)(E) [15 U.S.C. 80a–12(d)(1)(E)].

''Money Market Fund'' means a registered open-end management investment company, or series thereof, that is regulated as a money market fund pursuant to rule 2a–7 [17 CFR 270.2a–7] under the Investment Company Act of 1940.

''Multiple Class Fund'' means a Fund that has more than one Class.

''Registrant'' means an open-end management investment company registered under the Investment Company Act.

''SAI'' means the Statement of Additional Information required by Part B of this Form.

''Securities Act'' means the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

''Securities Exchange Act'' means the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

''Series'' means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f–2(a) [17 CFR 270.18f–2(a)].

B. Filing and Use of Form N–1A

1. What is Form N–1A used for?

Form N–1A is used by Funds, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to file:

(a) An initial registration statement under the Investment Company Act and amendments to the registration statement, including amendments required by rule 8b–16 [17 CFR 270.8b–16];

(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or

(c) Any combination of the filings in paragraph (a) or (b).

2. What is included in the registration statement?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.

(b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, 4, 8A, and 13), B, and C (except Items 28(e) and (i)–(k)), and the required signatures.

3. What are the fees for Form N–1A?

No registration fees are required with the filing of Form N–1A to register as an investment company under the Investment Company Act or to register securities under the Securities Act. See section 24(f) [15 U.S.C. 80a–24(f)] and related rule 24f–2 [17 CFR 270.24f–2].

4. What rules apply to the filing of a registration statement on Form N–1A?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act [17 CFR 230.400–230.497] apply to the filing of Form N–1A. Specific requirements concerning Funds appear in rules 480–485 and 495–497 of Regulation C.

(b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b–1—8b–32 [17 CFR 270.8b–1—270.8b–32] apply to the filing of Form N–1A.

(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N–1A. The information required by Items 2 through 8 must be provided in plain English under rule 421(d) under the Securities Act.

(d) Regulation S–T [17 CFR 232.10–232.903] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'').

C. Preparation of the Registration Statement

1. Administration of the Form N–1A Requirements

(a) The requirements of Form N–1A are intended to promote effective communication between the Fund and prospective investors. A Fund's prospectus should clearly disclose the fundamental characteristics and investment risks of the Fund, using concise, straightforward, and easy to understand language. A Fund should use document design techniques that promote effective communication. The prospectus should emphasize the Fund's overall investment approach and strategy.

(b) The prospectus disclosure requirements in Form N–1A are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Fund by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting the Fund with other funds.

(c) Responses to the Items in Form N–1A should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Fund. The prospectus should avoid: Including lengthy legal and technical discussions; simply restating legal or regulatory requirements to which Funds generally are subject; and disproportionately emphasizing possible investments or activities of the Fund that are not a significant part of the Fund's investment operations. Brevity is especially important in describing the practices or aspects of the Fund's operations that do not differ materially from those of other investment companies. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.

(d) The requirements for prospectuses included in Form N–1A will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N–1A.

2. Form N–1A Is Divided Into Three Parts

(a) Part A. Part A includes the information required in a Fund's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Fund in a way that will help investors to make informed decisions about whether to purchase the Fund's shares described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI or shareholder reports. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) Part B. Part B includes the information required in a Fund's SAI. The purpose of the SAI is to provide additional information about the Fund that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Fund an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Fund believes may be of interest to some investors. The Fund should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) Part C. Part C includes other information required in a Fund's registration statement.

3. Additional Matters

(a) Organization of Information. Organize the information in the prospectus and SAI to make it easy for investors to understand. Notwithstanding rule 421(a) under the Securities Act regarding the order of information required in a prospectus, disclose the information required by Items 2 through 8 in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act. Information that is included in response to Items 2 through 8 need not be repeated elsewhere in the prospectus, other than fee information required in both Item 3 and Item 8A. Disclose the information required by Item 12 (Distribution Arrangements) in one place in the prospectus. Only principal risks should be disclosed in the prospectus, in accordance with Items 4 and 9.

(b) Other Information. A Fund may include, except in response to Items 2 through 8A, information in the prospectus or the SAI that is not otherwise required. For example, a Fund may include charts, graphs, or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Items 2 through 8A may not include disclosure other than that required or permitted by those Items.

(c) Use of Form N–1A Registration Statement by More Than One Registrant, Series, or Class. A Form N–1A registration statement may be used by one or more Registrants, Series, or Classes.

(i) When disclosure is provided for more than one Fund or Class, the disclosure should be presented in a format designed to communicate the information effectively. Except as required by paragraph (c)(ii) for Items 2 through 8, Funds may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Funds or Classes. Funds are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Funds or Classes.

(ii) Paragraph (a) requires Funds to disclose the information required by Items 2 through 8 in numerical order at the front of the prospectus and not to precede Items 2 through 8 with other information. Except as permitted by paragraph (c)(iii), a prospectus that contains information about more than one Fund must present all of the information required by Items 2 through 8 for each Fund sequentially and may not integrate the information for more than one Fund together. That is, a prospectus must present all of the information for a particular Fund that is required by Items 2 through 8 together, followed by all of the information for each additional Fund, and may not, for example, present all of the Item 2 (Risk/Return Summary: Investment Objectives/Goals) information for several Funds followed by all of the Item 3 (Risk/Return Summary: Fee Summary) information for several Funds. If a prospectus contains information about multiple Funds, clearly identify the name of the relevant Fund at the beginning of the information for the Fund that is required by Items 2 through 8. A Multiple Class Fund may present the information required by Items 2 through 8 separately for each Class or may integrate the information for multiple Classes, although the order of the information must be as prescribed in Items 2 through 8. For example, the prospectus may present all of the Item 2 (Risk/Return Summary: Investment Objectives/Goals) information for several Classes followed by all of the Item 3 (Risk/Return Summary: Fee Summary) information for the Classes, or may present Items 2 and 3 for each of several Classes sequentially. Other presentations of multiple Class information also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 through 8 in a standard order at the beginning of the prospectus. For a Multiple Class Fund, clearly identify the relevant Classes at the beginning of the Items 2 through 8 information for those Classes.

(iii) A prospectus that contains information about more than one Fund may integrate the information required by any of Items 6 through 8 for all of the Funds together, provided that the information contained in any Item that is integrated is identical for all Funds covered in the prospectus. If the information required by any of Items 6 through 8 is integrated pursuant to this paragraph, the integrated information should be presented immediately following the separate presentations of Item 2 through 8 information for individual Funds. In addition, include a statement containing the following information in each Fund's separate presentation of Item 2 through 8 information, in the location where the integrated information is omitted: ''For important information about [purchase and sale of fund shares], [tax information], and [financial intermediary compensation], please turn to [identify section heading and page number of prospectus].''

(d) Modified Prospectuses for Certain Funds.

(i) A Fund may modify or omit, if inapplicable, the information required by Items 6, 11(b)–(d) and 12(a)(2)–(5) for funds used as investment options for:

(A) A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)];

(B) a tax-deferred arrangement under sections 403(b) or 457 of the Internal Revenue Code [26 U.S.C. 403(b) and 457]; and

(C) a variable contract as defined in section 817(d) of the Internal Revenue Code [26 U.S.C. 817(d)], if covered in a separate account prospectus.

(ii) A Fund that uses a modified prospectus under Instruction (d)(i) may:

(A) Alter the legend required on the back cover page by Item 1(b)(1) to state, as applicable, that the prospectus is intended for use in connection with a defined contribution plan, tax-deferred arrangement, or variable contract; and

(B) modify other disclosure in the prospectus consistent with offering the Fund as a specific investment option for a defined contribution plan, tax-deferred arrangement, or variable contract.

(iii) A Fund may omit the information required by Items 4(b)(2)(iii)(B) and (C) and 4(b)(2)(iv) if the Fund's prospectus will be used exclusively to offer Fund shares as investment options for one or more of the following:

(A) A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], a tax-deferred arrangement under section 403(b) or 457 of the Internal Revenue Code [26 U.S.C. 403(b) or 457], a variable contract as defined in section 817(d) of the Internal Revenue Code [26 U.S.C. 817(d)], or a similar plan or arrangement pursuant to which an investor is not taxed on his or her investment in the Fund until the investment is sold; or

(B) persons that are not subject to the Federal income tax imposed under section 1 of the Internal Revenue Code [26 U.S.C. 1], or any successor to that section.

(iv) A Fund that omits information under Instruction (d)(iii) may alter the legend required on the back cover page by Item 1(b)(1) to state, as applicable, that the prospectus is intended for use in connection with a defined contribution plan, tax-deferred arrangement, variable contract, or similar plan or arrangement, or persons described in Instruction (d)(iii)(B).

(e) Dates. Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(f) Sales Literature. A Fund may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

(g) Interactive Data File.

(i) An Interactive Data File (§ 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T (§ 232.405 of this chapter) for any registration statement or post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2, 4, or 8A.

(A) Except as required by paragraph (g)(i)(B), the Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

(B) In the case of a post-effective amendment to a registration statement filed pursuant to paragraphs (b)(1)(i), (ii), (v), or (vii) of rule 485 under the Securities Act [17 CFR 230.485(b)], the Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which the Interactive Data Filing relates that is submitted on or before the date the post-effective amendment that contains the related information becomes effective.

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 4, or 8A that varies from the registration statement. The Interactive Data File must be submitted with the filing made pursuant to rule 497.

(iii) The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual, and in such a manner that will permit the information for each Series and, for any information that does not relate to all of the Classes in a filing, each Class of the Fund to be separately identified.

D. Incorporation by Reference

1. Specific Rules for Incorporation by Reference in Form N–1A Registration Statement

(a) A Fund may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Fund may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Fund may incorporate by reference into the SAI or its response to Part C, information that Parts B and C require to be included in the Fund's registration statement.

2. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0–4 [17 CFR 270.0–4] (additional rules on incorporation by reference for Funds).

Part A—Information Required in a Prospectus

Item 1. Front and Back Cover Pages

(a) Front Cover Page. Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside front cover page of the prospectus:

(1) The Fund's name and the Class or Classes, if any, to which the prospectus relates.

(2) The exchange ticker symbol of the Fund's shares or, if the prospectus relates to one or more Classes of the Fund's shares, adjacent to each such Class, the exchange ticker symbol of such Class of the Fund's shares. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

(3) The date of the prospectus.

(4) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Fund may include on the front cover page a statement of its investment objectives, a brief (*e.g.,* one sentence) description of its operations, or any additional information, subject to the requirement set out in General Instruction C.3(b).

(b) Back Cover Page. Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Fund, and a statement to the following effect:

Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders and in Form N–CSR. In the Fund's annual report, you will find a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during its last fiscal year. In Form N–CSR, you will find the Fund's annual and semi-annual financial statements.

Explain that the SAI, the Fund's annual and semi-annual reports to shareholders, and Form N–CSR are available, without charge, upon request, and explain how shareholders in the Fund may make inquiries to the Fund. Provide a toll-free telephone number for investors to call: To request the SAI; to request the Fund's annual or semi-annual report; to request the Form N–CSR; to request other information about the Fund; and to make shareholder inquiries. Also, state the Fund makes available its SAI, annual and semi-annual report, and Form N–CSR, free of charge, on or through the Fund's website at a specified address. If the Fund does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have a website).

Instructions

1. A Fund may indicate, if applicable, that the SAI, annual and semi-annual report, Form N–CSR, and other information are available by email request.

2. A Fund may indicate, if applicable, that the SAI and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the SAI, the annual report, the semi-annual report, or Form N–CSR, the Fund (or financial intermediary) must send the requested document within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. A Fund that has not yet been required to deliver an annual or semi-annual report to shareholders under rule 30e–1 [17 CFR 270.30e–1] or to file a Form N–CSR report may omit the statements required by this paragraph regarding the report.

4. A Money Market Fund may omit the sentence indicating that a reader will find in the Fund's annual report a discussion of the market conditions and investment strategies that significantly affect the Fund's performance during its last fiscal year.

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Fund will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Fund may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) State that reports and other information about the Fund are available on the EDGAR Database on the Commission's website at *http://www.sec.gov*, and that copies of this information may be obtained, after paying a duplicating fee, by electronic request at the following email address: *publicinfo@sec.gov*.

(4) The Fund's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (*e.g.,* 8-point modern type).

Item 2. Risk/Return Summary: Investment Objectives/Goals

Disclose the Fund's investment objectives or goals. A Fund also may identify its type or category (*e.g.,* that it is a Money Market Fund or a balanced fund).

Item 3. Risk/Return Summary: Fee Summary

Include the following information, in plain English under rule 421(d) under the Securities Act, after Item 2:

Your Investment Costs

These are the amounts you could pay to buy, hold, and sell shares of the Fund. These costs reduce the value of your investment. You may pay other fees, such as brokerage commissions and other fees to financial intermediaries, which are not reflected in the table and example below.

Transaction Fees (fees paid each time you buy or sell):	
Purchase Charge (as a percentage of your investment)	[Up to] ____% (Or [up to] $____, if you invest $10,000).
Exit Charge (as a percentage of ____)	[Up to] ____% (Or [up to] $____, if you invest $10,000).
Maximum Purchase Charge Imposed on Reinvested Dividends [and Other Distributions] (as a percentage of ____).	[Up to] ____% (Or [up to] $____, if you invest $10,000).
Early Exit Fee (as a percentage of amount redeemed)	[Up to] ____% (Or [up to] $____, if you invest $10,000).
Exchange Fee	[Up to] ____% (Or [up to] $____, if you invest $10,000).
Maximum Account Fee	[Up to] ____% (Or [up to] $____, if you invest $10,000).
Ongoing Annual Fees (estimated expenses you pay each year as a percentage of the value of your investment)	
Ongoing Annual Fees	____% (Or $____, if you invest $10,000).
Ongoing Annual Fees with Temporary Discount *	____% (Or $____, if you invest $10,000).

* Discount expected to end on [date].

Example

This example may help you understand the costs of investing in the Fund. The example assumes that: (1) You invest $10,000 in the Fund; (2) your investment has a 5% return each year; and (3) the Fund's operating expenses are based on the table above.

	1 Year	10 Years
Although your actual costs may be higher or lower, based on these assumptions, your costs would be:	$___	$___
If you sold your shares at the end of the relevant period, your costs would be:	$___	$___

The example does not reflect purchase charges on reinvested dividends [and other distributions]. If these purchase charges were included, your costs would be higher.

Portfolio Turnover

Portfolio turnover measures how often a fund buys and sells its investments. A higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes. The Fund's annual portfolio turnover rate is ____%.

Instructions

1. *General.*

(a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown.

(c) Footnotes and other extraneous disclosure are not permitted, except that a footnote is permitted in a case where omitting it would cause the disclosure to be materially misleading, in that fees borne by the investor would be materially higher than fees presented in the fee summary.

(d) If the Fund offers sales charge discounts, include ''up to'' before the maximum transaction fee amount in the table.

(e) If the prospectus offers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate response for each Class or Feeder Fund.

(f) If the Fund is an Exchange-Traded Fund, exclude any fees charged for the purchase and redemption of the Fund's creation units.

2. *Transaction Fees.* Based on the information given in response to Item 8A, provide the maximum purchase charge, maximum exit charge, maximum purchase charge on reinvested dividends and other distributions, early exit fee, and exchange fee. Also disclose the dollar value of the maximum purchase charge, maximum exit charge, maximum purchase charge on reinvested dividends and other distributions, early exit fee, and exchange fee, based on a $10,000 investment. Any transaction fees equaling $0 should not be included and the applicable line item should be omitted. However, a Multiple Class Fund that shows a charge and line item because one Class imposes a charge may show 0 as the charge for the other Classes.

3. *Maximum Account Fee.* Based on the information given in response to Item 8A, provide the maximum account fee. Also disclose the dollar value of the maximum account fee based on a $10,000 investment. Any account fee equaling $0 should not be included and the maximum account fee line item should be omitted.

4. *Ongoing Annual Fees.*

(a) Based on the information given in response to Item 8A, provide the total Ongoing Annual Fees. If the Fund is a New Fund, include a parenthetical after the total Ongoing Annual Fees to state that the amount is estimated.

(b) If there are expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement, a Fund may also show the Fund's net expenses after subtracting the fee reimbursement or expense waiver from the total Ongoing Annual Fees under a caption titled ''Ongoing Annual Fees with Temporary Discount.'' The Fund should place this additional caption directly below the ''Ongoing Annual Fees'' caption of the table. If the Fund provides this disclosure, provide in a footnote the expected termination date of the expense reimbursement or fee waiver arrangement.

(c) Also disclose the dollar value of the total Ongoing Annual Fees and, as applicable, the dollar value of the total Ongoing Annual Fees with Temporary Discount based on a $10,000 investment.

(d) If the Fund is including disclosure responsive to instruction 4(f)(ii) of Item 8A, provide the footnote required by that instruction.

5. *Example.*

(a) Calculate the example in accordance with Instruction 5 to Item 8A for 1- and 10-year periods. If the Fund is a New Fund, as described in Instruction 7 to Item 8A, provide information for 1- and 3-year periods in the Example and estimate any shareholder account fees collected.

(b) Include the second 1- and 10-year periods and related narrative explanation only if an exit charge or other fee is charged upon redemption.

6. *Portfolio Turnover.* Disclose the portfolio turnover rate provided in response to Item 13(a) for the most recent fiscal year (or for such shorter period as the Fund has been in operation). Disclose the period for which the information is provided if less than a full fiscal year. A Fund that is a Money Market Fund may omit the portfolio turnover information required by this Item.

Item 4. Risk/Return Summary: Investments, Risks, and Performance

Include the following information, in plain English under rule 421(d) under the Securities Act, in the order and subject matter indicated:

(a) Principal Investment Strategies of the Fund.

Based on the information given in response to Item 9(b), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

(b) Principal Risks of Investing in the Fund.

(1) Narrative Risk Disclosure.

(i) Based on the information given in response to Item 9(c), briefly summarize the principal risks of investing in the Fund, including the risks to which the Fund's portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, and total return. Unless the Fund is a Money Market Fund, disclose that loss of money is a risk of investing in the Fund.

Instructions

1. A Fund may, in responding to this Item, describe the types of investors for whom the Fund is intended or the types of investment goals that may be consistent with an investment in the Fund.

2. A Fund should describe principal risks in order of importance, with the most significant risks appearing first. A Fund may use any reasonable means of determining the significance of risks. A Fund should not describe principal risks in alphabetical order.

3. A Fund should, where appropriate, tailor risk disclosures to how the Fund

operates rather than rely on generic, standard risk disclosures.

(ii) Statements Provided by Money Market Funds.

(A) If the Fund is a Money Market Fund that is not a government Money Market Fund, as defined in § 270.2a–7(a)(16) or a retail Money Market Fund, as defined in § 270.2a–7(a)(25), include the following statement:

You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(B) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a–7(a)(16), or a retail Money Market Fund, as defined in § 270.2a–7(a)(25), and that is subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter (or is not subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a–7(c)(2)(iii) of this chapter, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii)), include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(C) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a–7(a)(16), that is not subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a–7(c)(2)(iii) of this chapter, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii), include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Instruction. If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, and the term of the agreement will extend for at least one year following the effective date of the Fund's registration statement, the statement specified in Item 4(b)(1)(ii)(A), Item 4(b)(1)(ii)(B), or Item 4(b)(1)(ii)(C) may omit the last sentence (''The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.''). For purposes of this Instruction, the term ''financial support'' includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term ''financial support'' excludes any routine waiver of fees or reimbursement of fund expenses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

(iii) If the Fund is advised by or sold through an insured depository institution, state that:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Instruction. A Money Market Fund that is advised by or sold through an insured depository institution should combine the disclosure required by Items 4(b)(1)(ii) and (iii) in a single statement.

(iv) If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (*e.g.,* disclose that, compared with other funds, the Fund may invest a greater percentage of its assets in a particular issuer), and summarize the risks of investing in a non-diversified fund.

(2) Risk/Return Bar Chart and Table.

(i) Include the bar chart and table required by paragraphs (b)(2)(ii) and (iii) of this section. Provide a brief explanation of how the information illustrates the variability of the Fund's returns (*e.g.,* by stating that the information provides some indication of the risks of investing in the Fund by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare with those of a broad measure of market performance). Provide a statement to the effect that the Fund's past performance (before and after taxes) is not a good predictor of the Fund's future performance. If applicable, include a statement explaining that updated performance information is available and providing a website address and/or toll-free telephone number where the updated information may be obtained.

(ii) If the Fund has annual returns for at least one calendar year, provide a bar chart showing the Fund's annual total returns for each of the last 10 calendar years (or for the life of the Fund if less than 10 years), but only for periods subsequent to the effective date of the Fund's registration statement. Present the corresponding numerical return adjacent to each bar. If the Fund's fiscal year is other than a calendar year, include the year-to-date return information as of the end of the most recent quarter in a footnote to the bar chart. Following the bar chart, disclose the Fund's highest and lowest return for a quarter during the 10 years or other period of the bar chart.

(iii) If the Fund has annual returns for at least one calendar year, provide a table showing the Fund's (A) average annual total return; (B) average annual total return (after taxes on distributions); and (C) average annual total return (after taxes on distributions and redemption). A Money Market Fund should show only the returns described in clause (A) of the preceding sentence. All returns should be shown for 1-, 5-, and 10-calendar year periods ending on the date of the most recently completed calendar year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. The table also should show the returns of an appropriate broad-based securities market index as defined in Instruction 6 to Item 27A(d)(2) for the same periods. A Fund that has been in existence for more than 10 years also may include returns for the life of the Fund. A Money Market Fund may provide the Fund's 7-day yield ending on the date of the most recent calendar year or disclose a toll-free telephone number that investors can use to obtain the Fund's current 7-day yield. For a Fund (other than a Money Market Fund or a Fund described in General Instruction C.3.(d)(iii)), provide the information in the following table with the specified captions:

AVERAGE ANNUAL TOTAL RETURNS

[For the periods ended December 31, ____]

	1 year	5 years *(or life of fund)*	10 years *(or life of fund)*
Return Before Taxes	____%	____%	____%
Return After Taxes on Distributions	____%	____%	____%
Return After Taxes on Distributions and Sale of Fund Shares	____%	____%	____%
Index (*reflects no deduction for [fees, expenses, or taxes]*)	____%	____%	____%

(iv) Adjacent to the table required by paragraph 4(b)(2)(iii), provide a brief explanation that:

(A) After-tax returns are calculated using the historical highest individual Federal marginal income tax rates and do not reflect the impact of state and local taxes;

(B) Actual after-tax returns depend on an investor's tax situation and may differ from those shown, and after-tax returns shown are not relevant to investors who hold their Fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts;

(C) If the Fund is a Multiple Class Fund that offers more than one Class in the prospectus, after-tax returns are shown for only one Class and after-tax returns for other Classes will vary; and

(D) If average annual total return (after taxes on distributions and redemption) is higher than average annual total return, the reason for this result may be explained.

Instructions

1. *Bar Chart.*

(a) Provide annual total returns beginning with the earliest calendar year. Calculate annual returns using the Instructions to Item 13(a), except that the calculations should be based on calendar years. If a Fund's shares are sold subject to a sales charge (*e.g.,* purchase charge or exit charge) or account fees, state that sales charges or account fees are not reflected in the bar chart and that, if these amounts were reflected, returns would be less than those shown.

(b) For a Fund that provides annual total returns for only one calendar year or for a Fund that does not include the bar chart because it does not have annual returns for a full calendar year, modify, as appropriate, the narrative explanation required by paragraph (b)(2)(i) (*e.g.,* by stating that the information gives some indication of the risks of an investment in the Fund by comparing the Fund's performance with a broad measure of market performance).

2. *Table.*

(a) Calculate a Money Market Fund's 7-day yield under Item 26(a); the Fund's average annual total return under Item 26(b)(1); and the Fund's average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) under Items 26(b)(2) and (3), respectively.

(b) A Fund may include, in addition to the required broad-based securities market index, information for one or more other indexes as permitted by Instruction 7 to Item 27A(d)(2). If an additional index is included, disclose information about the additional index in the narrative explanation accompanying the bar chart and table (*e.g.,* by stating that the information shows how the Fund's performance compares with the returns of an index of funds with similar investment objectives).

(c) If the Fund selects an index that is different from the index used in a table for the immediately preceding period, explain the reason(s) for the selection of a different index and provide information for both the newly selected and the former index.

(d) A Fund (other than a Money Market Fund) may include the Fund's yield calculated under Item 26(b)(2). Any Fund may include its tax-equivalent yield calculated under Item 26. If a Fund's yield is included, provide a toll-free telephone number that investors can use to obtain current yield information.

(e) Returns required by paragraphs 4(b)(2)(iii)(A), (B), and (C) for a Fund or Series must be adjacent to one another and appear in that order. The returns for a broad-based securities market index, as required by paragraph 4(b)(2)(iii), must precede or follow all of the returns for a Fund or Series rather than be interspersed with the returns of the Fund or Series.

3. *Multiple Class Funds.*

(a) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2), provide annual total returns in the bar chart for only one of those Classes. The Fund can select which Class to include (*e.g.,* the oldest Class, the Class with the greatest net assets) if the Fund:

(i) Selects the Class with 10 or more years of annual returns if other Classes have fewer than 10 years of annual returns;

(ii) Selects the Class with the longest period of annual returns when the Classes all have fewer than 10 years of returns; and

(iii) If the Fund provides annual total returns in the bar chart for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the bar chart the reasons for the selection of a different Class.

(b) When a Multiple Class Fund offers a new Class in a prospectus and separately presents information for the new Class in response to Item 4(b)(2), include the bar chart with annual total returns for any other existing Class for the first year that the Class is offered. Explain in a footnote that the returns are for a Class that is not presented that would have substantially similar annual returns because the shares are invested in the same portfolio of securities and the annual returns would differ only to the extent that the Classes do not have the same expenses. Include return information for the other Class reflected in the bar chart in the performance table.

(c) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2):

(i) Provide the returns required by paragraph 4(b)(2)(iii)(A) of this Item for each of the Classes;

(ii) Provide the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item for only one of those Classes. The Fund may select the Class for which it provides the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item, provided that the Fund:

(A) Selects a Class that has been offered for use as an investment option for accounts other than those described in General Instruction C.3.(d)(iii)(A);

(B) Selects a Class described in paragraph (c)(ii)(A) of this Instruction with 10 or more years of annual returns if other Classes described in paragraph (c)(ii)(A) of this Instruction have fewer than 10 years of annual returns;

(C) Selects the Class described in paragraph (c)(ii)(A) of this Instruction with the longest period of annual returns if the Classes described in paragraph (c)(ii)(A) of this Instruction all have fewer than 10 years of returns; and

(D) If the Fund provides the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the table the reasons for the selection of a different Class;

(iii) The returns required by paragraphs 4(b)(2)(iii)(A), (B), and (C) of this Item for the Class described in paragraph (c)(ii) of this Instruction should be adjacent and should not be interspersed with the returns of other Classes; and

(iv) All returns shown should be identified by Class.

(d) If a Multiple Class Fund offers a Class in the prospectus that converts into another Class after a stated period, compute average annual total returns in the table by using the returns of the other Class for the period after conversion.

4. *Change in Investment Adviser.* If the Fund has not had the same investment adviser during the last 10 calendar years, the Fund may begin the bar chart and the performance information in the table on the date that the current adviser began to provide advisory services to the Fund subject to the conditions in Instruction 12 of Item 27A(d)(2).

Item 5. Management

(a) *Investment Adviser(s).* Provide the name of each investment adviser of the Fund, including sub-advisers.

Instructions

1. A Fund need not identify a sub-adviser whose sole responsibility for the Fund is limited to day-to-day management of the Fund's holdings of cash and cash equivalent instruments, unless the Fund is a Money Market Fund or other Fund with a principal investment strategy of regularly holding cash and cash equivalent instruments.

2. A Fund having three or more sub-advisers, each of which manages a portion of the Fund's portfolio, need not identify each such sub-adviser, except that the Fund must identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph, a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the Fund's net assets.

(b) *Portfolio Manager(s).* State the name, title, and length of service (or year service began) of the person or persons employed by or associated with the Fund or an investment adviser of the Fund who are primarily responsible for the day-to-day management of the Fund's portfolio (''Portfolio Manager'').

Instructions

1. This requirement does not apply to a Money Market Fund.

2. If a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, information in response to this Item is required for each member of such committee, team, or other group. If more than five persons are jointly and primarily responsible for the day-to-day management of the Fund's portfolio, the Fund need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Fund's portfolio.

Item 6. Purchase and Sale of Fund Shares

(a) *Purchase of Fund Shares.* Disclose the Fund's minimum initial or subsequent investment requirements.

(b) *Sale of Fund Shares.* Also disclose that the Fund's shares are redeemable and briefly identify the procedures for redeeming shares (*e.g.,* on any business day by written request, telephone, or wire transfer).

(c) *Exchange-Traded Funds.* If the Fund is an Exchange-Traded Fund, the Fund may omit the information required by paragraphs (a) and (b) of this Item and must disclose:

(1) That Individual Fund shares may only be bought and sold in the secondary market through a broker or dealer at market price;

(2) That because ETF shares trade at market prices rather than net asset value, shares may trade at a price greater than net asset value (premium) or less than net asset value (discount);

(3) That an investor may incur costs attributable to the difference between the highest price a buyer is willing to purchase shares of the Fund (bid) and the lowest price a seller is willing to accept for shares of the Fund (ask) when buying or selling shares in the secondary market (the ''bid-ask spread'');

(4) If applicable, how to access recent information, including information on the Fund's net asset value, Market Price, premiums and discounts, and bid-ask spreads, on the Exchange-Traded Fund's website; and

(5) The median bid-ask spread for the Fund's most recent year.

Instructions

1. A Fund may omit the information required by paragraph (c)(5) of this Item if it satisfies the requirements of paragraph (c)(1)(v) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(v)] under the Investment Company Act.

2. An Exchange-Traded Fund that had its initial listing on a national securities exchange at or before the beginning of the most recently completed fiscal year must include the median bid-ask spread for the Fund's most recent fiscal year. For an Exchange-Traded Fund that had an initial listing after the beginning of the most recently completed fiscal year, explain that the Exchange-Traded Fund did not have a sufficient trading history to report trading information and related costs. Information should be based on the most recently completed fiscal year end.

3. Bid-Ask Spread (Median). Calculate the median bid-ask spread by dividing the difference between the national best bid and national best offer by the mid-point of the national best bid and national best offer as of the end of each ten-second interval throughout each trading day of the Exchange-Traded Fund's most recent fiscal year. Once the bid-ask spread for each ten-second interval throughout the fiscal year is determined, sort the spreads from lowest to highest. If there is an odd number of spread intervals, then the median is the middle number. If there

is an even number of spread intervals, then the median is the average between the two middle numbers. Express the spread as a percentage, rounded to the nearest hundredth percent.

4. A Fund may combine the information required by Item 6(c)(4) into the information required by Item 1(b)(1) and Rule 498(b)(1)(v) [17 CFR 230.498(b)(1)(v)] under the Securities Act.

Item 7. Tax Information

State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income or capital gains or that the Fund intends to distribute tax-exempt income. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, a general statement to the effect that a portion of the Fund's distributions may be subject to Federal income tax.

Item 8. Financial Intermediary Compensation

Include the following statement. A Fund may modify the statement if the modified statement contains comparable information. A Fund may omit the statement if neither the Fund nor any of its related companies pay financial intermediaries for the sale of Fund shares or related services.

Payments to Broker-Dealers and Other Financial Intermediaries

If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may create a conflict of interest by influencing the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's website for more information.

Item 8A. Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act:

Fees and Expenses of the Fund

This table describes the fees and expenses that you could pay if you buy, hold, and sell shares of the Fund. These costs reduce the value of your investment. You may pay other fees, such as brokerage commissions and other fees to financial intermediaries, which are not reflected in the table and example below. You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least $[ ] in [name of fund family] funds. More information about these and other discounts is available from your financial professional and in [identify section heading and page number] of the Fund's prospectus and [identify section heading and page number] of the Fund's statement of additional information.

Transaction Fees (fees paid each time you buy or sell):	
Purchase Charge (as a percentage of your investment)	____%
Exit Charge (as a percentage of ____)	____%
Maximum Purchase Charge Imposed on Reinvested Dividends [and Other Distributions] (as a percentage of ____)	____%
Early Exit Fee (as a percentage of amount redeemed, if applicable)	____%
Exchange Fee	____%
Maximum Account Fee	____%
Ongoing Annual Fees (estimated expenses you pay each year as a percentage of the value of your investment):	
Management Fees	%
Selling Fees	%
Other Expenses	%
	%
	____%
	____%
Total Ongoing Annual Fees	____%
Temporary Discount	____%
Total Ongoing Annual Fees with Temporary Discount	____%

Example

This example may help you understand the cost of investing in the Fund. The example assumes that: (1) You invest $10,000 in the Fund; (2) your investment has a 5% return each year; and (3) the Fund's operating expenses are based on the table above.

	1 Year	3 Years	5 Years	10 Years
Although your actual costs may be higher or lower, based on these assumptions, your costs would be:	$____	$____	$____	$____
If you sold your shares at the end of the relevant period, your costs would be:	$____	$____	$____	$____

The example does not reflect purchase charges on reinvested dividends [and other distributions]. If these purchase charges were included, your costs would be higher.

Portfolio Turnover

Portfolio turnover measures how often a fund buys and sells its investments. A higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes. The Fund's annual portfolio turnover rate is ____%.

Instructions

1. *General.*

(a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown. The narrative explanation regarding sales charge discounts is only required by a Fund that offers such discounts and should specify the minimum level of investment required to qualify for a discount as disclosed in the table required by Item 12(a)(1).

(c) Include the caption ''Maximum Account Fees'' only if the Fund charges these fees. A Fund may omit other captions if the Fund does not charge the fees or expenses covered by the captions.

(d) Multiple Class and Master-Feeder Funds.

(i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in a single fee table using the captions provided. In a footnote to the fee table, state that the table and Example reflect the expenses of both the Feeder and Master Funds.

(ii) If the prospectus offers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate response for each Class or Feeder Fund.

(e) If the Fund is an Exchange-Traded Fund, exclude any fees charged for the purchase and redemption of the Fund's creation units.

2. *Transaction Fees.*

(a) ''Purchase Charge'' is the sales charge (load) imposed on purchases, expressed as a percentage of the offering price. Provide the maximum purchase charge.

(b) ''Exit Charge'' includes the total deferred sales charge (load) payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 12(a). Provide the maximum exit charge. A Fund may include in a footnote to the table, if applicable, a tabular presentation showing the amount of exit charges over time or a narrative explanation of the exit charges (*e.g.,* ____% in the first year after purchase, declining to ____% in the ____ year and eliminated thereafter).

(c) If more than one type of sales charge (load) is imposed (*e.g.,* a purchase charge and an exit charge), the first caption in the table should read ''Maximum Combined Purchase and Exit Charge'' and show the maximum cumulative percentage. Show the percentage amounts and the terms of each sales charge (load) comprising that figure on separate lines below.

(d) If a purchase charge is imposed on shares purchased with reinvested capital gains distributions or returns of capital, include the bracketed words in the ''Maximum Purchase Charge Imposed on Reinvested Dividends'' caption.

(e) ''Early Exit Fee'' includes a fee charged for any redemption of the Fund's shares, but does not include an exit charge upon redemption, and, if the Fund is a Money Market Fund, does not include a liquidity fee imposed upon the sale of Fund shares in accordance with rule 2a–7(c)(2).

(f) ''Exchange Fee'' includes the maximum fee charged for any exchange or transfer of interest from the Fund to another fund. The Fund may include in a footnote to the table, if applicable, a tabular presentation of the range of exchange fees or a narrative explanation of the fees.

3. *Maximum Account Fees.* Disclose account fees that may be charged to a typical investor in the Fund; fees that apply to only a limited number of shareholders based on their particular circumstances need not be disclosed. Include a caption describing the maximum account fee (*e.g.,* ''Maximum Account Maintenance Fee'' or ''Maximum Cash Management Fee''). State the maximum annual account fee as either a fixed dollar amount or a percentage of assets. Include in a parenthetical to the caption the basis on which any percentage is calculated. If an account fee is charged only to accounts that do not meet a certain threshold (*e.g.,* accounts under $5,000), the Fund may include the threshold in a parenthetical to the caption or footnote to the table. The Fund may include an explanation of any non-recurring account fee in a parenthetical to the caption or in a footnote to the table.

4. *Ongoing Annual Fees.*

(a) ''Management Fees'' include investment advisory fees (including any fees based on the Fund's performance), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates that are not included as ''Other Expenses.''

(b) ''Selling Fees'' include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1 [17 CFR 270.12b–1]. Under an appropriate caption or a subcaption of ''Other Expenses,'' disclose the amount of any distribution or similar expenses deducted from the Fund's assets other than pursuant to a rule 12b–1 plan.

(c) ''Other Expenses''.

(i) ''Other Expenses'' include all expenses not otherwise disclosed in the table that are deducted from the Fund's assets or charged to all shareholder accounts. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(ii) ''Other Expenses'' do not include extraordinary expenses. ''Extraordinary expenses'' refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially affected the Fund's ''Other Expenses,'' disclose in a footnote to the table what ''Other Expenses'' would have been had the extraordinary expenses been included.

(iii) The Fund may subdivide this caption into no more than three subcaptions that identify the largest expense or expenses comprising ''Other Expenses,'' but must include a total of all ''Other Expenses.'' Alternatively, the Fund may include the components of ''Other Expenses'' in a parenthetical to the caption.

(d) ''Ongoing Annual Fees''.

(i) Base the percentages of ''Ongoing Annual Fees'' on amounts incurred during the Fund's most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If the Fund has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining ''Ongoing Annual Fees.''

(ii) If there have been any changes in ''Ongoing Annual Fees'' that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in ''Ongoing Annual Fees'' means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in ''Ongoing Annual Fees'' does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(e) If there are expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement, a Fund may add two captions to the table: One caption showing the amount of the expense reimbursement or fee waiver, and a second caption showing the Fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. The Fund should place these additional captions directly below the ''Total Ongoing Annual Fees'' caption of the table and should use appropriate descriptive captions, such as ''Temporary Discount'' and ''Total Ongoing Annual Fees with Temporary Discount,'' respectively. If the Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, including the expected termination date, and briefly describe who can terminate the arrangement and under what circumstances.

(f) Acquired Fund Fees and Expenses.

(i) If the Fund (unless it is a Feeder Fund) invests in shares of one or more Acquired Funds, add a subcaption to the ''Ongoing Annual Fees'' portion of the table directly above the subcaption titled ''Total Ongoing Annual Fees.'' Title the additional subcaption: ''Acquired Fund Fees and Expenses.'' Disclose in the subcaption fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds. For purposes of this item, an ''Acquired Fund'' means any company in which the Fund invests or has invested during the relevant fiscal period that (A) is an investment company or (B) would be an investment company under section 3(a) of the Investment Company Act [15 U.S.C. 80a–3(a)] but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)]. If a Fund uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title.

(ii) A Fund may omit the Acquired Fund Fees and Expenses subcaption in the table if the ratio of the Acquiring Fund's investments in Acquired Funds (excluding Money Market Funds) to the Fund's total assets for the prior fiscal year, as calculated as described below, is 10 percent or less and the Fund discloses in a footnote to the table: The amount of the Fund's Acquired Fund Fees and Expenses, and a statement that the Fund's [Total] Ongoing Annual Fees in the table would be higher if these fees and expenses were included. Calculate the ratio in the following manner.

(A) For each of the 12 months that compose the prior fiscal year, divide the Fund's investments in Acquired Funds (excluding Money Market Funds) as of the end of the month by the Fund's total assets as of the end of the month. This will produce 12 data items (or fewer if the Fund has been in operation for less than a full fiscal year).

(B) Calculate the average of the 12 (or fewer) data items. This figure is the ratio.

(iii) Determine the ''Acquired Fund Fees and Expenses'' according to the following formula:

$$AFFE = \frac{[(F_1 / FY) * AI_1 * D_1] + [(F_2 / FY) * AI_2 * D_2] + [(F_3 / FY) * AI_3 * D_3] + \text{Transaction Fees} + \text{Incentive Allocations}}{\text{Average Net Assets of the Registrant}}$$

Where:

AFFE = Acquired Fund fees and expenses;

$F_1, F_2, F_3, \ldots$ = Total annual operating expense ratio for each Acquired Fund;

FY = Number of days in the relevant fiscal year (or the number of days since the date the Fund made its first investment, if less than a year);

$AI_1, AI_2, AI_3, \ldots$ = Average invested balance in each Acquired Fund;

$D_1, D_2, D_3, \ldots$ = Number of days invested in each Acquired Fund;

''Transaction Fees'' = The total amount of purchase charges, exit charges, redemption fees, or other transaction fees paid by the Fund in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year; and

''Incentive Allocations'' = Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate based on a percentage of the Acquiring Fund's income, capital gains and/or appreciation in the Acquired Fund.

(iv) Calculate the average net assets of the Fund for the most recent fiscal year, as provided in Item 13(a) (see Instruction 4 to Item 13(a)).

(v) The total annual operating expense ratio used for purposes of this calculation (F1) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report, or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Fund. For purposes of this Instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors; and (ii) Acquired Fund expenses do not include expenses (*i.e.,* performance fees) that are incurred solely upon the realization and/or distribution of a gain. If an Acquired Fund has no operating history, include in the Acquired Funds' expenses any fees payable to the Acquired Fund's investment adviser or its affiliates stated in the Acquired Fund's registration statement, offering memorandum or other similar communication without giving effect to any performance.

(vi) To determine the average invested balance (AI_1) the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Fund (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.,* if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(vii) A New Fund should base the Acquired Fund fees and expenses and the percent invested in Acquired Funds on assumptions of the specific Acquired Funds in which the New Fund expects to invest. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

(viii) If the Fund includes the Acquired Fund fees and expenses subcaption in the table, the Fund may clarify in a footnote to the fee table that the Total Ongoing Annual Fees under Item 8A do not correlate to the ratio of expenses to average net assets given in the fund's shareholder reports or in response to Item 13, which reflects the operating expenses of the Fund and does not include Acquired Fund fees and expenses.

5. *Example.*

(a) Assume that the percentage amounts listed under ''Ongoing Annual Fees'' remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect any expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement. An adjustment to reflect any expense reimbursement or fee waiver arrangement may be reflected only in the period(s) for which the expense reimbursement or fee waiver arrangement is expected to continue.

(b) For any breakpoint in any fee, assume that the amount of the Fund's assets remains constant as of the level at the end of the most recently completed fiscal year.

(c) Assume reinvestment of all dividends and distributions.

(d) Reflect recurring and non-recurring fees charged to all investors other than any exchange fees or any purchase charges on shares purchased with reinvested dividends or other distributions. If purchase charges are imposed on reinvested dividends or other distributions, include the narrative explanation following the Example and include the bracketed words when purchase charges are charged on reinvested capital gains distributions or returns of capital. Reflect any shareholder account fees collected by more than one Fund by dividing the total amount of the fees collected during the most recent fiscal year for all Funds whose shareholders are subject to the fees by the total average net assets of the Funds. Add the resulting percentage to ''Ongoing Annual Fees'' and assume that it remains the same in each of the 1-, 3-, 5-, and 10-year periods. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(e) Include the second 1-, 3-, 5-, and 10-year periods and related narrative explanation only if an exit charge or other fee is charged upon redemption. Reflect any exit charge by assuming redemption of the entire account at the end of the year in which the exit charge is due. In the case of an exit charge that is based on the Fund's net asset value at the time of payment, assume that the net asset value at the end of each year includes the 5% annual return for that and each preceding year.

6. *Portfolio Turnover.* Disclose the portfolio turnover rate provided in response to Item 13(a) for the most recent fiscal year (or for such shorter period as the Fund has been in operation). Disclose the period for which the information is provided if less than a full fiscal year. A Fund that is a Money Market Fund may omit the portfolio turnover information required by this Item.

7. *New Funds.* For purposes of this Item, a ''New Fund'' is a Fund that does not include in Form N–1A financial statements reporting operating results or that includes financial statements for the Fund's initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Funds.

(a) Base the percentages expressed in ''Ongoing Annual Fees'' on payments that will be made, but include in expenses, amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of ''Other Expenses.'' Disclose in a footnote to the table that ''Other Expenses'' are based on estimated amounts for the current fiscal year.

(b) Complete only the 1- and 3-year period portions of the Example and estimate any shareholder account fees collected.

Item 9. Investment Objectives, Principal Investment Strategies, Related Risks, and Disclosure of Portfolio Holdings

(a) *Investment Objectives.* State the Fund's investment objectives and, if applicable, state that those objectives may be changed without shareholder approval.

(b) *Implementation of Investment Objectives.* Describe how the Fund intends to achieve its investment objectives. In the discussion:

(1) Describe the Fund's principal investment strategies, including the particular type or types of securities in which the Fund principally invests or will invest.

Instructions

1. A strategy includes any policy, practice, or technique used by the Fund to achieve its investment objectives.

2. Whether a particular strategy, including a strategy to invest in a particular type of security, is a principal investment strategy depends on the strategy's anticipated importance in achieving the Fund's investment objectives, and how the strategy affects the Fund's potential risks and returns. In determining what a principal investment strategy is, consider, among other things, the amount of the Fund's assets expected to be committed to the strategy, the amount of the Fund's assets expected to be placed at risk by the strategy, and the likelihood of the Fund's losing some or all of those assets from implementing the strategy.

3. A negative strategy (*e.g.,* a strategy not to invest in a particular type of security or not to borrow money) is not a principal investment strategy.

4. Disclose any policy to concentrate in securities of issuers in a particular industry or group of industries (*i.e.,* investing more than 25% of a Fund's net assets in a particular industry or group of industries).

5. Disclose any other policy specified in Item 16(c)(1) that is a principal investment strategy of the Fund.

6. Disclose, if applicable, that the Fund may, from time to time, take temporary defensive positions that are inconsistent with the Fund's principal investment strategies in attempting to respond to adverse market, economic, political, or other conditions. Also disclose the effect of taking such a temporary defensive position (*e.g.,* that the Fund may not achieve its investment objective).

7. Disclose whether the Fund (if not a Money Market Fund) may engage in active and frequent trading of portfolio securities to achieve its principal investment strategies. If so, explain the tax consequences to shareholders of increased portfolio turnover, and how the tax consequences of, or trading costs associated with, a Fund's portfolio turnover may affect the Fund's performance.

(2) Explain in general terms how the Fund's adviser decides which securities to buy and sell (*e.g.,* for an equity fund, discuss, if applicable, whether the Fund emphasizes value or growth or blends the two approaches).

(c) *Risks.* Disclose the principal risks of investing in the Fund, including the risks to which the Fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the

Fund's net asset value, yield, or total return.

Instructions

1. In determining whether a risk is a principal risk, a Fund should consider whether the risk would place more than 10% of the Fund's assets at risk, or whether it is reasonably likely that the risk would place more than 10% of the Fund's assets at risk in the future.

2. In the case of an Acquiring Fund, risks should only be included if they are principal risks of the Acquiring Fund. A principal risk of an Acquired Fund should not be included unless it is a principal risk of the Acquiring Fund.

3. If a Fund's strategy provides the freedom to invest in different types of assets at the manager's discretion, disclose that an investor may not know—and has no way to know—how the fund will invest in the future and its associated risks.

(d) *Portfolio Holdings.* State that a description of the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities is available (i) in the Fund's SAI; and (ii) on the Fund's website, if applicable.

Item 10. Management, Organization, and Capital Structure

(a) *Management.*

(1) *Investment Adviser.*

(i) Provide the name and address of each investment adviser of the Fund, including sub advisers. Describe the investment adviser's experience as an investment adviser and the advisory services that it provides to the Fund.

(ii) Describe the compensation of each investment adviser of the Fund as follows:

(A) If the Fund has operated for a full fiscal year, state the aggregate fee paid to the adviser for the most recent fiscal year as a percentage of average net assets. If the Fund has not operated for a full fiscal year, state what the adviser's fee is as a percentage of average net assets, including any breakpoints.

(B) If the adviser's fee is not based on a percentage of average net assets (*e.g.,* the adviser receives a performance-based fee), describe the basis of the adviser's compensation.

Instructions

1. If the Fund changed advisers during the fiscal year, describe the compensation and the dates of service for each adviser.

2. Explain any changes in the basis of computing the adviser's compensation during the fiscal year.

3. If a Fund has more than one investment adviser, disclose the aggregate fee paid to all of the advisers, rather than the fees paid to each adviser, in response to this Item.

(2) *Portfolio Manager.* For each Portfolio Manager identified in response to Item 5(b), state the Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Fund. If a Portfolio Manager is a member of a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund that is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, provide a brief description of the person's role on the committee, team, or other group (*e.g.,* lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Fund's portfolio.

(3) *Legal Proceedings.* Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund or the Fund's investment adviser or principal underwriter is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Fund or the ability of the investment adviser or principal underwriter to perform its contract with the Fund.

(b) *Capital Stock.* Disclose any unique or unusual restrictions on the right freely to retain or dispose of the Fund's shares or material obligations or potential liabilities associated with holding the Fund's shares (not including investment risks) that may expose investors to significant risks.

Item 11. Shareholder Information

(a) *Pricing of Fund Shares.* Describe the procedures for pricing the Fund's shares, including:

(1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost); except that if the Fund is an Exchange-Traded Fund, an explanation that the price of Fund shares is based on a market price.

Instruction. A Fund (other than a Money Market Fund) must provide a brief explanation of the circumstances under which it will use fair value pricing and the effects of using fair value pricing. With respect to any portion of a Fund's assets that are invested in one or more open-end management investment companies that are registered under the Investment Company Act, the Fund may briefly explain that the Fund's net asset value is calculated based upon the net asset values of the registered open-end management investment companies in which the Fund invests, and that the prospectuses for these companies explain the circumstances under which those companies will use fair value pricing and the effects of using fair value pricing.

(2) A statement as to when calculations of net asset value are made and that the price at which a purchase or redemption is effected is based on the next calculation of net asset value after the order is placed.

(3) A statement identifying in a general manner any national holidays when shares will not be priced and specifying any additional local or regional holidays when the Fund shares will not be priced.

Instructions

1. In responding to this Item, a Fund may use a list of specific days or any other means that effectively communicates the information (*e.g.,* explaining that shares will not be priced on the days on which the New York Stock Exchange is closed for trading).

2. If the Fund has portfolio securities that are primarily listed on foreign exchanges that trade on weekends or other days when the Fund does not price its shares, disclose that the net asset value of the Fund's shares may change on days when shareholders will not be able to purchase or redeem the Fund's shares.

(b) *Purchase of Fund Shares.* Describe the procedures for purchasing the Fund's shares.

(c) *Redemption of Fund Shares.* Describe the procedures for redeeming the Fund's shares, including:

(1) Any restrictions on redemptions.

(2) Any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived.

(3) Any procedure that a shareholder can use to sell the Fund's shares to the Fund or its underwriter through a broker-dealer, noting any charges that may be imposed for such service.

Instruction. The specific fees paid through the broker-dealer for such service need not be disclosed.

(4) The circumstances, if any, under which the Fund may redeem shares automatically without action by the shareholder in accounts below a certain number or value of shares.

(5) The circumstances, if any, under which the Fund may delay honoring a request for redemption for a certain time after a shareholder's investment (*e.g.,* whether a Fund does not process redemptions until clearance of the check for the initial investment).

(6) Any restrictions on, or costs associated with, transferring shares held in street name accounts.

(7) The number of days following receipt of shareholder redemption requests in which the fund typically expects to pay out redemption proceeds to redeeming shareholders. If the number of days differs by method of payment (*e.g.,* check, wire, automated clearing house), then disclose the typical number of days or estimated range of days that the fund expects it will take to pay out redemptions proceeds for each method used.

(8) The methods that the Fund typically expects to use to meet redemption requests, and whether those methods are used regularly, or only in stressed market conditions (*e.g.,* sales of portfolio assets, holdings of cash or cash equivalents, lines of credit, interfund lending, and/or ability to redeem in kind).

(d) *Dividends and Distributions.* Describe the Fund's policy with respect to dividends and distributions, including any options that shareholders may have as to the receipt of dividends and distributions.

(e) *Frequent Purchases and Redemptions of Fund Shares.*

(1) Describe the risks, if any, that frequent purchases and redemptions of Fund shares by Fund shareholders may present for other shareholders of the Fund.

(2) State whether or not the Fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of Fund shares by Fund shareholders.

(3) If the Fund's board of directors has not adopted any such policies and procedures, provide a statement of the specific basis for the view of the board that it is appropriate for the Fund not to have such policies and procedures.

(4) If the Fund's board of directors has adopted any such policies and procedures, describe those policies and procedures, including:

(i) Whether or not the Fund discourages frequent purchases and redemptions of Fund shares by Fund shareholders;

(ii) Whether or not the Fund accommodates frequent purchases and redemptions of Fund shares by Fund shareholders; and

(iii) Any policies and procedures of the Fund for deterring frequent purchases and redemptions of Fund shares by Fund shareholders, including any restrictions imposed by the Fund to prevent or minimize frequent purchases and redemptions. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances, including whether each of these restrictions applies to trades that occur through omnibus accounts at intermediaries, such as investment advisers, broker-dealers, transfer agents, third party administrators, and insurance companies. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(A) Any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period;

(B) Any exchange fee or redemption fee;

(C) Any costs or administrative or other fees or charges that are imposed on shareholders deemed to be engaged in frequent purchases and redemptions of Fund shares, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(D) Any minimum holding period that is imposed before an investor may make exchanges into another Fund;

(E) Any restrictions imposed on exchange or purchase requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(F) Any right of the Fund to reject, limit, delay, or impose other conditions on exchanges or purchases or to close or otherwise limit accounts based on a history of frequent purchases and redemptions of Fund shares, including the circumstances under which such right will be exercised.

(5) If applicable, include a statement, adjacent to the disclosure required by paragraphs (e)(1) through (e)(4) of this Item, that the SAI includes a description of all arrangements with any person to permit frequent purchases and redemptions of Fund shares.

(f) *Tax Consequences.*

(1) Describe the tax consequences to shareholders of buying, holding, exchanging and selling the Fund's shares, including, as applicable, that:

(i) The Fund intends to make distributions that may be taxed as ordinary income and capital gains (which may be taxable at different rates depending on the length of time the Fund holds its assets). If the Fund expects that its distributions, as a result of its investment objectives or strategies, will consist primarily of ordinary income or capital gains, provide disclosure to that effect.

(ii) The Fund's distributions, whether received in cash or reinvested in additional shares of the Fund, may be subject to Federal income tax.

(iii) An exchange of the Fund's shares for shares of another fund will be treated as a sale of the Fund's shares and any gain on the transaction may be subject to Federal income tax.

(2) For a Fund that holds itself out as investing in securities generating tax-exempt income:

(i) Modify the disclosure required by paragraph (f)(1) to reflect that the Fund intends to distribute tax- exempt income.

(ii) Also disclose, as applicable, that:

(A) The Fund may invest a portion of its assets in securities that generate income that is not exempt from Federal or state income tax;

(B) Income exempt from Federal tax may be subject to state and local income tax; and

(C) Any capital gains distributed by the Fund may be taxable.

(3) If the Fund does not expect to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code [I.R.C. 851 *et seq.*], explain the tax consequences. If the Fund expects to pay an excise tax under the Internal Revenue Code [I.R.C. 4982] with respect to its distributions, explain the tax consequences.

(g) *Exchange-Traded Funds.* If the Fund is an Exchange-Traded Fund:

(1) The Fund may omit from the prospectus the information required by Items 11(a)(2), (b), and (c).

(2) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (*i.e.,* premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund

may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii)–(iv) and (c)(1)(vi) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(ii)–(iv) and (c)(1)(vi)] under the Investment Company Act.

Instruction

1. Provide the information in tabular form.

2. Express the information as a percentage of the net asset value of the Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.

3. Adjacent to the table, provide a brief explanation that: Shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.

4. Include a statement that the data presented represents past performance and cannot be used to predict future results.

Item 12. Distribution Arrangements

(a) *Sales Loads.*

(1) Describe any sales loads, including exit charges, applied to purchases of the Fund's shares. Include in a table any purchase charge (and each breakpoint in the charge, if any) as a percentage of both the offering price and the net amount invested.

Instructions

1. If the Fund's shares are sold subject to a purchase charge, explain that the term ''offering price'' includes the purchase charge.

2. Disclose, if applicable, that purchase charges are imposed on shares, or amounts representing shares, that are purchased with reinvested dividends or other distributions.

3. Discuss, if applicable, how exit charges are imposed and calculated, including:

(a) Whether the specified percentage of the exit charge is based on the offering price, or the lesser of the offering price or net asset value at the time the exit charge is paid.

(b) The amount of the exit charge as a percentage of both the offering price and the net amount invested.

(c) A description of how the exit charge is calculated (*e.g.,* in the case of a partial redemption, whether or not the exit charge is calculated as if shares or amounts representing shares not subject to an exit charge are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased).

(d) If applicable, the method of paying an installment exit charge (*e.g.,* by withholding of dividend payments, involuntary redemptions, or separate billing of a shareholder's account).

(2) Unless disclosed in response to paragraph (a)(1), briefly describe any arrangements that result in breakpoints in, or elimination of, purchase charges or exit charges (*e.g.,* letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of investors). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested. If applicable, state that additional information concerning purchase charge or exit charge breakpoints is available in the Fund's SAI.

Instructions

1. The description, pursuant to paragraph (a)(1) or (a)(2) of this Item 12, of arrangements that result in breakpoints in, or elimination of, purchase charges or exit charges must include a brief summary of shareholder eligibility requirements, including a description or list of the types of accounts (*e.g.,* retirement accounts, accounts held at other financial intermediaries), account holders (*e.g.,* immediate family members, family trust accounts, solely controlled business accounts), and fund holdings (*e.g.,* funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for purchase charge or exit charge breakpoints.

2. The description pursuant to paragraph (a)(2) of this Item 12 need not contain any information required by Items 17(d) and 23(b).

(3) Describe, if applicable, the methods used to value accounts in order to determine whether a shareholder has met purchase charge or exit charge breakpoints, including the circumstances in which and the classes of individuals to whom each method applies. Methods that should be described, if applicable, include historical cost, net amount invested, and offering price.

(4) Eligibility for Breakpoints

(i) State, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the Fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet purchase charge or exit charge breakpoints. Describe any information or records, such as account statements, that it may be necessary for a shareholder to provide to the Fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. This description must include, if applicable:

(A) Information or records regarding shares of the Fund or other funds held in all accounts (*e.g.,* retirement accounts) of the shareholder at the financial intermediary;

(B) Information or records regarding shares of the Fund or other funds held in any account of the shareholder at another financial intermediary; and

(C) Information or records regarding shares of the Fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.

(ii) If the Fund permits eligibility for breakpoints to be determined based on historical cost, state that a shareholder should retain any records necessary to substantiate historical costs because the Fund, its transfer agent, and financial intermediaries may not maintain this information.

(5) State whether the Fund makes available free of charge, on or through the Fund's website at a specified address, and in a clear and prominent format, the information required by paragraphs (a)(1) through (a)(4) and Item 23(a), including whether the website includes hyperlinks that facilitate access to the information. If the Fund does not make the information required by paragraphs (a)(1) through (a)(4) and Item 23(a) available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have a website).

Instruction. All information required by paragraph (a) of this Item 12 must be adjacent to the table required by paragraph (a)(1) of this Item 12; must be presented in a clear, concise, and understandable manner; and must include tables, schedules, and charts as expressly required by paragraph (a)(1) of this Item 12 or where doing so would facilitate understanding.

(b) *Selling Fees.* If the Fund has adopted a plan under rule 12b–1, state the amount of the distribution fee payable under the plan and provide disclosure to the following effect:

(1) The Fund has adopted a plan under rule 12b–1 that allows the Fund to pay distribution fees for the sale and distribution of its shares; and

(2) Because these fees are paid out of the Fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales charges.

Instruction. If the Fund pays service fees under its rule 12b–1 plan, modify this disclosure to reflect the payment of these fees (*e.g.,* by indicating that the Fund pays distribution and other fees for the sale of its shares and for services provided to shareholders). For purposes of this paragraph, service fees have the same meaning given that term under FINRA rule 2341.

(c) *Multiple Class and Master-Feeder Funds.*

(1) Describe the main features of the structure of the Multiple Class Fund or Master-Feeder Fund.

(2) If more than one Class of a Multiple Class Fund is offered in the prospectus, provide the information required by paragraphs (a) and (b) for each of those Classes.

(3) If a Multiple Class Fund offers in the prospectus shares that provide for mandatory or automatic conversions or exchanges from one Class to another Class, provide the information required by paragraphs (a) and (b) for both the shares offered and the Class into which the shares may be converted or exchanged.

(4) If a Feeder Fund has the ability to change the Master Fund in which it invests, describe briefly the circumstances under which the Feeder Fund can do so.

Instruction. A Feeder Fund that does not have the authority to change its Master Fund need not disclose the possibility and consequences of its no longer investing in the Master Fund.

Item 13. Financial Highlights Information

(a) Provide the following information for the Fund, or for the Fund and its subsidiaries, audited for at least the latest 5 years and consolidated as required in Regulation S–X [17 CFR 210].

Financial Highlights

The financial highlights table is intended to help you understand the Fund's financial performance for the past 5 years [or, if shorter, the period of the Fund's operations]. Certain information reflects financial results for a single Fund share. The total returns in the table represent the rate that an investor would have earned [or lost] on an investment in the Fund (assuming reinvestment of all dividends and distributions). This information has been audited by __________, whose report, along with the Fund's financial statements, are included in [the SAI or annual Form N–CSR report], and are available on the Fund's website and upon request.

Net Asset Value, Beginning of Period
Income From Investment Operations
Net Investment Income
Net Gains or Losses on Securities (both realized and unrealized)
Total From Investment Operations
Less Distributions
Dividends (from net investment income)
Distributions (from capital gains)
Returns of Capital
Total Distributions
Net Asset Value, End of Period
Per Share Market Value, End of Period [for ETFs only]
Total Return

Ratios/Supplemental Data
Net Assets, End of Period
Ratio of Expenses to Average Net Assets
Ratio of Net Income to Average Net Assets
Portfolio Turnover Rate

Instructions

1. General

(a) Present the information in comparative columnar form for each of the last 5 fiscal years of the Fund (or for such shorter period as the Fund has been in operation), but only for periods subsequent to the effective date of the Fund's registration statement. Also present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. When a period in the table is for less than a full fiscal year, a Fund may annualize ratios in the table and disclose that the ratios are annualized in a note to the table.

(b) List per share amounts at least to the nearest cent. If the offering price is expressed in tenths of a cent or more, then state the amounts in the table in tenths of a cent. Present the information using a consistent number of decimal places.

(c) Include the narrative explanation before the financial information. A Fund may modify the explanation if the explanation contains comparable information to that shown.

2. Per Share Operating Performance

(a) Derive net investment income data by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) per share may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods of computing net investment income may be acceptable. Provide an explanation in a note to the table of any other method used to compute net investment income.

(b) The amount shown at the Net Gains or Losses on Securities caption is the balancing figure derived from the other amounts in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of the Fund's shares in relation to fluctuating market values for the portfolio.

(c) For any distributions made from sources other than net investment income and capital gains, state the per share amounts separately at the Returns of Capital caption and note the nature of the distributions.

3. Total Return

(a) To calculate total return based on net asset value per share:

(i) Assume an initial investment made at the net asset value calculated on the last business day before the first day of each period shown.

(ii) Do not reflect purchase charges, exit charges, or account fees in the initial investment, but, if purchase charges, exit charges, or account fees are imposed, note that they are not reflected in total return.

(iii) Reflect any purchase charge assessed upon reinvestment of dividends or distributions.

(iv) Assume a redemption at the price calculated on the last business day of each period shown.

(v) For a period less than a full fiscal year, state the total return for the period and disclose that total return is not annualized in a note to the table.

(b) For ETFs only, present as a separate caption total return based on market value per share. To calculate total return based on per share market value, assume a purchase of common stock at the current market price on the first day and a sale at the current market price on the last day of each period reported on the table. A Registrant also should briefly explains in a note the differences between this calculation and the calculation required by Instruction 3(a).

4. Ratios/Supplemental Data

(a) Calculate ''average net assets'' based on the value of the net assets determined no less frequently than the end of each month.

(b) Calculate the Ratio of Expenses to Average Net Assets using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal period, including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X and reductions resulting from complying with paragraphs 2(a) and (f) of rule 6–07 regarding fee waivers and reimbursements.

(c) A Fund that is a Money Market Fund may omit the Portfolio Turnover Rate.

(d) Calculate the Portfolio Turnover Rate as follows:

(i) Divide the lesser of amounts of purchases or sales of portfolio securities for the fiscal year by the monthly average of the value of the portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding 11 months and dividing the sum by 13.

(ii) Exclude from both the numerator and the denominator amounts relating to all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Include all long-term securities, including long-term U.S. Government securities. Purchases include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

(iii) If the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares during the fiscal year in a purchase-of-assets transaction, exclude the value of securities acquired from purchases and securities sold from sales to realign the Fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

(iv) Include in purchases and sales any short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of the portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of the portfolio securities sold during the period.

(e) A Fund may incorporate by reference the Financial Highlights Information from Form N–CSR into the prospectus in response to this Item if the Fund transmits the annual report required by rule 30e–1(b) with the prospectus or, if the report has been previously transmitted (*e.g.,* to a current shareholder), the Fund includes the statement required by Item 1(b)(1).

Part B—Information Required in a Statement of Additional Information

Item 14. Cover Page and Table of Contents

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

(1) The Fund's name and the Class or Classes, if any, to which the SAI relates. If the Fund is a Series, also provide the Registrant's name.

(2) The exchange ticker symbol of the Fund's securities or, if the SAI relates to one or more Classes of the Fund's securities, adjacent to each such class, the exchange ticker symbol of such Class of the Fund's securities. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

(3) A statement or statements:

(i) That the SAI is not a prospectus;

(ii) How the prospectus may be obtained; and

(iii) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI unless the information has been previously delivered in a shareholder report (*e.g.,* to a current shareholder), and the Fund states that the shareholder report is available, without charge, upon request. Provide a toll-free telephone number to call to request the report.

(4) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 15. Fund History

(a) Provide the date and form of organization of the Fund and the name of the state or other jurisdiction in which the Fund is organized.

(b) If the Fund has engaged in a business other than that of an investment company during the past 5 years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. Briefly describe the nature and results of any change in the Fund's business or name that occurred in connection with any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment or succession.

Item 16. Description of the Fund and Its Investments and Risks

(a) *Classification.* State that the Fund is an open-end, management investment company and indicate, if applicable, that the Fund is diversified.

(b) *Investment Strategies and Risks.* Describe any investment strategies, including a strategy to invest in a particular type of security, used by an investment adviser of the Fund in managing the Fund that are not principal strategies and the risks of those strategies.

(c) *Fund Policies.*

(1) Describe the Fund's policy with respect to each of the following:

(i) Issuing senior securities;

(ii) Borrowing money, including the purpose for which the proceeds will be used;

(iii) Underwriting securities of other issuers;

(iv) Concentrating investments in a particular industry or group of industries;

(v) Purchasing or selling real estate or commodities;

(vi) Making loans; and

(vii) Any other policy that the Fund deems fundamental or that may not be changed without shareholder approval, including, if applicable, the Fund's investment objectives.

Instruction. If the Fund reserves freedom of action with respect to any practice specified in paragraph (c)(1), state the maximum percentage of assets to be devoted to the practice and disclose the risks of the practice.

(2) State whether shareholder approval is necessary to change any policy specified in paragraph (c)(1). If so, describe the vote required to obtain this approval.

(d) *Temporary Defensive Position.* Disclose, if applicable, the types of investments that a Fund may make while assuming a temporary defensive position described in response to Item 9(b).

(e) *Portfolio Turnover.* Explain any significant variation in the Fund's portfolio turnover rates over the two most recently completed fiscal years or any anticipated variation in the portfolio turnover rate from that reported for the last fiscal year in response to Item 13.

Instruction

This paragraph does not apply to a Money Market Fund.

(f) *Disclosure of Portfolio Holdings*

(1) Describe the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities to any person, including:

(i) How the policies and procedures apply to disclosure to different categories of persons, including individual investors, institutional investors, intermediaries that distribute the Fund's shares, third-party service providers, rating and ranking organizations, and affiliated persons of the Fund;

(ii) Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

(iii) The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;

(iv) Any policies and procedures with respect to the receipt of compensation or other consideration by the Fund, its investment adviser, or any other party in connection with the disclosure of information about portfolio securities;

(v) The individuals or categories of individuals who may authorize disclosure of the Fund's portfolio securities (*e.g.,* executive officers of the Fund);

(vi) The procedures that the Fund uses to ensure that disclosure of information about portfolio securities is in the best interests of Fund shareholders, including procedures to address conflicts between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other; and

(vii) The manner in which the board of directors exercises oversight of disclosure of the Fund's portfolio securities.

Instruction. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, with respect to the disclosure of the Fund's portfolio securities to any person.

(2) Describe any ongoing arrangements to make available information about the Fund's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements. Describe any compensation or other consideration received by the Fund, its investment adviser, or any other party in connection with each such arrangement, and provide the information described by paragraphs (f)(1)(ii), (iii), and (v) of this Item with respect to such arrangements.

Instructions

1. The consideration required to be disclosed by Item 16(f)(2) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

2. The Fund is not required to describe an ongoing arrangement to make available information about the Fund's portfolio securities pursuant to this Item, if, not later than the time that the Fund makes the portfolio securities information available to any person pursuant to the arrangement, the Fund discloses the information in a publicly available filing with the Commission that is required to include the information.

3. The Fund is not required to describe an ongoing arrangement to make available information about the Fund's portfolio securities pursuant to this Item if:

(a) The Fund makes the portfolio securities information available to any person pursuant to the arrangement no earlier than the day next following the day on which the Fund makes the information available on its website in the manner specified in its prospectus pursuant to paragraph (b); and

(b) the Fund has disclosed in its current prospectus that the portfolio securities information will be available on its website, including (1) the nature of the information that will be available, including both the date as of which the information will be current (*e.g.,* month-end) and the scope of the information (*e.g.,* complete portfolio holdings, Fund's largest 20 holdings); (2) the date when the information will first become available and the period for which the information will remain available, which shall end no earlier than the date on which the Fund files its Form N–CSR or Form N–PORT for the last month of the Fund's first or third fiscal quarters with the Commission for the period that includes the date as of which the website information is current; and (3) the location on the Fund's website where either the information or a prominent hyper link (or series of prominent hyperlinks) to the information will be available.

(g) *Money Market Fund Material Events.* If the Fund is a Money Market Fund (except any Money Market Fund that is not subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a–7(c)(2)(iii) of this chapter, and has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii)) disclose, as applicable, the following events:

(1) *Imposition of Liquidity Fees and Temporary Suspensions of Fund Redemptions.*

(i) During the last 10 years, any occasion on which the Fund has invested less than ten percent of its total assets in weekly liquid assets (as provided in § 270.2a–7(c)(2)(ii)), and with respect to each such occasion, whether the Fund's board of directors determined to impose a liquidity fee pursuant to § 270.2a–7(c)(2)(ii) and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a–7(c)(2)(i).

(ii) During the last 10 years, any occasion on which the Fund has invested less than thirty percent, but more than ten percent, of its total assets in weekly liquid assets (as provided in § 270.2a–7(c)(2)(i)) and the Fund's board of directors has determined to impose a liquidity fee pursuant to § 270.2a–7(c)(2)(i) and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a–7(c)(2)(i).

Instructions

1. With respect to each such occasion, disclose: The dates and length of time for which the Fund invested less than ten percent (or thirty percent, as applicable) of its total assets in weekly liquid assets; the dates and length of time for which the Fund's board of directors determined to impose a liquidity fee pursuant to § 270.2a–7(c)(2)(i) or § 270.2a–7(c)(2)(ii), and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a–7(c)(2)(i); and the size of any liquidity fee imposed pursuant to § 270.2a–7(c)(2)(i) or § 270.2a–7(c)(2)(ii).

2. The disclosure required by Item 16(g)(1) should incorporate, as

appropriate, any information that the Fund is required to report to the Commission on Items E.1, E.2, E.3, E.4, F.1, F.2, and G.1 of Form N–CR [17 CFR 274.222].

3. The disclosure required by Item 16(g)(1) should conclude with the following statement: ''The Fund was required to disclose additional information about this event [or ''these events,'' as appropriate] on Form N–CR and to file this form with the Securities and Exchange Commission. Any Form N–CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's website at *http://www.sec.gov*.''

(2) *Financial Support Provided to Money Market Funds.* During the last 10 years, any occasion on which an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, provided any form of financial support to the Fund, including a description of the nature of support, person providing support, brief description of the relationship between the person providing support and the Fund, date support provided, amount of support, security supported (if applicable), and the value of security supported on date support was initiated (if applicable).

Instructions

1. The term ''financial support'' includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio; excluding, however, any routine waiver of fees or reimbursement of Fund expenses, routine inter-fund lending, routine inter-fund purchases of Fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio.

2. If during the last 10 years, the Fund has participated in one or more mergers with another investment company (a ''merging investment company''), provide the information required by Item 16(g)(2) with respect to any merging investment company as well as with respect to the Fund; for purposes of this Instruction, the term ''merger'' means a merger, consolidation, or purchase or sale of substantially all of the assets between the Fund and a merging investment company. If the person or entity that previously provided financial support to a merging investment company is not currently an affiliated person, promoter, or principal underwriter of the Fund, the Fund need not provide the information required by Item 16(g)(2) with respect to that merging investment company.

3. The disclosure required by Item 16(g)(2) should incorporate, as appropriate, any information that the Fund is required to report to the Commission on Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7 of Form N–CR [17 CFR 274.222].

4. The disclosure required by Item 16(g)(2) should conclude with the following statement: ''The Fund was required to disclose additional information about this event [or ''these events,'' as appropriate] on Form N–CR and to file this form with the Securities and Exchange Commission. Any Form N–CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's website at *http://www.sec.gov*.''

Item 17. Management of the Fund

Instructions

1. For purposes of this Item 17, the terms below have the following meanings:

(a) The term ''family of investment companies'' means any two or more registered investment companies that:

(1) Share the same investment adviser or principal underwriter; and

(2) Hold themselves out to investors as related companies for purposes of investment and investor services.

(b) The term ''fund complex'' means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

(c) The term ''immediate family member'' means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code [26 U.S.C. 152].

(d) The term ''officer'' means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Fund separately from the information for directors who are not interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

(a) *Management Information.*

(1) Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age (or Year of Birth)	Position(s) Held with Fund	Term of Office and Length of Time Served (or Year Service Began)	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director	Other Directorships Held by Director

Instructions

1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Fund, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act [15 U.S.C. 78l] or subject to the requirements of section 15(d) of the Securities Exchange Act [15 U.S.C. 78o(d)] or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (a)(1) of this Item 17, except for any director who is not an interested person of the Fund, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

Instruction

When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction

Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(b) *Leadership Structure and Board of Directors.*

(1) Briefly describe the leadership structure of the Fund's board, including the responsibilities of the board of directors with respect to the Fund's management and whether the chairman of the board is an interested person of the Fund. If the chairman of the board is an interested person of the Fund, disclose whether the Fund has a lead independent director and what specific role the lead independent director plays in the leadership of the Fund. This disclosure should indicate why the Fund has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Fund. In addition, disclose the extent of the board's role in the risk oversight of the Fund, such as how the board administers its oversight function and the effect that this has on the board's leadership structure.

(2) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(3) Positions Held by Directors and Their Immediate Family Members

(i) Unless disclosed in the table required by paragraph (a)(1) of this Item 17, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years with:

(A) The Fund;

(B) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) [15 U.S.C. 80a–3(c)(1) and (c)(7)], having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(C) An investment adviser, principal underwriter, or affiliated person of the Fund; or

(D) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

(ii) Unless disclosed in the table required by paragraph (a)(1) of this Item 17 or in response to paragraph (b)(3) of this Item 17, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act [15 U.S.C. 78l] or subject to the requirements of section 15(d) of the Securities Exchange Act [15 U.S.C. 78o(d)] or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships were held.

Instruction. When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(4) For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Fund; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Fund.

(1)	(2)	(3)
Name of Director	Dollar Range of Equity Securities in the Fund	Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies

Instructions

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act [17 CFR 240.16a–1(a)(2)].

3. If the SAI covers more than one Fund or Series, disclose in column (2) the dollar range of equity securities beneficially owned by a director in each Fund or Series overseen by the director.

4. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: None, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

(5) For each director who is not an interested person of the Fund, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director	Company	Title of Class	Value of Securities	Percent of Class

Instructions

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act [17 CFR 240.13d–3 or 240.16a–1(a)(2)].

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(6) Unless disclosed in response to paragraph (b)(5) of this Item 17, describe any direct or indirect interest, the value of which exceeds $120,000, of each director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years, in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instructions

1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $120,000.

(7) Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Fund, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $120,000 and to which any of the following persons was a party:

(i) The Fund;

(ii) An officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) [15 U.S.C. 80a–3(c)(1) and (c)(7)], having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) [15 U.S.C. 80a–3(c)(1) and (c)(7)], having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(v) An investment adviser or principal underwriter of the Fund;

(vi) An officer of an investment adviser or principal underwriter of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instructions

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph (b)(7) of this Item 17 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(7)(i)

through (b)(7)(viii) of this Item 17, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the Class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 unless the director is accorded special treatment.

(8) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $120,000, of any director who is not an interested person of the Fund, or immediate family member of the director, that existed at any time during the two most recently completed calendar years with any of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17;

(ii) Provision of legal services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(8)(i) through (b)(8)(iii) of this Item 17.

Instructions

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $120,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph (b)(8)(i) of this Item 17, the following may be excluded:

A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 unless the director is accorded special treatment.

(9) If an officer of an investment adviser or principal underwriter of the Fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Fund who is not an interested person of the Fund, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph (b)(9)(ii) of this Item 17 holds or held office and the office held; and

(iv) The director of the Fund or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(10) For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Fund at the time that the disclosure is made, in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

(c) *Compensation.* For all directors of the Fund and for all members of any advisory board who receive compensation from the Fund, and for each of the three highest paid officers or any affiliated person of the Fund who received aggregate compensation from the Fund for the most recently completed fiscal year exceeding $60,000 (''Compensated Persons''):

(1) Provide the information required by the following table:

COMPENSATION TABLE

(1)	(2)	(3)	(4)	(5)
Name of Person, Position	Aggregate Compensation From Fund	Pension or Retirement Benefits Accrued As Part of Funds Expenses	Estimated Annual Benefits Upon Retirement	Total Compensation From Fund and Fund Complex Paid to Directors

Instructions

1. For column (1), indicate, as necessary, the capacity in which the remuneration is received. For Compensated Persons who are directors of the Fund, compensation is amounts received for service as a director.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)] or otherwise for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement, other than fee arrangements disclosed in paragraph (c)(1), under which the Compensated Persons are or may be compensated for services provided, including amounts paid, if any, to the compensated Person under these arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payment under the plan, and whether the payment of benefits is secured or funded by the Fund.

(d) *Sales Loads.* Disclose any arrangements that result in breakpoints in, or elimination of, purchase charges or exit charges for directors and other affiliated persons of the Fund. Identify each class of individuals and transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested of the Fund's shares. Explain, as applicable, the reasons for the difference in the price at which securities are offered generally to the public, and the prices at which securities are offered to directors and other affiliated persons of the Fund.

(e) *Codes of Ethics.* Provide a brief statement disclosing whether the Fund and its investment adviser and principal underwriter have adopted codes of ethics under rule 17j–1 of the Investment Company Act [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Fund.

Instruction: A Fund that is not required to adopt a code of ethics under rule 17j–1 of the Investment Company Act is not required to respond to this item

(f) *Proxy Voting Policies.* Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free telephone number; or on or through the Fund's website at a specified address; or both; and (2) on the Commission's website at *http://www.sec.gov*.

Instructions

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Fund discloses that the Fund's proxy voting record is available on or through its website, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N–PX must remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1–4 [17 CFR 270.30b1–4] and discloses that the Fund's proxy voting record is available on or through its website.

Item 18. Control Persons and Principal Holders of Securities

Provide the following information as of a specified date no more than 30 days prior to the date of filing the registration statement or an amendment.

(a) *Control Persons.* State the name and address of each person who controls the Fund and explain the effect of that control on the voting rights of other security holders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, give the jurisdiction under the laws of which it is organized. List all parents of the control person.

Instruction. For purposes of this paragraph, ''control'' means (i) the beneficial ownership, either directly or through one or more controlled companies, of more than 25% of the voting securities of a company; (ii) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (iii) an adjudication under section 2(a)(9), which has become final, that control exists.

(b) *Principal Holders.* State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own beneficially 5% or more of any Class of the Fund's outstanding equity securities.

Instructions

1. Calculate the percentages based on the amount of securities outstanding.

2. If securities are being registered under or in connection with a plan of acquisition, reorganization, readjustment or succession, indicate, as far as practicable, the ownership that would result from consummation of the plan based on present holdings and commitments.

3. Indicate whether the securities are owned of record, beneficially, or both. Show the respective percentage owned in each manner.

(c) *Management Ownership.* State the percentage of the Fund's equity securities owned by all officers, directors, and members of any advisory board of the Fund as a group. If the amount owned by directors and officers as a group is less than 1% of the Class, provide a statement to that effect.

Item 19. Investment Advisory and Other Services

(a) *Investment Advisers.* Disclose the following information with respect to each investment adviser:

(1) The name of any person who controls the adviser, the basis of the person's control, and the general nature of the person's business. Also disclose, if material, the business history of any organization that controls the adviser.

(2) The name of any affiliated person of the Fund who also is an affiliated person of the adviser, and a list of all capacities in which the person is affiliated with the Fund and with the adviser.

Instruction. If an affiliated person of the Fund alone or together with others controls the adviser, state that fact. It is not necessary to provide the amount or percentage of the outstanding voting securities owned by the controlling person.

(3) The method of calculating the advisory fee payable by the Fund including:

(i) The total dollar amounts that the Fund paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years;

(ii) If applicable, any credits that reduced the advisory fee for any of the last three fiscal years; and

(iii) Any expense limitation provision.

Instructions

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to a standard, describe the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees that the adviser would earn at various levels of performance as long as the examples include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State separately each type of credit or offset.

3. When a Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.

4. For a Registrant with more than one Series, or a Multiple Class Fund, describe the methods of allocation and payment of advisory fees for each Series or Class.

(b) *Principal Underwriter.* State the name and principal business address of any principal underwriter for the Fund. Disclose, if applicable, that an affiliated person of the Fund is an affiliated person of the principal underwriter and identify the affiliated person.

(c) *Services Provided by Each Investment Adviser and Fund Expenses Paid by Third Parties.*

(1) Describe all services performed for or on behalf of the Fund supplied or paid for wholly or in substantial part by each investment adviser.

(2) Describe all fees, expenses, and costs of the Fund that are to be paid by persons other than an investment adviser or the Fund, and identify those persons.

(d) *Service Agreements.* Summarize the substantive provisions of any other management-related service contract that may be of interest to a purchaser of the Fund's shares, under which services are provided to the Fund, indicating the parties to the contract, and the total dollars paid and by whom for the past three years.

Instructions

1. The term ''management-related service contract'' includes any contract with the Fund to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following:

(a) Any contract with the Fund to provide investment advice;

(b) Any agreement with the Fund to perform as custodian, transfer agent, or dividend-paying agent for the Fund; and

(c) Any contract with the Fund for outside legal or auditing services, or contract for personal employment entered into with the Fund in the ordinary course of business.

2. No information need be given in response to this paragraph with respect to the service of mailing proxies or periodic reports to the Fund's shareholders.

3. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;

(b) The direct or indirect relationships, if any, of the person with the Fund, an investment adviser of the Fund or the Fund's principal underwriter; and

(c) The nature of the services provided, and the basis of the compensation paid for the services for the last three fiscal years.

(e) *Other Investment Advice.* If any person (other than a director, officer, member of an advisory board, employee, or investment adviser of the Fund), through any understanding, whether formal or informal, regularly advises the Fund or the Fund's investment adviser with respect to the Fund's investing in, purchasing, or selling securities or other property, or has the authority to determine what securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration, provide the following information:

(1) The person's name;

(2) A description of the nature of the arrangement, and the advice or information provided; and

(3) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's portfolio securities) paid for the advice or information, and a statement as to how the remuneration was paid and by whom it was paid for the last three fiscal years.

Instruction. Do not include information for the following:

1. Persons who advised the investment adviser or the Fund solely through uniform publications distributed to subscribers;

2. Persons who provided the investment adviser or the Fund with only statistical and other factual information, advice about economic factors and trends, or advice as to occasional transactions in specific securities, but without generally advising about the purchase or sale of securities by the Fund;

3. A company that is excluded from the definition of ''investment adviser'' of an investment company under section 2(a)(20)(iii) [15 U.S.C. 80a–2(a)(20)(iii)];

4. Any person the character and amount of whose compensation for these services must be approved by a court; or

5. Other persons as the Commission has by rule or order determined not to be an ''investment adviser'' of an investment company.

(f) *Dealer Reallowances.* Disclose any purchase charge reallowed to dealers as a percentage of the offering price of the Fund's shares.

(g) *Rule 12b–1 Plans.* If the Fund has adopted a plan under rule 12b–1, describe the material aspects of the plan, and any agreements relating to the implementation of the plan, including:

(1) A list of the principal types of activities for which payments are or will be made, including the dollar amount and the manner in which amounts paid by the Fund under the plan during the last fiscal year were spent on:

(i) Advertising;

(ii) Printing and mailing of prospectuses to other than current shareholders;

(iii) Compensation to underwriters;

(iv) Compensation to broker-dealers;

(v) Compensation to sales personnel;

(vi) Interest, carrying, or other financing charges; and

(vii) Other (specify).

(2) The relationship between amounts paid to the distributor and the expenses that it incurs (*e.g.,* whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).

(3) The amount of any unreimbursed expenses incurred under the plan in a previous year and carried over to future years, in dollars and as a percentage of the Fund's net assets on the last day of the previous year.

(4) Whether the Fund participates in any joint distribution activities with another Series or investment company. If so, disclose, if applicable, that fees paid under the Fund's rule 12b–1 plan may be used to finance the distribution of the shares of another Series or investment company, and state the method of allocating distribution costs (*e.g.,* relative net asset size, number of shareholder accounts).

(5) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) Any interested person of the Fund; or

(ii) Any director of the Fund who is not an interested person of the Fund.

(6) The anticipated benefits to the Fund that may result from the plan.

(h) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (d), identify any person who provides significant administrative or business affairs management services for the Fund (*e.g.,* an ''administrator''), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Fund's transfer agent and the dividend-paying agent.

(3) State the name and principal business address of the Fund's custodian and independent public accountant and describe generally the services performed by each. If the Fund's portfolio securities are held by a person other than a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person or persons.

(4) If an affiliated person of the Fund, or an affiliated person of the affiliated person, acts as custodian, transfer agent, or dividend-paying agent for the Fund, describe the services that the person performs and the basis for remuneration.

(i) *Securities Lending.*

(1) Provide the following dollar amounts of income and fees/compensation related to the securities lending activities of each Series during its most recent fiscal year:

(i) Gross income from securities lending activities, including income from cash collateral reinvestment;

(ii) All fees and/or compensation for each of the following securities lending activities and related services: Any share of revenue generated by the securities lending program paid to the securities lending agent(s) (''revenue split''); fees paid for cash collateral management services (including fees deducted from a pooled cash collateral reinvestment vehicle) that are not included in the revenue split; administrative fees that are not included in the revenue split; fees for indemnification that are not included in the revenue split; rebates paid to borrowers; and any other fees relating to the securities lending program that are not included in the revenue split, including a description of those other fees;

(iii) The aggregate fees/compensation disclosed pursuant to paragraph (ii); and

(iv) Net income from securities lending activities (*i.e.,* the dollar amount in paragraph (i) minus the dollar amount in paragraph (iii)).

Instruction. If a fee for a service is included in the revenue split, state that the fee is ''included in the revenue split.''

(2) Describe the services provided to the Series by the securities lending agent in the Series' most recent fiscal year.

Item 20. Portfolio Managers

(a) *Other Accounts Managed.* If a Portfolio Manager required to be identified in response to Item 5(b) is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

(1) The Portfolio Manager's name;

(2) The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(A) Registered investment companies;

(B) Other pooled investment vehicles; and

(C) Other accounts.

(3) For each of the categories in paragraph (a)(2) of this Item, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

(4) A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the Fund's investments, on the one hand, and the investments of the other accounts included in response to paragraph (a)(2) of this Item, on the other. This description would include,

for example, material conflicts between the investment strategy of the Fund and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the Fund and other accounts managed by the Portfolio Manager.

Instructions

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, include the account in responding to paragraph (a) of this Item.

(b) *Compensation.* Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to Item 5(b). For each type of compensation (*e.g.,* salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on Fund pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the Fund's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

Instructions

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement, relocation, and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Fund, the Fund's investment adviser, or any other source with respect to management of the Fund and any other accounts included in the response to paragraph (a)(2) of this Item. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Fund and other accounts, *e.g.,* if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Fund, this must be disclosed.

(c) *Ownership of Securities.* For each Portfolio Manager required to be identified in response to Item 5(b), state the dollar range of equity securities in the Fund beneficially owned by the Portfolio Manager using the following ranges: None, $1–$10,000, $10,001–$50,000, $50,001–$ 100,000, $100,001–$500,000, $500,001–$1,000,000, or over $1,000,000.

Instructions

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Specify the valuation date.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act [17 CFR 240.16a–1(a)(2)].

Item 21. Brokerage Allocation and Other Practices

(a) *Brokerage Transactions.* Describe how transactions in portfolio securities are affected, including a general statement about brokerage commissions, markups, and markdowns on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during its three most recent fiscal years. If, during either of the two years preceding the Fund's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the Fund differed materially from the amount paid during the most recent fiscal year, state the reason(s) for the difference(s).

(b) *Commissions.*

(1) Identify, disclose the relationship, and state the aggregate dollar amount of brokerage commissions paid by the Fund during its three most recent fiscal years to any broker:

(i) That is an affiliated person of the Fund or an affiliated person of that person; or

(ii) An affiliated person of which is an affiliated person of the Fund, its investment adviser, or principal underwriter.

(2) For each broker identified in response to paragraph (b)(1), state:

(i) The percentage of the Fund's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and

(ii) The percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

(3) State the reasons for any material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, a broker disclosed in response to paragraph (b)(1).

(c) *Brokerage Selection.* Describe how the Fund will select brokers to effect securities transactions for the Fund and how the Fund will evaluate the overall reasonableness of brokerage commissions paid, including the factors that the Fund will consider in making these determinations.

Instructions

1. If the Fund will consider the receipt of products or services other than brokerage or research services in selecting brokers, specify those products and services.

2. If the Fund will consider the receipt of research services in selecting brokers, identify the nature of those research services.

3. State whether persons acting on the Fund's behalf are authorized to pay a broker a higher brokerage commission than another broker might have charged for the same transaction in recognition of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, explain that research services provided by brokers through

which the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all of these services may be used by the adviser in connection with the Fund. If other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, explain those policies and practices.

(d) *Directed Brokerage.* If, during the last fiscal year, the Fund or its investment adviser, through an agreement or understanding with a broker, or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

(e) *Regular Broker-Dealers.* If the Fund has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b–1 [17 CFR 270.10b–1] or of their parents, identify those brokers or dealers and state the value of the Fund's aggregate holdings of the securities of each issuer as of the close of the Fund's most recent fiscal year.

Instruction. The Fund need only disclose information about an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year.

Item 22. Capital Stock and Other Securities

(a) *Capital Stock.* For each Class of capital stock of the Fund, provide:

(1) The title of each Class; and

(2) A full discussion of the following provisions or characteristics of each Class, if applicable:

(i) Restrictions on the right freely to retain or dispose of the Fund's shares;

(ii) Material obligations or potential liabilities associated with owning the Fund's shares (not including investment risks);

(iii) Dividend rights;

(iv) Voting rights (including whether the rights of shareholders can be modified by other than a majority vote);

(v) Liquidation rights;

(vi) Preemptive rights;

(vii) Conversion rights;

(viii) Redemption provisions;

(ix) Sinking fund provisions; and

(x) Liability to further calls or to assessment by the Fund.

Instructions

1. If any Class described in response to this paragraph possesses cumulative voting rights, disclose the existence of those rights and explain the operation of cumulative voting.

2. If the rights evidenced by any Class described in response to this paragraph are materially limited or qualified by the rights of any other Class, explain those limitations or qualifications.

(b) *Other Securities.* Describe the rights of any authorized securities of the Fund other than capital stock. If the securities are subscription warrants or rights, state the title and amount of securities called for, and the period during which and the prices at which the warrants or rights are exercisable.

Item 23. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* To the extent that the prospectus does not do so, describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of shareholders.

(b) *Fund Reorganizations.* Disclose any arrangements that result in breakpoints in, or elimination of, purchase charges or exit charges in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization. Identify each class of individuals to which the arrangements apply and state each different purchase charge or exit charge available as a percentage of both the offering price and the net amount invested.

(c) *Offering Price.* Describe the method followed or to be followed by the Fund in determining the total offering price at which its shares may be offered to the public and the method(s) used to value the Fund's assets.

Instructions

1. Describe the valuation procedure(s) that the Fund uses in determining the net asset value and public offering price of its shares.

2. Explain how the excess of the offering price over the net amount invested is distributed among the Fund's principal underwriters or others and the basis for determining the total offering price.

3. Explain the reasons for any difference in the price at which securities are offered generally to the public, and the prices at which securities are offered for any class of transactions or to any class of individuals.

4. Unless provided as a continuation of the balance sheet in response to Item 27, include a specimen price-make-up sheet showing how the Fund calculates the total offering price per unit. Base the calculation on the value of the Fund's portfolio securities and other assets and its outstanding securities as of the date of the balance sheet filed by the Fund.

(d) *Redemption in Kind.* If the Fund has received an order of exemption from section 18(f) or has filed a notice of election under rule 18f–1 that has not been withdrawn, describe the nature, extent, and effect of the exemptive relief or notice.

(e) *Arrangements Permitting Frequent Purchases and Redemptions of Fund Shares.* Describe any arrangements with any person to permit frequent purchases and redemptions of Fund shares, including the identity of the persons permitted to engage in frequent purchases and redemptions pursuant to such arrangements, and any compensation or other consideration received by the Fund, its investment adviser, or any other party pursuant to such arrangements.

Instructions

1. The consideration required to be disclosed by Item 23(e) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

2. If the Fund has an arrangement to permit frequent purchases and redemptions by a group of individuals, such as the participants in a defined contribution plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], the Fund may identify the group rather than identifying each individual group member.

Item 24. Taxation of the Fund

(a) If applicable, state that the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code. Disclose the consequences to the Fund if it does not qualify under Subchapter M.

(b) Disclose any special or unusual tax aspects of the Fund, such as taxation resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Fund may be entitled.

Item 25. Underwriters

(a) *Distribution of Securities.* For each principal underwriter distributing securities of the Fund, state:

(1) The nature of the obligation to distribute the Fund's securities;

(2) Whether the offering is continuous; and

(3) The aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the Fund's last three fiscal years.

(b) *Compensation.* Provide the information required by the following table with respect to all commissions and other compensation received by each principal underwriter, who is an affiliated person of the Fund or an affiliated person of that affiliated person, directly or indirectly, from the Fund during the Fund's most recent fiscal year:

(1)	(2)	(3)	(4)	(5)
Name of Principal Underwriter	Net Underwriting Discounts and Commissions	Compensation on Redemptions and Repurchases	Brokerage Commissions	Other Compensation

Instruction

Disclose in a footnote to the table the type of services rendered in consideration for the compensation listed under column (5).

(c) *Other Payments.* With respect to any payments made by the Fund to an underwriter or dealer in the Fund's shares during the Fund's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Fund. Do not include information about:

(1) Payments made through deduction from the offering price at the time of sale of securities issued by the Fund;

(2) Payments representing the purchase price of portfolio securities acquired by the Fund;

(3) Commissions on any purchase or sale of portfolio securities by the Fund; or

(4) Payments for investment advisory services under an investment advisory contract.

Instructions

1. Do not include in response to this paragraph information provided in response to paragraph (b) or with respect to service fees under the Instruction to Item 12(b)(2). Do not include any payment for a service excluded by Instructions 1 and 2 to Item 19(d) or by Instruction 2 to Item 34.

2. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

Item 26. Calculation of Performance Data

(a) *Money Market Funds.* Yield quotation(s) for a Money Market Fund included in the prospectus should be calculated according to paragraphs (a)(1)–(4).

(1) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(2) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

(3) *Tax Equivalent Current Yield Quotation.* Calculate the Fund's tax equivalent current yield by dividing that portion of the Fund's yield (as calculated under paragraph (a)(1)) that is tax- exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Tax Equivalent Effective Yield Quotation.* Calculate the Fund's tax equivalent effective yield by dividing that portion of the Fund's effective yield (as calculated under paragraph (a)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's effective yield that is not tax-exempt.

Instructions

1. When calculating yield or effective yield quotations, the calculation of net change in account value must include:

(a) The value of additional shares purchased with dividends from the original share and dividends declared on both the original shares and additional shares; and

(b) All fees, other than non-recurring account or sales charges, that are imposed on all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

2. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield. Exclude income other than investment income.

3. Disclose the amount or specific rate of any nonrecurring account or sales charges not included in the calculation of the yield.

4. If the Fund holds itself out as distributing income that is exempt from Federal, state, or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, using the maximum rate for individual income taxation. For example, if the Fund holds itself out as distributing income exempt from Federal taxation and the income taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Funds.* Performance information included in the prospectus should be calculated according to paragraphs (b)(1)–(6).

(1) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1 + T)^n = ERV$

Where:

P = a hypothetical initial payment of $1,000.
T = average annual total return.
n = number of years.
ERV = ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10- year periods (or fractional portion).

Instructions

1. Assume the maximum purchase charge (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund are reinvested at the price stated in the prospectus (including any purchase charge imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed an exit charge, assume the maximum exit charge is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

5. State the average annual total return quotation to the nearest hundredth of one percent.

6. Total return information in the prospectus need only be current to the end of the Fund's most recent fiscal year.

(2) *Average Annual Total Return (After Taxes on Distributions) Quotation.* For the 1-, 5-, and 10-year periods ended on the-date-of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return (after taxes on distributions) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending value, according to the following formula:

$P(1 + T)^n = ATV_D$

Where:

P = a hypothetical initial payment of $1,000.
T = average annual total return.
n = number of years.
ATV_D = ending value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion), after taxes on fund distributions but not after taxes on redemption.

Instructions

1. Assume the maximum purchase charge (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any purchase charge imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rates specified in Instruction 4 to each component of the distributions on the reinvestment date (*e.g.,* ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the Federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portion of any distribution that would not result in Federal income tax on an individual, *e.g.,* tax-exempt interest or non-taxable returns of capital. The effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with Federal tax law.

4. Calculate the taxes due using the highest individual marginal Federal income tax rates in effect on the reinvestment date. The rates used should correspond to the tax character of each component of the distributions (*e.g.,* ordinary income rate for ordinary income distributions, short-term capital gain rate for short-term capital gain distributions, long-term capital gain rate for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than Federal tax liabilities (*e.g.,* state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the Federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed an exit charge, assume the maximum exit charge is deducted at the times, in the amounts, and under the terms disclosed in the prospectus. Assume that the redemption has no tax consequences.

7. State the average annual total return (after taxes on distributions) quotation to the nearest hundredth of one percent.

(3) *Average Annual Total Return (After Taxes on Distributions and Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return (after taxes on distributions and redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending value, according to the following formula:

$P(1 + T)^n = ATV_{DR}$

Where:

P = a hypothetical initial payment of $1,000.
T = average annual total return (after taxes on distributions and redemption).
n = number of years.
ATV_{DR} = ending value of a hypothetical $1,000 payment made at the beginning of

the 1-, 5-, or 10-year periods (or fractional portion), after taxes on fund distribution and redemption.

Instructions

1. Assume the maximum purchase charge (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any purchase charge imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rates specified in Instruction 4 to each component of the distributions on the reinvestment date (*e.g.,* ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the Federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portion of any distribution that would not result in Federal income tax on an individual, *e.g.,* tax-exempt interest or non-taxable returns of capital. The effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with Federal tax law.

4. Calculate the taxes due using the highest individual marginal Federal income tax rates in effect on the reinvestment date. The rates used should correspond to the tax character of each component of the distributions (*e.g.,* ordinary income rate for ordinary income distributions, short-term capital gain rate for short-term capital gain distributions, long-term capital gain rate for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than Federal tax liabilities (*e.g.,* state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the Federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed an exit charge, assume the maximum exit charge is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

7. Determine the ending value by subtracting capital gains taxes resulting from the redemption and adding the tax benefit from capital losses resulting from the redemption.

(a) Calculate the capital gain or loss upon redemption by subtracting the tax basis from the redemption proceeds (after deducting any nonrecurring charges as specified by Instruction 6).

(b) The Fund should separately track the basis of shares acquired through the $1,000 initial investment and each subsequent purchase through reinvested distributions. In determining the basis for a reinvested distribution, include the distribution net of taxes assumed paid from the distribution, but not net of any purchase charges imposed upon reinvestment. Tax basis should be adjusted for any distributions representing returns of capital and any other tax basis adjustments that would apply to an individual taxpayer, as permitted by applicable Federal tax law.

(c) The amount and character (*e.g.,* short-term or long-term) of capital gain or loss upon redemption should be separately determined for shares acquired through the $1,000 initial investment and each subsequent purchase through reinvested distributions. The Fund should not assume that shares acquired through reinvestment of distributions have the same holding period as the initial $1,000 investment. The tax character should be determined by the length of the measurement period in the case of the initial $1,000 investment and the length of the period between reinvestment and the end of the measurement period in the case of reinvested distributions.

(d) Calculate the capital gains taxes (or the benefit resulting from tax losses) using the highest Federal individual capital gains tax rate for gains of the appropriate character in effect on the redemption date and in accordance with Federal tax law applicable on the redemption date. For example, applicable Federal tax law should be used to determine whether and how gains and losses from the sale of shares with different holding periods should be netted, as well as the tax character (*e.g.,* short-term or long-term) of any resulting gains or losses. Assume that a shareholder has sufficient capital gains of the same character from other investments to offset any capital losses from the redemption so that the taxpayer may deduct the capital losses in full.

8. State the average annual total return (after taxes on distributions and redemption) quotation to the nearest hundredth of one percent.

(4) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by dividing the net investment income per share earned during the period by the maximum offering price per share on the last day of the period, according to the following formula:

$$YIELD = 2\,[(\frac{a-b}{cd} + 1)^6 - 1]$$

Where:

a = dividends and interest earned during the period.

b = expenses accrued for the period (net of reimbursements).

c = the average daily number of shares outstanding during the period that were entitled to receive dividends.

d = the maximum offering price per share on the last day of the period.

Instructions

1. To calculate interest earned on debt obligations for purposes of ''a'' above:

(a) Calculate the yield to maturity of each obligation held by the Fund based on the market value of the obligation (including actual accrued interest) at the close of business on the last business day of each month or, with respect to obligations purchased during the month, the purchase price (plus actual accrued interest). The maturity of an obligation with a call provision(s) is the next call date on which the obligation reasonably may be expected to be called, or if none, the maturity date.

(b) Divide the yield to maturity by 360 and multiply the quotient by the market value of the obligation (including actual accrued interest) to determine the interest income on the obligation for each day of the subsequent month that the obligation is in the portfolio. Assume that each month has 30 days.

(c) Total the interest earned on all debt obligations and all dividends accrued on all equity securities during the 30-day (or one month) period. Although the period for calculating interest earned is based on calendar months, a 30-day yield may be calculated by aggregating the daily interest on the portfolio from portions of 2 months. In addition, a Fund may recalculate daily interest income on the portfolio more than once a month.

(d) For a tax-exempt obligation issued without original issue discount and having a current market discount, use the coupon rate of interest in lieu of the yield to maturity. For a tax-exempt obligation with original issue discount in which the discount is based on the current market value and exceeds the then-remaining portion of original issue discount (market discount), base the yield to maturity on the imputed rate of the original issue discount calculation. For a tax-exempt obligation with original issue discount, where the discount based on the current market value is less than the then-remaining portion of original issue discount (market premium), base the yield to maturity on the market value.

2. For discount and premium on mortgage or other receivables-backed obligations that are expected to be subject to monthly payments of principal and interest (''paydowns''):

(a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period; and

(b) The Fund may elect:

(i) To amortize the discount and premium on the remaining securities, based on the cost of the securities, to the weighted average maturity date, if the information is available, or to the remaining term of the securities, if the weighted average maturity date is not available; or

(ii) Not to amortize the discount or premium on the remaining securities.

3. Solely for the purpose of calculating yield, recognize dividend income by accruing 1/360 of the stated dividend rate of the security each day that the security is in the portfolio.

4. Do not use equalization accounting in calculating yield.

5. Include expenses accrued under a plan adopted under rule 12b–1 in the expenses accrued for the period. Reimbursement accrued under the plan may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

6. Include in the expenses accrued for the period all recurring fees that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

7. If a broker-dealer or an affiliate of the broker-dealer (as defined in rule 1–02(b) of Regulation S–X [17 CFR 210.1–02(b)]) has, in connection with directing the Fund's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Fund (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Fund had paid for the services directly in an arm's length transaction.

8. Undeclared earned income, calculated in accordance with generally accepted accounting principles, may be subtracted from the maximum offering price. Undeclared earned income is the net investment income that, at the end of the base period, has not been declared as a dividend, but is reasonably expected to be and is declared as a dividend shortly thereafter.

9. Disclose the amount or specific rate of any nonrecurring account or sales charges.

10. If, in connection with the sale of the Fund's shares, an exit charge payable in installments is imposed, the ''maximum public offering price'' includes the aggregate amount of the installments (''installment charge amount'').

(5) *Tax Equivalent Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's tax equivalent yield by dividing that portion of the Fund's yield (as calculated under paragraph (b)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(6) *Non-Standardized Performance Quotation.* A Fund may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

Item 27. Financial Statements

(a) Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S–X. The specimen price- make-up sheet required by Instruction 4 to Item 23(c) may be provided as a continuation of the balance sheet specified by Regulation S–X.

Instructions

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S–X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3–18 of Regulation S–X [17 CFR 210.3–18], any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

Item 27A. Annual and Semi-Annual Shareholder Report

(a) *Annual and Semi-Annual Reports.* Every annual shareholder report required by rule 30e–1 must contain the information required by paragraphs (b) through (i) of this Item and may contain the information permitted by paragraph (j) of this Item. Every semi-annual shareholder report required by rule 30e–1 must contain the information required by paragraphs (b), (c), (e), (f), (h), and (i) of this Item and may contain other information permitted or required in annual shareholder reports.

Instructions

1. For annual shareholder reports, disclose the information required or permitted by paragraphs (b) through (j) of this Item in the same order as these items appear below. In an annual shareholder report that appears on a website or is otherwise provided electronically, organize the information in a manner that gives each item similar prominence as that provided by the order prescribed in this Instruction.

2. For semi-annual shareholder reports, disclose the information that must appear in the report pursuant to paragraph (a) of this Item in the same order as these items appear below. Any other information permitted in annual shareholder reports, which the Fund chooses to include in its semi-annual shareholder report pursuant to this Item, must also be included in the same order as these items appear below. For example, if a Fund chooses to include the information described in paragraph (g) in its semi-annual shareholder report, the information in the Fund's semi-annual report must appear in the following order: Paragraphs (b), (c), (e),

(f), (g), (h), and (i). In a semi-annual shareholder report that appears on a website or electronically, organize the information in a manner that gives each item similar prominence as that provided by the order prescribed in this Instruction.

3. Do not include information in an annual or semi-annual shareholder report other than disclosure that Item 27A and its Instructions require or permit in annual or semi-annual shareholder reports, as applicable, or as provided by rule 8b–20 under the Investment Company Act [17 CFR 270.8b–20].

4. Prepare a separate annual or semi-annual shareholder report for each Series of a Fund.

5. A Fund may not incorporate by reference any information into its annual or semi-annual shareholder report.

6. Use plain English in an annual or semi-annual shareholder report, taking into consideration Fund shareholders' level of financial experience. Include white space and use other design features to make the annual or semi-annual shareholder report easy to read. The annual or semi-annual shareholder report should be concise and direct. Specifically: (i) Use short sentences and paragraphs; (ii) use definite, concrete, everyday words; (iii) use active voice; (iv) avoid legal jargon or highly technical business terms unless clearly explained; (v) avoid multiple negatives; (vi) use ''you,'' ''we,'' etc. to speak directly to shareholders; and (vii) use descriptive headers and sub-headers. Do not use vague or imprecise ''boilerplate.''

7. If a required disclosure is inapplicable, a Fund may omit the disclosure from an annual or semi-annual shareholder report. A Fund may modify a required legend or narrative information if the modified language contains comparable information.

8. Funds should use design techniques that promote effective communication. Funds are encouraged to use, as appropriate, question-and-answer formats, charts, graphs, tables, bullet lists, and other graphics or text features to respond to the required disclosures.

For an annual or semi-annual shareholder report that appears on a website or is otherwise provided electronically, funds are encouraged to use online tools (for example, tools that populate discrete sets of information based on investor selections—*e.g.,* Class-specific information, performance information over different time horizons, or the dollar value used to illustrate the Fund's expenses or to populate the performance line graph, as applicable). The default presentation must use the value that the applicable form requirement prescribes. Funds also may include: (i) A means of facilitating electronic access to video or audio messages, or other forms of information (*e.g.,* hyperlink, website address, Quick Response Code (''QR code''), or other equivalent methods or technologies); (ii) mouse-over windows; (iii) pop-up boxes; (iv) chat functionality; (v) expense calculators; or (vi) other forms of electronic media, communications, or tools designed to enhance an investor's understanding of material in the annual or semi-annual shareholder report. Any information that is not included in the annual or semi-annual shareholder report filed on Form N–CSR shall have the same status, under the Federal securities laws, as any other website or electronic content that the Fund produces or disseminates.

9. In an annual or semi-annual shareholder report posted on a website or otherwise provided electronically, Funds must provide a means of facilitating access to any information that is referenced in the annual or semi-annual shareholder report if the information is available online, including, for example, hyperlinks to the Fund's prospectus and financial statements. In an annual or semi-annual shareholder report that is delivered in paper format, Funds may include website addresses, QR codes, or other means of facilitating access to such information. Funds must provide a link specific enough to lead investors directly to the particular information, rather than to the home page or section of the fund's website other than on which the information is posted. The link may be to a central site central site with prominent links to the referenced information.

10. Explanatory or supplemental information included in an annual or semi-annual shareholder report under Instruction 8 or 9 may not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included. When using interactive graphics or tools, Funds may include instructions on their use and interpretation.

11. Unless otherwise indicated, the reporting period for an annual shareholder report is the Fund's most recent fiscal year, and the reporting period for a semi-annual shareholder report is the Fund's most recent fiscal half-year.

12. The Fund's annual or semi-annual shareholder report must be given greater prominence than other materials that accompany the report, with the exception of other shareholder reports, summary prospectuses or statutory prospectuses (both as defined in rule 498 under the Securities Act [17 CFR 230.498]), or a notice of internet availability of proxy materials under rule 14a–6 under the Securities Exchange Act [17 CFR 240.14a–6].

13. In an annual or semi-annual shareholder report posted on a website or otherwise provided electronically, Funds may satisfy legibility requirements applicable to printed documents by presenting all required information in a format that promotes effective communication as described in Instruction 8. The body of every printed annual or semi-annual shareholder report and other tabular data included therein shall comply with the applicable legibility of prospectus requirements set forth in rule 420 under the Securities Act of 1933.

(b) *Cover Page or Beginning of Annual or Semi-Annual Shareholder Report.* Include on the cover page or at the beginning of the annual or semi-annual shareholder report:

(1) The Fund's name and the Class or Classes, if any, to which the annual or semi-annual shareholder report relates.

(2) The exchange ticker symbol of the Fund's shares or, if the annual or semi-annual shareholder report relates to one or more Classes of the Fund's shares, adjacent to each such Class, its exchange ticker symbol. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund's shares are traded.

(3) A statement identifying the document as an ''annual shareholder report'' or a ''semi-annual shareholder report,'' as applicable.

(4) The following statement:

This [annual or semi-annual] shareholder report contains important information about [the Fund] for the period of [beginning date] to [end date] [as well as certain changes to the Fund]. You can find additional information about the Fund at [______]. You can also request this information by contacting us at [______].

Instructions

1. A Fund may include graphics, logos, and other design or text features on the cover page or at the beginning of its annual or semi-annual shareholder report to help shareholders identify the materials as the Fund's annual or semi-annual shareholder report.

2. In the statement required under paragraph (b)(4), provide the toll-free telephone number and, as applicable, email address that shareholders can use to request additional information about

the Fund. Provide a website address where information about the Fund is available. The website address must be specific enough to lead shareholders directly to the materials that are required to be accessible under rule 30e–1, rather than to the home page or a section of the website other than on which the materials are posted. The website may be a central site with prominent links to the materials that must be accessible under rule 30e–1. In addition to the website address, a Fund may include other ways an investor can find or request additional information about the Fund (*e.g.,* QR code, mobile application). A Fund that discloses material fund changes under paragraph (g) of this Item 27A must include the bracketed language in the required statement referring to certain changes to the Fund.

(c) *Fund Expenses.*

In a table, provide the expenses of an ongoing $10,000 investment in the Fund during the reporting period. The table must show: (i) The beginning value of the account; (ii) total return during the period, before deducting expenses; (iii) expenses in dollars paid during the period; (iv) the ending value of the account based on net asset value return; (v) for ETFs only, the ending value of the account based on market value return; and (vi) expenses as a percent of an investor's investment in the Fund (*i.e.* expense ratio).

What were your Fund costs for the period?
(based on a hypothetical $10,000 investment)

[Fund or Class Name]	Beginning account value [beginning date]	Total return before costs paid*	**Costs paid †**	Ending account value [end date]	[For ETFs only] Ending account value [end date](based on market value return)	**Costs paid as a percentage of your investment†**
	$10,000	+ (plus) $[x]	**- (minus) $[x]**	= (equals) $[x]		**__%**

* Qualitatively describe other costs included in total return, if material to the fund.

† The costs paid during the period do not reflect certain costs paid outside the fund (such as purchase and exit costs charged by the shareholder's broker-dealer).

Instructions

1. General.

(a) Round all percentages in the table to the nearest hundredth of one percent and round all dollar figures in the table to the nearest dollar.

(b) Provide the amounts in each of the columns as a mathematical expression, as appropriate (*i.e.,* include +, − and = symbols). Costs paid during the period must be expressed as a negative amount. Total return, if negative during the period, must be expressed as a negative amount.

(c) Use text and/or table features to make the ''costs paid'' and ''costs paid as a percentage of your investment'' columns more noticeable and more prominent than the other columns of the table through, for example: Graphics, larger font size, different border width or column shading, or different colors or font styles.

(d) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund. In a footnote to the expense table, state that the expense table reflects the expenses of both the Feeder and Master Funds.

(e) If the report covers more than one Class of a Multiple Class Fund, provide a separate expense table, or a separate line item in the expense table, for each Class.

(f) In a footnote to the ''Total return before costs paid'' column, the Fund must qualitatively describe, in plain English under rule 421(d) under the Securities Act, other costs included in total return, if material to the fund. For example, if applicable, the Fund must explain that the total return includes fund investment transaction costs, securities lending costs, or acquired fund fees and expenses, which materially reduced total return.

(g) In a footnote to the ''Costs paid'' and the ''Costs paid as a percentage of your investment'' columns, the Fund must briefly explain, in plain English under rule 421(d) under the Securities Act, that the table does not reflect shareholder transaction costs associated with purchasing or selling Fund shares.

(h) If the Fund is an Exchange-Traded Fund:

(i) In addition to the ''Ending account value'' column (which, for an Exchange-Traded Fund, must be titled ''Ending account value (based on net asset value return)''), also provide the ''Ending account value (based on market value return)'' column in the expense table.

(ii) Modify the narrative explanation to state that investors may pay brokerage commissions on their purchases and sales of Exchange-Traded Fund shares, which are not reflected in the expense table; and

(iii) Exclude any fees charged for the purchase and redemption of the Fund's creation units.

(i) If the Fund's annual or semi-annual shareholder report covers a period of time that is less than the full reporting period of the annual or semi-annual report, the Fund must include a footnote to the table to briefly explain that expenses for the full reporting period would be higher.

(j) If the disclosed expenses include extraordinary expenses, the Fund may include a brief footnote to the ''Costs paid as a percentage of your investment'' column disclosing what actual costs would have been if extraordinary expenses were not included. ''Extraordinary expenses'' refers to expenses that are distinguished by their unusual nature and by the infrequency of their occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the Fund, taking into account the environment in which the Fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the Fund operates. The environment of a Fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of government regulation.

2. *Computation.*

(a) To determine ''Costs paid,'' multiply the figure in the ''Cost paid as a percentage of your investment'' column by the average account value over the period based on an investment of $10,000 at the beginning of the period.

(b) Assume reinvestment of all dividends and distributions.

(c) In the annual shareholder report, disclose the expense ratio in the ''Costs paid as a percentage of your investment'' column as it appears in the Fund's most recent audited financial statements or financial highlights. In the semi-annual shareholder report, the Fund's expense ratio in the ''Costs paid as a percentage of your investment column'' should be calculated in the manner required by Instruction 4(b) to Item 13(a) using the expenses for the Fund's most recent fiscal half-year. Express the expense ratio on an annualized basis.

(d) The figure reflected in the ''Total return before costs paid'' column should equal the figure in the ''Ending account value (based on net asset value return)'' column less the figure in the ''Beginning account value'' column less the figure in the ''Costs paid'' column.

(e) To calculate the Fund's ''Ending account value (based on net asset value return),'' multiply $10,000 by the Fund's net asset value return. In the annual shareholder report, use the Fund's net asset value return as it appears in the Fund's most recent audited financial statements or financial highlights. In the semi-annual report, the Fund's net asset value return should be calculated in the manner required by Instruction 3 to Item 13(a).

(f) For Exchange-Traded Funds only, calculate the Fund's ''Ending account value (based on market value return)'' by multiplying $10,000 by the Fund's market value return. In the semi-annual report, the Fund's market value return should be calculated in the manner required by Instruction 3 to Item 13(a). In the annual shareholder report, use the Fund's market value return as it appears in the Fund's most recent audited financial statements or financial highlights.

(d) *Management's Discussion of Fund Performance.* Disclose the following information unless the Fund is a Money Market Fund:

(1) Briefly summarize the key factors that materially affected the Fund's performance during the reporting period, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

Instruction

1. As appropriate, use graphics or text features, such as bullet lists or tables, to present the key factors. Do not include a lengthy, generic, or overly broad discussion of the factors that generally affected market performance during the reporting period.

(2) Line graph and table.

(i) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(ii) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the reporting period (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Separately provide the average annual total returns with and without sales charges, as applicable. Also provide the average annual total returns of an appropriate broad-based securities market index for the same periods.

(iii) Include a statement accompanying the graph and table to the effect that:

(A) The Fund's past performance is not a good predictor of the Fund's future performance. Use text features to make the statement noticeable and prominent through, for example: Graphics, larger font size, or different colors or font styles.

(B) The graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or redemption of fund shares.

Instructions

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the reporting period.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load.* Reflect any purchase charges (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.,* assume that the maximum purchase charge, and other charges deducted from payments, is deducted from the initial $10,000 investment). For a Fund whose shares are subject to a contingent exit charge, assume the deduction of the maximum exit charge (or other charges) that would apply for a complete redemption that received the price last calculated on the last business day of the reporting period. For any other exit charge, assume that the deduction is in the amount(s) and at the time(s) that the exit charge actually would have been deducted.

3. *Dividends and Distributions.* Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any purchase charge imposed upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a $10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: Divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Table Computation.* Compute average annual total returns in accordance with Item 26(b)(1). To calculate average annual total returns without sales charges, do not deduct sales charges, as applicable, as otherwise described in the instructions to Item 26(b)(1). For the Fund's 1-year annual total return without sales charges in an annual shareholder report, use the 1-year total return in the Fund's most recent audited financial highlights.

6. *Appropriate Broad-Based Securities Market Index.* For purposes of this Item, an ''appropriate broad-based securities market index'' is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. A ''broad-based index'' is an index that represents the overall applicable domestic or international equity or debt markets, as appropriate. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

7. *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.,* the Consumer Price Index), so long as the comparison is not misleading.

8. *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding reporting period, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

9. *Interim Periods.* The line graph may compare the ending values of interim periods (*e.g.,* monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

10. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

11. *New Funds.* A New Fund (as defined in Instruction 7 to Item 8A) is not required to include the information specified by this Item in its annual shareholder report, unless Form N–1A (or the Fund's annual Form N–CSR report) contains audited financial statements covering a period of at least 6 months.

12. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in ''control'' of the previous adviser under section 2(a)(9) [15 U.S.C. 80a–2(a)(9)];

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

13. *Multiple Class Funds.*

(a) Provide information about account values in the line graph under Item 27A(d)(2)(i) for at least one Class. The Fund can select which Class to include (*e.g.,* the oldest Class, the Class with the greatest net assets) if the Fund:

(i) Selects the Class with 10 or more years of annual returns if other Classes have fewer than 10 years of annual returns;

(ii) Selects the Class with the longest period of annual returns when the Classes all have fewer than 10 years of annual returns; and

(iii) If the Fund provides account values in the line graph for a Class that is different from the Class selected for the most immediately preceding annual shareholder report, briefly explain in a footnote to the line graph the reasons for selecting a different Class.

(b) Provide information about each Class's average annual total returns in the table under Item 27A(d)(2)(ii).

14. *Material Changes.* If a material change to the Fund has occurred during the period covered by the line graph and table, such as a change in investment adviser or a change to the Fund's investment strategies, the Fund may include a brief legend or footnote to describe the relevant change and when it occurred.

15. *Availability of Updated Performance Information.* If the Fund provides updated performance information on its website or through other widely accessible mechanisms, direct shareholders to where they can find this information.

(3) If the Fund has a policy or practice of maintaining a specified level of distributions to shareholders, disclose if the Fund was unable to meet the specified level of distribution during the reporting period. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

(4) For an Exchange-Traded Fund, provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (*i.e.,* premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii)–(iv) and (c)(1)(vi) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(ii)–(iv) and (c)(1)(vi)] under the Investment Company Act.

Instructions

1. Provide the information in tabular form.

2. Express the information as a percentage of the net asset value of the Exchange-Traded Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.

3. Adjacent to the table, provide a brief explanation that: Shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.

4. Include a statement that the data presented represents past performance and cannot be used to predict future results.

(e) *Fund Statistics.* Disclose the Fund's net assets, total number of portfolio holdings, and portfolio turnover rate as of the end of the reporting period. A Fund may provide additional statistics that the Fund believes would help shareholders better understand the Fund's activities and operations during the reporting period (*e.g.,* tracking error, maturity, duration, average credit quality, or yield).

Instructions

1. If the Fund provides a statistic that is otherwise described in this form, it must follow any associated instructions describing the calculation method for the relevant statistic.

2. As appropriate, use graphics or text features, such as bullet lists or tables, to present the fund statistics.

3. If the Fund provides a statistic in a shareholder report that is otherwise included in, or could be derived from, the Fund's financial statements or financial highlights, the fund must use or derive such statistic from the Fund's most recent financial statements or financial highlights.

4. A Fund may briefly describe the significance or limitations of any disclosed statistics in a parenthetical, footnote, or similar presentation.

5. A Fund may include additional statistics only if they are reasonably related to the Fund's investment strategy.

(f) *Graphical Representation of Holdings.* One or more tables, charts, or graphs depicting the portfolio holdings of the Fund, as of the end of the reporting period, by reasonably identifiable categories (*e.g.,* type of security, industry sector, geographic regions, credit quality, or maturity) showing the percentage of (i) net asset value, (ii) total investments, (iii) net exposure, or (iv) total exposure attributable to each. The categories and the basis of the presentation should be disclosed in a manner reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives. A fund that uses ''net exposure'' or ''total exposure'' as a basis for representing its holdings may also include a brief explanation of this presentation. If the Fund depicts portfolio holdings according to the credit quality, it should include a brief description of how the credit quality of the holdings were determined, and if credit ratings, as defined in section 3(a)(60) of the Securities Exchange Act [15 U.S.C. 78(c)(a)(60)], assigned by a credit rating agency, as defined in section 3(a)(61) of the Securities Exchange Act [15 U.S.C. 78(c)(a)(61)], are used, concisely explain how they were identified and selected. This description should be included near, or as part of, the graphical representation.

(g) *Material Fund Changes.* Briefly describe any material change, with respect to any of the following items, that has occurred since the beginning of the reporting period or that the Fund plans to make in connection with updating its prospectus under section 10(a)(3) of the Securities Act for the current fiscal year. The Fund also may describe other material changes that it would like to disclose to its shareholders.

(1) The Fund's name (as described in Item 1(a)(1));

(2) The Fund's investment objectives or goals (as described in Item 2);

(3) With respect to material increases, the Fund's ongoing annual fees, transaction fees, or maximum account fee (as described in Item 3);

(4) The Fund's principal investment strategies (as described in Item 4(a));

(5) The principal risks of investing in the Fund (as described in Item 4(b)(1));

(6) The Fund's investment adviser(s) (as described in Item 5(a)); and

(7) The Fund's portfolio manager(s) (as described in Item 5(b)).

Instructions

1. Provide a concise description of each material change that the fund describes as specified in this Item 27A(g). Provide enough detail to allow shareholders to understand each change and how each change may affect shareholders.

2. Include a legend to the effect of the following: ''This is a summary of certain changes [and planned changes] to the Fund since [date]. For more complete information, you may review the Fund's next prospectus, which we expect to be available by [date] at [____] or upon request at [____].'' Provide the toll-free telephone number and, as applicable, email address that shareholders can use to request copies of the Fund's prospectus. If the updated prospectus will be made available on a website, provide the address of the central site where a link to the prospectus will be available.

3. A Fund is not required to disclose a material change that occurred during the reporting period if the Fund already disclosed this change in its last annual shareholder report because, for example, the change occurred before the last annual shareholder report was transmitted to shareholders or the Fund planned to make the change in connection with updating its prospectus under section 10(a)(3) of the Securities Act at that time.

(h) *Changes in and Disagreements with Accountants.* If the Fund is required to disclose on Form N–CSR the information that Item 304(a)(1) of Regulation S–K [17 CFR 229.304] requires, provide:

(1) A statement of whether the former accountant resigned, declined to stand for re-election, or was dismissed and the date thereof; and

(2) A brief, plain English description of disagreements(s) with the former accountant during the Fund's two most recent fiscal years and any subsequent interim period that the Fund discloses on Form N–CSR.

(i) *Statement Regarding Liquidity Risk Management Program.* If the board of directors reviewed the Fund's liquidity risk management program pursuant to rule 22e–4(b)(2)(iii) of the Act [17 CFR 270.22e–4(b)(2)(iii)] during the Fund's most recent fiscal half-year, briefly summarize the: (i) Key factors or market events that materially affected the fund's liquidity risk during the reporting period; (ii) key features of the Fund's liquidity risk management program; and (iii) effectiveness of the Fund's liquidity risk management program over the past year.

Instructions

1. The disclosure responsive to this item should be tailored to the fund rather than rely on generic, standard disclosures.

2. If the board reviews the liquidity risk management program more frequently than annually, a fund may choose to include the discussion of the program's operation and effectiveness over the past year in one of either the fund's annual or semi-annual reports, but does not need to include it in both reports.

(j) *Availability of Additional Information.* Provide a brief, plain English statement that certain additional Fund information is available on the Fund's website. Include plain English references to, as applicable, the fund's prospectus, financial information, holdings, and proxy voting information. A Fund may also refer to other information available on the Fund's website if it reasonably believes that shareholders would likely view the information as important.

Instructions

1. Provide means of facilitating shareholders' access to the additional information in accordance with Instruction 9 to Item 27A(a).

2. If the Fund provides prominent links to the additional information it refers to under this Item 27A(j) on the same central site the Fund discloses under Item 27A(b), the Fund may state that materials are available at the website address included at the beginning of its annual or semi-annual shareholder report. The Fund would not need to provide other means of facilitating shareholders' access to the relevant additional information under these circumstances.

(k) *Householding.* A Fund may include disclosure required under rule 30e–1(e)(3) [17 CFR 270.30e–1(e)(3)] or rule 498B(c)(3) under the Securities Act [17 CFR 230.498B(c)(3)] to explain how shareholders who have consented to receive a single annual or semi-annual shareholder report or notice of material changes at a shared address may revoke this consent.

Part C—Other Information

Item 28. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Articles of Incorporation.* The Fund's current articles of incorporation, charter, declaration of trust or corresponding instruments and any related amendment.

(b) *By-laws.* The Fund's current by-laws or corresponding instruments and any related amendment.

(c) *Instruments Defining Rights of Security Holders.* Instruments defining the rights of holders of the securities being registered, including the relevant portion of the Fund's articles of incorporation or by-laws.

(d) *Investment Advisory Contracts.* Investment advisory contracts relating to the management of the Fund's assets.

(e) *Underwriting Contracts.* Underwriting or distribution contracts between the Fund and a principal underwriter, and agreements between principal underwriters and dealers.

(f) *Bonus or Profit Sharing Contracts.* Bonus, profit sharing, pension, or similar contracts or arrangements in whole or in part for the benefit of the Fund's directors or officers in their official capacity. Describe in detail any plan not included in a formal document.

(g) *Custodian Agreements.* Custodian agreements and depository contracts under section 17(f) [15 U.S.C. 80a–17(f)] concerning the Fund's securities and similar investments, including the schedule of remuneration.

(h) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(i) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued, fully paid, and nonassessable.

(j) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].

(k) *Omitted Financial Statements.* Financial statements omitted from Item 27.

(l) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Fund, the underwriter, adviser, promoter or initial shareholders and written assurances from promoters or initial shareholders that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(m) *Rule 12b–1 Plan.* Any plan entered into by the Fund under rule 12b–1 and any agreements with any person relating to the plan's implementation.

(n) *Rule 18f–3 Plan.* Any plan entered into by the Fund under rule 18f–3, any agreement with any person relating to the plan's implementation, and any amendment to the plan or an agreement.

(o) *Reserved.*

(p) *Codes of Ethics.* Any codes of ethics adopted under rule 17j–1 of the Investment Company Act [17 CFR 270.17j–1] and currently applicable to the Fund (*i.e.,* the codes of the Fund and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Fund, state the reason (*e.g.,* that the Fund is a Money Market Fund).

Instructions

1. A Fund that is a Feeder Fund also must file a copy of all codes of ethics applicable to the Master Fund.

2. Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed provided that they do not contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.

3. The registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (*e.g.,* disclosure of bank account numbers, social security numbers, home addresses and similar information).

4. The registrant may redact provisions or terms of exhibits required to be filed by paragraph (h) of this Item if those provisions or terms are both (1) not material and (2) would likely cause competitive harm to the registrant if publicly disclosed. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both (1) not material and (2) would likely cause competitive harm to the registrant if publicly disclosed. The registrant also must indicate by brackets where the information is omitted from the filed version of the exhibit.

If requested by the Commission or its staff, the registrant must promptly provide an unredacted copy of the exhibit on a supplemental basis. The Commission staff also may request the registrant to provide its materiality and competitive harm analyses on a supplemental basis. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may request the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's materiality and competitive harm analyses. The registrant may request confidential treatment of the supplemental material pursuant to Rule 83 (§ 200.83 of this chapter) while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rules 418 (§ 230.418 of this chapter).

5. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

Item 29. Persons Controlled by or Under Common Control With the Fund

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Fund. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions

1. Include the Fund in the list or diagram and show the relationship of each company to the Fund and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 30. Indemnification

State the general effect of any contract, arrangements or statute under which any director, officer, underwriter or affiliated person of the Fund is insured or indemnified against any liability incurred in their official capacity, other than insurance provided by any director, officer, affiliated person, or underwriter for their own protection.

Item 31. Business and Other Connections of Investment Adviser

Describe any other business, profession, vocation or employment of a substantial nature that each investment adviser, and each director, officer or partner of the adviser, is or has been engaged within the last two fiscal years for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

Instructions

1. Disclose the name and principal business address of any company for which a person listed above serves in the capacity of director, officer, employee, partner, or trustee, and the nature of the relationship.

2. The names of investment advisory clients need not be given in answering this Item.

Item 32. Principal Underwriters

(a) State the name of each investment company (other than the Fund) for which each principal underwriter currently distributing the Fund's securities also acts as a principal underwriter, depositor, or investment adviser.

(b) Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 25:

(1)	(2)	(3)
Name and Principal Business Address	Positions and Offices with Underwriter	Positions and Offices with Fund.

(c) Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Fund during the last fiscal year by each principal underwriter who is not an affiliated person of the Fund or any affiliated person of an affiliated person:

(1)	(2)	(3)	(4)	(5)
Name of Principal Underwriter.	Net Underwriting Discounts and Commissions.	Compensation on Redemptions and Repurchases.	Brokerage Commissions ...	Other Compensation.

Instructions

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).

2. Instruction 1 to Item 25(c) also applies to this Item.

Item 33. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a–30(a)] and the rules under that section.

Instructions

1. The instructions to Item 20.4 of this form shall also apply to this item.

2. Information need not be provided for any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

3. A Fund may omit this information to the extent it is provided in its most recent report on Form N–CEN [17 CFR 274.101].

Item 34. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the Fund's last three fiscal years.

Instructions

1. The instructions to Item 19 also apply to this Item.

2. Exclude information about any service provided for payments totaling less than $5,000 during each of the last three fiscal years.

Item 35. Undertakings

In initial registration statements filed under the Securities Act, provide an undertaking to file an amendment to the registration statement with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons if the Fund intends to raise its initial capital under section 14(a)(3) [15 U.S.C. 80a–14(a)(3)].

Signatures

Pursuant to the requirements of the Securities Act of 1933 and the Investment Company Act of 1940, the Fund (certifies that it meets all of the requirement for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the city of ___, and State of ___, on the ___ day of ___ .

Fund

By Signature

Title

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature

Title

Date

■ 20. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by:

■ a. In the third sentence of the second paragraph on the cover page of Form N–CSR, removing ''450 Fifth Street NW, Washington, DC 20549–0609'' and adding in its place ''100 F Street NE, Washington, DC 20549–1090'';

■ b. In the first sentence of General Instruction D, removing ''Items 4, 5, and 12(a)(1)'' adding in its place ''Items 4, 5, and 17(a)I1)'';

■ c. In the second sentence of Instruction (c) to Item 2(a), removing ''Item 13(a)(1)'' and adding in its place ''Item 18(a)(1)'';

■ d. Revising Item 6(a);

■ e. Redesignating Items 7 through 13 as Items 12 through 18, respectively;

■ f. Adding Items 7 through 11; and

■ g. In the first sentence of the instruction to paragraph (a)(2) of Item 13, removing ''Item 13(a)(1)'' and adding in its place ''Item 18(a)(1)''.

The additions read as follows:

Note: The text of Form N–CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 6. Investments.

File Schedule I—Investments in securities of unaffiliated issuers as of the close of the reporting period as set forth in § 210.1212 of Regulation S–X [17 CFR 210.12–12], unless the schedule is included as part of the report to shareholders filed under Item 1 of this Form or is included in the financial statements filed under Item 7 of this Form'';

* * * * *

Item 7. Financial Statements and Financial Highlights for Open-End Management Investment Companies.

(a) An open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A] must file its most recent annual or semi-annual financial statements required, and for the periods specified, by Regulation S–X.

(b) An open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A] must file the information required by Item 13 of Form N–1A.

Instruction to paragraph (a) and (b).

The financial statements and financial highlights filed under this Item must be audited and be accompanied by any associated accountant's report, as defined in rule 1–02(a) of Regulation S–X [17 CFR 210.1–02(a)], except that in the case of a report on this Form N–CSR as of the end of a fiscal half-year, the financial statements and financial highlights need not be audited.

Item 8. Changes in and Disagreements with Accountants for Open-End Management Investment Companies.

An open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A] must disclose the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K [17 CFR 229.304].

Item 9. Proxy Disclosures for Open-End Management Investment Companies.

If any matter was submitted during the period covered by the report to a vote of shareholders of an open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A], through the solicitation of proxies or otherwise, the company must furnish the following information:

(1) The date of the meeting and whether it was an annual or special meeting.

(2) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

Instruction. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this Item.

Item 10. Remuneration Paid to Directors, Officers, and Others of Open-End Management Investment Companies.

An open-end management investment company registered on Form N–1A [17 CFR 239.15A and 17 CFR 274.11A] must disclose the aggregate remuneration paid by the company during the period covered by the report to:

(1) All directors and all members of any advisory board for regular compensation;

(2) Each director and each member of an advisory board for special compensation;

(3) All officers; and

(4) Each person of whom any officer or director of the Fund is an affiliated person.

Item 11. Statement Regarding Basis for Approval of Investment Advisory Contract.

If the board of directors approved any investment advisory contract during the Fund's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. Include the following in the discussion:

(1) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.,* pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(2) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

Instructions

(1) Board approvals covered by this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this Item include subadvisory contracts.

(2) Conclusory statements or a list of factors will not be considered sufficient disclosure. Relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

(3) If any factor enumerated in paragraph (d)(6)(i) of this Item is not relevant to the board's evaluation of an investment advisory contract, note this and explain the reasons why that factor is not relevant;''

* * * * *

By the Commission.

Dated: August 5, 2020.

J. Matthew DeLesDernier

Assistant Secretary.

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

Appendix A

[Graphic: The XYZ Income Fund, XYZ Funds, Inc. Class A—XYZIA Class Z—XYZIZ]

Annual Shareholder Report January 31, 2020

This annual shareholder report contains important information about the XYZ Income Fund for the period of February 1, 2019 to January 31, 2020 as well as certain changes to the Fund. You can find additional information at *XYZfunds.com/XYZIFdocs* or on the XYZ App. You can also request this information by contacting us at 1–800–XYZ–FUND or *documents@xyzfunds.com.*

WHAT WERE YOUR FUND COSTS FOR THE PERIOD?

[*Based on a hypothetical $10,000 investment*]

Class	Beginning account value 2/1/2019	Total return before costs paid *	Costs paid †	Ending account value 1/31/2020	Costs paid as a percentage of your investment †
Class A	$10,000	+$723	−$78	= $10,645	0.77
Class Z	10,000	+723	−53	= 10,670	0.52

* Certain Fund expenses, such as those associated with buying and selling fund investments, reduced your total return.

† The costs paid during the period do not reflect certain costs paid outside the Fund (such as purchase charges you might have paid if you bought shares of the Fund during the period).

How did the Fund perform last year? What affected the Fund's performance?

Performance Highlights

- XYZ Income Fund returned 6.45% for Class A and 6.70% for Class Z for the 12 months ended January 31, 2020. The Fund underperformed its benchmark (the QRS Aggregate Bond Index), which returned 7.72%. This underperformance is largely the result of our portfolio holding more interest-rate sensitive investments than our benchmark.
- Top contributors to performance:
  - Long-term fixed interest rate investments because the Federal Reserve reduced interest rates during the period which increased long-term bond prices; and
  - investments in technology and financial services companies.
- Top detractors from performance:
  - Short duration investments (such as bank loans) and new purchases of fixed income instruments because of the lower interest rate environment; and
  - investments in oil and telecommunication companies.

Performance Attribution

Asset class
Top Contributors:
↑ Corporate—High Yield.
↑ Corporate—High Quality.
↑ Mortgage Backed Securities.
Top Detractors:
↓ Bank Loans.
↓ Asset Backed Securities.
↓ Treasury.

Sector
Top Contributors:
↑ Technology.
↑ Financial Services.
↑ Health Care.
Top Detractors:
↓ Energy.
↓ Telecommunications.
↓ Industrials.

How did the Fund perform over the past 10 years?

Keep in mind that the Fund's past performance is not a good predictor of how the Fund will perform in the future.

Cumulative Performance: February 1, 2010 through January 31, 2020. Initial Investment of $10,000.

[Graphic: Line Graph Showing Class Z and Class A Performance Compared to Performance of the QRS Aggregate Bond Index]

AVERAGE ANNUAL TOTAL RETURNS

	1 year (%)	5 years (%)	10 years (%)
Class A (with purchase charge)	1.21	4.32	5.29
Class A (with*out* purchase charge)	6.45	5.36	5.86
Class Z	6.70	5.61	6.11
QRS Aggregate Bond Fund	7.72	5.21	4.25

Visit *xyzfunds.com/XYZG* or the XYZ app for more recent performance information.

WHAT ARE SOME KEY FUND STATISTICS?

[*as of January 31, 2020*]

Fund Size:	$789 mil.
Number of Investments:	722.
Annual Portfolio Turnover:	78%.
Average Credit Quality: *	BB.*
30-Day SEC Yield: **.	
• Class A	4.28%.
• Class Z	4.53%.
Effective Duration:	1.4 years.
Weighted Average Maturity:	5.4 years.

* The Average Credit Quality is based on credit ratings provided by UVW Rating Inc.
** The 30-Day SEC Yield is a standardized calculation so you can compare yields across funds.

WHAT DID THE FUND INVEST IN?

[*as of January 31, 2020*]

Asset class (% of net assets)	
Bank Loans	52.6
Corporate—High Quality	14.3
Corporate—High Yield	11.4
Mortgage Backed Securities	7.1
Treasury	4.8
Asset Backed Securities	3.3
Cash	1.8
Equity	1.6
Other	3.1

Credit quality * (% of net assets)	
U.S. Government	4.8
AAA	3.6
AA	5.8
A	16.7
BBB	20.4
BB	34.9
B	8.1
CCC & Below	3.6
Unrated	2.1

* Credit Quality is based on credit ratings provided by UVW Rating Inc., a nationally recognized statistical rating organization, because the XYZ Advisers (the Fund's manager) believes they have the broadest coverage of securities held by the Fund.

Sector (% of net assets)
[Graphic: Pie chart showing percentages of Fund's net assets invested in: Technology (23%), Consumer Discretionary (7%), Industrials (9%), Financial Services (11%), Consumer Staples (4%), Health Care (12%), Telecommunications (9%), Energy (13%), Real Estate (6%), and Materials (6%)]

Visit *www.xyzfunds.com/XYZG* or the XYZ App for more recent holdings information.

How has the Fund changed?

Beginning June 1, 2020, the Fund is revising its Interest Rate Risk to include risks of very low or negative interest rates. Very low or negative interest rates may prevent the Fund from earning positive returns and increases the risk of rising interest rates, which may negatively impact the Fund's performance.

This is a summary of a planned change to the Fund's principal risk disclosure. For more complete information, you may review the Fund's next prospectus, which we expect to be available by June 1, 2020 at *XYZfunds.com/XYZIFdocs* or upon request at 1–800–XYZ–FUND or *documents@xyzfunds.com.*

How does the Fund ensure that it has money available to pay me when I exit the Fund?

The XYZ Loan Fund has investments that may not be as liquid as typical stocks and bonds.

Primary source of the Fund's liquidity risk:	How does the Fund manage its liquidity risk?
The Fund invested significantly in bank loans. When a fund sells one of these loans, it may take a significant amount of time before the Fund receives the money from the sale.	• The Fund has a liquidity risk management program (LRMP) to ensure the Fund can pay you on time when you sell shares. • This program includes: (1) Maintaining a minimum amount of highly liquid assets and limiting purchases of illiquid assets; (2) borrowing money and entering into expedited settlement agreements when needed; and (3) stress testing to see how the Fund would perform in stressed market conditions and, if necessary, modifying the Fund's investments in response to these tests. • At a meeting on December 5, 2019, the Fund's board of directors reviewed a report prepared by XZY Advisers (the LRMP administrator) that described the operation of the Fund's LRMP over the prior year and affirmed that the program effectively managed the fund's liquidity risk.

Where can I find additional information about the Fund?

Additional information is available on the Fund's website, including its:

- Prospectus
- financial information
- holdings
- proxy voting information
- description of UVW Rating Inc.'s credit ratings

[Graphic: QR Code that takes the reader to *XYZfunds.com/XYZGEdocs*]

Appendix B

Feedback Flier: Shareholder Reports

We require mutual funds and exchange-traded funds (ETFs) to provide you with an annual and semi-annual *shareholder report.* These reports include key information about a fund, but they can often be long.

We are proposing changes to these reports to better highlight information that would be helpful to you as you monitor your investments. We would like to know what you think. Please take a few minutes to review this sample annual shareholder report and answer any or all of these questions. Thank you for your feedback!

Questions

1. Overall, would the sample shareholder report be useful in monitoring your fund investments? If not, how would you change it?

2. Rate the sections of the sample shareholder report. Please indicate whether you find each section *useful* or *not useful.* Please consider explaining your responses in the comments.

Section	Useful	Not useful	Why?
a. "What was your cost for the period?"	☐	☐	
b. "How did the Fund perform last year? What affected the Fund's performance?".	☐	☐	
c. "How did the Fund perform over the past 10 years?"	☐	☐	
d. "What are some key Fund statistics?"	☐	☐	
e. "What did the Fund invest in?"	☐	☐	
f. "How has the Fund changed?"	☐	☐	
g. "How does the Fund ensure that it has money available to pay me when I exit the Fund?".	☐	☐	
h. "Where can I find additional information about the Fund?"	☐	☐	

3. The section titled ''What was your cost for the period?'' includes an example of what it costs to hold fund shares this year.

a. Is the table clear?

[ ] Yes [ ] No

b. Is it helpful to see ''costs paid'' both in dollars and as a percentage of your investment?

[ ] Yes [ ] No

c. Is it clear how the total returns of the fund minus the costs paid result in the ending account value?

[ ] Yes [ ] No

4. The section titled ''How did the Fund perform last year? What affected the Fund's performance?'' includes narrative and graphic presentations.

a. There is a narrative description of the fund's past performance in the ''Performance Highlights'' section. Does the narrative description help you understand the key drivers of fund performance?

[ ] Yes [ ] No

b. There is a graphic presentation of key drivers of the fund's past performance in the ''Performance Attribution'' section. Does the graphic presentation help you understand why the fund performed as it did over the past year?

[ ] Yes [ ] No

c. There is a line graph representing the fund's performance in dollars over the past 10 years. Does this graph help you understand how the fund performed over that time period?

[ ] Yes [ ] No

d. There is an ''Average Total Returns Table'' showing the fund's performance as a percentage over the past 1, 5, and 10 years. Does this table help you understand how the fund performed over those time periods?

[ ] Yes [ ] No

e. Is it helpful to see the fund's performance both in dollars and as a percentage?

[ ] Yes [ ] No

Is there any information that could be presented more clearly in the ''How did the Fund perform last year?'' section?

5. The sample shareholder report includes key statistics about the fund's size, number of investments, and annual portfolio turnover. Do these statistics provide meaningful information regarding the fund, for example, to help put the fund's performance and investments into context?

[ ] Yes [ ] No

6. The section titled ''What did the Fund invest in?'' includes charts describing the types of investments made by the fund. Do these charts help you understand how the fund is investing your money?

[ ] Yes [ ] No

7. The section titled ''How has the Fund changed?'' describes important changes to the fund within the last fiscal year. What types of changes are most important to you?

8. Is there any information in the sample shareholder report that is difficult to understand, confusing, too technical, or that could be presented more clearly?

9. Is there additional information that we should require in the shareholder report? This could include the fund's full financial statements, the results of any shareholder votes and/or how much the fund paid to directors, officers, and others. Is there any information in the sample shareholder report that should be highlighted more?

10. Under the proposal, in addition to the shareholder report, you also would have access to more information about the fund online (and delivered in paper on request). How likely would you be to seek more information on the following?

a. The fund's full financial statements
b. Key financial information over time
c. Changes in and disagreements with accountants
d. Results of any shareholder votes
e. How much the fund paid to directors, officers and others

11. Is the length of the document:

[ ] Too short [ ] Too long [ ] About right

12. How would you prefer to receive or read a document like the sample shareholder report?

---

a. On paper
b. In an email
c. On a website
d. A combination of paper and digital
e. Other (explain)

13. Do you have any additional suggestions for improving the shareholder report?

We will post your feedback on our website. Your submission will be posted without change; we do not redact or edit personal identifying information from submissions. You should only make submissions that you wish to make available publicly.

If you are interested in more information on the proposal, or want to provide feedback on additional questions, click here. Comments should be received on or before [[ ]], 2020.

Thank You!

Other Ways To Submit Your Feedback

You also can send us feedback in the following ways (include the file number S7–09–20 in your response):

Print Your Responses and Mail: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

Print a PDF of Your Responses and Email: Use the printer friendly page and select a

PDF printer to create a file you can email to: *rule-comments@sec.gov.*

Print a Blank Copy of This Flier, Fill it Out, and Mail: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

Appendix C

Feedback Flier: Tailored Fund Disclosure Framework To Highlight Key Information

We are proposing a disclosure framework for mutual funds and exchange-traded funds (''funds'') that would highlight key information for investors. The proposal includes:

- Amendments to fund shareholder reporting requirements;
- an alternative approach to the current delivery of annual prospectus updates to fund investors; and
- amendments to the presentation of fee and principal risk disclosure in fund prospectuses.

In addition, we are proposing amendments to fund advertising rules to promote more transparent and balanced statements about investment costs. Those amendments would apply to all registered investment companies and business development companies.

More information about the proposal is available at *https://www.sec.gov/rules/proposed/2020/34-89478.pdf*.

We are particularly interested in learning what small funds think about the proposed disclosure framework. Hearing from small funds could help us learn how the proposed amendments and new rule would affect these funds. We would appreciate your feedback on any or all of the following questions.

All of the following questions are optional, including any questions that ask about identifying information.

Please note that responses to these questions—including any other general identifying information you provide—will be made public.

Questions

Item 1: General Identifying Information

Instructions: At your option, you may include general identifying information that would help us contextualize your other feedback on the proposal. This information could include responses to the following questions, as well as any other general identifying information you would like to provide. Responses to these items—like responses to the other items on this Feedback Flier—will be made public.

i. How big is the fund in terms of net asset value? (This may be expressed as a range, for example, $40 million to $50 million.)

ii. Please include any additional general identifying information that you wish to provide, that could add context for your feedback on the proposal.

Item 2: Current Shareholder Reporting and Prospectus Delivery Practices

The fund currently must provide annual and semi-annual shareholder reports in paper, unless the shareholder has elected electronic delivery.

i. Please provide an estimate of approximately how much it currently costs the fund annually to prepare and transmit annual shareholder reports. Please provide a dollar range of those costs and expenses.

ii. Please provide an estimate of approximately how much it currently costs the fund annually to prepare and transmit semi-annual shareholder reports. Please provide a dollar range of those costs and expenses.

iii. Rule 30e–3 under the Investment Company Act of 1940 currently provides an optional ''notice and access'' method to allow funds to satisfy their obligations to transmit shareholder reports, beginning on January 1, 2021. Do you anticipate that the fund will rely on the rule? [yes/no]

iv. Please provide any other information that you think could be helpful regarding the costs and expenses associated with current requirements to prepare and transmit annual and semi-annual shareholder reports.

Item 3: Principal Elements of the Proposed New Disclosure Framework

Proposed New Requirements for Funds' Annual and Semi-Annual Shareholder Reports

i. We are proposing that shareholder reports include the content described below. Please indicate whether the content should remain in the shareholder report, as proposed, whether the content should be disclosed elsewhere, or whether the content should be eliminated. If you think the content should be disclosed elsewhere, please explain.

PROPOSED SHAREHOLDER REPORTS

Description	Should the content remain in fund shareholder reports, as proposed? (yes/no)	Please include any comments that you would like to share about either the usefulness of the proposed content, including whether the content should be eliminated, or the location of the proposed content. If the content should be disclosed elsewhere, please explain.
Expense Example		
Management's Discussion of Fund Performance (required in Annual Report; optional in Semi-Annual Report).		
Fund Statistics (fund's size, number of investments, and annual portfolio turnover).		
Graphical Representation of Holdings		
Material Fund Changes (required in Annual Report; optional in Semi-Annual Report).		
Statement Regarding Liquidity Risk Management Program.		

ii. Is there content that should be added to funds' shareholder reports that is not included in the proposal (yes/no)?

If so, what content should be added to funds' shareholder reports?

iii. Approximately how much do you think it would cost the fund to transition to the new requirements for preparing and transmitting annual and semi-annual shareholder reports under the proposal? Please provide a dollar range of those costs and expenses.

iv. Approximately how much do you think it would cost the fund on an ongoing annual basis to prepare and transmit annual shareholder reports under the proposal? Please provide a dollar range of those costs and expenses.

v. Approximately how much do you think it would cost the fund on an ongoing annual basis to prepare and transmit semi-annual shareholder reports under the proposal? Please provide a dollar range of those costs and expenses.

Proposed New Form N–CSR and Website Availability Requirements

i. We are proposing that the fund no longer include the content, described in the chart below, in its annual and semi-annual shareholder reports. Instead, the fund would include that content in its filings on Form N–CSR. Please indicate whether the content should be disclosed in the fund's filings on Form N–CSR, as proposed, whether the content should remain in the fund's annual and semi-annual shareholder reports, or whether the content should be eliminated. If you think the content should be disclosed elsewhere, please explain.

PROPOSED NEW CONTENT FOR FORM N–CSR

Description	Should the content be disclosed in filings on Form N–CSR, as proposed? (yes/no)	Should the content remain in shareholder reports? (yes/no)	Should the content be disclosed elsewhere or eliminated? If the content should be disclosed elsewhere, please explain.
Financial statements for funds.			
Financial highlights for funds.			
Remuneration paid to directors, officers and others of funds.			
Changes in and disagreement with accountants for funds.			
Matters submitted to fund shareholders for a vote.			
Statement regarding the basis for the board's approval of investment advisory contract.			

ii. Is there content that a fund should have to disclose on Form N–CSR that is not included in the proposal (yes/no)?

If so, what content requirement(s) should be added to Form N–CSR?

iii. Approximately how much do you think it would cost the fund to transition to the proposed requirements to file certain new information on Form N–CSR instead of including this information in its annual and/or semi-annual shareholder reports? Please provide a dollar range of those costs and expenses.

iv. Approximately how much do you think it would cost the fund on an ongoing annual basis to comply with the proposed new Form N–CSR content requirements? Please provide a dollar range of those costs and expenses.

v. We are also proposing to require that a fund would have to make available all of new Form N–CSR content (described in the chart above), as well as the fund's complete portfolio holdings as of the close of the fund's most recent first and third fiscal quarters, on a website. In addition, we are proposing that the fund deliver such materials to investors upon request, free of charge.

a. Approximately how much do you think it would cost the fund to transition to the proposed new website availability requirements? Please provide a dollar range of those costs and expenses.

b. Approximately how much do you think it would cost the fund on an ongoing annual basis to comply with the proposed new website availability requirements? Please provide a dollar range of those costs and expenses.

Proposed New Treatment of Annual Prospectus Updates

i. Please provide an estimate of approximately how much it currently costs the fund on an annual basis to provide annual prospectus updates to shareholders. Please provide a dollar range of those costs and expenses.

ii. Reliance on proposed rule 498B—under which the fund would send existing investors certain notices in lieu of annual prospectus updates—would be optional. Do you think that the fund would rely on proposed rule 498B? [yes/no]

If you think the fund would rely on proposed rule 498B, approximately how much do you think the following would cost the fund? Please provide a dollar range of those costs and expenses:

a. The cost to the fund of transitioning to proposed rule 498B;

b. The ongoing costs on an annual basis for the fund to comply with proposed rule 498B (excluding transmitting notices of material changes to shareholders); and

c. The ongoing costs on an annual basis for the fund to transmit notices of material changes to shareholders, if any.

Proposed Changes to Rule 30e–3: Open-End Funds Could No Longer Use ''Notice and Access'' Model to Transmit Shareholder Reports

i. Beginning on January 1, 2021, a fund currently would be permitted to transmit shareholder reports under rule 30e–3, provided certain conditions are met, such as including a required statement on each prospectus. However, the proposal would no longer permit open-end funds to rely on rule 30e–3 to transmit shareholder reports. Approximately how much do you think it would cost the fund to transition away from the rule 30e–3 ''notice and access'' model? Please provide a dollar range of those costs and expenses.

Proposed Prospectus Disclosure Changes: Fund Fees and Risks

i. Approximately what do you think it would cost the fund to transition to the proposed new requirements for prospectus disclosure of fund fees and expenses, and fund principal risks? Please provide a dollar range of those costs and expenses.

ii. Approximately what do you think it would cost the fund on an ongoing annual basis to comply with the proposed new requirements for prospectus disclosure of fund fees and expenses, and fund principal risks? Please provide a dollar range of those costs and expenses.

iii. Should we modify any of the proposed new requirements for prospectus disclosure of fund fees and expenses, and fund principal risks, and if so, how?

iv. Are there additional ways to improve how funds disclose their fees and expenses to represent more accurately the full costs associated with a fund investment and to help investors better understand their investment costs?

Proposed Amendments To Fund Advertising Rules

i. Does the fund currently include fee and expense information in its advertisements and other marketing materials? [yes/no]

ii. We are proposing to amend the advertising rules to require that investment company fees and expenses in advertisements and supplemental sales literature be consistent with relevant prospectus fee table presentations and be reasonably current. The proposed amendments also address current representations of fund fees and expenses that could be materially misleading.

Approximately how much do you think it would cost the fund to comply with the proposed amendments to the investment company advertising rules (please provide a dollar range)?

iii. Are there additional ways that we could improve the fee and expense presentations in fund advertisements and supplemental sales literature?

Item 4: Other Feedback

Instructions: Please provide any additional suggestions or comments you have about our fund disclosure proposal.

In addition, please provide any suggestions or comments about what the Commission can do to encourage the use of technology in fund disclosure.

We will post your feedback on our website. Your submission will be posted without change; we do not redact or edit personal identifying information from submissions. You should only make submissions that you wish to make available publicly.

If you are interested in more information on the proposal, or want to provide feedback on additional questions, click here. Comments should be received on or before ____, 2020.

Thank you!

Other Ways To Submit Your Feedback

You also can send us feedback in the following ways (include the file number S7–09–20 in your response):

Print Your Responses and Mail: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

Print a PDF of Your Responses and Email: Use the printer friendly page and select a PDF printer to create a file you can email to: *rule-comments@sec.gov.*

Print a Blank Copy of This Flier, Fill it Out, and Mail: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

[FR Doc. 2020–17449 Filed 11–4–20; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Parts 240 and 249
Whistleblower Program Rules; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–89963; File No. S7–16–18]

RIN 3235–AM11

Whistleblower Program Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting several amendments to the Commission's rules implementing its congressionally mandated whistleblower program. Section 21F of the Securities Exchange Act of 1934 (''Exchange Act'') provides, among other things, that the Commission shall pay—under regulations prescribed by the Commission and subject to certain limitations—to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action, an aggregate amount, determined in the Commission's discretion, that is equal to not less than 10 percent, and not more than 30 percent, of monetary sanctions that have been collected in the covered or related actions. The Commission is adopting various amendments that are intended to provide greater transparency, efficiency and clarity to whistleblowers, to ensure whistleblowers are properly incentivized, and to continue to properly award whistleblowers to the maximum extent appropriate and with maximum efficiency. The Commission is also making several technical amendments, and adopting interpretive guidance concerning the term ''independent analysis.''

DATES: The final rules are effective December 7, 2020. For application dates for each amendment, see the table in Section III.

FOR FURTHER INFORMATION CONTACT: Emily Pasquinelli, Office of the Whistleblower, Division of Enforcement, at (202) 551–5973; Nicole Kelly, Office of the General Counsel, at (202) 551–4408, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending the following rules and adopting a new rule.

AMENDMENTS

Commission reference	CFR citation (17 CFR)
Rule 21F–2	§ 240.21F–2
Rule 21F–3	§ 240.21F–3
Rule 21F–4	§ 240.21F–4
Rule 21F–6	§ 240.21F–6
Rule 21F–7	§ 240.21F–7
Rule 21F–8	§ 240.21F–8
Rule 21F–9	§ 240.21F–9
Rule 21F–10	§ 240.21F–10
Rule 21F–11	§ 240.21F–11
Rule 21F–12	§ 240.21F–12
Rule 21F–13	§ 240.21F–13
New Rule	
Rule 21F–18	§ 240.21F–18

I. Background and Summary

The Commission's whistleblower program has made important contributions to the agency's efforts to enforce the federal securities laws. Original information provided by whistleblowers has led to enforcement actions in which the Commission has obtained more than $2.5 billion in financial remedies, including more than $1.4 billion in disgorgement of ill-gotten gains and interest, of which almost $750 million has been or is scheduled to be returned to harmed investors. In recognition of the important contributions of whistleblowers, the Commission has ordered over $523 million to 97 individuals in 80 enforcement actions whose original information led to the success of Commission actions and, in some instances, related actions brought by other enforcement authorities against wrongdoers.

A. The Whistleblower Award Program

Congress established the Commission's whistleblower program in July 2010 by adding Section 21F to the Exchange Act. Among other things, Section 21F directs that the Commission pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the securities laws that leads to the successful enforcement of a covered judicial or administrative action.[1] Section 21F also directs that the awards must be an aggregate amount (the ''Award Amount''), determined in the Commission's discretion, that is equal to not less than 10 percent, and not more than 30 percent, of what has been collected in the monetary sanctions imposed in the covered action and certain related actions.[2] Further, Section 21F provides that monetary awards to whistleblowers shall be paid from a special fund that Congress established called the Investor Protection Fund (''IPF'').[3]

In May 2011, the Commission adopted a set of rules to implement the whistleblower program. Those rules, which are codified at 17 CFR 240.21F–1 through 17, provide the operative

[1] 15 U.S.C. 78u–6(a)(1).

[2] 15 U.S.C. 78u–6(a)(5).

[3] The IPF, which was established as part of the whistleblower program, is a statutorily established fund overseen by the U.S. Department of the Treasury that serves primarily as the funding source for the Commission's whistleblower awards. Additionally, as detailed in Exchange Act Section 21F(g)(3), 15 U.S.C. 78u–6, the IPF has a statutorily created self-replenishing process and is not contingent on annual appropriations from Congress.

definitions, requirements, and processes related to the whistleblower program. Among other things, these rules define key terms and phrases in Section 21F, specify the form and manner through which an individual must submit information to qualify for an award, and establish the procedures for determining the Award Amounts.

B. Procedural Background and Summary of the Amendments Being Adopted

On June 28, 2018, the Commission proposed for public comment a package of rule amendments to the Commission's existing whistleblower rules (*see* Exchange Act Rules 21F–1 through 21F–17). These amendments were designed to enhance claim processing efficiency, clarify and bring greater transparency to the framework the Commission utilizes to exercise its discretion in determining Award Amounts, and otherwise address specific issues that have developed during the ten-year history of the whistleblower program.

For example, the amendments are intended to provide additional efficiency and transparency to the extent possible regarding the application of the existing award factors specified in Rule 21F–6(a) and (b) (the ''Award Factors''), individually and collectively, particularly for awards where the statutory maximum award of 30 percent is $5 million or less, which represent the vast majority (in number) of all awards.[4] Additionally, because whistleblowers entitled to receive awards pursuant to the Commission's rules should receive their awards as quickly as reasonably practicable, the Commission is implementing mechanisms to increase the effectiveness and efficiency of its award determination process.

The Commission received over 150 substantively distinct comment letters from approximately 100 commenters.[5] In addition, the Commission received three form letters from over 9,300 commenters.[6]

The Commission has carefully considered the comments received. As a threshold matter, we note that the Commission's discretion in determining Award Amounts, and the manner in which the Commission exercises that discretion, was a focus for many commenters. The Commission recognizes that its articulation of the manner in which the Commission exercises its authority to determine Award Amounts should be clarified. Accordingly, the Commission is adopting a provision that clarifies the Commission's broad discretion when applying the Award Factors and determining the Award Amount, including the discretion to consider and apply the Award Factors in percentage terms, dollar terms or some combination of percentage terms and dollar terms when determining the Award Amount. Aside from clarifying the Commission's broad discretion, the Commission is adopting the rules substantially as proposed with one exception. Specifically, the Commission is not adopting proposed Rule 21F–6(d)(2), which would have provided a specific process for the Commission to exercise its discretion to review certain larger awards (exceeding $30 million to an individual whistleblower) under certain circumstances.

Although the Commission did not intend to create a new restriction on, or affect the size of, Award Amounts, this proposed rule was misperceived by some as a potential new restriction on Award Amounts. The proposed rule was one component of the Commission's effort to provide greater transparency, efficiency and certainty to the Award Amount determination process. Based on the comments received, the Commission's further analysis of the operation of the whistleblower program to date and the more comprehensive clarifying amendments being adopted, the Commission does not believe that proposed Rule 21F–6(d)(2) is necessary. Further, as discussed below in Section II(E), based on these same factors and with a focus on increased transparency, efficiency and clarity, we are adding a specific provision to Rule 21F–6 that will create a presumption that, when (1) the statutory maximum authorized Award Amount is $5 million or less and (2) the negative Award Factors are not present, the Award Amount will be set at the statutory maximum, subject to the Commission's discretion to apply certain exclusions. Aside from this presumption, the process for recommendations by the Claims Review Staff (''CRS'') and the Office of the Whistleblower is not changing. Awards of this type—where the maximum statutory award of 30 percent is $5 million or less—make up the vast majority (in number) of all whistleblower awards to date. Consistent with the Commission's view that encouraging whistleblowers to come forward is important, the Commission believes any potential whistleblower should understand that where the aggregate maximum award for the actions resulting from that whistleblower's original information is likely to be $5 million or less (and where the negative Award Factors are not present), Rule 21F–6(c) will generally result in an Award Amount that is the statutory maximum.[7] In addition to providing potential whistleblowers with greater transparency and certainty, this presumption should increase efficiency in the award review process.

Below is a summary of the principal amendments to the Commission's whistleblower rules that are being adopted:

- Allowing awards based on deferred prosecution agreements (''DPAs'') and non-prosecution agreements (''NPAs'') entered into by the U.S. Department of Justice (''DOJ'') or a settlement agreement entered into by the Commission outside of a judicial or administrative proceeding to address violations of the securities laws;
- Consistent with the Commission's practice in award determinations to date, clarifying the current definition of related action to make clear that recovery from the Commission for the related action is not available where the Commission determines that a separate whistleblower award program more appropriately applies to the non-Commission action;
- Providing a specific process presumptively setting Award Amounts at the top end of the range when the statutory maximum award of 30 percent is $5 million or less and the negative Award Factors are not present, subject to the discretion of the Commission to apply certain exclusions;
- Clarifying the Commission's broad discretion when applying the Award Factors in Rule 21F–6(a) and (b) and setting Award Amounts, including the discretion to consider the Award Factors in percentage terms, dollar terms or some combination thereof; and
- Revising the Commission's definition of ''whistleblower'' in light of

[4] While the Commission has made a number of larger awards, the substantial majority of all awards were $5 million or less. The specific data regarding the Commission's whistleblower awards is detailed in the ''Economic Analysis'' section below. This information has informed our efforts to enhance the performance of the program.

[5] A number of commenters submitted multiple letters.

[6] The Commission did not investigate the circumstances under which each of these approximately 9,300 commenters submitted a form letter, including whether they submitted the letter of their own accord, were solicited to submit the letter, or provided informed consent to submit the letter.

[7] Of the total 74 awards by enforcement action as of July 31, 2020, including awards above and below $5 million, 31 awards were at the statutory maximum and an additional 16 received close to the maximum amount (in the top quarter of the range, *i.e.* 25% to 29%).

the Supreme Court's decision in *Digital Realty Trust, Inc.* v. *Somers,*[8] and making certain related clarifications to Rule 21F–2 to address various other interpretive questions that have arisen in connection with the Court's holding.

In addition to the foregoing amendments, the Commission is adopting several other amendments to our whistleblower rules that are intended to clarify and enhance certain policies, practices, and procedures in implementing the program. The Commission is revising Exchange Act Rule 21F–4(e) to clarify the definition of ''monetary sanctions.'' Further, the Commission is revising Exchange Act Rule 21F–9 to provide the agency with additional flexibility to modify the manner in which individuals may submit Form TCR (Tip, Complaint or Referral) and to provide a new mechanism for individuals who failed to timely comply with the requirements of subparagraphs (a) and (b) of Rule 21F–9 to obtain an award if the Commission can readily determine that they clearly qualify for an award. Additionally, the Commission is adopting revisions to Exchange Act Rule 21F–8 to provide the agency with additional flexibility regarding the forms used in connection with the whistleblower program,[9] revisions to Exchange Act Rule 21F–12 to clarify the list of materials that the Commission may rely upon in making an award determination, and revisions to Rule 21F–13 to clarify the materials that may be part of the administrative record for purposes of judicial review.

Two further changes are designed to help increase the Commission's efficiency in processing whistleblower award applications. The Commission is adding a new paragraph (e) to Exchange Act Rule 21F–8 to clarify the agency's ability to bar individuals from submitting whistleblower award applications when they are found to have submitted false information in violation of Exchange Act Section 21F(i) and Rule 8(c)(7) thereunder, as well as to afford the Commission the ability to bar individuals who repeatedly make frivolous award claims in Commission actions. The Commission is also adding new Exchange Act Rule 21F–18 to create a summary disposition procedure for certain types of common denials, such as untimely award applications and applications involving a tip that was not provided to the Commission in the form and manner that the Commission's rules require. Under this new summary disposition process, the Office of the Whistleblower may issue the preliminary award denial in a limited class of relatively straightforward matters; for all other award applications our current award-processing procedures as specified in Rule 21F–10 will continue to apply, which, among other things, means that the preliminary award determination will be issued by the CRS and not the Office of the Whistleblower.[10]

Also, the Commission is adopting interpretive guidance to help clarify the meaning of ''independent analysis'' as that term is defined in Exchange Act Rule 21F–4(b)(3) and used in the definition of ''original information.''[11] Further, the Commission is specifying the applicability dates for each rule amendment that we are adopting.

Finally, the Commission received a number of comments in response to the proposing release requesting additional transparency related to the administration of the whistleblower program. The Commission has considered these concerns and the following actions are in response to them.[12] The Commission is directing that the Office of the Whistleblower will include in its annual reports to Congress (beginning with the fiscal year 2020 report), in an aggregated manner, an overview discussion of the factors that were present in the awards throughout the year, including (to the extent practicable) a qualitative discussion of how these factors affected the Commission's determination of Award Amounts. The Office of the Whistleblower will continue to make available on its web page, and will review and update as necessary on not less than an annual basis, information regarding its approach to processing whistleblower award claims, including the initial review and prioritization of award claims.[13]

II. Description of Final Rule Amendments

A. Rule 21F–4(d)—Definition of ''action''

1. Proposed Rule

Section 21F of the Exchange Act requires the Commission to pay whistleblower awards, with certain limitations and subject to certain conditions, in relation to the ''successful enforcement'' of ''any covered judicial or administrative action'' brought by the Commission and certain ''related [judicial or administrative] actions'' of other governmental entities, most notably DOJ.[14] The Commission proposed to add a new paragraph (3) to existing Rule 21F–4(d) (defining an ''action'') to provide that the term ''administrative action'' includes a deferred prosecution agreement (''DPA'') or a non-prosecution agreement (''NPA'') entered into by DOJ or a state attorney general in a criminal case as well as a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws; and further that any money required to be paid in such actions will be deemed a ''monetary sanction'' within the meaning of Rule 21F–4(e). This proposed addition to Rule 21F–4 sought to make awards available to meritorious whistleblowers in cases where these alternative vehicles are used to address violations of law. Its premise was the same as that underlying current Rule 21F–4(d)(1): Our view that Congress did not intend for meritorious whistleblowers to be denied awards simply because of the procedural vehicle that the Commission (or another governmental entity) has selected to resolve an enforcement matter.

[8] *Digital Realty Trust, Inc.* v. *Somers,* 138 S. Ct. 767 (2018).

[9] 17 CFR 249.1800–1801.

[10] Exchange Act Rule 21F–10(d) and Rule 21F–11(d) authorize the CRS to make a preliminary determination on an award application for a covered action and related action, respectively. Further, in accordance with Section 4A(b) of the Exchange Act, both rules now clarify that Commission will be provided the opportunity to review any preliminary determination before it is provided to a claimant. *See id.* (providing that ''the Commission shall retain a discretionary right to review'' actions taken ''[w]ith respect to the delegation of any of [the Commission's] functions'').

[11] In addition to the amendments and other modifications described above, we are adopting a technical correction to Exchange Act Rule 21F–4(c)(2), to modify an erroneous internal cross-reference, as well as several technical modifications to Exchange Act Rules 21F–9, 10, 11, and 12, to accommodate certain of the substantive and procedural changes described above.

[12] None of the measures discussed in this paragraph are intended to create any enforceable rights. The measures discussed have no legal force or effect; they do not alter or amend applicable law, and create no new or additional obligations for any person.

[13] This information is available at *https://www.sec.gov/files/OWB%20Approach%20to%20Processing%20Award%20Claims.pdf.*

[14] 15 U.S.C. 78u–6(b)(1). A ''covered judicial or administrative action'' is any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1 million. *Id.* 78u–6(a)(1). A ''related action'' is a judicial or administrative action brought by any of several governmental entities designated in the statute that is based upon the original information provided by a whistleblower that led to successful enforcement of a Commission covered action. *Id.* 78u–6(a)(5). Awards range between 10 percent and 30 percent ''of what has been collected of the monetary sanctions imposed'' in the action. *Id.* 78u–6(b)(1)(A), 78u–6(b)(1)(B).

2. Comments Received

Most of the commenters who addressed proposed Rule 21F–4(d)(3) supported it.[15] Commenters generally agreed that the rule would reduce uncertainty for potential whistleblowers and supported the rationale stated in the proposed rule of assuring that the availability of a whistleblower award not depend on the procedural vehicle that the Government may use to resolve an enforcement matter.[16]

One commenter emphasized the important role that DPAs and NPAs play in fostering corporate compliance, cooperation, and remediation.[17] This commenter offered that it would be contrary to the public interest if, in encouraging vigorous compliance programs and extraordinary cooperation in investigations, DOJ or the Commission decided not to offer a company a DPA or an NPA for fear that, as a result, a meritorious whistleblower would not receive an award. Similarly, this commenter stated that it would be unfair to whistleblowers to be deprived of an award simply because of ''positive conduct'' by the entities about which whistleblowers provided information. For these reasons, this commenter believed that permitting awards based on DPAs and NPAs would fairly balance the important goals of rewarding whistleblowers and encouraging companies to adopt effective compliance programs and to cooperate fully during investigations in the hope of obtaining a DPA or an NPA.

Several commenters advocated that we pay awards in other circumstances beyond the DPAs, NPAs, and settlement agreements addressed in the proposed rule. One commenter urged that awards should be available in cases where, even if the Commission does not bring a covered action, the whistleblower's tip led DOJ to take action (including cases where DOJ issues a declination letter).[18] Another commenter stated that we should pay awards in cases where we refer a whistleblower complaint to a self-regulatory organization that subsequently takes enforcement action relating to the complaint.[19] One commenter asserted that an award should be available, irrespective of the mechanism by which a matter is resolved, any time a whistleblower's information assists the Commission or other governmental entities in obtaining money.[20] Another commenter opined that ''any monetary payment to the SEC by an entity accused of wrongdoing, after and because of the commencement of an SEC inquiry, could be fairly classified as the result of an administrative action, even if the matter does not proceed to be heard by an administrative judge.'' [21] Another commenter suggested that we pay awards in cases with less than $1 million in monetary sanctions.[22]

Two commenters did not support the proposal to pay whistleblower awards on the basis of DPAs and NPAs entered into by criminal authorities and Commission settlement agreements outside of the context of a judicial or administrative proceeding.[23] One of these commenters stated that these types of agreements are not always filed in court or subject to judicial oversight, which is an important ''check and balance'' on the process.[24] This commenter further stated that the Commission does not have any particular expertise in the myriad state laws that may come into play with respect to a settlement with a particular state attorney general, and that the standards of culpability under state law may differ considerably from those under the federal securities laws. This commenter thus urged that paying whistleblower awards on the basis of state DPAs and NPAs would lead to ''inconsistency in the eligibility standards under the Commission's rules, and could create an imbalance among the states.''

This same commenter also stated that interpreting the term ''administrative action'' to include DPAs, NPAs, and Commission settlement agreements outside of the context of a judicial or administrative proceeding would be contrary to the plain meaning of the term ''action,'' inconsistent with current usage of the term and judicial precedent, and would lack any basis in the Dodd-Frank Act itself. Instead, this commenter asserted, DPAs, NPAs, and Commission settlement agreements encompassed by the proposed rule are not ''actions'' because they are contracts among regulators and third parties, are entered into voluntarily by those third parties, and cannot be unilaterally implemented by any individual regulator.

3. Final Rule

After considering the comments, we have decided to adopt Rule 21F–4(d)(3) with three changes. *First,* we have decided not to extend the rule to DPAs and NPAs entered into by state attorneys general in criminal cases. *Second,* we have added the modifier ''similar'' in paragraph (d)(3)(ii), which describes the Commission settlement agreements to which the rule will apply, in order to clarify the features of these agreements that merit treating them as administrative actions that impose monetary sanctions. *Third,* we have decided to apply the rule to any DPA, NPA, or Commission settlement agreement that would otherwise fall within the terms of the rule (provided that the agreement was entered into after July 21, 2010, which is the date after which the Dodd-Frank Wall Street Reform and Consumer Protection Act took effect).[25]

For the reasons described in the Proposing Release, we disagree with the

[15] *See* letters from Anat R. Admati, Faculty Director, and Graham Scott Steele, Director, Corporations and Society Initiative, Stanford University Graduate School of Business (Sept. 18, 2018) (''Admati and Steele Letter''); Americans for Financial Reform Education Fund (Sept. 18, 2018) (''AFREF Letter''); Better Markets (Sept. 18, 2018) (''Better Markets Letter''); Securities Industry and Financial Markets Association (Sept. 18, 2018) (''SIFMA Letter''); Cohen Milstein Sellers & Toll PLLC (Sept. 17, 2018) (''Cohen Milstein Letter''); Richard Jansson (June 5, 2019) (''Jansson Letter''); Eileen Morrell (Sept. 17, 2018) (''Morrell Letter''); Harry Markopolos (Sept. 14, 2018) (''Markopolos Letter''); Joe Fischer (Aug. 9, 2018) (''Fischer Letter''); Peter Sivere dated July 13, 2018, Aug. 14, 2018, Aug. 16, 2018, Aug. 20, 2018 (two letters submitted on this date), Aug. 21, 2018, Aug. 27, 2018 (two letters submitted on this date), Sept. 2, 2018 (two letters submitted on this date), Sept. 10, 2018, and Sept. 14, 2018 (collectively ''Sivere'' unless specified by date); Think Computer Foundation (July 17, 2018) (''Think Computer Letter''); Taxpayers Against Fraud (Sept. 18, 2018) (''TAF Letter''); G. Johnson (July 29, 2018) (''Johnson Letter''); Anonymous–88 (July 28, 2018), (''Anonymous–88 Letter'').

[16] *See* Admati and Steele Letter; AFREF Letter; Cohen Milstein Letter; Jansson Letter; Fischer Letter; TAF Letter; Johnson Letter.

[17] *See* SIFMA Letter.

[18] *See* Sivere Letters dated Aug. 14 and 10, 2018.

[19] *See* letter from Anonymous–46 (Sept. 9, 2018).

[20] *See* TAF Letter.

[21] *See* Think Computer Letter.

[22] *See* Anonymous–88 Letter.

[23] *See* letter from U.S. Chamber of Commerce Center for Capital Markets Competitiveness (Sept. 18, 2018) (''CCMC Letter''); letter from Carrie Devorah (July 30, 2018) (''Devorah Letter'').

[24] *See* CCMC Letter.

[25] We have effectuated this change by revising the language in Rule 21F–10(b) and Rule 21F–11(b). Specifically, we have added language to those rules so that the effective date of the amended rules will serve as the trigger date that begins a 90-day period for a whistleblower to submit an application for a DPA, NPA, or Commission settlement agreement entered after July 21, 2010 but prior to the effective date of the amended rules (although any award application that as of the effective date of these rule amendments is already pending for an DPA, NPA, or Commission settlement agreement covered by this rule need not be resubmitted). We believe that applying the revised definition of ''action'' to these prior DPAs, NPAs, and Commission settlement agreements is consistent with the purposes of the program to compensate meritorious whistleblowers when their information also leads the authorities identified in the statute to successfully resolve a related matter while, at the same time, not creating an undue additional burden on the Office of the Whistleblower in processing what we anticipate should be a relatively small number of applications.

commenter who asserted that we lack authority to interpret the term ''administrative action'' to also encompass DPAs and NPAs entered into by DOJ and settlement agreements entered into by the Commission outside of the context of a judicial or administrative proceeding. Rather, we conclude that the term ''administrative action'' is sufficiently broad to encompass these alternative vehicles for resolving investigations into violations of law. In particular, as noted previously, Congress's use of the term ''administrative action''—rather than administrative *proceeding*—does not limit award consideration to cases where investigations are resolved through formal adjudicatory administrative proceedings, and our rulemaking authority under Section 21F and other provisions of the Exchange Act therefore permits us to bring the agreements described in the proposed rule within the definition of an ''administrative action.''[26]

Several circumstances inform our decision to treat DPAs and NPAs entered into by DOJ as forms of ''administrative action'' for purposes of Section 21F.[27] *First,* DOJ itself recognizes the importance of DPAs and NPAs in the hierarchy of tools that are available for addressing criminal misconduct on the part of companies, their officers, and their employees.[28] DOJ has explained that DPAs and NPAs provide a ''middle ground'' for resolution of a criminal matter in circumstances where a declination is determined to be inappropriate, but a conviction of a company may have significant collateral consequences for innocent third parties.[29] *Second,* DPAs and NPAs entered into by DOJ ordinarily impose significant continuing obligations and conditions on subject companies, coupled with clear and substantial consequences for default—including the continuation or initiation of criminal prosecution.[30] Thus, on its face, the terms of a DPA or an NPA reflect a substantive resolution of a criminal matter by DOJ—in other words, an *action*—and not simply the closing of the investigation.

For similar reasons, it is reasonable to view payments made under DOJ DPAs and NPAs as ''monetary sanctions'' on which a whistleblower award can be based. Section 21F(a)(4) defines ''monetary sanctions,'' in relevant part, as ''monies, including penalties, disgorgement, and interest, ordered to be paid . . . as a result of such action or any settlement of such action.''[31] The payments required under a DPA or an NPA with DOJ are enforceable as a result of the company's admissions of facts and liability, which would support the government's criminal charges, coupled with the company's agreement to toll applicable statutes of limitations in the event DOJ determines (in its sole discretion) that prosecution is warranted because the company has breached the agreement. Given these provisions, the practical effect of a DPA or an NPA is to compel the subject company to make the monetary payments to which it has agreed or face the possibility of criminal prosecution on the basis of its previous admissions. Under these circumstances, payments made under a DPA or an NPA with DOJ are reasonably viewed as ''ordered'' within the meaning of Section 21F.[32]

In the implementation of our whistleblower program to date we have not had occasion to consider a DPA or an NPA entered into by a state attorney general in a criminal case. We proposed to include such agreements in Rule 21F–4(d)(3)(i) in the expectation that they should generally be similar in nature to DPAs and NPAs entered into by DOJ. However, we are persuaded by the concern expressed by one commenter that including state DPAs and NPAs in the rule risks introducing inconsistency in the eligibility standards for related action awards as a result of the application of varying culpability and other standards under state law.[33] DPAs and NPAs are long-established in DOJ practice, and their terms, conditions, and use have been subject to a great deal of transparency.[34] But the Commission has limited insight into the practices of 50 state attorneys general (plus the District of Columbia's) in entering into DPAs and NPAs, and we believe it would be administratively infeasible to establish consistent award standards if required, on a case-by-case basis, to determine whether any particular state DPA or NPA includes terms sufficiently similar to those that typify DOJ DPAs and NPAs such that the state instrument should also be deemed an ''administrative action'' that imposes ''monetary sanctions.'' For this reason, new Rule 21F–4(d)(3) does not extend to DPAs or NPAs entered into by state attorneys general in criminal cases.

The rule we are adopting today includes settlement agreements similar to DOJ DPAs and NPAs entered into by the Commission outside of the context of a judicial or administrative proceeding. In our practice, these agreements have included key provisions typically analogous to those

[26] Section 21F(j) of the Exchange Act, 15 U.S.C. 78u–6(j), grants us ''the authority to issue such rules and regulations as may be necessary or appropriate to implement'' the whistleblower award program. Similarly, Section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), expressly provides the Commission the ''power to make such rules and regulations as may be necessary or appropriate to implement the provisions'' of the Exchange Act. In addition, we have broad definitional authority pursuant to Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b), which provides us with the ''power by rules and regulations to define . . . terms used in [the Exchange Act].''

[27] We note that, because criminal charges are filed in connection with a DPA (and later dismissed if all the terms of the agreement are satisfied), a DPA in our view also satisfies the alternative requirement of being a ''judicial action.''

[28] *See* US Dep't of Justice, Justice Manual, § 9–28.200, 9–28.1100 (2018) (*available at https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.200*) (''Justice Manual''); *see also* Memorandum from Brian A. Benczkowski, Assistant Attorney General, re: Selection of Monitors in Criminal Division Matters (Oct. 11, 2018) (*available at https://www.justice.gov/criminal-fraud/file/1100366/download*) (describing DPAs, NPAs, and plea agreements as forms of corporate criminal resolution).

[29] *See* Justice Manual § 9–28.1100.

[30] For example, DPAs and NPAs entered by DOJ have stated terms (usually two to three years). At the end of the term, if the company has fulfilled all of its obligations—including making any required monetary payments—the government will typically dismiss the charges (in connection with DPAs) or not file charges (in the case of an NPA). Typically, in both DPAs and NPAs the company is required to admit responsibility for the conduct of its officers and employees and to admit to a detailed statement of facts that supports the government's case. The company is also typically required during the term of the agreement to self-report any new evidence of violations. The government, acting in its sole discretion, determines whether the company has fulfilled all of its obligations under the agreement. If the company fails to do so, then the government may proceed with the prosecution (in the case of a DPA) or file charges against the company (in the case of an NPA). Applicable statutes of limitation are typically tolled during the term of the agreement, and the statement of facts to which the company admitted is admissible into evidence in any prosecution resulting from failure to comply with the agreement.

[31] 15 U.S.C. 78u–6(a)(4), 78u–6 (b)(1).

[32] 15 U.S.C. 78u–6(a)(4); *see Order,* Black's Law Dictionary (10th ed. 2014) (defining an ''Order'' as ''A command, direction, or instruction''); U.S. Gov't Accountability Off., GAO–10–110, DOJ Has Taken Steps to Better Track Its Use of Deferred and Non-Prosecution Agreements, but Should Evaluate Effectiveness 11 (2009) (characterizing payments under DPAs and NPAs as ''monetary penalties imposed by DOJ . . . .''). We have also carefully considered whether to include declination letters within the ambit of Rule 21F–4(d)(3), and we have determined not to do so. We recognize that, in some instances, recent declination letters recite considerations similar in certain respects to provisions found in DPAs and NPAs, such as a company's agreement to cooperate, make monetary payments, and undertake remedial measures. *See, e.g.,* Justice Manual § 9–47.120 (2018) (*available at https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977*) (FCPA Corporate Enforcement Policy). However, declination letters as a class do not appear to reflect many of the key attributes of DPAs and NPAs described above (*e.g.,* admissions and tolling of applicable statutes of limitations) that have been important to our decision to make whistleblower awards available for DPAs and NPAs.

[33] *See* CCMC Letter.

[34] *See* notes 28 to 30, *supra.*

found in DOJ DPAs and NPAs that warrant also treating them as ''administrative actions,'' with the payments required under these agreements constituting ''monetary sanctions.'' Among the provisions that we deem important to our analysis are: (1) Substantial continuing obligations on the part of the respondent (*e.g.,* detailed and specific cooperation requirements and a requirement that any successors to the respondent be bound by the agreement); (2) specificity as to conduct that constitutes a violation of the agreement (*e.g.,* further violations of the federal securities laws, provision of false information, and failure to make payments on the schedule and in the amounts due); (3) tolling of applicable statutes of limitations; and (4) clear and substantial consequences for default, including the respondent's agreement not to contest or challenge the admissibility in a future enforcement action of factual statements supporting the Commission's case that are recited as part of the agreement, as well as the respondent's consent to the use of any documents, testimony, or other evidence previously provided by it in a future enforcement action resulting from its violations.

However, extending awards to the other circumstances suggested by some of the commenters would exceed our statutory authority. As Section 21F defines a ''covered judicial or administrative action'' to require ''monetary sanctions exceeding $1 million,'' [35] we are unable to pay awards in Commission actions where we obtain any smaller amount of monetary sanctions. For similar reasons, the suggestion of some commenters that an award be available any time a whistleblower's information helps secure a payment of money to the Commission sweeps too broadly; our ability to pay a whistleblower award turns in each case on whether a payment can reasonably be viewed as a ''monetary sanction,'' defined in relevant part as ''monies, including penalties, disgorgement, and interest, ordered to be paid . . . as a result of such action or any settlement of such action.'' [36] In addition, because a ''related action'' is defined in the statute to require that the same original information provided by the whistleblower also led to the successful enforcement of the Commission action,[37] we cannot grant an award for an action by DOJ or a self-regulatory organization absent a predicate Commission covered action as to which the whistleblower also merits an award.[38]

B. Rule 21F–4(e)—Definition of ''monetary sanctions''

1. Proposed Rule

Rule 21F–4(e) currently defines the term ''monetary sanctions'' to mean ''any money, including penalties, disgorgement, and interest, ordered to be paid and any money deposited into a disgorgement fund or other fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)) as a result of a Commission action or a related action.'' This definition substantially tracks the definition set forth in Section 21F of the Exchange Act.[39] The Commission proposed to amend Rule 21F–4(e) to provide that the term ''monetary sanctions'' means: (1) A required payment that results from a Commission action or related action and which is either (i) expressly designated by the Commission in an administrative proceeding or a court of competent jurisdiction in a judicial proceeding as disgorgement, a penalty, or interest thereon, or (ii) otherwise required as relief for the violations that are the subject of the covered action or related action; or (2) any money deposited into a disgorgement fund or other fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

Paragraph (e)(1)(ii) of the proposed amended rule was intended to clarify—consistent with our existing practice—that a required payment not expressly designated as disgorgement, penalty, or interest, must be in the nature of relief for the violations charged in order to be considered a ''monetary sanction'' for purposes of the whistleblower award program. Thus, we explained, if, for example, a court orders an asset freeze and appoints a receiver in a Commission enforcement action, and, without separately entering a disgorgement order, the court subsequently issues an order approving the receiver's plan to distribute money to injured investors, the amended rule would treat that second order as a monetary sanction under paragraph (e)(1)(ii) of the proposed rule. However, if the receiver requests approval to use frozen funds to pay creditors, taxes to a governmental entity, attorney's fees, or other costs of the receivership, such payments would not constitute monetary sanctions under paragraph (e)(1)(ii) because they are not in the nature of relief for the violations charged.

2. Comments Received

Some commenters supported the proposed amendment to the definition of ''monetary sanctions.'' [40] However, one of these commenters expressed concern that if the Commission were to obtain a court order for defendants to pay ''$1 million in restitution payments and $1 million in punitive damages,'' the order for punitive damages might not be viewed ''as relief'' for the securities violations.[41] This commenter recommended use of ''broader terminology, without substantially changing the way [the Commission] calculates qualifying payments from the way it does now.''

Several other commenters objected to the proposed amendment.[42] Some

[35] 15 U.S.C. 78u–6(a)(1).

[36] 15 U.S.C. 78u–6(a)(4), 78u–6 (b)(1). As the Proposing Release explained, in our view, a payment of money is reasonably treated as ''ordered'' when the governmental entity has some mechanism to compel the payment either directly or indirectly. This could include, but does not necessarily require, the ability to obtain a court order requiring the payment. As is further discussed above, the requisite indicia of compulsion are present in the agreements described in proposed Rule 21F–4(d)(3) because of the significant consequences that may result from a breach of the payment obligation under the agreement.

[37] 15 U.S.C. 78u–6(a)(5).

[38] *See* In the Matter of the Claim for an Award in Connection with a Notice of Covered Action, Exchange Act Release No. 34–84506, 2018 WL 5619386 n.5 (Oct, 30, 2018) (''The Commission may make an award to a whistleblower in connection with a related action *only if* the Commission has determined that the whistleblower is entitled to an award for a Commission covered action.'') (emphasis in original). As with other related actions, we do not believe it is necessary to require the Office of the Whistleblower to post notices of DPAs or NPAs entered into by DOJ. In the great majority of cases, claimants should be able to learn about DPAs and NPAs through public announcements. Some claimants also may know of a DPA or NPA as a result of having communicated with the authority bringing the action. In the rare instance where a claimant can demonstrate that compliance with Rule 21F–11(b) was not practicable because a DPA or an NPA was non-public and the claimant did not obtain actual knowledge of the agreement prior to the deadline for filing an award claim, the Commission could consider exercising its authority to waive compliance with the rule. *See* Section 36(a) of the Exchange Act, 15 U.S.C. 78mm(a), and Rule 21F–8(a). Commission settlement agreements subject to the rule are publicly announced on our website.

[39] According to section 21F(a)(4), the term ''monetary sanctions,'' when used with respect to any judicial or administrative action, means any monies, including penalties, disgorgement, and interest, ordered to be paid; and any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action. 15 U.S.C. 78u–6(a)(4).

[40] *See* CCMC Letter; Think Computer Letter; letter from Anonymous-135 (Oct. 22, 2019).

[41] *See* Think Computer Letter.

[42] *See* TAF Letter; letter from Whistleblower Law Collaborative, LLC (Sept. 18, 2018) (''Whistleblower

Continued

commenters argued that the proposed changes would introduce ambiguity or confusion into the rule.[43] In particular, one of these commenters observed that our use of the word ''required'' in the proposed rule would lead to ''confusion and uncertainty'' and suggested that we revert to the statutory term ''ordered.'' [44]

The principal concern of objectors appeared to be that the definition of ''monetary sanctions'' should be flexible enough to support whistleblower awards in a variety of circumstances that did not appear to be covered by the proposed amendment. For example, several commenters urged that the definition of ''monetary sanctions'' should permit payments to a whistleblower based on recoveries by a bankruptcy trustee to the same degree as a receiver appointed in a Commission enforcement action.[45] One of these commenters asserted: ''While Ponzi cases often go into receivership, public company accounting frauds . . . often end up in federal bankruptcy court. It is important for corporate whistleblowers to know they will be rewarded for turning in their company even if exposing the fraud ends up bankrupting the company.'' [46] Another of these commenters similarly supported awards in connection with bankruptcy proceedings, making the point that ''[t]he primary purpose of the two proceedings is essentially the same: To place control of the company in the hands of a disinterested party in order to properly run, reorganize or liquidate the business and protect investors and creditors.'' [47]

In addition to including bankruptcy cases, one commenter argued that the definition of ''monetary sanctions'' should be broad enough to permit awards in other forms of proceedings ''where sanctions or settlements result because of the Commission's work and/or the whistleblower's tip . . . .'' [48] This commenter urged that ''the definition of 'monetary sanctions' should be sufficiently flexible . . . to allow the Commission to consider sanctions obtained in any proceeding which results from the Commission's action (or a 'related action'), where there is a strong nexus (*e.g.,* a common nucleus of operating facts) between the matter in question and the whistleblower's tip and the ensuing investigation, and results in monetary relief for injured parties such as investors. In other words, the Commission's definition of 'monetary sanction' should be sufficiently flexible to accurately reflect what the whistleblower's tip accomplished in the form of relief to defrauded investors.'' [49]

This same commenter also asserted that there are many cases where the cost of recovery and administration of claims ''cannibalizes'' a substantial portion of the funds available for distribution to injured investors.[50] The commenter gave as an example a $100 million fraud case where a receiver successfully recovers $10 million but bills $7.5 million in professional expenses and fees. In such a case, the commenter opined, it would seem unduly harsh to calculate the award on $2.5 million; an award should be based on the gross amount recovered, and not reduced because of ''billings from attorneys, accountants, or other professionals.'' [51]

3. Final Rule

After considering the comments, we have decided to adopt Rule 21F–4(e) substantially as proposed. However, in response to concerns raised by some commenters about potential confusion, and to more closely track the statutory language, we have determined to use the word ''ordered,'' rather than ''required,'' so that Rule 21F–4(e) as adopted, in relevant part, now reads, ''(e) *Monetary sanctions* means: (1) An order to pay money that results from a Commission action or related action and which is either: (i) Expressly designated as penalty, disgorgement, or interest; or (ii) Otherwise ordered as relief for the violations that are the subject of the covered action or related action . . . .'' [52]

With respect to comments relating to bankruptcy proceedings, our statutory authority does not extend to paying whistleblower awards for recoveries in bankruptcy proceedings or other proceedings that may in some way ''result from'' the Commission's enforcement action and the activities of the whistleblower. Under Section 21F, we are authorized to pay whistleblower awards only on the basis of monetary sanctions that are imposed ''in'' a covered judicial or administrative action or related action.[53] A ''covered judicial or administrative action'' is an action ''brought by the Commission under the securities laws that results in monetary sanctions exceeding $1 million,'' [54] while a ''related action'' must be brought by one of the enforcement and regulatory authorities specified in the statute.[55] Bankruptcy proceedings are not brought by either the Commission acting under the securities laws or by one of the designated related-action authorities, and orders to pay money that result from bankruptcy proceedings are not imposed ''in'' Commission covered actions or related actions. The same is true of monetary payments that may result from other forms of proceedings that are not Commission covered actions or related actions.[56]

Defining ''monetary sanctions'' to include payments that are ordered ''as relief for the violations that are the subject of the . . . action'' is most consistent with our statutory authority. As noted, Section 21F(a)(4) of the Exchange Act defines ''monetary sanctions,'' in relevant part, as ''any monies, including penalties, disgorgement, and interest, ordered to be paid; . . . as a result of [any judicial or administrative] action or the settlement of such action.'' [57] Under accepted principles of statutory construction, the words that follow ''including''—penalties, disgorgement, and interest—although not an exhaustive list, are illustrative of the

Law Collaborative Letter''); Markopolos Letter; letter from Anonymous-12 (Sept. 18, 2018) (''Anonymous-12 Letter''); and letter from Mac Vineyard (Sept. 29, 2018) (''Vineyard Letter'').

[43] *See* TAF Letter; Whistleblower Law Collaborative Letter; Markopolos Letter.

[44] *See* Whistleblower Law Collaborative Letter.

[45] *See* TAF Letter; Whistleblower Law Collaborative Letter; Markopolos Letter; Anonymous-12 Letter.

[46] *See* Markopolos Letter.

[47] *See* TAF Letter.

[48] *See* Whistleblower Law Collaborative Letter.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] The proposed rule substituted the term ''required'' to reflect the recognition in proposed Rule 21F–4(d)(3) that monetary obligations under DPAs, NPAs, and Commission settlement agreements outside of the context of a judicial or administrative proceeding are not reflected in formal adjudicative orders. However, we have now included in the discussion of Rule 21F–4(d)(3), as adopted, additional explanation of these agreements and why the payments under them are reasonably viewed as ''ordered'' for purposes of the definition of monetary sanctions, rendering it unnecessary to substitute ''required'' for ''ordered'' in Rule 21F–4(e). We have also revised paragraph (e)(1)(i) to refer to ''a penalty, disgorgement, or interest'' rather than ''disgorgement, a penalty, or interest thereon,'' as was used in the proposed rule, in order to more closely track the statutory language and eliminate any potential confusion regarding this phraseology.

[53] 15 U.S.C. 78u–6(b)(1)(A) through (B).

[54] 15 U.S.C. 78u–6(a)(1).

[55] 15 U.S.C. 78u–6(a)(5). These authorities are the Attorney General of the United States, an appropriate regulatory authority (a term which is further defined in Exchange Act Rule 21F–4(g)), a self-regulatory organization, or a State Attorney General in connection with a criminal investigation. 15 U.S.C. 78u–6(h)(2)(D)(i).

[56] With respect to the commenter who sought to ensure that punitive damages would be covered by the rule, we note that punitive damages are not obtainable in Commission covered actions. However, the Commission may order (in an administrative proceeding) or seek (in a federal court action) civil money penalties, which are covered by the statute and the rule and therefore are a basis for posting a Notice of Covered Action and paying a whistleblower award.

[57] 15 U.S.C. 78u–6(a)(4).

general principle to be applied.[58] Accordingly, as the D.C. Circuit has held, we think it is reasonable to ''expand on the remedies explicitly included in the statute only with remedies similar in nature to those enumerated.'' [59] Because ''penalties, disgorgement, and interest'' describe forms of monetary relief for the violations that are the subject of an action, this provision reflects a congressional expectation that we would pay whistleblower awards only with respect to other orders to pay money that also constitute relief for the violations. For example, although restitution is not one of the sanctions set forth after the word ''including,'' restitution ordered in a criminal proceeding is a form of relief for the violations that are the subject of the action, and therefore is a ''monetary sanction'' that will support a related-action whistleblower award.

For these reasons, we are not persuaded by the commenter who urged that we define ''monetary sanctions'' to include a court's orders to pay a receiver's fees or billings from attorneys, accountants, or other professionals. Treating a court order to pay such fees as a ''monetary sanction'' would not comport with the statutory language (as just discussed).[60]

Additionally, as the Proposing Release stated, this conclusion is buttressed by Congress's use of the phrase ''monetary sanctions *imposed in* the action'' in further describing the sanctions that would support a whistleblower award.[61] While in normal parlance a person might say that disgorgement or civil penalties were ''imposed'' as a result of a securities-law violation, we do not believe that one would typically say that a court order approving fees and expenses of a court-appointed receiver or other professionals hired by the receiver ''impos[ed]'' a monetary sanction. Rather, this language indicates that the congressional focus was on monetary obligations that are in the nature of relief for the violations that are the subject of the action.

Finally, the Proposing Release stated generally that a court order approving a receiver's plan to distribute money to injured investors would be treated as a monetary sanction. We further clarify here, in line with Commission practice, the types of distributions to injured investors that will be treated as monetary sanctions. Although the Commission may seek the appointment of a receiver in an enforcement action filed in federal court, a receiver does not work for the Commission, represent the interests of the Commission, or even represent the interests of investors. Rather, a receiver is an officer of the court, appointed by the court to take custody of assets over which the court asserts jurisdiction (the receivership estate), for the benefit of all persons whom the court may later adjudge to have rights in the property.[62] Depending on the violations charged and the attendant facts and circumstances of the case, a court order directing a receiver appointed in a Commission enforcement action to make a distribution to investors may reflect recompense to the investors of money lost as a result of the securities violations, or it instead may simply reflect a return of assets that the receiver has obtained in his custodial capacity, which is greater than the amount of money lost as a result of the violations.

For example, in a simple hypothetical case where an investment adviser is charged with violating the securities laws for misappropriating $1 million from a fund that holds $100 million, investors lost $1 million as a result of the violations. If, for some reason, a receiver were appointed in the case and the receiver were ordered to unwind the funds and return all fund assets to the investors, any amounts paid in excess of the $1 million lost as a result of the violations would be a return of custodial assets held by the receiver, and not relief for the violations.

Under Rule 21F–4(e) as amended, we first look to whether an order to pay money is expressly designated as penalty, disgorgement, or interest. If so, then that order establishes the amount of monetary sanctions in the case as to that defendant. Absent an order to pay money expressly designated as a penalty, disgorgement, or interest, we will consider whether an order to pay money to investors is in the nature of relief for the violations that were the subject of the action. In the context of a Commission covered action where a receiver is appointed and the court orders a distribution of money in the receivership estate to investors, we will begin our assessment of the amount of the applicable monetary sanctions with an amount that does not exceed the higher of (i) the ill-gotten gains received by the defendants over which the receiver has been appointed, or (ii) investors' losses as a result of the violations. In determining the investor losses, we will consider losses that flowed from the violative conduct alleged in the covered action, to the extent such losses approximate the monetary sanctions the Commission could obtain in the covered action. In addition, we will not treat as a ''monetary sanction'' amounts that merely reflect a return of custodial assets to investors and not relief for the violations.[63]

C. Amendments to Exchange Act Rule 21F–3(b) Defining ''*related action*''

1. Proposed Amendments

Under Exchange Act Section 21F(b), any whistleblower who obtains an award based on a Commission enforcement action may be eligible for an award based on monetary sanctions

[58] *See Samantar* v. *Yousuf,* 560 U.S. 305, 317 (2010); *United States* v. *Philip Morris USA, Inc.,* 396 F.3d 1190, 1200 (D.C. Cir. 2004).

[59] *United States* v. *Philip Morris USA, Inc.,* 396 F.3d at 1200.

[60] As more fully discussed in the Proposing Release, we also view the requirement in Section 21F(a)(1), 15 U.S.C. 78u–6(a)(1), that a Commission action must ''*result*[ ] *in* monetary sanctions exceeding $1,000,000'' (emphasis added), and the requirement in Section 21F(a)(4), 15 U.S.C. 78u–6(a)(4), that a monetary sanction must be a ''result of'' an action, as supporting our interpretation. The phrase ''results in'' suggests to us that Congress was addressing those monetary obligations that the action secures ''as relief'' for the violations that are the subject of the action.

[61] 15 U.S.C. 78u–6(b)(1)(A) through (B) (emphasis added).

[62] *See Atlantic Trust Co.* v. *Chapman,* 208 U.S. 360, 370–71 (1908). Indeed, viewing a court order to pay a receiver's fees as a ''monetary sanction'' cannot be squared with the legal status of a receiver as an officer of the court and the receiver's fees as costs incurred by the court in administering the receivership property. Ralph Ewing Clark, A Treatise on the Law and Practice of Receivers §§ 11, 637 (3d ed. 1992).

[63] Under Section 21F(b)(1), the Award Amount must be between 10 percent and 30 percent ''of what has been collected'' of the monetary sanctions imposed in a Commission covered action or a related action. When, pursuant to the analysis above, a receiver's distribution to investors is the basis for the amount of a monetary sanction under paragraph (e)(1)(ii) of Rule 21F–4, that amount is deemed ''collected'' at the time the court orders the distribution. However, in a case involving a receiver in which the court has ordered penalties, disgorgement, or interest under paragraph (e)(1)(i), as noted above, that order—not the amounts distributed by the receiver—establishes the amount of the monetary sanction as to that defendant. In this circumstance, payment of an award based on the amount ''collected'' turns on the Commission's ability to conclude that some portion of funds or other assets over which the receiver assumes control should be treated as satisfying the court's monetary judgment in favor of the Commission. In applying this principle we have and will continue to generally expect—absent particular facts and circumstances supporting a different approach—to look to the amount distributed to investors as the amount collected for award purposes. If the amount distributed to investors includes monies paid to the receiver by other defendants to satisfy their own respective monetary orders, then we would generally expect to net these monies. For example, if two defendants are each separately ordered to pay disgorgement of $1 million, each contribute $500,000 to the receivership estate, and the receiver distributes $1 million to investors, then only $500,000 is ''collected'' as to each defendant's disgorgement order.

that are collected in a related action. Exchange Act Rule 21F–3(b) implements this statutory directive.

Rule 21F–3(b)(1) defines ''related action.'' The Commission proposed to amend the existing definition to clarify that a whistleblower would qualify for a potential related-action award if either (i) the whistleblower provided to the other governmental entity that pursued the purported related action the same information that the whistleblower provided to the Commission and the provision of that information led to the successful enforcement of the Commission covered action or (ii) the Commission itself provided that information to the other governmental entity and the provision of that information led to the successful enforcement of the related action.[64]

Additionally, the Commission proposed a new paragraph (4) to Rule 21F–3(b) that would apply to situations where the Commission's whistleblower program and one or more separate whistleblower award programs might potentially apply to the same action. The proposed new paragraph (4)—the ''multiple-recovery rule''—is based on the Commission's experience and past practice and is intended to clarify various issues relating to the application of the Commission's whistleblower program when another award program would potentially apply to the same action. It would provide that, notwithstanding the definition of related action in Rule 21F–3(b)(1), ''if a judicial or administrative action is subject to a separate monetary award program established by the Federal Government, a state government, or a self-regulatory organization, the Commission will deem the action a related action only if the Commission finds (based on the unique facts and circumstances of the action) that its whistleblower program has the more direct or relevant connection to the action.'' Proposed paragraph (4) would also provide that even ''[i]f the Commission does determine to deem the action a related action, the Commission will not make an award to you for the related action if you have already been granted an award by the governmental entity responsible for administering the other whistleblower award program. Further, if you were denied an award by the other award program, you will not be permitted to readjudicate any issues before the Commission that the governmental entity responsible for administering the other whistleblower award program resolved against you as part of the award denial.'' Lastly, proposed paragraph (4) provided that, if the Commission makes an award before an award determination is finalized by the governmental entity responsible for administering the other award program, the Commission would condition its award on the meritorious whistleblower making a prompt, irrevocable waiver of any claim to an award from the other award program.

Beyond these proposed amendments, the Commission also stated that as part of this rulemaking it is considering whether to repeal Exchange Act Rule 21F–3(b)(3)—which provides a somewhat different mechanism to determine that recovery from the Commission is not available where the whistleblower program administered by the Commodity Futures Trading Commission (CFTC) is involved—so that the provisions of proposed paragraph (4) would apply to all instances where a potential multiple recovery might occur.

2. Comments Received

With respect to the proposed revision of paragraph (1) of Rule 21F–3(b), the Commission received two comments.[65] One of the comment letters opposed the proposal and the other raised concerns.[66]

Both commenters expressed the view that the Commission cannot require whistleblowers to provide directly any information to any federal or state agency (or other governmental entity that can bring a related action) that does not have rules protecting whistleblower confidentiality and allowing anonymous whistleblower submissions. The commenter who opposed the proposed change also asserted that the confidentiality concern is not ameliorated by the alternative that allows the Commission to share the whistleblower's information directly with the other governmental entity because the whistleblower may never be informed that the information has been provided.[67] Finally, the opposing commenter asserted that the revised language in proposed paragraph (1) would not cover situations where one sister agency (*e.g.,* DOJ) provided a whistleblower's information to another sister agency (*e.g.,* the Federal Deposit Insurance Corporation), but neither the Commission nor the whistleblower had directly provided the information to the second sister agency.[68]

With respect to the proposed multiple-recovery rule, two commenters supported the proposal. One commenter stated that the proposal would improve the Commission's stewardship of the disbursement of public funds,[69] while another agreed with the Commission's preliminary view that a whistleblower should neither have multiple recoveries on the same action nor multiple bites at the adjudicatory apple.[70] One commenter recommended that the Commission go further by categorically excluding from the related-action definition any judicial or administrative action that may be subject to an alternative award program.[71]

Several commenters opposed the proposed multiple-recovery rule. The principal concerns raised were that: (i) The proposed amendment would increase the uncertainty and delay concerning any potential award and that this might discourage a whistleblower from coming forward;[72] (ii) the proposal is unnecessary because the Commission has never encountered a situation where a second whistleblower program potentially applied;[73] (iii) the proposal places an unreasonable burden on potential whistleblowers and could undermine the confidentiality protections in Section 21F(h)(2) by forcing whistleblowers to submit their information to other entities that may have a competing whistleblower program;[74] (iv) the Commission should not read Section 21F's language to impose a cross-agency cumulative 30 percent award ceiling;[75] and (v) the proposal ignores the fact that other whistleblower programs may have different award criteria and eligibility

[64] We also indicated that we are making a technical modification to the definition in Rule 21F–3(b)(1) to conform the existing rule language with the statutory definition as provided in Section 21F(a)(6) of the Exchange Act. This technical amendment clarifies that with respect to any related action the action must be ''based on'' the same original information that the whistleblower voluntarily provided to the Commission and that ''led to the Commission to obtain monetary sanctions totaling more than $1,000,000.'' As currently drafted, the rule reads as though this requirement applies only to criminal actions brought by a state attorney general.

[65] *See* letters from Kohn, Kohn & Colapinto, LLP (July 24, 2018) (''Kohn, Kohn & Colapinto July 24 Letter'') and Sen. Charles E. Grassley (Sept. 18, 2018) (''Sen. Grassley Letter'').

[66] Neither of these comments expressed any concern with the technical revision to conform paragraph (1) to the statutory definition of related action in Section 21F(a) of the Exchange Act.

[67] *See* Kohn, Kohn & Colapinto July 24 Letter.

[68] *Id.*

[69] *See* CCMC Letter.

[70] *See* Center for Workplace Compliance Letter.

[71] *See* CCMC Letter.

[72] *See* TAF Letter; Cornell Securities Law Clinic (Sept. 17, 2018) (''Cornell Law Clinic Letter''); Anonymous-9 (Sept. 18, 2018) (''Anonymous-9 Letter''); Think Computer Letter; AFREF Letter.

[73] *See* TAF Letter.

[74] *See* Sen. Grassley Letter; Anonymous-9 Letter.

[75] *See* AFREF Letter; Think Computer Letter.

considerations, including significantly reduced payout potentials.[76]

Some commenters offered alternatives to the proposed multiple-recovery rule. One alternative would be to allow a whistleblower to decide whether to receive an award from the Commission's whistleblower award program or the other award program after the whistleblower has been informed by both programs about their respective award determinations.[77] A second alternative would authorize a Commission award on an action as a supplement to the award authorized by the other whistleblower program up to an aggregate maximum based on the application of the statutory maximum percentage under the Commission's program (*i.e.,* 30 percent) to a combination of the multiple recoveries.[78]

Finally, two commenters supported the existing paragraph (3) of Rule 21F–3(b) and its framework for preventing multiple-recoveries or issue re-adjudication where both the Commission's and the CFTC's whistleblower programs might apply. In supporting the framework of paragraph (3), one of the commenters observed that the SEC and the CFTC regulate very similar and at times overlapping markets and the commenter believed that this counseled for retention of the existing paragraph (3).[79] Another commenter suggested that the existing framework of paragraph (3) should actually be expanded to cover all situations where the Commission might encounter a potentially applicable alternative whistleblower program that relates to another governmental entity's action.[80]

3. Final Rule

After reviewing the comments, we are (i) adopting revised paragraph (1) of Rule 21F–3(b) as proposed with one further clarification; (ii) removing existing paragraph (3) concerning potential multiple recovery under the SEC and CFTC whistleblower programs for the same action; and (iii) adopting proposed paragraph (4) as new paragraph (3) of Rule 21F–3(b).[81]

Revised paragraph (1) of Rule 21F–3(b) provides that a related action is: (i) A judicial or administrative action yielding monetary sanctions; (ii) that is brought by one of the entities listed in Rule 21F–3(b)(1)(i)–(iv); and (iii) that is based upon information that either the whistleblower provided directly to the governmental entity or the Commission itself passed along to the other governmental entity pursuant to the Commission's procedures for sharing information, and which is the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than $1 million.[82] The modification that we are making to the proposed rule text would include a clarification that a related action must yield monetary sanctions because the statute requires that any Award Amount must be tied directly to the monetary sanctions imposed.[83]

For the reasons stated in the Proposing Release, it is appropriate that for an action to qualify as a potential related action a whistleblower must have submitted information directly to the governmental entity that brought the action, or the Commission must have provided the whistleblower's information directly to the governmental entity. This requirement is already provided for in Rule 21F–11(c), and it reflects our interpretation of the requirement in Section 21F(a)(5) of the Exchange Act that a related action must be ''based upon the original information provided by a whistleblower'' to the Commission. In addition, our experience with the whistleblower program to date leads us to conclude that these requirements regarding the provision of information are appropriate and beneficial to allow us to work with the governmental entity that has brought the purported related action to assess the role a whistleblower's information actually played in contributing to the success of the action. These two alternative requirements have allowed our staff to work with the other governmental entity in a way that is not unduly burdensome to our staff or the other governmental entity to reasonably trace the role of the information from the other governmental entity's receipt of it (including whether it was duplicative of information the other governmental entity already had and what role the information played in advancing the governmental entity's investigation) through to the success of the purported related action.

We acknowledge the commenters' concerns that a whistleblower may decline to provide information directly to a governmental entity that lacks any confidentiality or anonymity protections because of a potential heightened risk of disclosure. But thus far in our experience administering the program, we have routinely observed that many whistleblowers have been directly sharing information with entities that can bring potential related actions. That said, to the extent some subset of whistleblowers may have concerns about submitting their potential original information to one of these entities, they can take steps to remove any information that may disclose their identity before providing it to the other governmental entity and, when submitting their tip to that governmental entity, explain that information that may identify the whistleblower has been excluded but that it can potentially be obtained by the governmental entity from the Commission.[84] In this way, if the authority seeks and obtains information from the Commission that might reasonably disclose the whistleblower's identity, the other governmental entity will be subject to the same heightened confidentiality obligations that Section 21F(h)(2) imposes on the Commission.[85]

[76] *See* Anonymous-9 Letter.

[77] *See* AFREF Letter; Think Computer Letter.

[78] *See* AFREF Letter.

[79] *See* Think Computer Letter.

[80] *See* Anonymous-9 Letter.

[81] We are making one further clarifying change. The proposed rule text stated that in assessing whether an action brought by another entity qualifies as a related action under the Commission's whistleblower program, the Commission will consider the ''unique facts and circumstances'' of the case. We are concerned that the use of the word ''unique'' may suggest that something highly unusual or special about the case will be relevant to the analysis, but that was not the intention of the proposal. Accordingly, to clarify that each case will be assessed on its own particular facts and circumstances, the final rule text does not include the word ''unique.''

[82] Experience with the program has shown that other types of actions, including actions under antitrust law, are not likely to qualify as related actions where they do not have a clear, explicit, and direct connection to the conduct governed by the securities law.

[83] 15 U.S.C. 78u–6(b)(1).

[84] If the whistleblower includes the Commission's TCR number in his or her submission to the other governmental entity, this should make it possible for the Commission to locate the information and provide it to the other governmental entity subject to the procedures and requirements for sharing such information. Further, if the other governmental entity for some reason is unwilling to accept an anonymous whistleblower tip submitted by an individual, the whistleblower could request, in writing, that the Commission staff provide the tip to the governmental entity and Commission staff will assess whether doing so would be appropriate given the nature of the tip, among other relevant considerations. Generally, before providing a whistleblower's tip to another governmental entity, the other authority must agree to maintain all whistleblower identifying information as confidential in accordance with the requirements established under Section 21F(h)(2)(A). In determining whether to provide information to another governmental entity or authority based on a whistleblower's request, we anticipate that the staff will consider the same mix of factors that the staff already looks to in deciding whether to share information.

[85] *See* 15 U.S.C. 78u–6(h)(2)(D)(ii)(I) (directing that DOJ, various federal regulatory agencies, self-regulatory organizations, state attorney generals and

Continued

While we appreciate that this may take additional effort by a whistleblower who is seeking to ensure that his or her information is received by the other governmental entity without losing the statutory confidentiality guarantees, we do not believe that this should impose an undue burden. Moreover, in the context of anonymous submissions made to the Commission, a whistleblower could similarly provide that same submission to one of the related-action entities even if the governmental entity does not expressly provide for anonymous disclosures. Under the Commission's rules, an anonymous whistleblower seeking to be eligible for an award must have an attorney, so the attorney should be well positioned to make the anonymous submission to the other governmental entity and to serve as the whistleblower's point of contact in dealing with that governmental entity.

We also determined not to revise the new rule to permit awards when another governmental entity that can pursue a potential related action shares information with a third governmental entity. In our view, the difficulties that could arise in trying to accurately and consistently assess the award criteria as a result of such an indirect chain of information transfer could pose undue burdens on our ability to reasonably make reliable award determinations.[86] In light of this, it is appropriate to anticipate that a whistleblower who may want a related-action award from any governmental entity should either provide that information directly to the governmental entity or otherwise rely on the Commission in its sole discretion to determine whether to share the information with another governmental entity.

Turning to the multiple-recovery rule that we are adopting as new paragraph (3) of Rule 21F–3(b), this rule is appropriate for all of the reasons specified in the Proposing Release. As we explained, those considerations are: (i) Permitting potential multiple recoveries on a single action could allow a total award in excess of the 30 percent ceiling that Congress has historically imposed in establishing federal whistleblower award programs in the modern era; (ii) in our view, the related-action-award component of the Commission's whistleblower program is intended to allow meritorious whistleblowers the opportunity to obtain a financial award for the ancillary recoveries that otherwise might not be covered by a whistleblower program even though the action resulted from the same original information the whistleblower provided to the Commission; and (iii) permitting whistleblowers to recover under both our award program and a separate award program for the same action would produce the irrational result of encouraging multiple ''bites at the apple'' in adjudicating claims for the same action and potentially allowing multiple recoveries. This rule codifies the approach the Commission has previously taken where another award program is available in connection with an action for which a related-action award is sought.[87]

In deciding to adopt the rule as proposed, we are unpersuaded by the concerns raised by those commenters who opposed the proposed rule. Although one commenter opposed the rule on the theory that it was unnecessary as the Commission had not encountered a matter involving a potential multiple recovery, as noted, the Commission has, in fact, issued a final order in connection with an award that involved a potential multiple recovery.[88] Further, we do not believe that our multiple-recovery rule will disincentivize (because of uncertainty about receiving an award or otherwise) whistleblowers from coming to the Commission. Potential whistleblowers still stand to receive an award both for any Commission covered action [89] and any ancillary action that may produce an award under the alternative whistleblower program. We do not agree that our rule should result in any appreciable additional delay for whistleblowers in receiving an award determination; in assessing this threshold question, the Commission and the CRS should be able to rely on publicly available information to determine the relative relationship of the other governmental entity's action to our whistleblower program and to the other potentially applicable award program.[90]

We do not believe that our rule should impact a whistleblower's confidentiality protections under Section 21F(h)(2) of the Exchange Act because those protections—to the extent that they apply in any given context—are not contingent on the recovery of an award in connection with another governmental entity's action. We are also unpersuaded that our rule will impose an undue burden on a whistleblower by forcing a whistleblower to submit information to another governmental entity that may have its own whistleblower award program; in our view, if Congress or some other governmental entity has established a whistleblower program, it is not unreasonable to expect that a whistleblower should comply with that program's requirements for submitting information in order to be eligible for an award under it.

As we explained at the time that we proposed this rule, in determining whether a potential related action has a more direct or relevant connection to the Commission's whistleblower program than another award program, the Commission has and will continue to consider the nature, scope, and impact of the misconduct charged in the purported related action, and its relationship to the federal securities laws. This inquiry will include consideration of, among other things: (i) The relative extent to which the misconduct charged in the potential related action implicates the public policy interests underlying the federal securities laws (*e.g.,* investor protection) versus other law enforcement or regulatory interests (*e.g.,* tax collection or fraud against the Federal Government); (ii) the degree to which the monetary sanctions imposed in the potential related action are attributable to conduct that also underlies the federal securities law violations that were the subject of the Commission's enforcement action; and (iii) whether the potential related action involves

regulatory authorities, and the Public Company Accounting Oversight Board ''shall maintain'' any whistleblower identifying information provided to them from the Commission ''as confidential in accordance with'' the same heightened confidentiality obligations that Section 21F(h)(2)(A) of the Exchange Act imposes on the Commission).

[86] We note that if a whistleblower can identify (or staff is aware of) an instance where this type of sharing of information clearly occurred, and provided that the claimant would be entitled to an award had the individual shared the information directly, the Commission would not be foreclosed from making a related-action award. *See* 15 U.S.C. 78mm(a) (Exchange Act provision affording the Commission discretionary waiver authority).

[87] *See In the Matter of the Claims for Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–84046, 2018 WL 4488273 at *6 (Sept. 6, 2018).

[88] *Id.*

[89] And as discussed below in connection with new Rule 21F–6(c), the incentive to come forward to potentially receive an award on a Commission action should be increased as a result of that rule amendment. This is because (subject to certain conditions) Rule 21F–6(c) will establish a presumption where the aggregate maximum award for actions resulting from a whistleblower's original information is $5 million or less (and the negative Award Factors are not present), that the Award Amount be set at the statutory maximum.

[90] We use the term ''governmental entity'' in the Description of Final Rule Amendments to refer to self-regulatory organizations, state governments and their various agencies, and federal government agencies and departments. The terminology is intended to capture not just governmental entities that may currently have a whistleblower program, but governmental entities that in the future may adopt or oversee a whistleblower program.

state-law claims and the extent to which the state may have a whistleblower award program that potentially applies to that type of law-enforcement action.[91] To take an example, we would not expect that our program would apply under the new rule to a DOJ action that charges a scheme to avoid tax obligations and imposes monetary sanctions; the IRS's award program would have a more direct and relevant connection to the case than the Commission's whistleblower program.[92] In addition, we would not expect the IRS's award program to apply to a Commission securities fraud action.

We considered the alternatives advanced by commenters but believe that our approach continues to be appropriate. We disagree that another governmental entity's action should be excluded from our program in all instances when another whistleblower award program might apply; it is preferable to continue to review each such case to determine whether based on the particular facts and circumstances it has a closer relationship to our whistleblower program or the alternative program. We are also unpersuaded that a whistleblower should be able either to collect a supplemental award from us up to a 30 percent total recovery from the various programs (*e.g.,* the Commission would have the discretion to add an additional amount to ''cap off'' up to 30 percent any award another governmental entity made that was below our statutory cap). Nor are we persuaded that a whistleblower should be allowed to choose which award (*e.g.,* the Commission's award for a related action versus another governmental entity's award for that same related action) to accept after learning the award determination from each of the potentially applicable award programs. These proposals are in our view needlessly inefficient, as both proposals would have both agencies conduct independent assessments of a whistleblower's contribution to the same action; further, as we explained above, including by the example referencing the IRS award program, we do not believe that Congress ever intended for multiple governmental award programs to yield awards on the same action.[93] Further, we are not persuaded that the potential existence of different eligibility requirements cuts against our rule. If we determine that another award program has a more direct or relevant connection to a particular action brought by another governmental entity, in our view it is fair and reasonable to require the whistleblower to meet all the same criteria and to be subject to the same award considerations that would be applied to any other applicant seeking a recovery under that other program.

Lastly, we have determined to repeal existing Rule 21F–3(b)(3) relating to the CFTC's award program and to allow our new multiple-recovery rule to apply to all actions brought by another governmental entity where one or more alternative whistleblower award programs might apply. A uniform rule to apply in these situations—including where the CFTC's whistleblower award program is implicated—is administratively preferable. This is because the Commission will have the authority under the new rule (based on the specific facts and circumstances of the underlying action) to assess which award program should more logically apply to an action brought by another authority. Under the rule we are repealing, the Commission has no such authority and instead the determination as to which whistleblower program applies is largely controlled (as the existing rule provides for) by the happenstance of which agency (*i.e.,* the SEC or the CFTC) first adjudicates an award application in connection with that action.

D. Rule 21F–6—Clarification of Commission's Discretion

Rule 21F–6 establishes the analytical framework that the Commission follows in exercising its discretion in both setting the appropriate amount of an award in connection with a particular Commission or related action and in determining an individual award for each whistleblower where the Commission makes awards to more than one whistleblower in connection with the same action.

In comments received in response to proposed new paragraphs (c) and (d) of Rule 21F–6 (discussed further below), there appeared to be some confusion regarding the Commission's discretion to consider the dollar amount of monetary sanctions collected, as opposed to focusing exclusively on a percentage amount (*i.e.,* between 10% and 30%) in the statutory range when applying the Award Factors and setting the Award Amount. Certain commenters appeared to assert that nothing in the statute suggests that the Commission, in setting the Award Amount, may consider the actual dollar value of the sanctions collected.[94] In addition, a hypothetical in the 2018 Proposing Release may have added to this confusion.[95] As the discussion below demonstrates, the statement that the Commission would be unable to consider the dollar amount, and rather only the percentage amount, in the context of the hypothetical was incorrect and did not reflect the Commission's prevailing understanding of its discretion or its practice in considering and applying the Award Factors and setting Award Amounts.

The Commission has had and continues to have broad discretion in applying the Award Factors and setting the Award Amount, including the discretion to consider and apply the Award Factors in percentage terms,

[91] To the extent that a state adopts a whistleblower award program relating directly to state securities law violations, we generally anticipate the Commission will find that the state award program should be the operative whistleblower program to determine whether to reward the whistleblower for that state action rather than the Commission's award program. The state program would likely be the more direct or relevant program and thus the appropriate avenue for the whistleblower to seek an award.

[92] By contrast, to the extent that a DOJ enforcement action centers on insider-trading violations that are based on the same misconduct that was the subject of the Commission's covered action, and that most of the monetary sanctions arise from the insider-trading violations, the Commission will likely treat the matter as a related action notwithstanding any potential restitution ordered due to any tax violations included within the case.

[93] One commenter argued that the new rule is inconsistent with the definition of related action in Exchange Act Section 21F(a)(5) because, according to the commenter, the ''plain meaning'' of that provision states that the Commission ''shall pay'' an award for an action or proceeding brought by another authority without any qualification or limitation based on the existence of an alternative whistleblower award program. *See* letters from Kohn, Kohn & Colapinto, LLP (Sept. 10, 2020) (''Kohn, Kohn & Colapinto Sept. 10, 2020 Letter''). The Commission has previously noted that, ''on its face, Exchange Act Section 21F does not exclude from the definition of related action those judicial or administrative actions . . . that have a less direct or relevant connection to our whistleblower program than another whistleblower scheme.'' *In the Matter of the Claims for Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–84046, 2018 WL 4488273 at *6 (Sept. 6, 2018). Nonetheless, as the Commission has previously explained, we ''perceive ambiguity when considering this language in the context of the overall statutory scheme. We believe that an understanding focused exclusively on the statutory definition of related action would produce a result that Congress neither contemplated nor intended.'' *Id.* The commenter further noted that ''the whistleblower advocacy community has never supported a 'double recovery' concept'' and suggested we extend the CFTC ''double recovery'' rule that the Commission adopted in 2011 so that it bars recoveries from other comparable programs. For the reasons discussed above and in the proposing release, we decline to do so because we believe that the new rule provides the Commission with appropriate flexibility in addressing situations that implicate possible multiple recoveries and should foster a more coherent approach for the resolution of award matters that potentially implicate multiple whistleblower award programs.

[94] *See* TAF Letter.

[95] *See* Whistleblower Program Rules, 83 FR at 34,713–714, nn. 99 & 105 (July 20, 2018).

dollar terms or some combination thereof.

The statutory language in Section 21F demonstrates that Congress gave the Commission the ability—and the discretion—to consider the application of the award criteria provided for in Rule 21F–6(a) and (b) in dollar terms. For example, the language in Section 21F(c)(1) repeatedly refers to the Commission setting the ''amount of the award,'' which indicates that Congress afforded the Commission discretion to consider the application of the Award Factors, and make an award to a meritorious whistleblower, in dollar terms.[96] Nothing in the text of Section 21F indicates any intent on the part of Congress to limit the Commission's discretion in this regard.[97] Indeed, the only reference to percentages in the award provisions of the statute is for purposes of setting the upper and lower bounds in dollar terms for the Award Amount.[98]

To implement Section 21F(c)(1) of the Exchange Act, the Commission adopted Exchange Act Rule 21F–5 (titled ''Amount of award'') and 21F–6 (titled ''Criteria for determining amount of award''). Rule 21F–5(a) reiterates the statutory direction that the ''determination of the amount of an award is in the discretion of the Commission.'' Rule 21F–5(b) states that, if all the conditions for a whistleblower award are satisfied, ''the Commission will then decide the percentage amount of the award applying the criteria set forth in'' Rule 21F–6.

We further observe that the Commission's long-standing interpretation of Rule 21F–6(a)(3)—law enforcement interest—already specifically references the Commission's discretion to consider the monetary sanctions and the potential Award Amount when assessing that factor, and, as described below, we are adding language to clarify (as contemplated by the statutory language) that the Commission has the same discretion with respect to the other existing Award Factors.

We also note that, as a practical matter, award determinations have historically been recommended to the Commission by the CRS as both a dollar amount and the corresponding percentage of monetary sanctions collected. In considering the application of the Award Factors and the Award Amount, it therefore would have been difficult as a practicable matter to require that the relevant dollar amounts not be considered by the Commission in applying the Award Factors. Moreover, it has been the Commission's long-standing general practice in the public whistleblower award orders (and notices announcing awards) to describe those awards in actual dollar amounts, not percentages (which are generally redacted). This practice has been followed for the common-sense reason that actual dollar figures—not abstract percentages—are most likely to advance the whistleblower award program's goal of incentivizing potential whistleblowers.

To clarify the Commission's discretionary authority, we are modifying Rule 21F–6 to state that the Commission may consider the factors, and only the factors set forth in in Rule 21F–6, in relation to the facts and circumstances of each case in setting the dollar or percentage amount of the award.[99] This new language, by expressly referring to setting the dollar or percentage amount of the award, makes clear that the Commission and the CRS may, in applying the Award Factors specified in Rule 21F–6(a) and (b) and setting the Award Amount, consider the potential dollar amount that corresponds to the application of any of the factors.[100]

The discretion that we are clarifying is the Commission's discretion in applying the Award Factors—in percentage terms, dollar terms, or some combination thereof—and setting the Award Amount. This is not a separate (post application of the Award Factors) assessment of whether Award Amounts are too small or too large. We also are affirming that Award Amounts should be based exclusively on the application of the Award Factors.[101]

We believe the clarity and transparency provided by this amendment will not affect the determination of Award Amounts. The process for recommendations from the CRS is not changing except for some increases due to the presumption described above for awards of less than $5 million. The Commission has had and continues to have the discretion to apply the Award Factors to determine the Award Amount within the statutory range. We also believe that the clarity and transparency provided by this and the other amendments the Commission is adopting, will further incentivize whistleblowers to come forward and to do so as promptly as practicable.[102]

The amendment we are adopting was the subject of a question posed to commenters in the proposing release. While the proposing release included proposed rule text that embodied the Commission's general discretion to consider the dollar amount of any increase or decrease under paragraphs (a) and (b) for large awards (along with the proposed specific mechanism for increasing small awards under $2 million), the proposing release asked commenters whether this approach should ''cover all awards considered under Exchange Act Rule 21F–6[.]'' The proposing release explained that this approach might ''allow [the Commission] to better assess each enhancement or reduction in dollar terms'' to permit the Commission to ''more realistically and concretely assess the impact of each award factor on the overall award to ensure that [the Commission is] appropriately rewarding the whistleblower and incentivizing future whistleblowers[.]'' [103]

E. Rule 21F–6(c)—Establishment of a Presumption of the Maximum Statutory Amount for Certain Awards

1. Proposed Rule

The Commission proposed paragraph (c) to Rule 21F–6, which would add to Rule 21F–6's existing framework by providing a specific mechanism for the

[96] 15 U.S.C. 78u–6(c)(1)(B)(i)(IV).

[97] *See also* Whistleblower Program Rules, 83 FR at 34,713–34,713, nn. 99 & 105 (July 20, 2018).

[98] 15 U.S.C. 78u–6(b)(1)(A) and (B).

[99] We are also making two other modifications to the first sentence of Rule 21F–6. *First,* we are replacing the words ''award percentage'' with just ''award.'' We are making this technical modification because we announce awards to the public primarily in dollar terms. *Second,* for the same reasons discussed above in footnote 81, we are removing the word ''unique.''

[100] As is the case with every aspect of any award determination under Rule 21F–6, the Commission shall not consider the balance of the IPF when exercising this express discretionary authority or the discretionary authority afforded by new Rule 21F–6(c). Section 21F(c)(1)(B)(ii) prohibits the Commission from adjusting an individual award based on the availability of money in the IPF; specifically, it provides that ''[i]n determining the amount of an award,'' the Commission ''shall not take into consideration the balance of the [IPF].''

[101] In deciding to clarify that the Commission may consider the dollar amount as it assesses the Award Factors, the Commission has determined that it is not necessary or appropriate to amend the Award Factors themselves. In the future, the Commission could amend the Award Factors through appropriate notice and comment.

[102] To add further transparency, we are also modifying Rule 21F–10 and Rule 21F–11 to make clear that, in applying the award factors specified in Rule 21F–6 and determining the award dollar and percentage amounts set forth in the preliminary determination, the award factors may be considered by the SEC staff and the Commission in dollar terms, percentage terms or some combination thereof. We further clarify that, should a claimant choose to contest a preliminary determination, the claimant may set forth the reasons for the objection to the proposed amount of an award, including the grounds therefore, in dollar terms, percentage terms or some combination thereof.

[103] The proposing release noted that ''to the extent that individuals are motivated to come forward based on a potential award, it is the total dollar payout that'' is generally relevant to them.

Commission to exercise its discretion to increase any awards to a single whistleblower that would likely be below $2 million.

Specifically, proposed paragraph (c) would provide that, ''[i]f the resulting award after applying the award factors specified in paragraphs (a) and (b) would yield a potential payout to a single whistleblower below $2 million (or any such greater amount that the Commission may periodically establish through publication of an order in the **Federal Register**), the Commission may increase the award so that the likely total payout to the whistleblower reflects a dollar amount that the Commission determines is appropriate to achieve the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers who might otherwise be concerned about the low dollar amount of a potential award; provided that in no event shall the provision be utilized to raise a potential award payout (as assessed by the Commission at the time it makes the award determination) above $2 million (or by such other amount as the Commission may designate by order) nor will the total amount awarded to all whistleblowers in the aggregate be greater than 30 percent.''

The proposed rule further provided that an increase to an Award Amount would not be available in the event that the award either involved any of the negative award criteria specified in Rule 21F–6(b)—*i.e.,* culpability, unreasonable reporting delay, or interference with a company's internal compliance processes or reporting program—or triggered the culpability provision of Rule 21F–16. The Commission explained that it believed proposed paragraph (c) could provide an important additional incentive for potential whistleblowers to come forward.

2. Comments Received

The Commission received several comments on the proposed rule. Each of the commenters who supported the proposed rule suggested that it could help incentivize more whistleblowers to come forward.[104] By contrast, commenters who opposed the rule suggested: The proposed rule would not encourage whistleblowers to come forward because it would introduce additional uncertainty into the award process; [105] there is no justification for an enhancement to an award if the existing Award Factors do not justify a higher award; [106] the Commission already has the authority to enhance an award up to the maximum possible amount so the proposed rule change is unnecessary; [107] and Congress did not authorize the Commission to apply any dollar amount considerations in setting an Award Amount.[108]

3. Final Rule

After considering the various views expressed in the comments, and consistent with the Commission's determination that increased transparency, efficiency, and clarity will enhance the overall effectiveness of the program, we have determined to adopt the proposed rule with several modifications.[109]

First, the reach of the rule will be expanded to include a greater number of potential award matters. Specifically, the rule will now be presumptively available, subject to the exclusions set forth below, if the statutory maximum award of 30 percent of the monetary sanctions collected in any covered and related action(s), in the aggregate, is $5 million or less, and the Commission determines there is no reasonable anticipation that future collections would cause the statutory maximum award to be paid to any whistleblower to exceed $5 million in the aggregate, and the negative Award Factors are not present.

In selecting $5 million as the ceiling for the new rule's application, we considered the fact that a majority of awards should, based on historical experience, be subject to this new rule. We believe there will be gains in efficiency from streamlining the award determination process for awards where the whistleblower did not trigger any of the negative award factors in Exchange Act Rule 6(b). In this category of cases, experience with the program demonstrates that there is no significant programmatic value in expending time and effort weighing minor increases or reductions to the Award Amount. Further, we believe application of this rule will save the majority of meritorious whistleblowers time and effort in explaining what they believe is the appropriate Award Amount in their award applications and in any subsequent response the whistleblower might file in response to a preliminary determination. Moreover, providing increased transparency, efficiency and clarity for this wide range of awards should help to further incentivize individuals to come forward because they can have more comfort, provided the criteria for the rule's application are met, that they may receive an award that is at the statutory maximum.

Second, we have revised the criteria for eligibility of the rule to allow more claimants to potentially receive the maximum statutory award. Consistent with the proposed rule, to be eligible for application of the new rule a claimant must *not* have acted in such a manner that he or she triggered the negative award factors specified in either Rule 21F–6(b)(1) (culpability in connection with the securities law violation) or Rule 21F–6(b)(3) (malfeasance in connection with an internal compliance program) with respect to the claimant's award application, and the claimant must *not* have acted in a manner that triggers Rule 21F–16 (concerning awards to whistleblowers who engage in highly culpable misconduct). In a change from the proposed rule, a claimant's unreasonable delay under Rule 21F–6(b)(2) will not automatically disqualify the individual from receiving the enhancement under the new rule. Rather, the Commission in certain cases may exercise its discretion to allow a claimant to receive the benefit of the statutory maximum authorized by this rule notwithstanding his or her unreasonable delay, where the Commission determines that it is consistent with the public interest, the promotion of investor protection, and the objectives of the whistleblower program. Although we anticipate that this discretionary authority will not be routinely used where unreasonable delay has occurred, it will be available to the Commission where the public interest, investor protection and programmatic considerations counsel in favor of allowing the claimant to receive the statutory maximum.[110]

Third, subject to the below exceptions, the new rule embodies a presumption that the Commission will

[104] AFREF Letter; SIFMA Letter; Public Citizen Letter; Cohen Milstein Letter; Markopolos Letter.

[105] Cornell Law Clinic Letter; Think Computer Letter.

[106] CCMC Letter.

[107] Morrell Letter.

[108] Better Markets Letter.

[109] In addition to these modifications to the rule text, we are making one further change from the proposing release. The Commission intends new Rule 21F–6(c) to be applicable to all claims pending as of the effective date of these amendments so that those pending claims may receive the benefits of this amendment.

[110] In determining whether compelling circumstances exist to use this authority, the Commission may consider (among other relevant facts and circumstances presented by a particular award application) the following: Whether the period of delay that is determined to be unreasonable was on balance minimal; whether investors experienced additional harm during the period of unreasonable delay; and whether the Commission's ability to pursue an enforcement action was appreciably jeopardized as a result of the period of unreasonable delay.

pay a meritorious claimant the statutory maximum amount where none of the negative award criteria specified in Rule 21F–6(b)—*i.e.,* culpability, unreasonable reporting delay, or interference with a company's internal compliance processes or reporting program—are implicated and the award claim does not trigger Rule 21F–16 (concerning awards to whistleblowers who engage in culpable conduct).

Fourth, consistent with the presumption of the rule's applicability, an otherwise eligible claimant will not receive the statutory maximum if the Commission determines in its discretion that either: (1) The claimant's assistance as assessed by the Commission under Rule 21F–6(a) was, under the relevant facts and circumstances, limited; or (2) the Commission determines that providing the statutory maximum in the particular matter would be inconsistent with the public interest, investor protection or the objectives of the whistleblower program (the ''Exclusions''). These two Exclusions—which are the only means by which the presumption discussed above may be overcome—are intended to preserve the Commission's discretion to deny a statutory-maximum enhancement in situations where doing so is consistent with the program's overall goals.

The first Exclusion, for example, will allow the Commission discretion to deny a statutory-maximum enhancement where it determines that the assistance provided by the whistleblower was limited, with the degree of assistance provided by the whistleblower to be assessed in accordance with Rule 21F–6(a). This exclusion is consistent with prior past Commission practice in the case of limited assistance. Based on experience with the program, the Commission does not expect the presumption to be overcome by this Exclusion in the vast majority of circumstances.

The second discretionary Exclusion will preserve the Commission's discretion to deny a statutory-maximum enhancement where relevant circumstances counsel against an enhancement. As an example, if the claimant has engaged in securities-law violations that were unrelated to the conduct that formed the basis for the covered action, the Commission could (in its discretion) exclude the claimant from receiving a statutory-maximum enhancement.

Fifth, although we anticipate that the Commission should have little difficulty applying the presumptive enhancement afforded by Rule 21F–6(c) in cases involving a single meritorious whistleblower, the new rule recognizes that there are cases that will involve multiple meritorious whistleblowers. Where at least one of the multiple meritorious whistleblowers would qualify for the presumption if that individual were the sole meritorious whistleblower, the new rule will operate to ensure that the total aggregate award paid to all meritorious whistleblowers is the statutory maximum. But because these cases could involve any number of meritorious whistleblowers and because these cases could reflect any number of whistleblowers that might qualify for the enhancement rule were they the only whistleblower in the matter, the new rule provides flexibility in how the Commission should allocate the statutory maximum Award Amount in these instances. Nonetheless, the rule requires that in allocating that amount among the meritorious claimants, the Commission will consider all relevant facts.[111]

In adopting this rule, we concur with those commenters who expressed the view that this new provision could help to further incentivize whistleblowers to come forward to the Commission. Contrary to what some commenters suggested, we believe that we are significantly increasing certainty. When there are no negative award factors present and the statutory maximum award of 30 percent is $5 million or less, there will be a presumption in favor of an Award Amount at the statutory maximum, subject to the Exclusions.[112] Thus, we believe that this new rule will likely increase—not decrease—a reasonable individual's willingness to report potential securities-law violations.[113]

Lastly, we agree with the commenter that suggested that the Commission already possesses discretionary authority to increase any award to the statutory maximum. But expressly setting forth the specific terms and eligibility criteria in the new rule should help increase the public's confidence that the Commission will presumptively set the Award Amount at the statutory maximum in those cases where none of the negative award criteria specified in Rule 21F–6(b)(2) are present, the statutory maximum award of 30 percent is $5 million or less, and the Exclusions are not applicable.[114]

F. Rule 21F–6(d)—Enhanced Review of Certain Awards

1. Proposed Rule

The Commission proposed a new paragraph (d) that would add to Rule 21F–6's existing analytical framework by providing a mechanism for the Commission in its discretion to conduct an enhanced review of awards in situations where a whistleblower has provided information that led to the success of one or more covered or related actions that, collectively, result in at least $100 million in collected monetary sanctions.

This proposed provision would have formalized the exercise of the Commission's discretion in setting Award Amounts in two respects where the potential Award Amount might involve a large payout. *First,* proposed paragraph (d)(1) would have expressly stated that the Commission has the discretion to consider the potential dollar amount when applying each of the existing award criteria.

Second, proposed paragraph (d)(2) would have provided an express mechanism for the Commission to adjust the award if, after consideration of the existing Award Factors in paragraphs (a) and (b) of Rule 21F–6, the Commission finds that the potential award (from any Commission actions and related actions, collectively) exceeds what is reasonably necessary to reward the whistleblower and to incentivize similarly situated whistleblowers. Further, proposed paragraph (d)(2) would have made clear that any increases or decreases to a whistleblower's Award Amount under that paragraph shall not yield a potential award payout (as assessed by the Commission at the time that it makes the award determination) below $30 million, nor may any reduction result in the total amount awarded to all meritorious whistleblowers, collectively, for each covered or related action constituting less than 10 percent of the monetary sanctions collected in that action.

[111] We have decided not to adopt the proposed mechanism that would authorize the Commission to increase the $5 million figure through the publication of an order in the **Federal Register**. Such a mechanism is no longer necessary given our decision to expand the scope of the rule and the fact that (based on historical experience) the vast majority of awards will now be covered by this rule given its expanded scope.

[112] For awards where the statutory maximum award of 30 percent is greater than $5 million, the Commission will continue to analyze the Award Factors identified in Rule 21F–6 in determining the Award Amount. Based on the historical application of the award factors, if none of the negative Award Factors specified in Rule 21F–6(b) are present, the award amount would be expected to be in the top third of the award range.

[113] Morrell Letter.

[114] For the reasons already discussed above, we do not agree with the commenter that stated that Congress did not authorize the Commission to utilize dollar-amount considerations in setting awards. 15 U.S.C. 78u–6(c)(1). *See also id.* 78u–6(f).

2. Comments Received

This proposed rule received a substantial number of public comments. Many of these letters were one of two different form letters that opposed proposed paragraph (d), as described in the letters. The first set of these form letters incorrectly stated that proposed paragraph (d) would ''cap[] rewards in the largest cases to the lowest percentage rate.'' [115] The second set of form letters—contrary to the explanations offered in the Proposing Release—claimed that paragraph (d) would ''plac[e] an arbitrary limit'' on rewards and ''authorize . . . drastic reductions in the amount of rewards in major fraud cases.'' [116] The proposed rule would not have imposed a ''cap'' or an ''arbitrary limit,'' nor would it have resulted in a ''drastic reduction'' in Award Amounts. Aside from the form-letter comments, the Commission received approximately 30 unique comment letters from persons expressing views on proposed paragraph (d).

A minority of the unique comments supported the proposal.[117] One such commenter stated that there is a public policy interest in allowing the Commission to make discretionary increases or decreases to Award Amounts with extremely large payouts because, according to the commenter, there is not necessarily a correlation between the size of a judgment and the seriousness of the violation; as a result, it could be perceived as unfair if an uncomplicated whistleblower submission could earn a whistleblower a significant windfall.[118] Relatedly, another commenter asserted that awards substantially over $30 million create a potential public perception of ''jackpot justice'' that may harm the overall credibility of the Commission's enforcement program.[119] Additionally, two commenters asserted that awards over $30 million provide little marginal incentive for a whistleblower to come forward because individuals who receive awards over that amount should be financially secure for the rest of their lives.[120] Another commenter who supported proposed paragraph (d) stated that the Commission should have the flexibility to adjust awards downward as it deems appropriate provided that the Commission explains its reasoning in the award order.[121]

With respect to the unique comment letters opposing the proposed provision, the principal arguments against it generally related to the mechanism in paragraph (d)(2) that would formalize the use of Commission discretion to reduce large awards downward—but never below $30 million—under certain circumstances.[122] The principal arguments against paragraph (d)(2) are listed below.

- By permitting a reduction to or a capping of awards, the provision could disincentivize whistleblowers who may have information about massive frauds or other securities law violations.[123]
- Large awards are important to the program's success because these awards generate public awareness of the program.[124]
- The proposal to reduce awards could contravene the statutory language that prohibits the Commission from taking the IPF's balance into account when making whistleblower award determinations.[125]
- In considering whether to adopt a mechanism to reduce large awards, the Commission should focus exclusively on motivating people who know of potential securities law violations to report the violation and not on whether the monies could be used for other important public purposes.[126]
- The proposal would establish a 10 percent cap for awards above $30 million and the statute does not permit such a cap.[127]
- By operating as a 10 percent cap on whistleblower awards, the rule could decrease the amount of overseas violations of the securities laws that are detected because large awards incentivize foreigners who may lack employment anti-retaliation protections under U.S. law.[128]
- A 10 percent cap on awards could discourage companies from maintaining adequate internal compliance programs if companies are aware that whistleblowers are less likely to report potential violations to the Commission.[129]
- Large awards are needed to help mitigate the cost of professional and social sanctions that whistleblowers might experience.[130]
- The proposed rule would introduce an additional layer of uncertainty for potential whistleblowers and thus could reduce their willingness to assume the risks associated with reporting.[131]
- A ''cap'' would be unfair to individuals who disclose industry-wide frauds because they might no longer be able to work in their chosen field.[132]
- Proposed paragraph (d)(2)'s terms such as ''reasonably necessary'' are ''fuzzy'' and may result in downward-award adjustments based on political considerations.[133]
- The $30 million threshold in proposed paragraph (d)(2) is not based on the value of the particular whistleblower's information or behavior.[134]
- ''By simultaneously increasing the smallest awards and decreasing the largest awards,'' the Commission ''risks encouraging more low-level employees to report minor fraud while potentially deterring high-level executives from reporting major fraud.'' [135]

3. Final Rule

After considering the comments on this proposed rule and further analysis of the operation of the whistleblower

[115] Form Letter A.

[116] Form Letter C.

[117] The Commission also received a draft paper that supported proposed Rule 21F–6(d), asserting (among other things) that relying strictly on award percentages (without consideration of the corresponding dollar amount) ''does not ensure that awards will not vastly exceed what is *necessary* to incentivize whistleblowers to come forward[.]'' Amanda M. Rose, *Calculating SEC Whistleblower Awards: A Theoretical Approach* (May 28, 2019 Draft).

[118] *See* Anonymous–9 Letter.

[119] *See* SIFMA Letter.

[120] *See* SIFMA Letter; CWC Letter.

[121] *See* letter from Anonymous–123 (Oct. 31, 2018).

[122] Several commenters noted that the proposed rule may be unnecessary because the Commission has not made any awards above the $30 million threshold. *See, e.g.,* TAF Letter. But in fact the Commission had issued two awards exceeding $30 million to a single whistleblower. *See In the Matter of the Claims for an Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–82987, 2018 WL 1378788 (Mar. 19, 2018); *In the Matter of the Claims for an Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–73174, 2014 WL 4678597 (Sept. 22, 2014). Moreover, since the comments in question were received, the Commission has made additional awards to individual whistleblowers above $30 million. *See, e.g., In the Matter of the Claims for an Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–89002, 2020 WL 3030497 (June 4, 2020); *In the Matter of the Claims for an Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–85412, 2019 WL 1353776 (Mar. 26, 2019).

[123] *See, e.g.,* TAF Letter; Cohen Milstein Letter; Markopolos Letter; Public Citizen Letter.

[124] *See, e.g.,* TAF Letter; National Whistleblower Center Letter (Sept. 18, 2018) (''NWC Sept. 18 Letter'').

[125] *See, e.g.,* TAF Letter; AFREF Letter; NWC Sept. 18 Letter; Sen. Grassley Letter.

[126] *See* Admati & Steele Letter; NWC Sept. 18 Letter; Sen. Grassley Letter.

[127] *See* TAF Letter; letter from Taylor S. Amarel (Aug. 16, 2018).

[128] *See* NWC Sept. 18 Letter.

[129] *See* NWC Sept. 18 Letter; *see also* Sen. Grassley Letter.

[130] *See, e.g.,* letter from Wampler Buchanan Walker Chabrow Banciella & Stanley, P.A. (Sept. 14, 2018) (''Wampler Letter''); Sen. Grassley Letter.

[131] *See, e.g.,* TAF Letter; NWC Sept. 18 Letter; Better Markets Letter.

[132] *See* Markopolos Letter.

[133] *See* Think Computer Letter.

[134] *See* Sen. Grassley Letter; *see also* Wampler Letter; letter from Anonymous–43 (Sept. 9, 2018).

[135] *See* Admati & Steele Letter; *see also* Better Markets Letter; Jansson Letter.

program to date, we have concluded that it is not necessary to adopt the formalized mechanism for the Commission to exercise its discretion to apply the Award Factors and set Award Amounts, and thus we have determined not to adopt it. We note that many of the comments received demonstrated a misperception of Proposed Rule 21F–6(d)(2) that would have applied to exceedingly large potential awards. A significant number of commenters asserted that this proposed rule would effectively result in Award Amounts being capped or set at the statutory minimum. We think it is important to correct this misunderstanding for potential whistleblowers and the public generally: Proposed Rule 21F–6(d)(2) did not introduce a cap nor was it intended to function in any way as an award cap.[136]

G. Rule 21F–6(b)—Interpretive Guidance Regarding the Meaning of ''unreasonable delay''

1. Proposed Guidance

Rule 21F–6(b)(2) provides that the Commission will reduce an award if it finds that the whistleblower engaged in ''unreasonable delay'' in reporting a potential securities-law violation to the Commission. Further, new Rule 21F–6(c)—as discussed above—provides that the presumption under that rule will generally not be available if a whistleblower engaged in unreasonable delay. In the Proposing Release, we explained that any delay in reporting to the Commission beyond 180 days would be deemed presumptively unreasonable.

In proposing this interpretive guidance, we explained that the presumption could be overcome depending on potential highly unusual facts and circumstances of a particular award application connected to the delay. We also cautioned that shorter periods of delay (*i.e.,* less than 180 days) may also qualify as unreasonable depending on the particular facts and circumstances at issue, including, for example, whether the violations were ongoing, whether investors continued to experience harm or the whistleblower continued to profit from the wrongdoing during the period of the whistleblower's delay, or whether the delay had a discernable impact on the monetary sanctions that were ordered in the enforcement action.

2. Comments Received

We received only a few comments on the proposed unreasonable-delay guidance.[137] One commenter voiced support, asserting that the guidance would bring clarity and establish a general bright-line standard that could be adjusted on a case-by-case basis.[138]

Two commenters expressed concerns about the guidance. One asserted that a whistleblower who is genuinely continuing to pursue internal compliance procedures past the 180-day period should not be presumptively deemed to have unreasonably delayed reporting.[139] The other commenter who opposed the guidance expressed the view that the Commission should continue to evaluate unreasonable delay on a case-by-case basis.[140]

3. Final Rule

After considering the comments on this proposed rule and as a result of further analysis of the operation of the whistleblower program, we have determined not to adopt a specific time-based presumption of unreasonable delay as interpretive guidance. We continue to believe that a 180-day time period may be consistent with unreasonable delay in many circumstances. But we are persuaded that the idiosyncratic nature of the various claims the Commission is often presented with counsels in favor of continuing to assess the facts and circumstances of each case. Among other relevant considerations in assessing whether a delay was in part or in whole unreasonable (and whether any reduction is warranted if the delay was unreasonable) include whether the delay was a result of circumstances beyond the whistleblower's control and whether reasonable actions were taken by the whistleblower during the period of delay.

For example, we agree with the commenter who expressed the view that delay by a whistleblower who is genuinely following internal compliance procedures or otherwise genuinely attempting to address the misconduct internally may be reasonable. Specifically, if the whistleblower provides evidence for the administrative record that the whistleblower was continuing to pursue the matter internally and the company's responses to the whistleblower indicated that the company was taking investigatory or remedial action in a diligent and timely fashion, delay of up to or more than a 180-day period may be deemed reasonable under the facts and circumstances. The Commission will also continue to consider, for example, whether a whistleblower's delay was in whole or in part reasonably attributable to illness or other personal or family circumstances or to a reasonable amount of time spent attempting to ascertain relevant facts or obtain an attorney in order to remain anonymous.

The Commission will continue to evaluate whether the violations were continuing during the delay and whether investors were being harmed during that time. Another relevant consideration that the Commission may consider is whether the delay threatened the Commission's ability to pursue the violations either because of the statute of limitations,[141] or the loss or destruction of evidence during the period of delay. The Commission will also continue to consider whether the whistleblower might ultimately profit from the delay by obtaining a larger Award Amount because the failure to report permitted the misconduct to continue, which can affect the calculation of the monetary sanctions, including, for example, increased disgorgement of ill-gotten gains and penalties. The Commission will continue to set awards at amounts that appropriately reflect these considerations.

We continue to encourage whistleblowers to report as early as possible, to ensure the Commission is able to timely address misconduct and, whenever possible, return those funds to harmed investors.

H. Amendment to Exchange Act Rule 21F–2—Whistleblower Status, Award Eligibility, Confidentiality, and Retaliation Protection

1. Proposed Rule

As explained in the Proposing Release, proposed Rule 21F–2 sought to

[136] Our determination not to adopt proposed paragraph (d)(2) or any other downward-departure mechanism is not intended to imply that we agree with the arguments advanced by the comments opposing it.

[137] *See* TAF Letter; Wampler Buchanan Letter; Think Computer Letter.

[138] *See* TAF Letter.

[139] *See* Wampler Letter.

[140] Think Computer Letter. This commenter noted as an illustration supporting the continuation of a case-by-case basis that it may sometimes be reasonable for a whistleblower to delay beyond 180 days to avoid burdening the Commission with confusing and potentially peripheral information. But once a potential whistleblower knows the relevant facts that comprise a potential securities law violation the potential whistleblower should take appropriate steps to report those facts without delay irrespective of any concern by the whistleblower that certain of the facts may turn out to be peripheral or otherwise not relevant to the potential violation.

[141] The Supreme Court has held that the Commission may not seek disgorgement or penalties in any enforcement action that is brought after five years of the date the violation occurred. *See Kokesh* v. *SEC,* 137 S. Ct. 1635 (2017); *Gabelli* v. *SEC,* 568 U.S. 442 (2013).

conform whistleblower status, award eligibility, confidentiality, and retaliation protection in light of the Supreme Court's holding regarding Section 21F in *Digital Realty Trust, Inc.* v. *Somers.*[142] In *Digital Realty,* the Court held that Dodd-Frank's definition of ''whistleblower,'' codified in Section 21F(a)(6),[143] requires a report to the Commission as a prerequisite for retaliation protection, and that the Commission's broader interpretation of that term in connection with retaliation protection under Section 21F was therefore not entitled to deference.[144]

In response to *Digital Realty,* proposed Rule 21F–2(a) provided a uniform definition of whistleblower status to apply for all purposes under Section 21F—award eligibility, confidentiality, and retaliation protection—while tracking the ''whistleblower'' definition in Section 21F(a)(6). Accordingly, proposed Rule 21F–2(a) conferred whistleblower status only on (i) an individual; (ii) who provides the Commission with information ''in writing''; and only if (iii) ''the information relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.''

Proposed Rules 21F–2(b), (c), and (d) specified how the whistleblower status conferred by paragraph (a) operates across the various contexts of award eligibility, confidentiality, and retaliation protection. Thus, proposed Rule 21F–2(b) specified that, to be eligible for an award in a Commission action based on information provided to the Commission, a person ''must comply with the procedures and the conditions described in'' Rules 21F–4, 21F–8, and 21F–9. Likewise, proposed Rule 21F–2(c) specified that, to qualify for confidentiality protections afforded by Section 21F(h)(2)[145] based on information provided to the Commission, a person ''must comply with the procedures and the conditions described in'' Rule 21F–9(a)—that is, must submit information using the Commission's online portal or Form TCR.

Proposed Rule 21F–2(d) sought to define the scope of retaliation protection under Section 21F consistent with the Supreme Court's holding in *Digital Realty,* by specifying both who is eligible for protection as a whistleblower and also what conduct is protected from employment retaliation.[146] In explaining who is eligible for retaliation protection, proposed Rule 21F–2(d)(1)(i) and (ii) required that a person must ''qualify as a whistleblower under section (a) before experiencing the retaliation'' for which redress is sought and also must ''reasonably believe'' that the information provided to the Commission relates to a possible securities law violation. In explaining what conduct is protected from retaliation, proposed Rule 21F–2(d)(iii) required that a person must perform a ''lawful act'' that both is done in connection with any of the activities described in Section 21F(h)(1)(A)(i)–(iii)[147] and also ''relate[s] to the subject matter of'' the person's submission to the Commission under proposed Rule 21F–2(a).

Proposed Rule 21F–2(d)(2) resolved a timing issue not addressed by either the statute or the *Digital Realty* decision, by clarifying that a person does not need to qualify as a whistleblower under Rule 21F–2(a) at the time she or he performed the lawful act described in Rule 21F–2(d)(1)(iii), in order to be eligible for retaliation protection; rather, a person eligible for retaliation protection is protected from retaliation for prior lawful acts when the alleged retaliatory conduct occurs after the person qualifies as a whistleblower. Moreover, proposed Rule 21F–2(d)(3) and (4) carried forward provisions of the existing Rule 21F–2 without a substantive change. Paragraph (d)(3) stated that retaliation protection applies regardless of whether a person satisfies all the procedures and conditions to qualify for an award. Paragraph (d)(4) stated that the retaliation prohibition in Section 21F(h)(1) and the rules thereunder shall be enforceable in an action or proceeding brought by the Commission.

2. Comments Received

We received several comments addressing proposed Rule 21F–2's definition of whistleblower status and the scope of retaliation protection.[148] Commenters generally acknowledged the need to revise these aspects of the existing rule to conform to the *Digital Realty* decision.[149]

Commenters were divided on the proposal to require that a person provide information ''in writing'' to the Commission in order to qualify for whistleblower status under Rule 21F–2(a)(1). Two commenters supported the ''in writing'' proposal. One suggested further requiring that information be provided consistent with Rule 21F–9(a)—that is, either on Form TCR or through the online portal—not only for award eligibility and confidentiality, but also for retaliation protection.[150] The other recommended that the Commission make it a practice to physically or electronically date-stamp every written submission.[151] One commenter opposed the ''in writing'' requirement as too restrictive, since people may make oral reports out of a sense of urgency or fear of retaliation, and since oral reports in the form of interviews or testimony can still provide substantial assistance to the Commission.[152] Three joint commenters opposed the ''in writing'' requirement as not required by the text of Section 21F and as inconsistent with the statute's remedial purpose, while observing that Section 806 of Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'')[153] and the Fair Labor Standards Act (''FLSA'')[154] have been construed as affording protection to oral reports.[155] These joint commenters also asserted that, contrary to the justifications for this requirement in the Proposing Release, committing oral reports to writing would not pose a burden to the Commission's staff and there was no evidence that past protections for oral reports under Sarbanes-Oxley Section 806 and Exchange Act Section 21F had enmeshed the Commission's staff in disputes in private retaliation lawsuits.[156]

Similarly, commenters were divided on the specific request for comment whether the new rule should enumerate any additional ''manner'' of providing

[142] 138 S. Ct. 767 (2018).

[143] 15 U.S.C. 78u–6(a)(6).

[144] *Digital Realty Trust,* 138 S. Ct. at 781–82.

[145] 15 U.S.C. 78u–6(h)(2).

[146] *See Digital Realty Trust,* 138 S. Ct. at 777.

[147] 15 U.S.C. 78u–6(h)(1)(A)(i)–(iii).

[148] We did not receive any comments addressing the following aspects of proposed Rule 21F–2: Limiting whistleblower status to individuals, under proposed Rule 21F–2(a)(2); the clarification of the phrase ''securities laws'' in Section 21F(a)(6), under proposed Rule 21F–2(a)(1); defining award eligibility and confidentiality, under proposed Rule 21F–2(b) and (c); extending retaliation protection to a lawful act performed in connection with any of the activities described in Section 21F(h)(1)(A)(i)–(iii), under proposed Rule 21F–2(d)(1)(iii)(A); and providing that Section 21F(h)(1) and the rules thereunder shall be enforceable by the Commission, under proposed Rule 21F–2(d)(4).

[149] *See, e.g.,* CWC Letter; SIFMA Letter. *But see* joint letter from National Employment Lawyers Association, Government Accountability Project, and Public Citizen (Sept. 18, 2018) (''NELA Letter'') (opposing proposed rule to the extent it went further than required by *Digital Realty*); TAF Letter (endorsing comments from NELA); letter from Anonymous-52 (Sept. 7, 2018) (arguing that the Commission should challenge *Digital Realty* as wrongly decided).

[150] *See* CCMC Letter.

[151] *See* CWC Letter.

[152] *See* TAF Letter.

[153] 18 U.S.C. 1514A.

[154] 29 U.S.C. 215(a)(3).

[155] *See* NELA Letter.

[156] *See id.*

information to the Commission. One commenter argued against enumerating any of the manners described in clause (ii) of Section 21F(h)(1)(A), such as testimony, since this commenter agreed with the analysis in the Proposing Release that clause (ii) is best read as extending employment retaliation protection to acts of continued cooperation by a person who has already provided information to the Commission.[157] But other commenters supported enumerating the manners described in clause (ii) precisely because Section 21F lists them and because of the Commission's interest in ensuring that persons can testify or otherwise assist the Commission without reprisal.[158]

Commenters offered further feedback on the definition of whistleblower status under proposed Rule 21F–2(a)(1). Some commenters supported the extension of whistleblower status to persons who provide information concerning ''possible'' violations of the federal securities laws.[159] Another commenter suggested excluding from whistleblower status any individual who participated in wrongdoing, on a theory of unclean hands.[160]

Commenters took opposing views on whether an individual should be required to report to the Commission before receiving retaliation protection under proposed Rule 21F–2(d)(1). One commenter supported this requirement as dictated by the *Digital Realty* decision and observed the logical impossibility of ''commit[ting] retaliation *because of* a protected activity that has not yet occurred.'' [161] Three joint commenters believed, to the contrary, that this approach, in combination with the proposed protection for ''lawful acts'' done before the Commission report, would create a loophole by not protecting those who report internally before approaching the Commission, thereby incentivizing prompt firings for internal reports.[162] These commenters further believed this approach would encourage an employer to argue that the employee was fired in retaliation for the internal report rather than the report to the Commission.[163] As an alternative, these commenters proposed that the internal disclosure be deemed an initial step in disclosing to the Commission, and that the employer be required to forward the internal disclosure and its response to the Commission.[164]

Three joint commenters supported the proposal to afford retaliation protection, just as the current rule does, to persons who ''reasonably believe'' that the information provided to the Commission concerns a possible violation of the federal securities laws under proposed Rule 21F–2(d)(1)(ii).[165]

Commenters disagreed with one another on the limitation under proposed Rule 21F–2(d)(1)(iii)(B) that retaliation protection will attach to a lawful act only if that act ''relate[s] to the subject matter of your submission to the Commission under'' Rule 21F–2(a). One commenter supported this ''subject matter'' limitation as embodying the principle that the submission to the Commission establishes the parameters of retaliation protection.[166] Three joint commenters opposed this limitation as not required by either the text of Section 21F or the *Digital Realty* decision and as injecting uncertainty as to how close a nexus would be required between the lawful act and the subject matter of the submission.[167]

One commenter urged against the proposal to afford retaliation protection, just as the current rule does, regardless of whether the individual also satisfies the procedures and conditions for award eligibility, under proposed Rule 21F–2(d)(3).[168] This commenter instead advocated for expressly treating the procedures and conditions for award eligibility under Rules 21F–4, 21F–8, and 21F–9 as prerequisites for retaliation protection.[169]

Commenters were divided in responding to the request for comment whether participation in internal compliance systems should continue to be considered in determining the amount of an award, given the change in retaliation protection resulting from the *Digital Realty* decision. Two commenters [170] as well as three joint commenters [171] supported retaining this factor in the award analysis. One commenter believed that doing so would maintain the incentives for robust internal compliance programs, which the commenter described as the first and best line of defense against violations of the federal securities laws.[172] This commenter also suggested that the Commission consider an explicit program that, in appropriate cases where an individual bypasses internal compliance and goes directly to the Commission, would allow the company to run its own internal investigation and report the results before the Commission staff takes substantial investigative steps.[173] A second commenter similarly cited the benefits of internal compliance programs for both employers and employees,[174] while three joint commenters suggested that the Commission should retain this award factor while actively warning individuals about the limitations on retaliation protection for internal disclosures.[175]

Five commenters opposed keeping participation in internal compliance systems as a consideration in determining the amount of an award, reasoning that the *Digital Realty* decision leaves such reports unprotected from retaliation.[176] One commenter stated that it is simply not practical to assume that individuals will always be able to submit reports simultaneously to the Commission and to an internal compliance program.[177] Three commenters argued that any provisions to encourage internal reports would be illegal in light of the Supreme Court's recognition in *Digital Realty* that Congress designed Section 21F not to encourage internal reports but to encourage reports to the Commission.[178] These same three commenters further suggested that the Commission clarify that the internal compliance programs addressed in proposed Rule 21F–2 do not include internal investigations led by company counsel and that the Commission eliminate existing Rule 21F–4(b)(4)(iii), which generally requires certain employees in managerial, compliance, and other positions as well as auditors to wait 120 days before reporting to the Commission.[179] On the elimination of Rule 21F–4(b)(4)(iii), these three commenters were joined by a fourth.[180]

Commenters also took opposing views on whether proposed Rule 21F–2 should enumerate additional forms of retaliation as falling within the prohibition in Section 21F(h)(1)(A). One

[157] *See* CWC Letter (citing Whistleblower Program Rules, 83 FR 34,702, 34,718 n.144 (July 20, 2018)).

[158] *See* NELA Letter.

[159] *See id.*

[160] *See* CCMC Letter.

[161] *See* CWC Letter (emphasis in original).

[162] *See* NELA Letter.

[163] *See id.*

[164] *See id.*

[165] *See* NELA Letter.

[166] *See* CWC Letter.

[167] *See* NELA Letter.

[168] *See* CCMC Letter.

[169] *See id.*

[170] *See* CWC Letter; SIFMA Letter.

[171] *See* NELA Letter.

[172] *See* SIFMA Letter.

[173] *See id.*

[174] *See* CWC Letter.

[175] *See* NELA Letter.

[176] *See* letter from Anonymous-64 (Aug. 21, 2018) (''Anonymous-64 Letter''); Sen. Grassley Letter; Kohn, Kohn & Colapinto July 24 Letter; Morrell Letter; TAF Letter.

[177] *See* Sen. Grassley Letter.

[178] *See* Anonymous-64 Letter; Kohn, Kohn & Colapinto July 24 Letter; Morrell Letter.

[179] *See id.*

[180] *See* Sen. Grassley Letter.

commenter endorsed enumerating ''downstream'' conduct such as preventing a whistleblower from obtaining future employment,[181] while another commenter opposed doing so based on its assertion that the law is less clear as to retaliation protection for future employment.[182] Three joint commenters supported broadly construing the retaliation prohibition to encompass any employment action that is reasonably likely to deter employees from engaging in protected activity.[183]

3. Final Rule

After considering the comments, we are adopting Rule 21F–2 as proposed, with the addition of interpretive guidance defining the scope of retaliatory conduct prohibited by Section 21F(h)(1)(A). In addition, in the Proposing Release we observed that proposed Rule 21F–2 would render inapplicable the formal interpretation that the Commission issued in 2015 regarding the meaning of Exchange Act Rule 21F–9. *See* 83 FR at 34718 n.193 (citing Interpretation of the SEC's Whistleblower Rules under Section 21F of the Securities Exchange Act of 1934, 80 FR 47829 (Aug. 10, 2015)). That formal interpretation explained that compliance with Exchange Act Rule 21F–9 was not required to qualify as a whistleblower for purposes of Section 21F's employment retaliation protections. *See* 80 FR at 47830. Because the *Digital Realty* decision has since adopted a narrower reading of what is required to qualify as a whistleblower for Section 21F's employment retaliation protections, we now repeal that interpretive guidance as obsolete.

4. Whistleblower Status Under Rule 21F–2(a)

Requiring information to be provided to the Commission ''in writing'' as a condition of whistleblower status under Rule 21F–2(a) appropriately addresses the interests of affording flexibility to persons who report to the Commission and promoting reasonable certainty and efficiency for the Commission, including for the Commission staff who receive and process such reports. Were the rule to require that such reports also comply with Rule 21F–9(a)—that is, that they be made either on Form TCR or through the online portal—for retaliation protection, as one commenter suggested,[184] the burden to persons making such reports would increase without any corresponding benefit. As the Proposing Release explained, compliance with Rule 21F–9(a) is required in other contexts because it allows precise and reliable tracking of information for determining award eligibility as well as for helping clarify which submitters should receive heightened confidential treatment. There would be no similar benefit in the retaliation context, however, where the key issue following *Digital Realty* is not how the information was handled by the Commission's staff but whether the information was provided to the Commission at all.[185]

Nor are we persuaded that the ''in writing'' requirement is too onerous, as other commenters suggested.[186] Our experience to date in the awards context suggests that this requirement presents, at most, a minimal burden to individuals who want to report potential securities law violations to the Commission while facilitating the staff's use of the information. To the degree that some individuals may face urgent circumstances,[187] the ''in writing'' requirement affords ample flexibility in the means of transmission—for example, online submission, email, facsimile, or U.S. Mail—to meet that urgency. Moreover, given that *Digital Realty* has altered the legal landscape by strictly limiting retaliation protection to persons who have reported to the Commission, as distinct from persons who report internally, we anticipate that direct reports to the Commission may increase, and so protecting oral reports to the Commission could result in litigation disputes about what information was orally provided and on what dates. We decline the invitation of three joint commenters[188] to investigate how many such disputes arose in the past, since the *Digital Realty* decision is likely to encourage more direct reports to the Commission and thus any earlier data would likely have limited predictive value under the post-*Digital Realty* regime.

Nor is a contrary result required by judicial decisions finding oral reports protected under Sarbanes-Oxley Section 806 and the FLSA, since those decisions typically addressed oral reports made internally to an employer who necessarily had a pre-existing employment relationship with the complainant.[189] Our rule, by contrast, must preserve administrative efficiency and reliability while addressing external reports to the Commission from members of the public throughout the country and, indeed, across the globe.[190] Exchange Act Section 21F(a)(6) allows us discretion to determine the required ''manner'' of providing information, and we conclude that limiting whistleblower status to reports made ''in writing'' is the better programmatic approach for the reasons above.

In addition to keeping the ''in writing'' requirement, we have decided to adopt proposed Rule 21F–2(a) without specifying any other ''manners'' of providing information to the Commission. Although some commenters suggested that we specify the additional conduct enumerated in clause (ii) of Section 21F(h)(1)(A), such as testimony in an action brought by the Commission, we adhere to our analysis of clause (ii) in the Proposing Release. In particular, because clause (ii) refers to ''such information'' provided under the preceding clause (i), we continue to believe that clause (ii) is more reasonably understood as extending employment retaliation protection to acts of continued cooperation by a person who has already provided information to the Commission. And, as a practical matter, providing information to the Commission in writing presents a minimal burden for any individual who wants to receive retaliation protection under Section 21F for such acts of continued cooperation.

We have also declined the invitation of one commenter[191] to modify proposed Rule 21F–2(a) to exclude from whistleblower status any individual who participated in wrongdoing. Nothing in the *Digital Realty* decision, which is the impetus for the present revisions to Rule 21F–2, requires such an exclusion. Even were we writing on a blank slate, we find it significant that Congress chose not to adopt such a broad limitation on whistleblower status under Section 21F(a)(6), but instead

[181] *See* TAF Letter.

[182] *See* CWC Letter (citing *Dellinger* v. *Science Applications Int'l Corp.,* 649 F.3d 226 (4th Cir. 2011)).

[183] *See* NELA Letter (citing *Burlington N. & Santa Fe Rwy. Co.* v. *White,* 548 U.S. 53 (2006)).

[184] *See* CCMC Letter.

[185] As for the suggestion that the staff make it a practice to date-stamp every written submission, *see* CWC Letter, we observe that it is already the staff's practice to upload to the TCR System, upon receipt, every written report of a possible securities law violation. That system automatically generates an electronic record of the date and time the corresponding TCR is created within the system.

[186] *See, e.g.,* TAF Letter.

[187] *See id.*

[188] *See* NELA Letter.

[189] *See id.* (collecting cases). Indeed, the cited Supreme Court decision addressing the FLSA did not extend retaliation protection to all oral reports, but only to those oral reports sufficient to give the employer fair notice that the employee was making a complaint. *See Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 563 U.S. 1, 11–14.

[190] *See* Office of the Whistleblower, 2018 Annual Report to Congress 22–23 (2018) (documenting geographic dispersal of whistleblowers throughout the United States and from 72 other countries during fiscal year 2018).

[191] *See* CCMC Letter.

chose the more narrow option of denying award eligibility under Section 21F(c)(2)(B) [192] to ''any whistleblower who is convicted of a criminal violation related to the [covered action] for which the whistleblower otherwise could receive an award under this section.'' Based on our experience to date, moreover, existing Rule 21F–6(b)(1) provides appropriate flexibility on a case-by-case basis for decreasing an award based on a whistleblower's culpability.[193]

5. Retaliation Protection Under Rule 21F–2(d)

We are adopting Rule 21F–2(d)(1) as proposed to limit retaliation protection to persons who qualify as whistleblowers by providing information to the Commission before experiencing retaliation, as expressly required by the *Digital Realty* decision.[194] At the same time, we are also adopting Rule 21F–2(d)(2) as proposed to extend retaliation protection to lawful acts described in Exchange Act Section 21F(h)(1)(A) even if done before reporting to the Commission when the retaliation takes place after a person qualifies as a ''whistleblower'' by providing information directly ''to the Commission'' consistent with Section 21F(a)(6). We believe this interpretation is consistent with the language of Section 21F(h)(1)(A).[195] Although the net result is to limit retaliation protection for persons who report internally before reporting to the Commission,[196] this outcome is driven by the Supreme Court's holding that Section 21F distinguishes between ''who'' is protected as a whistleblower under Section 21F(a)(6) and ''what'' conduct is protected under Section 21F(h)(1)(A).[197]

The Supreme Court's holding forecloses the alternative suggested by certain commenters [198] that we require employers to forward all internal reports to the Commission and that we therefore afford retaliation protection to an employee's internal report as an ''initial step'' in reporting to the Commission. Even under that suggested regime, retaliation protection under Section 21F would not attach to a person who reported only indirectly—by making an internal report that was then forwarded by the employer to the Commission—until that same person also qualified as a ''whistleblower'' by providing information directly ''to the Commission'' consistent with Section 21F(a)(6).[199]

We are adopting Rule 21F–2(d)(1)(iii)(B) as proposed to state that retaliation protection will attach to a lawful act performed by a whistleblower only if the act ''relate[s] to the subject matter of'' the whistleblower's report to the Commission. Given Section 21F's silence and the Supreme Court's decision not to address whether any such connection should be required,[200] ''we believe this clarification helps avoid the incongruous result that a person could qualify just once as a whistleblower and then receive lifetime protection for any non-Commission reports . . . with respect to distinct securities law violations that occur years later.'' [201] This provision thus helps effectuate what the Supreme Court recognized as Congress's core objective of encouraging reports to the Commission.[202] Although some commenters expressed reservations about the uncertainty this provision might generate for whistleblowers,[203] we anticipate that this provision will be applied in a flexible manner to accommodate whistleblowers who make a good-faith effort to comply with our rules in seeking retaliation protection.

We are declining the invitation of one commenter [204] to limit retaliation protection strictly to persons who satisfy the procedures and conditions for award eligibility under Rules 21F–4, 21F–8, and 21F–9. Such a limitation would create significant and arbitrary hazards for whistleblowers who typically would be unable to assess at the time they report to the Commission, for example, whether their information is ''original'' under Rule 21F–4(b)(1)(ii) in the sense that it is not already known to the Commission from any other source. The text, history, and purposes of Section 21F do not indicate that such an approach would be appropriate. To the contrary, that approach would severely undermine the incentives for individuals to report potential securities law violations to the Commission as intended by Congress.

On the scope of the retaliatory conduct prohibited by Section 21F(h)(1)(A), we agree with the commenter who asserted that the decisional law is too uncertain to warrant revising Rule 21F–2 to prohibit discrimination by an employer against a whistleblower who is not currently employed, but rather seeking prospective employment.[205] Accordingly, Rule 21F–2 as adopted remains silent on that question. At the same time, we have determined to provide guidance, following the Supreme Court's decision in *Burlington Northern and Santa Fe Railway Company* v. *White,* that we interpret Section 21F(h)(1)(A) as prohibiting any retaliatory activity by an employer against a whistleblower that ''a reasonable employee [would find] materially adverse,'' which means ''it well might have dissuade[d] a reasonable worker'' from engaging in any lawful act encompassed by Section 21F(h)(1)(A).[206] In particular, we conclude that such a broad standard will promote greater ease of administration than revising Rule 21F–2 to include a list of prohibited forms of retaliation,[207] which might inadvertently omit certain retaliatory activities that otherwise would meet the *Burlington* standard.

[192] 15 U.S.C. 78u–6(c)(2)(B).

[193] Indeed, the Commission followed a similar analysis when it declined suggestions to implement a *per se* exclusion for culpable whistleblowers in our 2011 rulemaking. *See* Securities Whistleblower Incentives and Protections, 76 FR 34300, 34350–51 (June 13, 2011).

[194] *See Digital Realty Trust,* 138 S. Ct. at 778 (''Somers did not provide information 'to the Commission' before his termination, § 78u–6(a)(6), so he did not qualify as a 'whistleblower' at the time of the alleged retaliation. He is therefore ineligible to seek relief under § 78u–6(h).'').

[195] *See* Whistleblower Program Rules, 83 FR 34720 (July 20, 2018) (observing that the statute is silent on this timing issue).

[196] *Cf.* NELA Letter.

[197] *See Digital Realty Trust,* 138 S. Ct. at 777.

[198] *See* NELA Letter.

[199] Even where retaliation protection under Section 21F does not attach, Sarbanes-Oxley Section 806 may still provide retaliation protection for certain internal reports. *See* 18 U.S.C. 1514A.

[200] *See Digital Realty Trust,* 138 S. Ct. at 780–81.

[201] *See* Whistleblower Program Rules, 83 FR 34720 n.168 (July 20, 2018).

[202] *See Digital Realty Trust,* 138 S. Ct. at 777.

[203] *See* NELA Letter.

[204] *See* CCMC Letter.

[205] *See* CWC Letter (citing *Dellinger* v. *Science Applications Int'l Corp.* 649 F.3d 226 (4th Cir. 2011)). Much like the FLSA retaliation provision at issue in *Dellinger, see* 649 F.3d at 228–30, the language of Section 21F(h)(1)(A) focuses on employment relationships without expressly encompassing prospective employers.

[206] 548 U.S. 53, 67–68 (2006) (internal quotation marks omitted). In *Burlington,* the Supreme Court construed the phrase ''discriminate against'' in the retaliation provision of Title VII of the Civil Rights Act of 1964. *Id.* at 57. That statute stated, in relevant part, ''It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment'' because of their protected conduct. *Id.* at 62 (quoting 42 U.S.C. 2000e–3(a)) (internal quotation marks omitted). Here, Section 21F(h)(1)(A) reads at least as broadly, ''No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, *or in any other manner discriminate* against a whistleblower'' because of the whistleblower's protected conduct. 15 U.S.C. 78u–6(h)(1)(A) (emphasis supplied). Given that both statutes use the same phrase ''discriminate against,'' we expect that courts will follow *Burlington* in construing the scope of retaliatory conduct covered by Section 21F(h)(1)(A).

[207] *Cf.* NELA Letter.

6. Other Rules Addressing Internal Compliance

In the Proposing Release, we solicited comment on whether, given the change in retaliation protection following *Digital Realty,* it would be appropriate to change the Commission's use of award criteria that consider participation in internal compliance systems. As discussed above, a number of commenters suggested it would be inappropriate or even unlawful to retain such award criteria and Rule 21F–4(b)(4)(iii) in light of the Supreme Court's interpretation of Section 21F as conditioning retaliation protection on reporting to the Commission rather than simply reporting internally.[208] This interpretation is inconsistent with both *Digital Realty* and Section 21F. As the Supreme Court explained, Congress's enactment of Section 21F in the Dodd-Frank Act in 2010 built upon its earlier enactment of Sarbanes-Oxley Section 806, which already afforded retaliation protection for certain internal reports.[209] Section 21F repealed neither Sarbanes-Oxley Section 806 nor any of the other provisions of the federal securities laws that require or encourage the maintenance and use of internal compliance systems for responding to possible violations of the federal securities laws. Accordingly, we have implemented Section 21F in a way that does not frustrate the design of these other statutes that Congress has chosen to retain. To that end, it is appropriate to retain the provisions in our whistleblower rules that help preserve the internal compliance systems adopted under those other statutes.

Based on our review of the comments received, and in light of our experience to date, we are retaining the award criteria, particularly Rule 21F–6(a)(4) and (b)(3), that consider the whistleblower's participation in or frustration of internal compliance systems when determining the amount of an award. In particular, we are persuaded that the possibility of an increased award under Rule 21F–6(a)(4) remains an appropriate incentive for whistleblowers to use internal compliance systems where available, while the possibility of a decreased award under Rule 21F–6(b)(3) remains an appropriate deterrent against acts to undermine such a system. Nothing in either of these provisions will change the award analysis for a whistleblower who, out of fear of reprisal or for any other reason, reports directly to the Commission in order to secure retaliation protection under Section 21F. In other words, we will not construe a direct report to the Commission, made to secure retaliation protection under Section 21F, to constitute an act that undermines an internal compliance system under Rule 21F–6(b)(3).

Based on these same considerations, we are retaining Rule 21F–4(b)(4)(iii), which generally requires certain employees in managerial, compliance, and other positions as well as auditors to wait 120 days before reporting to the Commission, if they want their information to be considered ''original'' for purposes of award eligibility. As we explained in adopting this rule, ''we believe there are good policy reasons to exclude information from consideration . . . where its use in a whistleblower submission might undermine the proper operation of internal compliance systems.'' [210] In other words, repeal of this rule could create incentives for such employees and auditors to report potentially unlawful conduct to the Commission in hopes of an award instead of fulfilling their professional responsibilities within those internal compliance systems by internally reporting information and allowing a reasonable response time.[211] While these personnel will lack retaliation protection under Section 21F until they report to the Commission, this compromise is appropriate in light of the narrow categories of personnel covered by Rule 21F–4(b)(4)(iii) and the need to preserve the proper operation of internal compliance systems.

We are declining the suggestion of one commenter [212] to adopt an explicit program that, in appropriate cases where an individual bypasses internal compliance and goes directly to the Commission, would allow the company to run its own internal investigation and report the results before the Commission staff takes substantial investigative steps. The better approach in our view is to maintain the discretion of the Division of Enforcement to decide how best to evaluate and investigate potential violations, including the potential role of internal investigations. We see no need in light of *Digital Realty* to adopt a one-size-fits-all policy for all enforcement matters.[213]

To illustrate how Rule 21F–2 will operate in practice, consider the following hypothetical scenario: An employee at a publicly traded issuer overhears a conversation by colleagues discussing a scheme to create an artificial boost for reported sales. The employee investigates and discovers that sales invoices are being generated without any corresponding movement of inventory, and then reports the possible misconduct to the issuer's chief compliance officer. But a week passes without any action being taken on the report. If the Commission then receives an email from that employee in which the employee reports the same possible misconduct, and in sending the email the employee reasonably believed that the report relates to a possible securities laws violation, then the employee would qualify as a whistleblower under Rule 21F–2(a) and would be eligible for anti-retaliation protections under Rule 21F–2(d)(1)(i)–(ii) as of the time the employee provides the information to the Commission. Assuming that the employee's internal report was within the scope of Section 806(a) of Sarbanes-Oxley, that internal report itself would be a protected ''lawful act'' under Rule 21F–2(d)(1)(iii). The fact that the employee made the internal report before the Commission report would not make a difference for anti-retaliation protections under Rule 21F–2(d)(2). That said, if the employee wanted to be eligible for an award under Rule 21F–2(b) and to qualify for confidentiality protections under Rule 21F–2(c), he or she would need to make his or her first report of that information to the Commission using Form TCR or through the online portal at *www.sec.gov*, as required by Rule 21F–9(a), and not through an email to the Commission. To qualify for an award, the employee would additionally need to satisfy the relevant procedural requirements, eligibility criteria, and other conditions described in Rules 21F–3 through 21F–18.

I. Rule 21F–8(d)—Forms Used for Whistleblower Program

1. Proposed Rule

Rule 21F–8 describes certain requirements that a whistleblower must satisfy to be eligible for an award, including the form and manner in which information is submitted to the Commission. The Commission proposed to add a new paragraph (d) to provide the Commission with additional

[208] *See* Anonymous-64 Letter; Sen. Grassley Letter; Kohn, Kohn & Colapinto July 24 Letter; Morrell Letter.

[209] *See* 138 S. Ct. at 773.

[210] Securities Whistleblower Incentives and Protections, 76 FR 34,300, 34,317 (June 13, 2011).

[211] *See id.* at 34,315–19.

[212] *See* SIFMA Letter.

[213] We also decline the suggestion of certain commenters to clarify that the internal compliance programs addressed in proposed Rule 21F–2 do not include internal investigations led by company counsel. *See* Anonymous-64 Letter; Kohn, Kohn & Colapinto July 24 Letter; Morrell Letter. Rule 21F–2 itself does not refer to internal compliance systems *per se,* and the suggested revision has nothing to do with *Digital Realty.*

flexibility to change the forms it uses to administer the program. The new subparagraph (d)(1) would allow the Commission to periodically designate on its web page a revised Form TCR for individuals seeking to submit original information to the Commission. Similarly, subparagraph (d)(2) would allow the Commission to periodically designate a revised Form WB–APP for individuals making a claim for an award.

2. Comments Received

We received few comments on proposed Rule 21F–8(d). Two commenters supported the proposed amendment,[214] while others offered suggested modifications.[215] Two commenters suggested a thirty (30) day grace period to allow a potential whistleblower to use the prior version of each form before a revised version is posted to the Commission website.[216] One commenter suggested that forms be amended at most once per year,[217] while another commenter recommended that the Commission add a section to address the seven factors affecting an award determination.[218]

3. Final Rule

After considering the comments, we are adopting Rule 21F–8(d) as proposed with a slight modification. We agree that it is reasonable to allow a whistleblower to continue to use the superseded versions of the Form TCR and Form WB–APP for a 30-day period following the public release of each revised form. This modification would be reflected in a new sentence added to Proposed Rule 21F–8(a).

While we considered the remaining suggested modifications, they are not reflected in the final rule. One of the goals of the proposal is to ensure that the information the Commission requests in the Form TCR conforms to the information that the Commission requests through the online portal. Permitting the Form TCR to be changed only once a year would run the risk of soliciting asymmetrical information through the two submission methods which would undermine the purpose of the proposed Rule 21F–8(d).

Finally, we are not persuaded that Form TCR should be amended to include a section for the seven factors for determining the amount of an award as described in Rule 21F–6(a) and 21F–6(b). The Form WB–APP asks an individual to explain the basis for the Award Amount that the individual is seeking. To that end, an applicant is permitted to include supporting documents and to attach additional pages to the Form WB–APP. In our experience implementing the program, most claimants already use this opportunity to supplement their award application.

J. Rule 21F–8(e) and a Clarifying Amendment to Rule 21F–8(c)(7)—Abuse of Award Application Process or Submission of False Information in Connection With the Whistleblower Program and Certain Other Dealings With the Commission

1. Proposed Rule

Proposed Rule 21F–8(e)(1) would authorize the Commission to permanently bar an individual who submits three or more award applications that are frivolous or lack a colorable connection between the tip and the action. The proposed rule would also authorize the Commission to bar an individual who has been deemed ineligible for an award pursuant to paragraph (c)(7) of Rule 21F–8 for knowingly and willfully making false statements to the Commission or another governmental entity.

Further, paragraph (e)(2) would require the Office of the Whistleblower to notify the claimant of its assessment that the award application is frivolous or lacks a colorable connection to the action, and give the claimant the opportunity to withdraw the application before a Preliminary Determination or Preliminary Disposition recommending a bar is issued. If a bar is recommended, the applicant would have an opportunity to submit a response in accordance with the award processing procedures specified in Rule 21F–10(e)(2) and Rule 21F–18(b)(3).

2. Comments Received

Nearly all commenters supported the proposed rule.[219] Many shared our concern that frivolous award applications divert the Commission's limited resources and threaten the effective and efficient operation of the program.[220] Some commenters suggested imposing a permanent bar after an individual has submitted one[221] or two[222] frivolous applications. However, one commenter suggested that the bar should apply only to claimants who filed three frivolous award applications in one year.[223]

Some commenters—while supporting the proposed rule—raised concerns about the timing and frequency of the process for withdrawing a frivolous application. One commenter stated that the time period between when the Office of the Whistleblower advises a claimant that a claim is considered frivolous and when the claimant actually withdraws the claim should take no more than fifteen days.[224] Another commenter recommended that claimants not be given unlimited opportunities to withdraw an application that has initially been deemed frivolous. Instead, the claimant should be able to withdraw only the first frivolous claim, after which any other frivolous claim would count toward the three without an opportunity to withdraw it.[225]

3. Final Rules

After considering the comments, we are adopting Rule 21F–8(e) substantially as proposed with three modifications.

First, the notice provision and opportunity to withdraw applications that are frivolous or lack a colorable connection to the matter will apply only to the initial three such applications reviewed by the Office of the Whistleblower.[226] We agree with the commenter who suggested that claimants should not be provided an unlimited opportunity to withdraw award applications that might be subject to a bar and believe that limiting this opportunity to three such applications after the claimant receives a preliminary notification from the Office of the Whistleblower about the application's frivolous nature is the appropriate approach.

Second, the final rule includes a new paragraph (e)(4) that addresses pending

[214] *See* Think Computer Letter; TAF Letter.

[215] *See* CCMC Letter; TAF Letter.

[216] *Id.*

[217] *See* Think Computer Letter.

[218] *See* letter from Anonymous-24 (Sept. 15, 2018).

[219] *See* SIFMA Letter; CWC Letter; Cohen Milstein Letter; Markopolos Letter; Think Computer Letter; TAF Letter; Anonymous-9 Letter; Sen. Grassley Letter; letter from Anonymous-33 (Sept. 14, 2018); CCMC Letter.

[220] *See* CCMC Letter; SIFMA Letter; Cohen Milstein Letter.

[221] See Markopolos Letter.

[222] *See* TAF Letter.

[223] *See* Think Computer Letter.

[224] *See* Think Computer Letter.

[225] *See* Anonymous-9 Letter.

[226] We have also clarified that a claimant will have only 30 days from the date of the notification by the Office of the Whistleblower to provide that Office with notice that the application has been withdrawn. Failure to provide timely notice will result in the application being considered for purposes of a potential bar. For purposes of determining whether a bar should be imposed under this rule, claimants will not be permitted to withdraw their application (1) after the 30-day period to withdraw has run following notice from the Office of the Whistleblower with respect to the initial three applications assessed by that Office to be frivolous, or (2) after a Preliminary Determination or Preliminary Disposition has issued in connection with any other frivolous application.

award applications.[227] The rule codifies the Commission's existing practice of barring applicants who submit materially false, fictitious, or fraudulent statements in their dealings with the Commission [228] and provides an important new tool for the Commission in processing frivolous award applications.[229] As the Proposing Release explained, these applications consume a disproportionate amount of staff resources that could otherwise be dedicated to analyzing potentially meritorious award applications.[230]

Third, we are adding clarifying language to Rule 21F–8(c)(7) to address the circumstances under which Rule 21F–8(c)(7), and by extension the bar, will apply. As adopted, the rule provides that individuals who have violated Rule 21F–8(c)(7) may be permanently barred from making future whistleblower award applications or otherwise participating in the program.[231] To clarify the standard to be applied, the additional language will provide that 21F–8(c)(7) will apply, in the context of the eligibility of a whistleblower and by extension in the context of the new authority to bar an applicant, only where there has been a finding by the Commission or a court of competent jurisdiction that the individual provided materially false, fictitious, or fraudulent representations, statements, or documents. After considering the programmatic interests underlying the rule, we are also clarifying that the disqualification from eligibility in Rule 21F–8(c)(7), and by extension the permanent bar in Rule 21F–8(e), will *not* apply where the Commission, in its discretion, determines that refraining from finding a violation of Rule 21F–8(c)(7) is consistent with the public interest, the promotion of investor protection, and the objectives of the whistleblower program.

In addition, we are adding clarifying language to address which dealings with the Commission will be considered when applying the rule. While we expect that the Commission will impose a bar based upon a violation of 21F–8(c)(7) primarily in situations where there is a finding that an individual has provided materially false information in some way connected to the whistleblower program, the Proposing Release stated that the proposed rule would also apply to ''false, fictitious, or fraudulent representations, statements, or documents beyond those made in connection with an award determination.'' We continue to believe this is appropriate grounds on which to impose a bar and we are adding clarifying language to Rule 21F–8(c)(7) to provide that the dealings include ''dealings beyond the whistleblower program and covered action.'' For example, there may be situations where an individual's untruthful conduct in connection with the Commission (albeit outside a context associated with the whistleblower program or the covered action) may be sufficiently egregious or harmful, such that the Commission should have the ability to deem the individual's actions a violation of Rule 21F–8(c)(7) and deny a monetary award to such an individual under Section 21F and potentially bar the individual from future whistleblower applications or from otherwise participating in the program.[232] In light of the clarifying language noted further above, however, we expect there to be certain situations in which the Commission finds it in the public interest not to apply a disqualification or bar. The clarifying provisos to Rule 21F–8(c)(7) reflect this balanced approach.

We believe that focusing our authority to impose a bar in the limited the situations described above will discourage individuals from, in an effort to mislead or hinder the Commission or other governmental entity, (i) knowingly or willfully making materially false, fictitious, or fraudulent statements or representations, or (ii) using any false writing or document knowing the writings or documents contain materially false, fictitious, or fraudulent statements or information.

Turning to the procedural aspects of the new rule, Rule 21F–8(e) provides in paragraph (e)(2) that the Preliminary Determination or Preliminary Summary Disposition generally must inform the claimant that a permanent bar is being considered, in order to afford the claimant an opportunity to submit a response in accordance with the claims review procedures in Rules 21F–10(e)(2) and 21F–18(b)(3). We have added a sentence to paragraph (e)(2) to clarify that, if the basis for a bar arises or is discovered after the issuance of the Preliminary Determination or Preliminary Summary Disposition, then the Office of the Whistleblower must notify the claimant and afford the claimant an opportunity to submit a response before the Commission determines whether to issue a bar. This procedure will give the claimant notice and an opportunity to be heard before the issuance of a permanent bar where, for example, the claimant makes a false statement or submits a fictitious document in response to the Preliminary Determination or Preliminary Summary Disposition.

Finally, the new paragraph (e)(4) explains that Rule 21F–8(e) applies to all award applications pending as of the effective date of these rules, but the Office of the Whistleblower must advise claimants, prior to a Preliminary Determination or Preliminary Summary Disposition, of any assessment by that Office that the conditions for issuing a bar are satisfied because of a frivolous claim or a false or fictitious statement or document submitted prior to the effective date. If the claimant withdraws the relevant award application(s) within 30 days of receiving notice from the Office of the Whistleblower, then the Commission will not consider the withdrawn award application(s) in determining whether to impose a permanent bar. This approach strikes an appropriate balance between the need to process pending award applications efficiently and the need to provide fair notice to claimants of the possible consequences should they refuse to

[227] Additionally, proposed paragraph (e)(2) has been broken into separate paragraphs (e)(2) and (e)(3) with minor modifications in phrasing.

[228] *See* May 12, 2014 and August 5, 2015 Commission Final Orders finding two serial filers ineligible for awards pursuant to Rule 21F–8(c)(7) of the Exchange Act because of a materially false, fictitious, and fraudulent statements made in their respective dealings with the Commission.

[229] Frivolous claims are those that lack any reasonable or plausible connection to the covered or related action.

[230] As an example of the delays and inefficiencies that a frivolous award claim may introduce, *see generally Final Order of the Commission* (May 12, 2014) (*available at https://www.sec.gov/about/offices/owb/orders/owb-multiple-final-051214.pdf*) (explaining that, in barring a frivolous award claimant, the claimant had consumed considerable staff effort with ''frivolous claims and caused a delay in the Commission's ability to make a final determination to the three legitimate whistleblowers'' in the particular matter and also noting the ''time and effort OWB staff expended to prepare the administrative record and other materials for an additional 51 claims'').

[231] If such a bar is issued, it will apply to any other award applications from the claimant without any assessment by the Commission of the merits of those other award applications.

[232] The Commission does not intend that in assessing a whistleblower's eligibility, and by extension the potential application of the bar, there will be an inquiry into the whistleblower's prior dealings with the Commission to ensure that the individual did not engage in any misconduct covered by the exclusion provided for in Rule 21F–8(c)(7). Rather, the Commission anticipates that it will only utilize this rule to determine that a whistleblower is ineligible for the individual's ''other dealings with the Commission'' if the Commission has previously made (or otherwise learns of) a prior finding of material misconduct. Further, to the extent that the misconduct covered by this rule may occur in a judicial or administrative enforcement proceeding, the Commission in applying this rule will as a general matter deem a whistleblower ineligible only if there was an express finding during the course of that judicial or administrative enforcement proceeding, or in a related proceeding, that the individual willfully made the sort of materially false, fictitious, or fraudulent statement covered by the rule.

withdraw an award application made prior to the effective date of these rules.

K. Rule 21F–9—Procedures for Submitting Original Information

1. Proposed Rule

Current Rule 21F–9 describes the procedures for submitting original information to the Commission. The Commission proposed to amend Rule 21F–9(a) to clarify that an individual must use certain prescribed submission methods to qualify for an award and/or confidentiality protections under Rule 21F–2(b) and (c). As proposed, an individual would have to submit information to the Commission by one of three methods: (1) Online, through the Commission's electronic TCR portal; (2) by mailing or faxing a Form TCR to the Office of the Whistleblower at the mailing address or fax number identified on the SEC's web page for making such submissions; or (3) by any such method that the Commission may expressly designate on its website.

We also proposed new paragraph 9(e), which would clarify that the first time an individual provides information to the Commission that the individual will rely upon as a basis for a claim, the individual must have provided the information in accordance with Rule 21F–9(a) and (b).[233] Currently our rules do not provide any established mechanism to permit individuals who fail to comply with the TCR requirement (including the requirement to provide a signed declaration) to qualify for an award with respect to information they provide to the Commission prior to filing a TCR (and signed declaration). However, proposed paragraph 9(e) provided the Commission with new authority to waive compliance with paragraphs (a) and (b) when the Commission determines that the administrative record ''clearly and convincingly'' demonstrates that the individual would otherwise qualify for an award *and* the individual shows that he or she complied with paragraphs (a) and (b) within 30 days of communicating with the staff.

2. Comments Received

We received several comments that addressed proposed amendments to paragraph (a) of Rule 21F–9. Two commenters supported the proposal.[234] One of those commenters supported proposed paragraph 21F–9(a) as long as the SEC has a process in place to address technical security issues with the TCR portal that the public may identify.[235] Another commenter, while not clearly supporting or opposing the proposal, suggested permitting filing of the Form TCR by email.[236]

With respect to proposed paragraph (e), the Commission received numerous copies of a form letter that stated the proposed rule language ''would create unrealistic reporting procedures that would disqualify a vast number of whistleblowers, simply because they reported their concerns to the wrong office at the SEC, rather than filling out a specific form and filing it according to specific reporting procedures.'' [237] Beyond these form letters, the Commission received a number of unique comments from the public. One commenter generally supported the proposal, asserting that it would bring greater clarity to the parameters for obtaining an award, but this commenter opposed the exception granting the Commission discretion to waive some criteria on the ground that it could open the agency to endless waiver requests from ''bad actors.'' [238]

Several other commenters raised broader concerns with proposed paragraph (e).[239] One commenter stated that proposed paragraph 9(e) would render a whistleblower who ''contacts *anyone* at the SEC without first having a filed a TCR . . . automatically ineligible for an award.'' [240] Another commenter stated that proposed Rule 21F–9(e) thwarted congressional intent by limiting the types of information for which an individual can claim whistleblower credit.[241] This commenter also asserted that the Commission may use a whistleblower's information well before the whistleblower knows the information was helpful and recommended that any restriction on the time for filing a compliant TCR be tied to the latest date on which the individual could reasonably be aware that (1) the individual's information assisted the Commission, and (2) the individual may therefore be eligible for an award.[242]

Some commenters thought the proposal did not reflect the day-to-day practice in which potential whistleblowers directly contact Commission staff with information about suspected securities law violations. One commenter asserted that SEC staff has welcomed direct contact with the public and that when a matter is time sensitive these interactions can allow the SEC employees to act quickly without waiting for the TCR system to review any pertinent information.[243] The commenter suggested that excluding such communications from consideration in an award determination would discourage individuals from providing information through the most expedient channels.[244]

One commenter expressed concern that the paragraph 9(e) exception for noncompliance with paragraphs 9(a) and 9(b) placed ''strict limits'' on the Commission's ability to grant waivers because ''the whistleblower must meet a high standard that the information they provided resulted in the enforcement action . . .'' and must do so by ''clear and convincing evidence.'' [245] The same commenter suggested that the proposed exception actually limited the Commission's ability to use its general exemptive authority.[246] The commenter also suggested that the Commission could use its discretionary authority under Rule 9(e) to reduce a whistleblower's award to 10 percent and the whistleblower ''would have no

[233] Many of the comments that the Commission received on this portion of the rule seem to have believed that this rule would impose a new obligation on potential whistleblowers. It did not. Rather, this portion of the proposed rule merely codified the Commission's existing interpretation of its current rules; indeed, this portion of the proposed rule was fully consistent with how the Commission has interpreted and applied its current whistleblower rules since those rules were promulgated in 2011. *See, e.g., In the Matter of the Claims for Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–83689, 2018 WL 3546251 (July 23, 2018); *In the Matter of the Claims for Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–82181, 2017 WL 5969236 (Nov. 30, 2017). Further, the proposal was consistent with Section 21F in which Congress directed that individuals may obtain an award *only* if they follow the form and manner prescribed by the Commission for submitting information; failure to do so under the statute means that an individual will be ineligible for an award. *See* 15 U.S.C. 78u–6(a)(6) (requiring that to qualify as a whistleblower information must be ''provide[d] . . . in a manner established'' by the Commission's rules); *id.* 78u–6(c)(2)(D) (directing that ''[n]o award . . . shall be made . . . to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require''). The important change that was reflected in this proposed rule was the 30-day period in which the Commission could waive an untimely failure to comply with the rule; thus, the changes proposed by this rule were intended to benefit potential whistleblowers by potentially granting relief to them in certain circumstances where they have failed to adhere to the procedural requirements for submitting information and this proposed rule in no way reflected any new obligation on individuals receiving an award.

[234] *See* Think Computer Letter; CCMC Letter.

[235] *See* Think Computer Letter.

[236] *See* letter from Liam Foster (Sept. 18, 2018).

[237] Form Letter C.

[238] *See* CCMC Letter.

[239] *See* Anonymous-9 Letter; letter from Kohn, Kohn & Colapinto (May 6, 2019) (''Kohn, Kohn & Colapinto May 6 Letter'').

[240] *See* Kohn, Kohn, & Colapinto May 6 Letter.

[241] *See* TAF Letter.

[242] *Id.*

[243] *See* Anonymous-9 Letter.

[244] *Id.*

[245] *See* Kohn, Kohn, & Colapinto May 6 Letter.

[246] *Id.*

recourse or appeal.'' [247] And that commenter suggested that because the Commission's web page provides ''numerous methods'' to contact the agency about potential securities-law violations or related issues, this may result in individuals initially reporting information to the Commission in a manner that results in an eventual disqualification from receiving an award.[248] Finally, several commenters suggested that the Commission should establish a ''good cause'' exception that would excuse an individual's non-compliance with the TCR and declaration requirements of Rule 21F–9 in any situation where the individual would otherwise qualify as a meritorious whistleblower.[249]

3. Final Rule

After considering the comments, we are adopting the final rule as proposed with several important substantive modifications to paragraph (e). *First,* we are clarifying that an individual need not in the first instance provide original information to the Commission in accordance with the procedures in Rule 21F–9(a) and (b), but may instead provide original information in a different manner, provided that the individual complies with Rule 21F–9(a) and (b) within 30 days of first providing that original information. *Second,* we are permitting an individual who fails to satisfy these procedural requirements to qualify for a waiver if the individual can demonstrate that he or she complied with Rule 21F–9(a) and (b) within 30 days of first learning about the requirements. *Third,* we are making this waiver automatic when the criteria specified in the rule are satisfied. *Fourth,* we have revised the language of the proposed rule to require that the Commission must be able to ''readily'' determine that the administrative record ''unambiguously''—rather than ''clearly and convincingly''—demonstrates that the claimant would otherwise qualify for an award in order for us to grant a waiver of noncompliance.[250]

Since the whistleblower rules were implemented in 2011, the Commission has required any individual seeking an award and/or the confidentiality protections of the program to submit a tip through the Commission's online portal or by submitting a Form-TCR by mail or fax.[251] The requirement to file a TCR has been a necessary initial step for an individual to obtain treatment as a ''whistleblower'' under our rules [252] and, in our experience, has proved beneficial to the effective administration of our whistleblower program. Accordingly, the Commission has treated the failure to file a properly executed TCR as grounds for denial of a claim for award.[253] Thus, paragraph 9(e) as proposed would not have created a new obligation for potential whistleblowers; rather, it was intended to clarify the Commission's existing approach when making award determinations—when an individual provides information to the Commission that he or she will rely upon as a basis for claiming an award, the information should be provided initially in accordance with Rule 21F–9(a) and (b). We view this clarification of the importance of the Commission's TCR-filing requirement as merely a codification of current practice—*i.e.,* whistleblowers must comply with the procedures for submitting their information in order to later be eligible for a potential award. Moreover, the Commission's experience with the program to date demonstrates in our view that the procedures for submitting information to the Commission to qualify for an award—including those specified in Rule 21F–9(e)—do not create unrealistic or onerous reporting procedures for potential whistleblowers and that any burdens on the public are outweighed by the administrative efficiencies to the program and the agency.

That said, we have not applied these procedural requirements rigidly and have through our practice permitted whistleblowers to ''perfect'' their submissions of original information by complying with the requirements of Rule 21F–9(a) and (b) for a brief period of time from the date they first provide the information to the Commission. This practice of permitting individuals to perfect their submission has grown out of our recognition of the practical realities of how whistleblowers or their counsel may first relay information to the Commission. Based on our historical practice, and our consideration of the comments that we have received on proposed paragraph (e), we have modified the rule to expressly provide that an individual's first contact with the Commission need not be in the form of a TCR with an accompanying declaration. Rather, to qualify for a potential award under the rule we are adopting, an individual need only submit the TCR and declaration within 30 days of first providing that information to the Commission. As modified from the proposed rule, paragraph (e) now fully captures the current practice that we have found both beneficial to the agency's administration of the program and practicable for individuals to follow without imposing unnecessary burdens on them.

We view the new express waiver authority as an important mechanism to protect the ability of these individuals to obtain an award notwithstanding their untimely compliance with Rule 21F–9(a) and (b). Specifically, the new express waiver authority will permit an otherwise clearly meritorious whistleblower who failed to comply with Rule 21F–9(a) and (b) within 30 days of first providing original information to the Commission to nonetheless obtain an award provided that the individual complied with those requirements within 30 days of first learning of them and the Commission can readily develop an administrative record that unambiguously demonstrates that the individual would otherwise merit an award, without a significant expenditure of staff time and resources to do so. Significantly, our rules currently do not provide any established mechanism to permit individuals who fail to comply with the TCR requirement (including the requirement to provide a signed declaration) to qualify for an award with respect to information they provide to the Commission prior to filing a TCR (and signed declaration). New Rule 21F–9(e) now provides that mechanism. In determining whether the new waiver authority applies, the Commission will consider that any whistleblower represented by counsel has constructive notice [254] of the requirements of Rule

[247] *Id.*

[248] *See* letter from Kohn, Kohn, & Colapinto (Oct. 16, 2019) (''Kohn, Kohn & Colapinto Oct. 16 Letter'').

[249] *See* letter from Kohn, Kohn, & Colapinto (Oct. 21, 2019) (''Kohn, Kohn & Colapinto Oct. 21 Letter''); letter from Phillips & Cohen LLP (Oct. 25, 2019) (''Phillips & Cohen Letter).

[250] We are also making the discretionary safe harbor provided by Rule 21F–9(e) effective as to all award claims still pending on the effective date of the rules. We believe that doing so is appropriate as we think that all claimants—not just future whistleblowers—should be able to benefit from this new mechanism.

[251] Rule 21F–9(a), (b).

[252] Under Rule 21F–2, as amended, a TCR filing remains necessary to obtain whistleblower confidentiality protections and award eligibility.

[253] *See, e.g., In the Matter of the Claims for Award in Connection with a Notice of Covered Action,* Exchange Act Release No. 34–82181, 2017 WL 5969236 (Nov. 30, 2017) (denying two claimants, in part, on the ground that they had failed to submit their original information to the Commission in the form and manner required to qualify as a whistleblower).

[254] Constructive notice is generally defined as ''[n]otice arising by presumption of law from the existence of facts and circumstances that a party had a duty to take notice of.'' Black's Law Dictionary (10th ed. 2014).

21F–9(a) and (b) as of the date counsel was retained.

Although we recognize that some commenters have challenged the long-standing requirement that whistleblowers should file their original information on a TCR in order to obtain an award based on that information, the policy grounds for this requirement are sound. The Commission has strived to ensure that (1) all TCRs are collected in one central place; (2) the TCR data is combined with other public and confidential information on the persons and entities identified in the TCRs, and (3) investigative resources are dedicated to the TCRs presenting the greatest threat of investor harm. We understand that some whistleblowers may choose to contact staff directly to share information about a suspected violation of the securities laws. However, we do not view such outreach as satisfying or obviating the requirement to file a TCR. Indeed, there are important reasons for requiring the timely submission of a TCR (and an accompanying declaration) which benefit *both* the whistleblower and the Commission's programmatic interests.

First, these requirements ensure that the agency has an accurate record of the information a potential whistleblower deems important to the Commission's enforcement efforts instead of relying on Commission staff to file a TCR summarizing the individual's information. Without this safeguard, disputes may arise as to what information an individual actually provided in the initial contact with Commission staff and when the information was submitted to the TCR system. *Second,* the requirement to file a TCR at the outset of the information-sharing process provides a clear indication to staff that the submitter is seeking the heightened confidentiality protections that are afforded by Section 21F(h)(2) of the Exchange Act;[255] it is important that submitters make this clear up front in this manner because it alerts the staff about the extent to which it may (or may not) reveal the submitter's information to third parties, including other government agencies, and it also determines whether other government agencies are themselves subject to the heightened confidentiality requirements of Section 21F(h)(2).[256] *Third,* the TCR requirement memorializes the timing of a whistleblower's provision of information, which is especially important if a subsequent whistleblower provides similar information or if the whistleblower seeks the program's confidentiality and/or retaliation protections. *Fourth,* the TCR requirement allows the Commission to manage and track ''the thousands of tips that it receives annually and to connect tips to each other so as to make better use of the information provided . . .''[257] The accompanying declaration requirement helps deter individuals from submitting false tips that result in the inefficient use of the Commission's resources.[258] We find it significant that Section 21F provides that an individual ''shall'' be denied an award if he or she fails to submit information to the Commission in the form and manner required—a strong signal of congressional intent that individuals seeking an award must follow the procedures that the Commission establishes for submitting information.[259]

Notwithstanding the foregoing, the changes that we have expressly incorporated into paragraph (e) will afford an opportunity for individuals who first come to the Commission with original information without complying with Rule 21F–9(a) and (b) to perfect their submissions and thus potentially qualify for an award. Specifically, in those instances when an individual first provides information to the Commission without complying with Rule 21F–9(a) and 9(b), the following mechanisms will now be available: (1) The individual can perfect his or her submission by complying with those rules within 30 days of first providing original information to the Commission;[260] (2) after 30 days of first providing original information to the Commission, the individual may still qualify for a waiver from having failed to timely comply with Rule 21F–9(a) and (b) if the individual can demonstrate that he or she complied with these procedural requirements within 30 days of first learning about them[261] and the Commission can readily develop an administrative record that unambiguously demonstrates that the individual would otherwise merit an award, without a significant expenditure of staff time and resources to do so. As compared with the proposed rule, we have determined to make the waiver of non-compliance with Rule 21F–9(a) and (b) automatic, rather than discretionary, when the Commission finds that the whistleblower has established that the conditions for the waiver are satisfied. Further, we have determined to provide for such a waiver opportunity from the time when the individual first learns of the Rule 21F–9(a) and (b) requirements rather than establishing a fixed deadline calculated from when the original information is first submitted.

Based on the suggestion of a commenter, we have eliminated the phrase ''clearly and convincingly'' and replaced it with the terms ''readily'' and ''unambiguously'' in order to avoid confusion and any suggestion that we intended to incorporate into our practice under paragraph 9(e) other areas of law that may require proof by ''clear and convincing'' evidence. That said, it would be harmful to the effective and efficient administration of our whistleblower program to broadly waive non-compliance with the TCR-filing

[255] 15 U.S.C. 78u–6(h)(2).

[256] For example, if a submitter fails to provide information on a TCR and the staff shares it with the another government agency before the TCR is submitted, that agency will not be subject to the confidentiality requirements of Section 21F(h)(2) and this may lead to the disclosure of the submitter's identity. Filing the TCR as part of the initial information-sharing means that the legal protections of Section 21F(h)(2) will apply if the Commission shares the submitter's information with the other agency.

[257] *See* Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, 75 FR 70,502 (November 17, 2010).

[258] *Id.*

[259] See 15 U.S.C. 78u–6(c)(2)(D).

[260] As noted in the Proposing Release, even if the individual does not satisfy the procedural requirements within the 30-day safe harbor, he or she may remain award-eligible for any new information that is submitted later in accordance with the Rule 21F–9 procedures. *See* Proposing Release note 195. For example, in our experience, whistleblowers frequently share information and insights with the Enforcement staff in a series of communications over time. Such contacts may range from formal interviews, meetings, or even sworn testimony to more informal contacts such as email exchanges. To date, the Commission has employed a flexible approach in whistleblower awards to treat individuals as award-eligible for any new information submitted after the individual has complied with the TCR-filing requirement, and we expect to continue that practice under new Rule 21F–9(e). *See In the Matter of the Claim for Award,* Exchange Act Release No. 34–78025, 2016 WL 3194294 (June 9, 2016).

[261] Such a demonstration will require a sworn declaration or other supporting materials satisfactory to the Commission. We note that the Office of the Whistleblower makes clear on its web page that, to qualify for an award, an individual must submit information regarding possible law violations to the Commission in one of two ways: (1) Submitting a tip electronically through the SEC's Tips, Complaints and Referrals Portal, or (2) mailing or faxing a Form TCR to the SEC. *See https://www.sec.gov/whistleblower/submit-a-tip.* In determining whether the new waiver authority applies, the Commission will consider that any whistleblower represented by counsel has constructive notice of the requirements of Rule 21F–9(a) and (b) as of the date counsel was retained. Further, if staff advises an individual to review the whistleblower website or to otherwise obtain information about the whistleblower program, the Commission may under the particular facts and circumstances consider the individual to have received constructive notice as of the date the staff communicated this information to the individual.

requirement for non-meritorious claimants or claimants whose entitlement to an award is not clearly established by the administrative record, and we also believe that doing so would be inconsistent with the congressional directive that individuals ''shall'' comply with the Commission's procedures for submitting information.[262] In adopting this provision for situations where the record ''unambiguously'' demonstrates that an individual would otherwise qualify for an award (and the record can ''readily'' be developed to confirm this without a significant expenditure of staff time and resources to do so), we intend the exception to be available only where a clear case exists that the claimant otherwise merits an award, and the claimant submitted his or her TCR and declaration as required by Rule 21F–9(a) and 9(b) within 30 days of first learning about those requirements.[263] That said, the Commission continues to retain its separate discretionary exemptive authorities under Rule 21F–8(a) and Exchange Act Section 36(a) for circumstances that may warrant exemptive relief.[264]

Finally, we have determined not to adopt the recommendation discussed above from several commenters that the Commission afford an unlimited opportunity for any individual that might otherwise qualify as a meritorious whistleblower to comply with the procedural requirements of Rule 21F–9(a) and (b). That standard would generate additional inefficiencies in the program by requiring the Commission in all cases to develop a comprehensive record detailing whether a claimant was in fact meritorious before deciding whether the claimant should be excused from the filing obligation. This would be particularly burdensome because there may be no clear documentation as to when and with whom on the staff a claimant spoke—or what was conveyed—before filing a TCR and officially becoming a whistleblower potentially eligible for an award. For this reason, we believe that it is appropriate to limit the exception for untimely compliance with Rule 21F–9(a) and (b) to those claimants whom the Commission can readily determine would otherwise clearly qualify as meritorious whistleblowers without a significant expenditure of staff time and resources to do so. In our view, this approach strikes an appropriate balance—ensuring that individuals who would clearly obtain an award but for their untimely compliance will in fact receive an award (provided they comply with the 30-day period in paragraph (e)), while not imposing new and undue burdens on the program to develop comprehensive records in cases involving claimants who would not be clearly entitled to an award (thereby preventing the diversion of staff time and resources from cases involving meritorious whistleblowers who did in fact adhere to the filing requirements of Rule 21F–9).

L. Amendments to Exchange Act Rule 21F–12—Materials That May Form the Basis of the Commission's Award Determination

1. Proposed Rule

As explained in the Proposing Release, the Commission proposed two revisions to Exchange Act Rule 21F–12, which specifies the materials that may form the basis of the Commission's award determination. *First,* proposed Rule 21F–12(a)(3) would clarify that the Commission and the CRS (and the Office of the Whistleblower when processing a claim pursuant to proposed Rule 21F–18) may rely upon materials *timely* submitted by the whistleblower in response to the Notice of Covered Action, a request from the Office of the Whistleblower or the Commission, or the Preliminary Determination.[265] Materials submitted after the respective deadlines for these submissions would not be considered absent extraordinary circumstances excusing the delay.[266] *Second,* proposed Rule 21F–12(a)(6) would clarify that it applies only to materials submitted by third parties, not to materials submitted by claimants themselves.

2. Comments Received

We received three comments supporting the proposed revisions to Rule 21F–12 and none in opposition.[267] One of these supporting commenters also expressed concern, however, that the timeliness requirement under proposed Rule 21F–12(a)(2) would prevent claimants from alerting the Commission to developments arising after a deadline, such as changes in the law, additional hardships suffered, and the collection of additional funds on behalf of affected investors.[268] To accommodate this concern, this commenter suggested that Rule 21F–12 be revised to allow the supplemental filing, after a deadline, of ''a reasonably short presentation of (1) information requested by the Commission, and/or (2) information that could not reasonably have been known to the whistleblower at the WB–APP deadline.'' [269]

3. Final Rule

After considering the comments, we are adopting the revisions to Rule 21F–12 as proposed. We have decided not to make further revision to accommodate submissions concerning subsequent developments [270] because our existing rules already meet that concern in two ways. *First,* existing Rule 21F–8(b) already permits the Commission to request additional information from a whistleblower in support of an award application, regardless of whether the application deadline (or any other relevant deadline) has already passed. *Second,* existing Rule 21F–8(a) already permits the Commission, in its sole discretion, to waive a deadline in the whistleblower rules based upon a showing of extraordinary circumstances.[271] Thus, the Commission already possesses ample discretion to allow a post-deadline submission concerning subsequent developments such as changes in the law precisely because, by definition, that information was not available to the claimant before the deadline.

[262] The standard being adopted is in some respects akin to the plain-error standard of review under which some appellate courts require that, if a litigant argues that an error occurred in the trial court but the litigant failed to raise the issue with the trial court in a timely manner, the error must be ''obvious'' and ''clear-cut'' for the appellate court to grant relief. *See, e.g., United States* v. *Wahid,* 614 F.3d 1009, 1015 (9th Cir. 2010). For a claimant to qualify for discretionary relief under Rule 21F–9(e), the claimant's status as a meritorious whistleblower must be clear-cut, obvious, and readily ascertainable.

[263] The heightened confidentiality protections afforded by Section 21F(h)(2) of the Exchange Act will not attach until an individual has submitted a TCR in compliance with Rule 21F–9.

[264] The Commission's discretionary exemptive authorities will continue to include circumstances where a whistleblower is represented by counsel, but the facts and circumstances nevertheless warrant relief from the requirements under Rule 21F–9(a) and (b). And in pending cases, the staff will continue to assess the facts and circumstances of each case to determine whether to recommend to the Commission that application of the exemptive authority is appropriate.

[265] The deadline for filing a claim for a whistleblower award is ninety (90) days after the relevant Notice of Covered Action under Rule 21F–10(a) & (b) and Rule 21F–11(a) & (b). Consistent with Rule 21F–8(b), the Commission may specify a deadline when it requests additional information from the whistleblower in support of an award application. 17 CFR 240.21F–8(b). The time frame for responding to the Preliminary Determination is expressly established by Rule 21F–10(e) and Rule 21F–11(e). 17 CFR 240.21F–10(e), 21F–11(e).

[266] 17 CFR 240.21F–8(a).

[267] CCMC Letter; TAF Letter; Think Computer Letter.

[268] *See* TAF Letter.

[269] *Id.*

[270] *Id.*

[271] *Id.* 21F–8(a).

M. Amendment to Exchange Act Rule 21F–13—The Administrative Record on Appeal

1. Proposed Rule

As explained in the Proposing Release, the Commission proposed revisions to Exchange Act Rule 21F–13 (which governs the administrative record on appeal) to eliminate the designation of items for inclusion in the record on appeal and instead to define the record on appeal in a manner that conforms more closely to Rule 16 of the Federal Rules of Appellate Procedure. Proposed Rule 21F–13(b) would exclude from the record on appeal any pre-decisional or internal deliberative process materials that are prepared exclusively to assist either the Commission or the CRS, and also would exclude any materials that exclusively concern any claimant other than the claimant who brought the appeal, in matters where multiple claimants applied for an award under a single Notice of Covered Action.

2. Comments Received

We received two comments supporting the proposed revisions to Rule 21F–13 and none in opposition.[272] One of these commenters also suggested that internal deliberative process materials should be made available so that whistleblowers can more easily identify errors in the analysis of the CRS and the Commission.[273]

3. Final Rule

After considering the comments, we are adopting the revisions to Rule 21F–13 as proposed. We have decided not to make internal deliberative process materials available to whistleblowers as part of the record on appeal. As noted when we adopted our whistleblower rules in 2011, ''[t]hese materials are by their nature pre-decisional work product that may often contain the staff's 'frank discussion of legal and policy making materials,' and the disclosure of these materials would have a chilling effect on our decision-making process.'' [274]

[272] CCMC Letter; Think Computer Letter.

[273] Think Computer Letter. This commenter asserted, ''The Commission has no stated basis for excluding these materials from the record, and the justification of avoiding potential future embarrassment is insufficient as a legal rationale.'' *Id.*

[274] Securities Whistleblower Incentives and Protections, 76 FR 34,347 (June 13, 2011) (quoting *NLRB* v. *Sears, Roebuck & Co.,* 421 U.S. 132, 151 (1975)).

N. Adoption of Exchange Act Rule 21F–18—Summary Disposition Process

1. Proposed Rule

As explained in the Proposing Release, proposed Rule 21F–18 would authorize the Office of the Whistleblower to follow a summary disposition process for certain categories of denials of award applications that are relatively straightforward, as a more streamlined alternative to the existing processes specified in Rules 21F–10 and 21F–11. Thus, proposed Rule 21F–18 would apply to five categories of denials: (1) Untimely award applications; (2) failure to submit a tip in compliance with Rule 21F–9; (3) where the staff handling the covered action or the underlying investigation (or examination) never received or used the claimant's information and otherwise had no contact with the claimant; (4) failure to comply with Rule 21F–8(b), which encompasses Commission requests for supplemental information and for signed confidentiality agreements; and (5) failure to specify the tip on which the award claim is based. For these categories of denials, the Office of the Whistleblower rather than the CRS would assume responsibility for reviewing the record, issuing a Preliminary Determination (here, a ''Preliminary Summary Disposition''), considering any written response filed by the claimant, and issuing any Proposed Final Determination (here, a ''Proposed Final Summary Disposition''). Additionally, a claimant seeking to challenge a Preliminary Summary Disposition would have 30 days rather than 60 days in which to file a written response and would receive a staff declaration containing the pertinent facts rather than the full administrative record supporting the Preliminary Summary Disposition.

2. Comments Received

Five commenters supported proposed Rule 21F–18,[275] of which three believed that the new summary disposition process would promote staff efficiency in processing likely meritorious whistleblower award claims.[276] Eight commenters opposed the proposed rule,[277] of which six argued that the Commission should provide a quantitative analysis of the anticipated effect of the proposal on the existing queue of whistleblower award claims.[278] Those who opposed the proposed rule also contended that its effect on the existing queue of claims is unclear because likely frivolous claims are already placed at the back of the queue [279] and that the proposal would not address the time required to gather the information necessary to decide a claim.[280]

Two commenters addressed whether proposed Rule 21F–18 would afford claimants due process.[281] In this context, one commenter asserted that the new rule would reduce ''potential whistleblowers' certainty that their information would ever be taken seriously'' and suggested as an alternative that the Office of the Whistleblower engage in ''more transparent communication with whistleblowers (and other types of stakeholders).'' [282]

Two commenters expressed concern that 30 days would be too narrow a window for claimants to prepare and file a written response to a Preliminary Summary Disposition.[283] One of these asserted that a 30-day window would be too narrow absent a permanent tracking mechanism to give claimants immediate notification of a Preliminary Summary Disposition.[284] The other suggested that claimants should be granted an automatic 30-day extension (for 60 days total) upon written request.[285]

3. Final Rule

After considering the comments, we are adopting Rule 21F–18 as proposed.[286] In our experience to date,

[275] Anonymous-9 Letter; Anonymous-33 Letter; CCMC Letter; CWC Letter; TAF Letter.

[276] CCMC Letter; CWC Letter; TAF Letter.

[277] Letters from Anonymous-26 (Sept. 15, 2018) (''Anonymous-26 Letter''); Anonymous-28 (Sept. 15, 2018) (''Anonymous-28 Letter''); Anonymous-29 (Sept. 15, 2018) (''Anonymous-29 Letter''); Anonymous-35 (''Anonymous-35 Letter'') (Sept. 14, 2018); Anonymous-65 (''Anonymous-65 Letter'') (Aug. 21, 2018); Anonymous-73 (''Anonymous-73 Letter'') (Aug. 17, 2018); Devorah Letter; Think Computer Letter.

[278] Anonymous-26 Letter; Anonymous-28 Letter; Anonymous-29 Letter; Anonymous-35 Letter; Anonymous-65 Letter; Anonymous-73 Letter.

[279] Anonymous-35 Letter.

[280] Anonymous-73 Letter.

[281] *Compare* TAF Letter (stating that proposed Rule 21F–18 would ''ensure the provision of due process'' to claimants) *with* Think Computer Letter (stating that proposed Rule 21F–18 is likely to be challenged on due process grounds).

[282] *See* Think Computer Letter.

[283] *See* Anonymous-33 Letter; Devorah Letter.

[284] *See* Devorah Letter.

[285] *See* Anonymous-33 Letter.

[286] The final rule text has been modified to conform to the text of the discussion in the Proposing Release. The final rule text also clarifies in section (a)(1)(2) that the summary disposition process will apply to the denial of claims for failure to comply with Rule 21F–9 only if the claimant is not eligible for a waiver under either Rule 21F–9(e) or the Commission's other waiver authorities because the Commission cannot readily develop an administrative record that unambiguously demonstrates that the claimant would otherwise qualify for an award. This language thus ensures

the five categories of relatively straightforward denials encompassed by this rule have consumed a disproportionate share of staff time and resources, with little or no corresponding benefit from utilizing the more robust procedures under Rules 21F–10 and 21F–11. We anticipate that the new summary disposition process will conserve time in preparing the administrative record,[287] since all pertinent facts will be gathered in a single staff declaration at the Preliminary Summary Disposition stage rather than in multiple declarations as has been common in the past. We anticipate that the new process will permit the more efficient disposition of all claims at all points in the queue.[288]

In our view, the summary disposition process under new Rule 21F–18 will afford claimants due process in the disposition of their claims. Courts have emphasized that ''[i]n informal adjudications like these, agencies must satisfy only minimal procedural requirements.'' [289] Thus, the Due Process Clause [290] imposes no blanket obligation to allow the submission of rebuttal evidence by a claimant [291] or to disclose the agency's own evidence in order to facilitate such a rebuttal.[292] New Rule 21F–18 affords claimants appropriate procedural protection; they have an opportunity to submit a rebuttal statement after having received the Preliminary Summary Disposition and the supporting staff declaration. Moreover, both the Preliminary Summary Disposition and the Commission's final order will provide a brief statement of the grounds for denial of the award application,[293] and a claimant may seek judicial review of the latter as specified in Exchange Act Section 21F(f).[294] Accordingly, the summary disposition process will be fair and transparent, with an abbreviated record and a streamlined process commensurate with the straightforward nature of the issues relevant to these subsets of award claims.

For similar reasons, we are adopting the 30-day window to respond to a Preliminary Summary Disposition, as proposed.[295] Courts have sustained even shorter response periods in the absence of any blanket obligation to accept rebuttal evidence,[296] and we likewise find it instructive that Congress established a 30-day window for claimants to petition for judicial review of our final award determinations.[297] We also anticipate that the Office of the Whistleblower will continue its current practice of providing claimants with prompt notice of such preliminary decisions using the most efficient means of delivery in light of the contact information provided by the claimant. Moreover, any claimant who demonstrates that extraordinary circumstances will prevent a timely written response may argue that the Commission should exercise its discretion under Rule 21F–8(a) to extend this 30-day deadline.

O. Technical Amendment to Rule 21F–4(c)(2)

In the Proposing Release, the Commission proposed to make a technical amendment to Rule 21F–4(c)(2) to correct an existing error in the text of that rule. We did not receive any comments on this proposed modification. Thus, for the reasons explained in the Proposing Release, we are adopting the proposed technical amendment to this rule.

P. Interpretive Guidance Regarding the Meaning and Application of ''independent analysis''

1. Proposed Interpretive Guidance

Section 21F of the Exchange Act limits whistleblower awards to individuals who, among other requirements, submit ''original information'' about possible securities violations. The statute defines ''original information'' as information that:

(A) Is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.[298]

Further, before we can grant an award, we must determine that the whistleblower's ''original information . . . led to the successful enforcement'' of a Commission covered action or a related action.[299]

In promulgating our whistleblower rules, we further defined the terms ''independent knowledge'' and ''independent analysis,'' as used in Section 21F(a)(3)(A) of the definition of ''original information'':

(2) Independent knowledge means factual information in your possession that is not derived from publicly available sources. You may gain independent knowledge from your experiences, communications, and observations in your business or social interactions.

(3) Independent analysis means your own analysis, whether done alone or in combination with others. *Analysis means your examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.*

The Commission proposed interpretive guidance to address the potential availability of a whistleblower award in cases where information provided by a whistleblower is not based on the whistleblower's ''independent knowledge'' but, instead, is premised on information derived from the whistleblower's ''independent analysis'' of publicly available information. In formulating our views, we considered Congress's and the Commission's determinations to substantially restrict any role for publicly available information in potential whistleblower awards. Further, with reference to the requirement of Rule 21F–4(b)(3) that ''independent analysis'' must ''reveal[ ] information that is not generally known or available to the public,'' we considered the framework that the D.C. Circuit and other federal courts of appeal have developed for determining when fraudulent transactions are deemed to have been publicly disclosed for purposes of the so-called ''public disclosure bar'' under the False Claims Act.[300] Based on our review, we concluded:

In order to qualify as ''independent analysis,'' a whistleblower's submission must

that the summary disposition process in Rule 21F–18 will be applied in a manner consistent with the claimant's eligibility for a waiver or lack thereof under either Rule 21F–9(e) or the Commission's other waiver authorities.

[287] *Cf.* letter from Anonymous-73 (Aug. 17, 2018).

[288] *Cf.* letter from Anonymous-35 (Sept. 14, 2018).

[289] *Sw. Airlines Co.* v. *Transp. Sec. Admin.,* 650 F.3d 752, 757 (D.C. Cir. 2011) (internal quotation marks and alterations omitted).

[290] U.S. Const. amend. V.

[291] *See Butte Cty., Calif.* v. *Chaudhuri,* 887 F.3d 501, 506 (D.C. Cir. 2018).

[292] *See Sw. Airlines,* 650 F.3d at 757.

[293] *See Butte Cty., Calif.* v. *Hogen,* 613 F.3d 190, 194 (D.C. Cir. 2010).

[294] *See* 15 U.S.C. 78u–6(f).

[295] Whistleblower Program Rules, 83 FR 34,726 (July 20, 2018) (''Given the relatively straightforward nature of the matters that would generally be eligible for summary disposition, this 30-day window will afford any claimant a sufficient opportunity to provide a meaningful reply'' to a Preliminary Summary Disposition.).

[296] *See Butte Cty.,* 887 F.3d at 506 (sustaining 20-day response period).

[297] 15 U.S.C. 78u–6(f).

[298] 15 U.S.C. 78u–6(a)(3). Our rules add the requirement that ''original information'' must have been submitted for the first time after the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Rule 21F–4(b)(1)(iv).

[299] 15 U.S.C. 78u–6(b)(1).

[300] 31 U.S.C. 3730(e)(4)(A).

provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information. In assessing whether this requirement is met, the Commission would determine based on its own review of the relevant facts during the award adjudication process whether the violations could have been inferred from the facts available in public sources.

In further clarifying our approach, we stated:

A whistleblower's examination and evaluation of publicly available information does not constitute ''analysis'' if the facts disclosed in the public materials on which the whistleblower relies and in other publicly available information are sufficient to raise an inference of the possible violations alleged in the whistleblower's tip. This is because, where the violations that the whistleblower alleges can be inferred by the Commission from the face of public materials, those violations are not ''reveal[ed]'' to the Commission by the whistleblower's tip or any purported analysis that the whistleblower has submitted. Rather, in order for a whistleblower to be credited with providing ''independent analysis,'' the whistleblower's examination and evaluation should contribute ''significant independent information'' that ''bridges the gap'' between the publicly available information and the possible securities violations.

We explained that ''significant independent information'' that ''bridges the gap'' in revealing violations may be found in the application of technical expertise, and we gave as a specific example of qualifying ''analysis'' the type of highly probative submissions to the Commission made by Harry Markopolos in his efforts to expose the Bernard Madoff fraud. However, we also stated that technical expertise is not required. For example, non-experts may configure publicly available information in a non-obvious way that reveals patterns indicating possible violations that would not be otherwise inferable from the public information or may engage in highly probative calculations or some other meaningful exercise with the information that may demonstrate the possibility of securities violations.

However, we contrasted analysis of this type with cases where the whistleblower directs the staff to publicly available information and states that the information itself suggests a fraud or other violations. The latter cases would not qualify as ''independent analysis.'' We offered as examples tips where the whistleblower points to common hallmarks of fraud on the face of the public materials (*e.g.,* impossibly high, guaranteed investment returns or extravagant claims in press releases) or to public discourse (*e.g.,* discussions on a public message board) in which investors or others are alleging a fraudulent scheme. We also stated that the result would be the same whether the individual relied on only one source (*e.g.,* a single website) to collect the publicly available information that demonstrates the hallmarks of the fraud or the individual relied on a multitude of different publicly available sources. We stated that, in each case, the touchstone is whether the whistleblower's submission is revelatory in utilizing publicly available information in a way that goes beyond the information itself and affords the Commission with important insights or information about possible violations.

Finally, we explained that, even when this standard is met, a whistleblower's independent analysis must still have ''led to'' a successful covered enforcement action. This standard requires an assessment of whether the whistleblower's analysis—as distinct from the publicly available information on which the analysis was based—either (1) was a principal motivating factor in the staff's decision to open its investigation, or (2) made a substantial and important contribution to the success of an existing investigation.[301]

2. Comments Received

We received 28 comments on our proposed interpretive guidance regarding ''independent analysis.'' Twenty-four of these were critical of the guidance.[302] The predominant objection of these commenters was that the proposed interpretive guidance would permit the Commission to deny awards based on a ''retroactive'' or ''hindsight'' determination of whether violations were ''reasonably apparent'' and ''could have'' been determined from information that was publicly available.[303] Some commenters expressed a further concern that this determination would be made by an individual Enforcement staff member responsible for the investigation, who might be predisposed to say that she could have inferred the violation herself from the publicly available information supplied by the whistleblower.[304] A number of commenters pointed critically to past violations such as the Bernard Madoff fraud that the Commission failed to identify on its own.[305] Those commenters urged that an award should be available under the ''independent analysis'' prong of ''original information'' any time a member of the public directs the staff to publicly available information of which the staff was not aware and the staff acts upon the tip by pursuing an investigation (and ultimately an enforcement action); an award should be denied only if the staff, in fact, found the information and acted on its own.[306] One commenter argued that the whistleblower's conclusion that violations exist should itself be viewed as non-public information that the Commission did not previously possess.[307]

Commenters also urged that the proposed interpretation of ''independent analysis'' would discourage potential whistleblowers because it would introduce ambiguity and uncertainty into the process (*e.g.,* as to the meaning of ''reasonably apparent''); [308] that whistleblowers should not be denied awards since they take significant personal and professional risks in coming forward; [309] and that the proposed interpretive guidance runs counter to Congress's express intent to make whistleblower awards available based on ''analysis'' of

[301] Although the interpretive guidance set forth in this release is comprehensive and need not be read in conjunction with the Proposing Release, we incorporate the Proposing Release herein by reference to the extent that it reflects additional supporting analysis and citations.

[302] *See* Think Computer Letter; letter from Anonymous-92 (July 18, 2018) (''Anonymous-92 Letter''); Kohn, Kohn & Colapinto July 24 Letter; letter from Anonymous-89 (July 25, 2018) (''Anonymous-89 Letter''); letters from Chris DiIorio dated July 2, 2018 and Aug. 2, 2018 (collectively ''DiIorio Letters''); letters from Dom Laviola dated June 28, 2018 and Aug. 9, 2018 (collectively ''Laviola Letters''); Anonymous-73 Letter; letter from Anonymous-72 (Aug. 17, 2018) (''Anonymous-72 Letter''); letter from Anonymous-71 (Aug. 20, 2018) (''Anonymous-71 Letter''); letter from Terry Smith (Aug. 22, 2018) (''Smith Letter''); Markopolos Letter; letter from National Whistleblower Center (Sept. 17, 2018) (''NWC Sept. 17 Letter''); Jansson letter; letter from Arthur ''Two Sheds'' Jackson (Sept. 17, 2018) (''Jackson Letter''); Cohen Milstein Letter; letter from Annie Bell (Sept. 18, 2018) (''Bell Letter''); Better Markets Letter; Anonymous-9 Letter; AFREF Letter; TAF Letter; letter from Anonymous-121 (Oct. 17, 2018); (''Anonymous-121 Letter''); letter from Anonymous-122 (Oct. 29, 2018) (''Anonymous-122 Letter''); letter from Phillips & Cohen LLP (Oct. 25, 2019) (''Phillips & Cohen Letter); letter from Anonymous-136 (Nov. 18, 2019) (''Anonymous-136 Letter'').

[303] *See* Think Computer Letter; Anonymous-89 Letter; DiIorio Letters; Laviola Letters; Anonymous-73 Letter; Anonymous-71 Letter; Smith Letter; Markopolos Letter; NWC Sept. 17 Letter; Jansson Letter; Jackson Letter; Cohen Milstein Letter; Better Markets Letter; Anonymous-9 Letter; AFREF Letter; TAF Letter; Anonymous-121 Letter.

[304] *See* TAF Letter; Phillips & Cohen Letter.

[305] *See* Think Computer Letter; Anonymous-89 Letter; Dilorio Letters; Anonymous-73 Letter; Anonymous -71 Letter; NWC Sept. 17 Letter; Jackson Letter; Better Markets Letter.

[306] *See* Anonymous-92 Letter; Anonymous-73 Letter; Anonymous-71 Letter; Markopolos Letter; NWC Sept. 17 Letter; Better Markets Letter; Anonymous-9 Letter; AFREF Letter; TAF Letter; Anonymous-121 Letter; Anonymous-122 Letter.

[307] See Cohen Milstein Letter.

[308] *See* Think Computer Letter; Anonymous-73 Letter; Jansson Letter; Better Markets Letter; Anonymous-9 Letter; AFREF Letter; TAF Letter.

[309] *See* Laviola Letters; Anonymous-73 Letter; Better Markets Letter; TAF Letter: Bell Letter.

publicly available information.[310] Some commenters acknowledged that merely pointing the Commission to a newspaper article or other publicly available information should not qualify for an award; but, these and other commenters emphasized the importance of contributions made by financial services professionals, market analysts, and others who apply specialized training or expertise to the review of publicly available information, as well as the contributions of individuals who devote a ''substantial application of time and resources'' in ''exhaustive research'' sifting through and assembling disparate pieces of public information to identify possible violations.[311] Two of these commenters also pointed out that information may be technically available to the public but obscure, costly, difficult to obtain, or largely inaccessible to most people (*e.g.,* documents produced in response to a FOIA request).[312]

Three commenters argued that False Claims Act precedent involving the public disclosure bar should not be applied to interpreting the Commission's rule on independent analysis.[313] One of these commenters argued that Commission actions differ from *qui tam* actions to the extent that Commission actions involve entities for which there is a large amount of publicly available information (*e.g.,* periodic reports or regulatory filings).[314] Thus, this commenter argued, ''there will *almost always* be publicly available information involved in whistleblower submissions, leaving the quality of the whistleblower's analysis as the key variable in most cases except the most brazen frauds.'' [315] Another commenter argued that Congress specifically included the term ''analysis'' in Section 21F in recognition of the fact that ''in the financial services industry . . . participants have specialized knowledge and/or experience reviewing financial statements, contracts, and filings and might be able to identify fraud . . . .'' [316] According to this commenter, this fact distinguishes Section 21F from the public disclosure bar because ''Congress specifically wanted industry professionals to add their analysis with regards to the SEC program to help root out fraud.'' A third commenter argued that the False Claims Act expressly permits the government to allow relators to pursue actions notwithstanding the public disclosure bar and also permits courts to grant awards even where the action is based primarily on public information.[317] One commenter supported the proposed interpretive guidance, including the approach of grounding the ''independent analysis'' framework in federal case law under the False Claims Act.[318] This commenter argued that the Commission's resources should not be diverted from ''genuine enforcement cases,'' into ''separating wheat from chaff when bounty seekers submit information that is already in the public record and contains no original analysis.'' Another commenter echoed this sentiment, specifically voicing concern that claims by company outsiders who appear to use certain methods of analysis from publicly available information to formulate claims of fraud ''distract[] SEC resources from investigating whistleblower claims by individuals who have been or are subject to retaliation and loss of employment from raising concerns of malfeasance to their employer.'' [319] This commenter, who identified herself as a former company insider with ''inside knowledge of the Company,'' urged that the award program should be focused on individuals who are at personal risk of retaliation and who provide the Commission with ''specific facts, documents, and relevant analysis to support their allegations.'' [320]

3. Final Interpretive Guidance

After considering the comments, we have decided to adopt the interpretive guidance as proposed with one additional interpretation. Subject to Section 21F(a)(3)(C) of the Exchange Act,[321] in the exercise of our discretion the Commission may determine that a whistleblower's examination and evaluation of publicly available information reveals information that is ''not generally known or available to the public''—and therefore is ''analysis'' within the meaning of Rule 21F–4(b)(3)—where: (1) The whistleblower's conclusion of possible securities violations derives from multiple sources, including sources that, although publicly available, are not readily identified and accessed by a member of the public without specialized knowledge, unusual effort, or substantial cost; and (2) these sources collectively raise a strong inference of a potential securities law violation that is not reasonably inferable by the Commission from any of the sources individually.

Our experience in administering the whistleblower program, and our review of the comments submitted, confirm the existence of uncertainty regarding the requirement of Rule 21F–4(b)(3) that independent analysis must ''reveal[] information that is not generally known or available to the public.'' By clarifying our application of the rule, we expect to encourage more high-quality submissions that may result in successful enforcement actions, promote transparency, reduce the volume of non-meritorious claims, and increase the efficiency of the whistleblower program. The interpretive guidance is not intended to discourage tips from financial services professionals and others who develop key insights and illuminate possible violations through the application of expertise to the review and evaluation of publicly available information. Moreover, as we explained, technical expertise is not a requirement under the guidance. We expect to treat as ''independent analysis'' highly-probative submissions in which the whistleblower's insights

[310] *See* Anonymous-92 Letter; Anonymous-73 Letter; Anonymous-71 Letter; NWC Sept. 17 Letter; Better Markets Letter; Laviola Letters.

[311] *See* Anonymous-92 Letters; Markopolos Letter; TAF Letter; Cohen Milstein Letter; Anonymous-9 Letter; Phillips & Cohen Letter; Anonymous-136 letter.

[312] *See* Markopolos Letter; Anonymous-9 Letter.

[313] *See* Think Computer Letter; Anonymous-92 Letter; Cohen Milstein Letter.

[314] A *qui tam* action allows a private party to bring an action on the government's behalf, and, if the government action is successful, then the private party can share in the award.

[315] *See* Think Computer Letter (emphasis in original).

[316] *See* Anonymous-92 Letter.

[317] *See* Cohen Milstein Letter.

[318] *See* CCMC Letter. However, this commenter also argued that the ''inference'' standard is too low and that ''the tip should provide concrete, actionable information to the Commission.'' The proposed guidance does not indicate, as the commenter may have believed, that a tip would qualify for an award if the whistleblower raised an inference of the violations, but rather that the whistleblower would *not* merit an award if the facts in publicly available information were sufficient to raise such an inference.

[319] *See* letter from Eileen Morrell (Aug. 29, 2019).

[320] *Id.* Two other commenters did not indicate disapproval of the proposed guidance, but asked only that it not be applied to tips that have been received before the effective date of the amended rules. *See* letter from Anonymous-124 (Nov. 4, 2018); letter from Taylor S. Amarel (Nov. 9, 2018) (''Amarel Letter''). These commenters stated that they had previously submitted TCRs under the existing rule, which, as noted, requires that ''analysis'' must ''reveal[ ] information that is not generally known or available to the public,'' and further stated that '''bridging the gap' is different than 'not generally known.' '' The interpretive guidance does not change any existing rules or the standards applied thereunder, but merely clarifies the standards under the existing rules that define and apply the term ''independent analysis.'' Further, as discussed below, the interpretation reflected in the guidance is consistent with statutory requirements. For these reasons, we believe that it is appropriate to apply the guidance to previously submitted TCRs.

[321] Section 21F(a)(3)(C) requires that ''original information not be exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.'' 15 U.S.C. 78u–6(a)(3)(C).

and evaluation provide significant independent information that ''bridges the gap'' between the publicly available information itself and the possibility of securities violations. The additional guidance we are adopting adds further clarification by describing a specific path available to experts and non-experts alike who devote substantial time and effort and develop unique insights from bringing together information from multiple specialized or difficult-to-obtain sources.

Conversely, our experience has shown that some claimants seek awards based on submissions that do little more than highlight information that is reasonably evident from the public sources. We gave as examples cases where the whistleblower points to common hallmarks of fraud on the face of the public materials (*e.g.,* impossibly high, guaranteed investment returns or extravagant claims in press releases) or to public discourse (*e.g.,* discussions on a public message board) in which investors or others are alleging a fraudulent scheme. Submissions of this type do not constitute ''independent analysis.'' We emphasize, however, that there is no bright-line test and whether any particular submission contains sufficient independent insights to rise to the level of analysis—and, hence, ''original information''—will depend on all of the facts and circumstances of the case.

In addition to promoting transparency and efficiency in the operation of our whistleblower program, we continue to believe that Congress did not intend that we should pay whistleblower awards merely for alerting the Commission staff to publicly-available information. The model for ''independent analysis'' that Congress had before it at the time was the detailed and sophisticated work performed by Harry Markopolos to expose the Madoff fraud, which consisted of more than simply providing the Commission with already-public information.

In conformance with this limitation, our interpretive guidance adapts to the Section 21F context the framework that has found widespread acceptance among federal courts of appeals for determining when fraudulent transactions are deemed to already be publicly disclosed under analogous provisions of the federal False Claims Act.[322] Although commenters criticized this approach as permitting the Commission to make a ''retroactive'' determination of whether the violations were ''reasonably apparent,'' we view the framework as an important analytical tool to help inform our judgment on a dispositive question under Section 21F: Whether a whistleblower's submission is *original*, and not merely a recitation of publicly available information. We observe further that, to the extent that our evaluation under the guidance is backward-looking, it is reasonably based only on information that was publicly available at the time of the whistleblower's tip; it does not evaluate the whistleblower's submission in light of any information that subsequently became public or in light of the investigative record.[323]

We are conscious of the concern expressed by some commenters that individual Enforcement staff assigned to the investigation will be responsible for determining whether the publicly available information was sufficient to raise an inference of the violations. This is not the case. In our award process, all determinations relevant to award entitlement—including whether the claimant provided ''original information''—are made in the first instance by the CRS, which currently is comprised of the Director and Deputy Director of the Enforcement Division and five other Enforcement senior officers. Further, all preliminary award denials that are contested are adjudicated by the Commission. As a result, the role of the individual Enforcement staff member is merely to relay to the CRS the facts relative to the investigation that are pertinent to the CRS's deliberations. It is the job of the CRS (and ultimately the Commission) to determine whether the claimant's submission constitutes ''independent analysis'' through the application of an objective, rather than a subjective, standard of reasonableness to the record. The interpretive guidance we are adopting provides a framework, consistent with existing legal standards, for making this judgment.

The commenters who urged that the test for ''independent analysis'' turn on whether the whistleblower provided information of which the staff was not aware and that, in fact, caused the staff to take action would read the ''analysis'' requirement out of the statute. Under the second prong of ''original information'' (Section 21F(a)(3)(B)), we are required to determine that information provided by a whistleblower was ''not known to the Commission from any other source''; and under Section 21F(b)(1) we must determine that original information provided by a whistleblower ''led to'' the successful enforcement of a Commission covered action or a related action.[324] We are obliged to interpret ''analysis'' in the first prong of ''original information'' (Section 21F(a)(3)(A)) in a manner that gives independent meaning to this term and is not redundant of the requirements that a whistleblower's information be unknown to the Commission and lead to a successful enforcement action.[325]

Put another way, in order to merit an award a whistleblower, among other things, must provide information that is not known to the Commission from any other source, that leads to successful enforcement, *and that also* comprises ''independent analysis'' (or ''independent knowledge''). Importantly, no commenters suggested any alternative interpretations that would distinguish submissions that

[322] We are not persuaded by the view that we should not follow False Claims Act precedent because of contextual differences between the False Claims Act and Section 21F. *First,* the fact that a large amount of publicly available information is filed with the Commission does not suggest a reason for granting awards based merely on publicly available information; as one commenter observed, the key variable remains ''the quality of the whistleblower's analysis'' of such information. *See* Think Computer Letter. *Second,* nothing in the interpretive guidance is inconsistent with Congress's expectation that the term ''analysis'' in Section 21F should support awards when financial services professionals develop original insights about possible violations through application of their specialized knowledge or experience to the review of publicly available information. *Third,* Section 21F does not have provisions similar to those found in the False Claims Act that permit the government to allow a relator to pursue an action notwithstanding the public disclosure bar (31 U.S.C. 3730(e)(4)(A)) or that permit a discretionary award of up to 10% when an action is based primarily on certain publicly available information (31 U.S.C. 3730(d)(1)).

[323] Moreover, our rules already require that we make a range of determinations about the nature, sources, and impact of the information provided by a whistleblower before we can credit it as ''original information.'' For example, in assessing whether a whistleblower possessed ''independent knowledge'' under Rule 21F–4(b)(2), we must exclude information that is ''derived from publicly available sources.'' Under Rule 21F–4(b)(4), we consider whether the information was obtained by an excluded person or under excluded circumstances, and, if so, whether an exception permitting use of the information applies. Under Rule 21F–4(b)(6), we consider how the information provided by a whistleblower related to other information already in our possession at the time and whether the whistleblower's submission ''materially add[ed]'' to our base of knowledge about the matter. Viewed in the context of the many individual determinations that we already must make in our evaluation of whether a whistleblower provided ''original information,'' it is reasonable that we should also consider whether the whistleblower provided ''significant independent information'' that ''bridge[d] the gap'' between the publicly available information and the possible securities violations.

[324] 15 U.S.C. 78u–6(a)(3)(B), 78u–6(b)(1).

[325] *See Moskal* v. *United States,* 498 U.S. 103, 109 (1990) (noting ''the established principle'' that ''every clause or word of a statute'' should be ''give[n] effect, if possible''); *Lowe* v. *SEC,* 472 U.S. 181, 207 n.53 (1985) (similar).

provide ''analysis'' of publicly available information from those that fail to do so.

Our conclusion is buttressed by our reading of Section 21F(a)(6) [326] in conjunction with Section 21F(b)(1).[327] Section 21F(a)(6) defines a ''whistleblower,'' in relevant part, as an individual (or two or more individuals acting jointly) who provide ''information'' relating to a violation of the securities laws to the Commission. However, Section 21F(b)(1) authorizes us to pay awards only to whistleblowers who provide ''original information'' to the Commission. We read these provisions as reflecting Congress's understanding that ''information'' and ''original information'' are distinct concepts, and that some number of individuals who are ''whistleblowers'' by virtue of the ''information'' they provide to the Commission may not also qualify as having provided ''original information.'' We cannot interpret ''independent analysis'' in a way that erases these distinctions and provide awards for any ''information'' that results in a successful enforcement action.

Further, we observe that Section 21F(a)(3)(C) requires that ''original information'' not be ''exclusively derived . . . from the news media.'' [328] However, the ''news media'' is not limited to conventional news sources. The Supreme Court has indicated that the identical term in the False Claims Act's public disclosure bar has ''broad sweep,'' [329] and lower courts interpreting that provision have held that ''news media'' include publicly available websites that promote a company's services and products.[330] Thus, in many cases, fulfilling our statutory duty not to grant awards for information that is ''exclusively derived . . . from the news media'' will require that we find in the whistleblower's purported ''analysis'' a degree of substance that goes beyond the information available on the face of a public website.[331]

Finally, in response to those commenters who expressed concern that the proposed interpretive guidance would discourage individuals from taking the significant personal and professional risks of becoming whistleblowers, we note that our rules provide whistleblowers with the ability to submit tips anonymously.[332] Further, the interpretive guidance as proposed, as well as the additional interpretation adopted today, will enable such professionals to be treated as having provided ''original information'' in appropriate cases.

III. Effective Date and Applicability Dates

The amended rules will become effective 30 days after publication in the **Federal Register**. Although we proposed that the amended rules would take effect 60 days after publication, we believe that it would benefit the program to have the amended rules take effect sooner given that these rules: (i) Largely codify existing agency interpretations and practice; (ii) involve a necessary change to conform Exchange Act Rule 21F–2 to a decision of the U.S. Supreme Court; and (iii) otherwise are procedural in nature and intended to achieve efficiencies in the Commission's processing of whistleblower award applications.

The table below explains whether and how the amended rules will apply:

Rule 21F–2 addressing whether whistleblower status and certain threshold criteria related to award eligibility, heightened confidentiality from identity disclosure, and employment anti-retaliation protection.	The amendments to Rule 21F–2 shall apply as follows: With respect to employment retaliation claims, the amended rule applies only to employment-retaliation violations occurring after the effective date of the rules; with respect to award eligibility and confidentiality protections, the amended rule applies only to information about a potential securities law violation that is submitted for the first time by an individual after the effective date of the rules.
Rule 21F–3(b)(1) and (b)(3) defining ''related action''	The amendments to Rule 21F–3(b) shall apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (see Exchange Act Rule 21F–10(a)) posted on or after effective date of the rules. *Note:* Although this rule will not apply to pending award applications, the Commission may use its adjudicatory authority to apply the same principles to pending award applications.
Rule 21F–4(c)(2) technical amendment	Rule 21F–4(c)(2) shall apply to all new whistleblower award applications filed after the effective date of the rules, as well as all whistleblower award applications that are pending and have not yet been the subject of a final order of the Commission by the effective date.
Rule 21F–4(d) defining ''action''	Rule 21F–4(d) as amended shall apply to any DPA, NPA, or Commission settlement agreement that has a date of entry after July 21, 2010.
Rule 21F–4(e) defining ''monetary sanctions''	Rule 21F–4(e) as amended shall be utilized by the Commission after the effective date of the final rules in determining whether an action qualifies as a ''covered action'' and in calculating any outstanding payments to be made to meritorious whistleblowers.
Rule 21F–6 concerning the Commission's discretion to consider the dollar amount of monetary sanctions collected when applying the award factors and concerning award calculations for certain awards of $5 million or less.	All aspects of this rule shall apply to all award claims still pending as of the effective date of the rules.

[326] 15 U.S.C. 78u–6(a)(6).

[327] 15 U.S.C. 78u–6(b)(1).

[328] 15 U.S.C. 78u–6(a)(3)(C).

[329] *Schindler Elevator Corp.* v. *United States ex rel. Kirk,* 563 U.S. 401, 408 (2011).

[330] *See United States ex rel. Osheroff* v. *Humana, Inc.,* 776 F.3d 805, 813 (11th Cir. 2015); *United States ex rel. Cherwenka* v. *Fastenal Co.,* 2018 U.S. Dist. LEXIS 75108, *20 (D. Minn. 2018); *United States ex rel. Green* v. *Service Contract Education and Training Trust Fund,* 843 F. Supp. 2d 20, 32–33 (D.D.C. 2012).

[331] *See generally Schindler Elevator,* 563 U.S. at 408 (''[T]o determine the meaning of one word in the public disclosure bar, we must consider the provision's 'entire text,' read as an 'integrated whole.' '').

[332] *See* Rule 21F–9(c).

Rule 21F–8(d) concerning flexibility regarding the forms used in connection with the whistleblower program and related rule modifications.	Rule 21F–8(d)(1) shall apply only in connection with submissions of information that are made by an individual after the effective date of the proposed rules. Further, Rule 21F–8(d)(2) shall apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (see Exchange Act Rule 21F–10(a)) posted on or after the effective date of the rules.
Rule 21F–8(e) concerning false statements or frivolous submissions, and revised Rule 21F–8(c).	Rule 21F–8(e) shall apply to all award claims still pending as of the effective date of the rules, but as provided in Rule 21F–8(e)(4), claimants will be given notice and an opportunity to withdraw the relevant award application(s) submitted prior to the effective date. Further, revised Rule 21F–8(c)(7) shall apply to all award claims still pending as of the effective date of the rules.
Rule 21F–9 regarding Form TCR	Rule 21F–9 as amended shall apply only in connection with submissions of information that are made by an individual to qualify as a whistleblower after the effective date of the rules, except Rule 21F–9(e) shall apply to all award claims still pending as of the effective date of the rules.
Rule 21F–12 regarding materials that may form the basis of the Commission's award determination.	Rule 21F–12 as amended shall apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (see Exchange Act Rule 21F–10(a)) posted on or after the effective date of the rules.
Rule 21F–13 regarding the administrative record on appeal	Rule 21F–13 as amended shall apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (see Exchange Act Rule 21F–10(a)) posted on or after the effective date of the rules.
Rule 21F–18 establishing a summary disposition process	Rule 21F–18 shall apply to any whistleblower award application for which the Commission has not yet issued a Preliminary Determination as of the effective date of the rules, as well as to any future award applications that might be filed.
Interpretive guidance regarding the meaning and application of the term "independent analysis" in Rule 21F–4.	As we noted in the Proposing Release, although the Commission proposed the interpretive guidance for public comment, the Commission intends to rely on the principles articulated in the guidance for any whistleblower claims that are still pending at any stage because this guidance clarifies the existing rules that define and apply the term "independent analysis." *Note:* As discussed *supra* note 320, the Commission received two comment letters concerning the application of the independent-analysis interpretive guidance to tips received before the effective date of the rules. For the reasons discussed in note 320, we have declined to follow that suggestion.

IV. Other Matters

If any of the provisions of these amendments, or the application of these provisions 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.

Pursuant to the Congressional Review Act,[333] the Office of Information and Regulatory Affairs has designated these amendments as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

V. Paperwork Reduction Act

A. Background

Certain provisions of the whistleblower rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[334] To qualify as a whistleblower, individuals seeking to submit information of a possible securities law violation to the Commission must do so by providing information through the Commission's online portal or by submitting the paper Form TCR. Individuals seeking an award must make their award request using a paper Form WB–APP. The hours and costs associated with preparing and submitting information through the online portal and affected forms constitute reporting and cost burdens imposed by each collection of information. An agency may not sponsor, conduct, or require a response to an information collection unless a currently valid Office of Management and Budget (''OMB'') control number is displayed. The Commission submitted a proposed reorganization of the affected collections of information to OMB for review in accordance with the PRA.[335] The titles for the affected collections of information were: (1) ''Electronic Data Base Collection System—TCR'' (OMB Control No. 3235–0672); and (2) ''Form TCR'' and ''Form WB–APP'' (OMB Control No. 3235–0686).

B. Estimated Costs and Burdens

As described in more detail above, to provide the Commission with the ability to make timely corresponding adjustments to the paper Form TCR when it determines to modify the online portal, the Commission is modifying Exchange Act Rule 21F–8 by adding a new section (d)(1) that reads as follows: ''The Commission will periodically designate a Form TCR (Tip, Complaint, or Referral) that individuals seeking be eligible for an award through the process identified in § 240.21F–9(a)(2) shall use.'' In addition, to provide the Commission with greater administrative flexibility to modify Form WB–APP, the Commission is modifying Exchange Act Rule 21F–8 by adding a new section (d)(2) that reads as follows: ''The Commission will also periodically designate a Form WB–APP for use by individuals seeking to apply for an award under either § 240.21F–10 or § 240.21F–11.''

In connection with these amendments, the Commission proposed that the OMB control numbers for the associated collections of information be

[333] 5 U.S.C. 801 *et seq.*

[334] 44 U.S.C. 3501 *et seq.*

[335] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

reorganized, so that both the online portal and Form TCR would fall under the same OMB control number (No. 3235–0672), and Form WB–APP would have its own OMB control number (No. 3235–0686). The collections of information would be re-titled, and the associated burden estimates adjusted accordingly.

In the Proposing Release, the Commission stated that it did not anticipate that the amendments would increase the burden or cost to individuals preparing and submitting the required information through the online portal and affected forms. Although certain modifications would be made to Form TCR so that the information elicited by the form is consistent with the information collected through the online portal, the Commission stated that these conforming modifications would not increase appreciably the burden for individuals completing the form.

The table below summarizes the burden and cost estimates associated with the online portal and affected forms after the proposed reorganization of the relevant control numbers:

TABLE 1 OF SECTION V.B.: REVISED BURDEN ESTIMATES UNDER THE PROPOSED REORGANIZATION

Title	OMB control No.	Burden hours	Costs
"Tips, Complaints and Referrals (TCR)"	3235–0672	9,050	$42,000
"Form WB–APP"	3235–0686	110	4,800

The Commission did not receive any comments that directly addressed its Paperwork Reduction Act analysis or the reorganized burden estimates, and we do not believe any changes in the final rules will affect these burden estimates.

C. Mandatory Collection of Information

A whistleblower is required to complete either a hardcopy Form TCR or submit his or her information electronically through the online portal and to complete Form WB–APP to qualify for a whistleblower award.

D. Confidentiality

As explained above, the statute provides that the Commission must maintain the confidentiality of the identity of each whistleblower, subject to certain exceptions. Section 21F(h)(2) states that, except as expressly provided:

[T]he Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission [or certain specific entities listed in paragraph (C) of Section 21F(h)(2)].

Further, as discussed above, Rule 21F–2(c) requires that an individual who is seeking this heightened confidentiality protection must submit his or her information to the Commission using the online portal or by completing a hardcopy Form TCR. If an individual fails to do so, then under our amended rule he or she will be ineligible for the heightened confidentiality protections.

Section 21F(h)(2) also permits the Commission to share information received from whistleblowers with certain domestic and foreign regulatory and law enforcement agencies. However, the statute requires the domestic entities to maintain such information as confidential, and requires foreign entities to maintain such information in accordance with such assurances of confidentiality as the Commission deems appropriate.

In addition, Section 21F(d)(2) provides that a whistleblower may submit information to the Commission anonymously and still be eligible for an award, so long as the whistleblower is represented by counsel. However, the statute provides that a whistleblower must disclose his or her identity prior to receiving payment of an award.

VI. Economic Analysis

The Whistleblower Program helps the Commission better enforce the federal securities laws. Unlike some of our rulemakings, we are not addressing a market failure or market risk here. Rather, based on our decade of experience administering the program, we have identified aspects of the program that could be improved to enhance its efficiency. Accordingly, the amendments to the whistleblower rules are designed to be thoughtful improvements that should help enhance the overall functioning of the program in ways that continue to encourage individuals to come forward to report securities-law violations. The specific changes we are adopting are designed to improve the efficiency of claims processing and provide additional transparency that may strengthen whistleblower incentives.[336] By improving the Whistleblower Program, these amendments should contribute to an improvement in the Commission's law enforcement efforts.

The Commission is sensitive to the economic consequences of its rules, including the benefits, costs, and effects on efficiency, competition, and capital formation. Section 23(a)(2) [337] of the Securities Exchange Act of 1934 requires the Commission, in promulgating rules under the Exchange Act, to consider the impact that any rule may have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Further, Section 3(f) of the Exchange Act [338] requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The economic analysis focuses on the amendments to Rule 21F–2, Rule 21F–3(b)(3), Rule 21F–4(d)(3), Rule 21F–6, Rule 21F–8(e), newly adopted Exchange Act Rule 21F–18, and the adopted interpretive guidance concerning the term ''independent analysis.'' As discussed above:

- The amendments to Rule 21F–2 are in response to the Supreme Court's recent decision in *Digital Realty Trust, Inc.* v. *Somers*; [339]
- Amended Rule 21F–3(b)(3) makes it clear that recovery from the Commission is not possible where the Commission determines that a separate whistleblower program more

[336] See section I.B.

[337] 15 U.S.C. 78w(a)(2).

[338] 15 U.S.C. 78c(f).

[339] 138 S. Ct. 767 (2018).

appropriately applies to a non-Commission action;

• Amended Rule 21F–4(d)(3) would allow awards based on DPAs or NPAs entered into by DOJ and settlement agreements entered into by the Commission;

• Amended Rule 21F–6(c) provides additional clarity regarding the potential award assessment;

• The newly added language to the opening paragraph of Rule 21F–6 clarifies the Commission's discretion to consider the dollar amount of monetary sanctions collected when considering the existing Award Factors and setting the Award Amount;

• Amended Rule 21F–8(e) would provide authority to bar applicants from future award applications in certain limited situations;

• New Rule 21F–18 would provide a streamlined award consideration process for certain limited categories of non-meritorious applications; and

• The adopted interpretive guidance would help clarify the meaning of ''independent analysis'' as that term is defined in Exchange Act Rule 21F–4 and utilized in the definition of ''original information.''

The other amendments adopted in this release are either procedural, technical in nature, or codify existing practice, and therefore we do not expect them to have significant benefits, costs, and economic effects, or significantly impact efficiency, competition, and capital formation.

Many of the benefits and costs discussed below are difficult to quantify. For example, although the analysis that follows details the specific ways in which we expect the adopted rules to affect whistleblower incentives, we lack the data necessary to estimate the magnitudes of these effects separately or in the aggregate. Similarly, we cannot precisely estimate the additional awards paid out of the IPF due to the inclusion of DPAs and NPAs entered into by DOJ or settlement agreements entered into by the Commission in the definition of an ''administrative action.'' [340] Therefore, while we have attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature.

A. Economic Baseline

To examine the potential economic effects of the amendments, we employ as a baseline the rules that the Commission adopted in May 2011 to implement the whistleblower program as currently administered, and the Supreme Court's recent decision in *Digital Realty Trust, Inc.* v. *Somers.* Further, we provide summary statistics that describe the distribution of awards paid by the whistleblower program under the 2011 rules, and estimates of wages and salaries obtained from a number of surveys.

1. Supreme Court Decision in *Digital Realty Trust, Inc.* v. *Somers*

As described above, the Supreme Court held in *Digital Realty Trust, Inc.* v. *Somers* [341] that Section 21F(h)(1) of the Exchange Act unambiguously requires that a person report a possible securities law violation to the Commission in order to qualify for employment retaliation protection.[342]

2. Awards Issued by the SEC Whistleblower Program

From August 2012 through July 2020, the Commission's whistleblower program issued 81 whistleblower awards to 88 individuals (including, as explained above, individuals who acted as joint whistleblowers).[343] Table 1 of Section VI.A.3 reports the frequency distribution of these awards by award size. Sixty (74%) of these awards were less than $5 million, of which 45 (56%) awards were less than $2 million. The dollar amount of these 60 awards makes up 16 percent of the dollar amount of all awards. Of the remaining 21 awards, 15 were at least $5 million but less than $30 million and six exceeded $30 million. The dollar amount of the 15 awards that were at least $5 million but less than $30 million makes up 39 percent of the dollar amount of all awards. The dollar amount of the six awards that exceeded $30 million makes up 45 percent of the dollar amount of all awards. According to the Office of the Whistleblower, of the 88 individuals who have received awards, approximately 7 percent are high-ranking corporate executives at companies of varying sizes and a majority of these executives received awards that were under $5 million.

TABLE 1 OF SECTION VI.A.3: FREQUENCY DISTRIBUTION OF WHISTLEBLOWER AWARDS

[We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through July 2020. ''Number'' is the number of awards that fall within an award size category. ''Percent'' is the number of awards in an award size category as a fraction of the total number of awards. ''Percent of Total Dollars Awarded'' is the dollars awarded in an award size category as a fraction of the total dollars awarded.]

Award size category	Number	Percent	Percent of total dollars awarded
Less than $2 million	45	56	6
At least $2 million but less than $5 million	15	19	10
At least $5 million but less than $10 million	6	7	8
At least $10 million but less than $15 million	2	2	5
At least $15 million but less than $20 million	4	5	13
At least $20 million but less than $30 million	3	4	13
At least $30 million	6	7	45
Total	81	100	100

[340] For an explanation of the IPF, *see supra* footnote 3.

[341] 138 S. Ct. 767 (2018).

[342] *Id.* at 781–82.

[343] These totals treat as single awards several cases where whistleblowers' original information led to multiple covered actions that were processed together in one award order recognizing the total contributions of the whistleblower. Similarly, consistent with the approach above governing cases where we grant an award for both a Commission enforcement action and a related action by another governmental entity based on the same information provided by the whistleblower (*see* Rule 21F–3(b)), we consider covered-action awards together with their corresponding related-action awards as single whistleblower awards.

In addition to summarizing the distribution of awards to whistleblowers, we also summarize the distribution of awards by enforcement action. For each enforcement action, we identify all whistleblowers who receive an award for that enforcement action and sum their awards to arrive at the aggregate award for that enforcement action. Table 2 of Section VI.A.3 indicates that between August 2012 and July 2020, there were 74 enforcement actions for which the Commission issued whistleblower awards.[344] Fifty-six enforcement actions had awards of less than $5 million, of which 43 awards were less than $2 million. The dollar amount of awards associated with these 56 actions makes up 15 percent of the dollar amount of all awards. Of the remaining 18 actions, 13 had aggregate awards of at least $5 million but less than $30 million and only five had an aggregate award that exceeded $30 million. The dollar amount of awards associated with the 13 actions makes up 34 percent of the dollar amount of all awards. The dollar amount of the awards associated with the five largest actions makes up 51 percent of the dollar amount of all awards.

TABLE 2 OF SECTION VI.A.3: FREQUENCY DISTRIBUTION OF AWARDS BY ENFORCEMENT ACTION

[We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through July 2020. For each enforcement action, we identify all whistleblowers who received an award for that enforcement action and sum their awards to arrive at the aggregate award for that enforcement action. ''Number'' is the number of aggregate awards that fall within an award size category. ''Percent'' is the number of aggregate awards in an award size category as a fraction of the total number of awards. ''Percent of Total Dollars Awarded'' is the dollars awarded in an award size category as a fraction of the total dollars awarded.]

Award size category	Number	Percent *	Percent of total dollars awarded
Less than $2 million	43	58	6
At least $2 million but less than $5 million	13	18	9
At least $5 million but less than $10 million	5	7	6
At least $10 million but less than $15 million	2	3	5
At least $15 million but less than $20 million	3	4	10
At least $20 million but less than $30 million	3	4	13
At least $30 million	5	7	51
Total	74	100	100

* Figures do not sum to 100% due to rounding.

3. Estimates of Current Annual Wages

Prospective whistleblowers' annual wages are potentially relevant to various aspects of the adopted rules. In particular, summary statistics of annual wages could inform an assessment of the potential impact of Rule 21F–6(c) on whistleblowing incentives. Table 3 of Section VI.A.3 presents, by industry, the pre-tax annual wages per employee (''average wages'') estimated by the Bureau of Labor Statistics for 2018.[345] Average wages vary from a low of $24,087 in the leisure and hospitality industry to a high of $113,781 in the information industry.

These averages do not reflect the substantial degree of within-industry wage variation. For example, more senior employees involved in financial activities likely earn higher wages than their more junior counterparts; likewise, staff who supply significant expertise may earn more than those who do not. A 2017 report documenting survey responses from 377 financial professionals included average base salaries for senior-level financial executives between $133,859 and $342,154, depending on title and whether companies are public or private.[346]

TABLE 3 OF SECTION VI.A.3: 2018 AVERAGE ANNUAL WAGES PER EMPLOYEE BY INDUSTRY

[This table presents the pre-tax annual wages per employee at privately owned establishments aggregated by industry as reported by the Bureau of Labor Statistics.]

Industry	Annual wages per employee ($)
Natural resources and mining	59,628
Construction	62,727
Manufacturing	68,525
Trade, transportation, and utilities	47,607
Information	113,781
Financial activities	95,561
Professional and business services	75,169
Education and health services	50,444
Leisure and hospitality	24,087

[344] As noted, we aggregate related actions with their corresponding Commission actions for purposes of this analysis.

[345] Wage data used for calculating the annual wages per employee are derived from the quarterly tax reports submitted to state government workforce agencies by employers, subject to state unemployment insurance laws, and from Federal agencies subject to the Unemployment Compensation for Federal Employees program. Further information is available at *https://www.bls.gov/cew/cewbultncur.htm#Tables*.

[346] *See* ''Financial Executive Compensation Report 2017,'' Grant Thornton LLP and Financial Executives Foundation, Inc., 2017 (*available at https://www.grantthornton.com/~/media/content-page-files/tax/pdfs/FEI-financial-exec-comp-survey-2017/FEI-survey-results-2017.ashx*).

TABLE 3 OF SECTION VI.A.3: 2018 AVERAGE ANNUAL WAGES PER EMPLOYEE BY INDUSTRY—Continued

[This table presents the pre-tax annual wages per employee at privately owned establishments aggregated by industry as reported by the Bureau of Labor Statistics.]

Industry	Annual wages per employee ($)
Other services	38,464
Unclassified	57,227

B. Analysis of Benefits, Costs, and Economic Effects of the Adopted Rules

In this section, we discuss the potential benefits, costs, and economic effects of the adopted rules. We also respond to comments that relate to the benefits, costs, and economic effects of these rules.

1. Amendments to Rule 21F–2

Most of the amendments to Rule 21F–2 are either in response to the Supreme Court's decision in *Digital Realty Trust, Inc.* v. *Somers* [347] or conform the rule substantively with current practice. Two amendments, however, do represent changes relative to the economic baseline, and their potential benefits, costs, and economic effects are discussed here. Final Rule 21F–2(a)(1) extends employment retaliation protection only to an individual who provides the Commission with information ''in writing.'' Final Rule 21F–2(d)(1)(iii), among other things, limits employment retaliation protection to lawful acts that ''relate to the subject matter'' of the person's submission to the Commission under final Rule 21F–2(a).

a. Final Rule 21F–2(a)(1)

Final Rule 21F–2(a)(1) could potentially impose a burden on those individuals who want to report potential violations to the Commission and wish to qualify as a ''whistleblower'' solely for employment retaliation protection. Such individuals might decide not to report to the Commission if the reporting burden is perceived to outweigh the benefits associated with retaliation protection. Our experience to date with individuals who have sought to qualify for a whistleblower award suggests that requiring that information be provided in writing presents, at most, a minimal burden to individuals who want to report violations to the Commission while facilitating the staff's use of the information. To the extent that this experience is informative about the reporting burden for individuals who will seek employment retaliation protection, such a burden would also be, at most, minimal.[348] Accordingly, the final rule would likely not have an adverse impact on the whistleblowing incentives of those individuals who wish to qualify as a ''whistleblower'' solely for employment retaliation protection.

We considered two alternatives to the approach we are adopting in Rule 21F–2(a): (1) Requiring information to be provided to the Commission consistent with Rule 21F–9(a)—that is, either through the online portal at *http://www.sec.gov* or by mailing or faxing a Form TCR to the Office of the Whistleblower; [349] and (2) permitting additional manners of reporting for anti-retaliation purposes (such as placing a telephone call or making an oral report more generally).[350]

We declined to adopt the first alternative because it would, in our view, unnecessarily limit the means of reporting to the Commission by individuals who are merely seeking employment retaliation protection. Limiting whistleblower status to those individuals who follow the first alternative could unnecessarily exclude individuals from the benefits of Section 21F(h)(2)'s employment retaliation protections without providing any accompanying benefit to the Commission, whistleblowers, or the public generally. Further, requiring that individuals report information simply ''in writing'' allows individuals to choose the least burdensome manner to report violations to the Commission, potentially lowering costs including, for example, time spent providing the information.

A second alternative to the final rule would have permitted reporting violations other than ''in writing'' that would, nonetheless, preserve a whistleblower's retaliation protection. While the *Digital Realty* decision requires a report as a prerequisite for retaliation protection, it is the final rule that requires the report to the Commission to be ''in writing.'' Some commenters supported the ''in writing'' requirement because it provided clarity and certainty as to when the whistleblower provided information and what information was provided,[351] while other commenters opposed the ''in writing'' requirement, noting that reporting can take many other forms and the purpose of the retaliation protection statute is to encourage reporting, whether in writing or not.[352] One commenter noted that reporting not made in writing (*e.g.,* oral disclosure) could readily be put into writing at the time of disclosure or any time after disclosure.[353] However, such an approach could raise a number of concerns. There may be a loss of information or the introduction of ambiguity if the whistleblower fails to provide a sufficiently detailed and clear oral disclosure, especially if the whistleblower fears retaliation or is otherwise distracted. Second, there is likely to be a delay between receiving an oral disclosure and memorializing it. Third, to address the two foregoing concerns, repeated contacts with the whistleblower may be necessary, which could further delay getting the whistleblower's information to the appropriate staff. While the drafting of a written report takes time, a written report likely would mitigate the aforementioned concerns related to oral disclosure. Finally, a commenter noted that an urgent need to make an oral report, particularly if the whistleblower feared retaliation and was therefore unwilling to make a written report, could leave a whistleblower who provides valuable information to the Commission without retaliation protection.[354] However, the act of providing a written report ensures that a whistleblower has the option to anonymously and confidentially report a violation and, more to the point, that the whistleblower will be provided with

[347] 138 S. Ct. 767 (2018).

[348] *See* also Section II.G.3.

[349] A commenter also suggested this alternative. *See* CCMC Letter.

[350] *See* letters from TAF and NELA.

[351] *See* letters from CPMC and CWC.

[352] *See* Kohn, Kohn & Colapinto (May 6 Letter); NELA Letter; TAF Letter.

[353] *See* NELA Letter.

[354] *See* TAF Letter.

retaliation protection. We decline to adopt the second alternative due to the concerns discussed above and to avoid potential costs that could arise if the Commission became involved in disputes in private anti-retaliation lawsuits over what information was provided to whom on what dates. Requiring that any reporting be done in writing obviates these concerns and potential costs.

b. Rule 21F–2(d)(1)(iii)

Rule 21F–2(d)(1)(iii) helps avoid the result that an individual who, having qualified as a whistleblower under the Commission's rules could, as a result, receive subsequent employment retaliation protection for making a required disclosure within the meaning of clause (iii) of Section 21F(h)(1)(A) that does not relate to the subject matter of the report the whistleblower made to the Commission. For individuals who want to make non-Commission reports about potential violations to their employers and desire employment retaliation protection for such lawful acts, the final rule could increase the incentives of these individuals to also report directly to the Commission. While final Rule 21F–2(a)'s ''in writing'' requirement could potentially impose a burden on these individuals, for the reasons discussed in the analysis of final Rule 21F–2(a)(1), *supra,* we believe that such a reporting burden would, at most, be minimal and would likely not limit the reporting incentives afforded by final Rule 21F–2(d)(1)(iii).

As discussed above, although some commenters expressed reservations about the uncertainty this provision might generate for whistleblowers,[355] we anticipate that this provision will be applied in a flexible manner to accommodate whistleblowers who make a good-faith effort to comply with our rules in seeking retaliation protection. To the extent that the Commission's application is flexible, this provision should not discourage potential whistleblowers due to uncertainty about what conduct is protected.

2. Rule 21F–3(b)(3) [356]

As adopted, Rule 21F–3(b)(3) makes clear that a law-enforcement action will not qualify as a related action if the Commission determines that there is a separate whistleblower award program that more appropriately applies to the enforcement action. Further, Rule 21F–3(b)(3) makes clear that the Commission will not make an award to the whistleblower for a potential related action if the whistleblower has already been granted an award by the governmental entity responsible for administering another whistleblower award program. Further, under final Rule 21F–3(b)(3), if the whistleblower was denied an award by another award program, the whistleblower would not be permitted to readjudicate any issues before the Commission that the governmental entity responsible for administering the other whistleblower award program resolved as part of the award denial.

The final rule clarifies that a whistleblower may not adjudicate his or her contributions in separate forums and potentially obtain two separate awards based on the same whistleblower report. While the rules that were adopted in May 2011 precluded this result when an action is applicable to both the Commission's whistleblower program and the CFTC's whistleblower program,[357] those rules do not expressly preclude this result when the non-SEC whistleblower program is administered by a governmental entity other than the CFTC. Thus, the Commission is amending its rules to reflect its current practice, thus clarifying that its position with respect to the CFTC applies to all other governmental entities,[358] because we believe clarity in this area will improve decision making by whistleblowers and their counsel.

The final rule would likely not have an adverse impact on the incentives of individuals who may report violations that result in enforcement actions potentially implicating both the Commission's whistleblower program and the whistleblower program of another governmental entity. Such an individual likely has the ability to determine (*e.g.,* using web searches, advice from legal counsel), whether her report could potentially be eligible for an award under the whistleblower program of another governmental entity if presented to that governmental entity, whether or not her report is ultimately eligible for an award under the Commission's whistleblower program. The existence of an alternative whistleblower program potentially improves the individual's overall likelihood of receiving an award from reporting a violation and would likely not adversely impact the individual's reporting incentives. In addition, potential whistleblowers with legal counsel likely would have taken into account the Commission's current practice, which the final rule codifies. As discussed in Section II(C) of the proposing release,[359] to date, the Commission has never paid an award on a matter where a second whistleblower program also applied to the same matter, nor has the Commission ever indicated that it would do so. As such, the final rule is unlikely to present a potential whistleblower with a disincentive to report a possible securities law violation.

One commenter was concerned that the proposed rule could disincentivize whistleblowing if the more applicable program has an award cap that is lower than the whistleblower's desired compensation (*e.g.,* FIRREA's $1.6 million limit).[360] In response to this concern, we note that whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements.[361] While it is possible that a more applicable award program with a lower award cap could, under the final rule, reduce a whistleblower's monetary incentives to report potential violations to the Commission, we believe that this possibility is so remote relative to other factors that it is unlikely to serve as a meaningful disincentive for a potential whistleblower. For example, when considering whether to report a potential violation to the Commission, that potential whistleblower still stands to receive an award from us for any Commission covered action; if a covered action does not occur, any ancillary action may produce an award for that whistleblower under the more applicable program. Even if the more applicable program has an award cap, individuals may still decide to report potential violations if they are sufficiently motivated by non-pecuniary elements, or the award amount available under the other program, or both. Because the amendment codifies current practice, we believe the final rule would likely not have an adverse impact on reporting incentives.

3. Rule 21F–4(d)(3)

Rule 21F–4(d)(3) provides that, for purposes of making a whistleblower

[355] *See* NELA Letter.

[356] This rule was proposed as new paragraph (4) to Exchange Act Rule 21F–3(b). *See* 83 FR at 34738.

[357] *See* Rule 21F–3(b)(3).

[358] In addition to the CFTC, there are various Federal and state whistleblower programs that are currently administered by other agencies or governmental entities, including a program administered by the IRS, whistleblower award programs related to the False Claims Act and the Financial Institution Reform, Recovery, and Enforcement Act (FIRREA), and state whistleblower award programs established in Utah and Indiana. *See* also Proposing Release 83 FR at 34735.

[359] *See* 83 FR at 34709–34711.

[360] *See* Cornell Law Clinic Letter.

[361] *See* Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

award, an NPA or DPA entered into by DOJ in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws, will be deemed to be an ''administrative action'' and any money required to be paid thereunder will be deemed a ''monetary sanction.'' [362] The rule will likely result in more awards because awards would be paid for DPAs and NPAs entered into by DOJ as well as settlement agreements entered into by the Commission in addition to judicial or administrative proceedings covered by the existing rules. The rule should enhance the incentives for whistleblowers to come forward in a timely manner to the extent that it signals to prospective whistleblowers that a wider array of enforcement resolutions may result in awards.

4. Rule 21F–6(c)

Rule 21F–6(c) provides a specific presumption that, subject to Commission discretion and certain other conditions, where the statutory maximum award of 30 percent of the monetary sanctions collected would total $5 million or less for all actions involving the whistleblower's same original information, the Award Amount presumptively will be set at the statutory maximum amount. However, this presumption would not apply under certain circumstances. For example, the Commission will not presume the award to be the statutory maximum amount if any of the negative Award Factors that are identified in Exchange Act Rule 21F–6(b) are found to be present with respect to the whistleblower's award claim or if the award claim triggers Exchange Act Rule 21F–16 (concerning awards to whistleblowers who engage in culpable conduct). In the case of multiple whistleblowers, the award could be set at the statutory maximum, but the allocation of the award could be altered if any of the negative Award Factors applied to one or more whistleblower. Additionally, where, under Rule 21F–6(a), the assistance provided by the whistleblower is limited, the Commission may exercise its discretion to set the Award Amount lower than the statutory maximum.

The final rule could enhance the incentives of potential whistleblowers who anticipate receiving awards below $5 million and do not expect to be subject to any of the above conditions that would preclude an application of the presumption. The prospect of a larger award could further incentivize these potential whistleblowers to report violations in a timely manner to the Commission, including before any of the negative Award Factors are present. Further, we anticipate that the final rule will increase incentives to report wrongdoing more broadly. At the time of deciding whether to submit a tip, it would be very unlikely that a whistleblower could estimate accurately the amount that might be awarded. The final rule gives whistleblowers some assurance that if monetary sanctions were to be insufficient to support an award of over $5 million, then the award-setting process will, in the vast majority of cases, start from the presumption of the maximum statutory award of 30% of monetary sanctions.

From a cost perspective, the final rule could potentially result in larger awards being paid because an award that would yield a potential payout below $5 million may be increased. As indicated in Table 1 of Section VI.A.3, as of July 31, 2020, the Commission has granted 60 whistleblower awards (*i.e.,* 74 percent of awards and 16 percent of total dollars awarded) that were below $5 million. To the extent that the distribution of past awards provides a reasonable estimate of the distribution of likely future awards to whistleblowers, the majority of future awards are likely to be subject to the final rule.

An alternative that we considered was using the $2 million threshold described in the proposal. In particular, the proposed rule would have increased incentives for potential whistleblowers who expected awards of less than $2 million, but with a potential increase to a maximum of $2 million. Like the final rule, the proposed rule would have included the limitations mentioned above to specify which whistleblowers could be considered for the presumption. The alternative would have provided increased incentives relative to current practice. Similarly, relative to current practice, the final rule's presumptive increase of small awards that are $5 million or less provides greater incentives and clarity regarding the application of increased awards for whistleblowers whose awards otherwise might have been smaller (and could have engendered concern in potential whistleblowers that they would have been smaller).

Compared to the proposed rule, the final rule likely would result in increases to the amount of the award for more whistleblowers, as suggested by the number of awards that fell between $2 million and $5 million, as shown in Table 1 of Section VI.A.3.

5. Proposed Rule 21F–6(d) and Amendments to Rule 21F–6

a. Consideration of Rule

The amendments to Rule 21F–6 that we are adopting today clarify that the Commission has the authority to consider the dollar amount when applying the award criteria. Because these amendments only clarify the Commission's existing authority, we do not believe they will have significant benefits, costs, and economic effects, or will significantly impact efficiency, competition, and capital formation.

As noted above, we are not adopting Proposed Rule 21F–6(d). As such, awards exceeding $30 million will not be subject to a specific mechanism for review. This alternative, as described in the proposal, would have provided a specific mechanism to guide the Commission's existing discretion to determine awards, specifically in the context of large awards. This mechanism would have provided a rubric within which the Commission could determine whether an award exceeded an amount necessary to sufficiently incentivize whistleblowers, which is a goal of the whistleblower award program.

In the Proposing Release, we stated our belief that Proposed Rule 21F–6(d) could reduce the likelihood of awards that are excessive in light of the whistleblower program's goals and the interests of investors and the public, and thus could foster more efficient use of the IPF.[363] In light of some commenters' perception that any downward-departure mechanism for exceedingly large potential awards would serve to hold awards at the 10 percent statutory minimum, the Commission at this time has determined not to adopt this alternative, thereby avoiding any detrimental chilling effect on potential whistleblowers coming forward as a result of misperceiving the purpose and function of the proposed provision.

6. Rule 21F–8(e)

As discussed above,[364] we are adopting Rule 21F–8(e) substantially as proposed. The final rule could increase the speed and efficiency of the award determination process.[365] By

[362] *See* Section II.A.3 regarding the clarifications related to the requirement that agreements be ''similar'' in order to qualify as ''administrative actions'' imposing ''monetary sanctions.''

[363] Whistleblower Program Rules, 83 FR 34,739 (July 20, 2018).

[364] *See* Section II.I.

[365] We acknowledge that this potential benefit rests, in large part, on the premise that the applicants currently submitting multiple frivolous applications are unlikely to change their behavior.

permanently barring applicants that make three or more frivolous award applications the final rule could help free up staff resources that could then be devoted to processing potentially meritorious award applications and other work related to the whistleblower program.[366] Based on the Commission's historical experience, the Commission believes the rule would have a meaningful impact in terms of freeing up staff resources. Likewise, to the extent that potentially being barred from awards discourages submitting frivolous applications, the rule may also create a deterrent effect that further limits the number of frivolous award applications that staff have to address. To the extent that the final rule fosters faster award determination and payment and to the extent that this motivates whistleblowing, individuals are more likely to come forward and report potential violations as a result of the final rule.

The rule might dissuade individuals who are permanently barred from providing information in the future about possible securities law violations. We believe that this potential cost of the final rule could be mitigated by a number of factors.

First, the number of individuals who may be permanently barred by the final rule for submitting three or more frivolous applications and who might subsequently have information about possible securities law violations that could be provided to the Commission is likely to be a small fraction of the population of meritorious award applicants, limiting the potential cost of the final rule. Through July 24, 2020, we have found that individuals that submitted three or more award applications make up approximately nine percent of the population of covered action award applicants. This estimate constitutes an upper bound of the actual fraction of applicants who submitted three or more *frivolous* applications and subsequently had information about possible securities law violations that could be provided to the Commission.[367]

Second, as discussed in the proposal, the Commission has issued two final orders that have permanently barred the applicants from submitting any further whistleblower award applications based on violations of Rule 21F–8(c)(7). Given that the final rule codifies the Commission's current practice, we believe that individuals who have been barred on the basis of Rule 21F–8(c)(7) could have already taken such current practice into account when deliberating on whether to report, even in the absence of the final rule.

Finally, as discussed in the adopting release that accompanied the original whistleblower rules, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements.[368] Individuals that are permanently barred from applying for whistleblower awards might still come forward and provide information about possible violations if they are sufficiently motivated by non-pecuniary elements.[369]

We also acknowledge the possibility that individuals who have made fewer than three frivolous award applications might be discouraged from reporting possible securities law violations because their next award application could be determined to be frivolous, which would increase the likelihood of a permanent bar from making any future award applications. We believe that this potential cost of the final rule could be mitigated by a number of factors.

First, claimants may withdraw an application that the Office of the Whistleblower has assessed to be frivolous for up to three such applications. *Second,* the claims adjudication processes should help ensure that potentially meritorious claims will be considered as such by the Commission. *Third,* as discussed above, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements.[370] Any individual may come forward and provide information about possible violations if she is sufficiently motivated by non-pecuniary elements.[371]

The final rule could further help protect investors and the public from potential harm that may flow from the provision of a materially false, fictitious, or fraudulent statement or representation, or false writing or document with the intent of misleading or otherwise hindering the Commission or another governmental entity. This benefit could arise from the permanent bar as well as the deterrent effect that discourages conduct prohibited by Rule 21F–8(c)(7), each of which is mentioned above.

As noted above, nearly all commenters supported the proposed rule. One commenter recommended not allowing unlimited opportunities to withdraw applications deemed frivolous.[372] The Commission shares the commenter's view that the opportunities to withdraw frivolous applications should be limited. Granting unlimited opportunities to withdraw frivolous applications would not curtail the submission of frivolous claims and by lowering the cost of withdrawing, could give rise to more frivolous claims. Such an outcome likely would consume staff resources without generating commensurate benefits in terms of detecting securities violations and protecting investors. Thus, final Rule 21F–8(e) provides that an individual may withdraw the initial three applications that are deemed frivolous. The final rule balances efficiency of awards processing, providing fair notice to claimants of consequences of filing frivolous claims, and allowing a claimant—once informed that a claim has been determined frivolous—subsequently to submit a meritorious claim. In this regard, the process seeks to efficiently reject frivolous claims without unilaterally foreclosing the opportunity to submit information and potentially submit a meritorious claim.

7. Rule 21F–18

Rule 21F–18(a) provides that the Office of the Whistleblower may use a summary disposition process to deny any award application that falls within any of the following categories: (1) Untimely award application;[373] (2) noncompliance with the requirements of Rule 21F–9, which concerns the manner for submitting a tip to qualify as

[366] Other work includes, for example, serving as subject matter experts to investigative staff regarding whistleblower issues in investigations, intake of hard copy tips, posting of Notices of Covered Actions, and manning the whistleblower hotline. To help promote the SEC's whistleblower program and establish a line of communication with the public, the Office of the Whistleblower operates a hotline where whistleblowers, their attorneys, or other members of the public with questions about the program may call to speak to the Office of the Whistleblower's staff. During Fiscal Year 2019, the Office of the Whistleblower returned over 2,600 calls from members of the public. Since May 2011 when the hotline was established, the Office of the Whistleblower has returned nearly 24,000 calls from the public. *See* SEC Whistleblower Program 2019 Annual Report to Congress (Nov. 15, 2019) (*available at https://www.sec.gov/files/sec-2019-annual-report-whistleblower-program.pdf*).

[367] To date, approximately 11 applicants submitted three or more applications who were determined to be potentially meritorious and not frivolous with respect to at least one of their applications.

[368] *See* Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

[369] *Id.* An example of a non-pecuniary element is a sense of ''doing the right thing.''

[370] *See* Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

[371] *Id.* and note 409.

[372] *See* Anonymous–9 Letter.

[373] The time periods for submitting an award application are specified in Rule 21F–10(b) and Rule 21F–11(b).

a whistleblower and to be eligible for an award; (3) claimant's information was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with the claimant; (4) noncompliance with Rule 21F–8(b), which requires an applicant to submit supplemental information that the Commission may require [374] and to enter into a confidentiality agreement; or (5) failure to specify in the award application the submission that the claimant made pursuant to Rule 21F–9(a) upon which the claim to an award is based. Rule 21F–18(b) specifies the procedures that shall apply to any award application designated for summary disposition.

The final rule could reduce the diversion of staff resources and time that it might otherwise take to process claims that may be rejected on straightforward grounds. An award application that is processed by the final summary disposition process would not require the CRS to review the record, issue a Preliminary Determination, consider any written response filed by the claimant, or issue the Proposed Final Determination; these functions would be assumed by the Office of the Whistleblower. The summary disposition process incorporates two other modifications. *First,* the 30-day period for replying to a Preliminary Summary Disposition is shorter than the time period for replying to a Preliminary Determination provided for in Rules 21F–10(e)(2) and 21F–11(e)(2). This shorter period should be sufficient for a claimant to reply and is appropriate given that the matters subject to summary disposition should be relatively straightforward. *Second,* a claimant would not have the opportunity to receive the full administrative record upon which the Preliminary Summary Disposition was based. Instead, the Office of the Whistleblower would (to the extent appropriate given the nature of the denial) provide the claimant with a staff declaration that contains the pertinent facts upon which the Preliminary Summary Disposition is based. This modification from the record-review process specified in Rules 21F–10 and 21F–11 should still afford any claimant a sufficient opportunity to provide a meaningful reply to a Preliminary Summary Disposition. This should eliminate the delay that can arise when a claimant does not expeditiously request the record (which, in turn, delays the start of the 60-day period for a claimant to submit a response to a preliminary determination); elimination of these delays should help further expedite the summary adjudication process that we are adopting.

As with Rule 21F–8(e), staff resources that are freed up as a result of the final rule could be devoted to processing potentially meritorious award applications or with other work related to the whistleblower program. This, in turn, could expedite the processing of potentially meritorious award applications. To the extent that faster processing of potentially meritorious award applications motivates whistleblowing, individuals may be more likely to come forward and report potential violations as a result of the final rule.

We acknowledge the potential that certain aspects of the final rule might make it marginally more difficult for whistleblowers to respond to the denial of award applications (specifically the shorter time period to respond to the Preliminary Summary Disposition). Thus, it could be possible that the final rule might reduce the whistleblowing incentives of those individuals who consider the ease of responding to award application denials when deciding whether to come forward and report potential violations.

However, certain factors substantially limit this potential for increased difficulties for whistleblowers. *First,* given that the matters subject to summary disposition should be relatively straightforward, we believe that the 30-day period for replying to a Preliminary Summary Disposition and the provision of a staff declaration (where applicable) should afford any claimant a sufficient opportunity to provide a meaningful reply to a Preliminary Summary Disposition. *Second,* as discussed above, the final rule may only be used to deny award applications that fall under certain restricted categories. *Third,* as discussed in the adopting release that accompanied the original whistleblower rules, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements.[375] Individuals who may be concerned with the ease of responding to award application denials may still come forward and provide information about possible violations if they are sufficiently motivated by non-pecuniary elements.

As noted above, commenters were mixed in their reception of the rule. Commenters who supported it underscored the possibility that the process would promote efficiency of resources, while some commenters opposed it due to the unclear effect it would have on the existing queue of claims. We note that staff from the Office of the Whistleblower have found that the categories encompassed by this rule have consumed a disproportionate amount of time and staff resources without a corresponding benefit. Based on this input, we believe this rule should allow staff to more efficiently process claims and deal with the existing queue of claims while continuing to provide appropriate due process to claimants.

8. Interpretive Guidance Regarding the Meaning and Application of ''Independent Analysis'' as Defined in Exchange Act Rule 21F–4(b)(3)

The interpretive guidance adopted in the final rule does not change the existing rules, but merely clarifies the meaning of ''independent analysis'' as that term is defined in Exchange Act Rule 21F–4 and utilized in the definition of ''original information.'' As discussed earlier, a whistleblower's examination and evaluation of publicly available information does not constitute ''analysis'' if the facts disclosed in the public materials on which the whistleblower relies and in other publicly available information are sufficient to raise an inference of the possible violations alleged in the whistleblower's tip. In order for a whistleblower to be credited with ''analysis,'' the whistleblower's examination and evaluation should contribute ''significant independent information'' that ''bridges the gap'' between the publicly available information and the possible securities violations. Assuming that a whistleblower's submission meets the threshold requirement that it constitutes ''independent analysis,'' for the whistleblower to be eligible for an award the ''information that . . . is derived from the . . . [whistleblower's] analysis'' must also be of such high quality that it leads to a successful enforcement action.

The interpretive guidance could potentially reduce the whistleblowing incentives of those individuals who wish to satisfy the ''independent analysis'' prong of the ''original information'' requirement by examining publicly available information and providing observations that do not go

[374] The authority to require additional information of an applicant is delegated to the Office of the Whistleblower. *See* Rule 21F–10(d).

[375] *See* Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

beyond the information itself and reasonable inferences to be drawn therefrom. In light of the interpretive guidance, these individuals may decide not to provide such public information knowing that such information would not be credited as ''independent analysis'' and therefore not be eligible for a whistleblower award. While not qualifying as ''independent analysis,'' to the extent that the provision of reasonable inferences or observations that do not go beyond public information itself improves Commission enforcement or otherwise provides a benefit, any potential reduction in such provision could be a cost associated with the interpretive guidance. Nevertheless, individuals who are aware that public information would not be credited with ''independent analysis'' may still come forward and provide reasonable inferences or observations that do not go beyond public information itself to the Commission if they are sufficiently motivated by non-pecuniary elements.

The interpretive guidance could increase the whistleblowing incentives of those individuals who possess ''significant independent information'' that ''bridges the gap'' between publicly available information (and reasonable inferences therefrom) and the conclusion that possible securities violations are indicated, but, in the absence of the guidance, may have decided against reporting to the Commission because of the perceived ambiguity in the meaning of ''independent analysis.'' To the extent that these individuals come forward and report such significant independent information to the Commission in light of the interpretive guidance, the quantity and quality of reported information might increase, which in turn might improve the Commission's ability to enforce the Federal securities laws, detect violations, and deter potential future violations. Further, the clarification afforded by the interpretive guidance might also reduce the number of award applications that are made solely on the basis of the provision of public information and do not meet the ''independent analysis'' threshold.

We are adopting an additional interpretation regarding information from sources that are technically public, but may be largely inaccessible to individuals without specialized knowledge. This additional guidance should benefit submitters of this type of information and others who devote substantial time and effort and develop unique insights from bringing together information from multiple specialized or difficult-to-obtain sources. To the extent that the number of claims that fail to meet the ''independent analysis'' threshold declines as a result of the interpretive guidance, staff resources could be freed up and devoted to processing potentially meritorious award applications and other work related to the whistleblower program as discussed earlier.

C. Effects of the Rules on Efficiency, Competition, and Capital Formation

The Commission believes that the amendments make incremental changes to its whistleblower program. Thus, the Commission does not anticipate the effects on efficiency, competition, and capital formation to be significant. The Commission did not receive comments that address the discussion of efficiency, competition, and capital formation in the proposal.

The final rules could have a positive indirect impact on investment efficiency and capital formation by increasing the incentives of potential whistleblowers to provide information on possible violations.[376] Providing such information could increase the effectiveness of the Commission's enforcement activities. More effective enforcement could lead to earlier detection of violations and increased deterrence of potential future violations, which should assist in a more efficient allocation of investment funds.

Serious securities frauds, for example, can cause inefficiencies in the economy by diverting investment funds from more legitimate, productive uses. If investors fear theft, fraud, manipulation, insider trading, or conflicted investment advice, their trust in the markets will be low, in both the primary market for issuance and the secondary market for trading.[377] This would prompt investors to demand a higher risk premium for holding securities, increasing the cost of raising capital and impairing capital formation (relative to the case where rules against such abuses were in effect and properly enforced and obeyed). To the extent that the final rules increase deterrence of potential future violations, investors' trust in the securities markets would also increase. This increased investor trust will promote lower capital costs as more investors enter the market, and as investors generally demand a lower risk premium due to a reduced likelihood of securities fraud.[378] This, too, should promote the efficient allocation of capital formation.

At the same time, some of the final rules could reduce whistleblowing incentives in certain cases, although any such reduction in whistleblowing incentives—to the extent that it occurs—is justified in light of the potential for positive indirect impact on investment efficiency and capital formation discussed above. Rule 21F–8(e) might reduce the whistleblowing incentives of (i) those individuals who are permanently barred under the final rule from submitting award applications and (ii) to a lesser extent, those individuals who have made fewer than three frivolous award applications. Additionally, Rule 21F–18 might reduce the whistleblowing incentives of those individuals who consider the ease of responding to award application denials when deciding whether to come forward and report potential violations. Further, the interpretive guidance might reduce the whistleblowing incentives of those individuals who wish to rely on the provision of solely public information to satisfy the ''independent analysis'' prong of the ''original information'' requirement for a whistleblower award. Yet these potential reductions in whistleblowing incentives may be limited for reasons discussed earlier.

We believe that Rule 21F–6(c) should enhance the whistleblowing incentives of those individuals who anticipate receiving awards that do not exceed $5 million by increasing their anticipated award to an amount of up to $5 million, and this in turn may have positive (albeit indirect) impacts on efficiency and capital formation.

The final rules could also improve other forms of efficiency. By permanently barring applicants that make frivolous or fraudulent award applications, final Rule 21F–8(e) could help free up staff resources that could be used to expedite the processing of potentially meritorious award applications as well as the payment of awards. As discussed previously, to the extent that faster award application processing and award payment motivate whistleblowing, individuals are more likely to come forward and report

[376] *See supra* Section VI.B. for a discussion of how final Rules 21F–2(d)(1)(iii), 21F–4(d)(3), 21F–6(c), 21F–8(e), 21F–18, and the interpretive guidance could increase whistleblowing incentives.

[377] Giannetti and Wang (2016) show that, after the revelation of corporate fraud in a state, household stock market participation in that state decreases. Households decrease holdings in fraudulent as well as nonfraudulent firms, even if they do not hold stocks in fraudulent firms. This finding is consistent with the revelation of corporate fraud reducing investors' trust and participation in the stock market. *See* Mariassunta Giannetti and Tracy Yue Wang, Corporate scandals and household stock market participation, 71 J. Fin. 2591 (2016) (*available at https://onlinelibrary.wiley.com/doi/full/10.1111/jofi.12399*).

[378] *See* Ko, K. Jeremy, ''Economics Note: Investor Confidence,'' October 2017 (*available at https://www.sec.gov/files/investor_confidence_noteOct2017.pdf*).

potential violations as a result of final Rule 21F–8(e) and final Rule 21F–18. To the extent that the final rules promote the timely reporting of possible violations by increasing whistleblowing incentives and prevent the provision of a materially false, fictitious, or fraudulent statement or representation, or a false writing or document with intent of misleading or otherwise hindering the Commission or another governmental entity, the efficiency and speed in detecting violations would be enhanced, which could reduce losses associated with the misuse of resources and hasten public disclosure of such violations to securities markets. To the extent that the final rule enables earlier public disclosure of violations, which, in turn, allow rapid incorporation of such news and information into prices and investors' information sets, price and allocative efficiency of capital markets could be improved.

Similar to the effects on capital formation, the effects of the final rules on competition would be indirect, and would flow from their effects on whistleblowing incentives. To the extent that the final rules increase the likelihood of detecting misconduct by increasing whistleblowing incentives, the final rules could reduce the unfair competitive advantages that some companies can achieve by engaging in undetected violations.[379] Conversely, to the extent that the final rules decrease the likelihood of detecting misconduct by reducing whistleblowing incentives, the final rules could increase the unfair competitive advantages that some companies can achieve by engaging in undetected violations.

VII. Regulatory Flexibility Act

Section 603(a) of the Regulatory Flexibility Act [380] requires the Commission to undertake a regulatory flexibility analysis of rules it is adopting unless the Commission certifies that the rules would not have a significant economic impact on a substantial number of small entities.[381] In the Proposing Release the Commission requested public comment on its preliminary regulatory-flexibility analysis but received none.

Small authority is defined in 5 U.S.C. 601(6) to mean ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' as defined in 5 U.S.C. 601(3) through (5). The definition of ''small authority'' does not include individuals. As explained in the Proposing Release, the rules apply only to an individual, or individuals acting jointly, who provide information to the Commission relating to the violation of the securities laws. Companies and other entities are not eligible to participate in the whistleblower program as whistleblowers. Consequently, the persons that will be subject to the amended rules are not ''small entities'' for purposes of the Regulatory Flexibility Act.

For the reasons stated above, the Commission certifies, pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, that the rules would not have a significant economic impact on a substantial number of small entities.

VIII. Statutory Basis

The Commission is adopting rule amendments, as well as the removal of references to various forms, contained in this document under the authority set forth in Sections 3(b), 21F, and 23(a) of the Exchange Act.

List of Subjects

17 CFR Part 240

Administrative practice and procedure; Brokers; Confidential business information; Fraud Reporting and recordkeeping requirements; Securities; Swaps.

17 CFR Part 249

Administrative practice and procedure; Brokers; Reporting and recordkeeping requirements; Securities.

Text of the Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 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 240.21F is also issued under Pub. L. 111–203, 922(a), 124 Stat. 1841 (2010).

* * * * *

■ 2. Section 240.21F–2 is revised to read as follows:

§ 240.21F–2 Whistleblower status, award eligibility, confidentiality, and retaliation protections.

(a) *Whistleblower status.* (1) You are a whistleblower for purposes of Section 21F of the Exchange Act (15 U.S.C. 78u–6) as of the time that, alone or jointly with others, you provide the Commission with information in writing that relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.

(2) A whistleblower must be an individual. A company or other entity is not eligible to be a whistleblower.

(b) *Award eligibility.* To be eligible for an award under Section 21F(b) of the Exchange Act (15 U.S.C. 78u–6(b)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in §§ 240.21F–4, 240.21F–8, and 240.21F–9. You should carefully review those rules before you submit any information that you may later wish to rely upon to claim an award.

(c) *Confidentiality protections.* To qualify for the confidentiality protections afforded by Section 21F(h)(2) of the Exchange Act (15 U.S.C. 78u–6(h)(2)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in Rule 21F–9(a) (§ 240.21F–9(a)).

(d) *Retaliation protections.* (1) To qualify for the retaliation protections afforded by Section 21F(h)(1) of the Exchange Act (15 U.S.C. 78u–6(h)(1)), you must satisfy all of the following criteria:

(i) You must qualify as a whistleblower under paragraph (a) of this section before experiencing the retaliation for which you seek redress;

(ii) You must reasonably believe that the information you provide to the Commission under paragraph (a) of this section relates to a possible violation of the federal securities laws; and

(iii) You must perform a lawful act that meets the following two criteria:

(A) First, the lawful act must be performed in connection with any of the activities described in Section 21F(h)(1)(A)(i) through (iii) of the Exchange Act (15 U.S.C. 78u–6(h)(1)(A)(i) through (iii)); and

(B) Second, the lawful act must relate to the subject matter of your submission to the Commission under paragraph (a) of this section.

[379] *See* 76 FR at 34362.

[380] 5 U.S.C. 603(a).

[381] 5 U.S.C. 605(b).

(2) To receive retaliation protection for a lawful act described in paragraph (d)(1)(iii) of this section, you do not need to qualify as a whistleblower under paragraph (a) of this section before performing the lawful act, but you must qualify as a whistleblower under paragraph (a) of this section before experiencing retaliation for the lawful act.

(3) To qualify for retaliation protection, you do not need to satisfy the procedures and conditions for award eligibility in §§ 240.21F–4, 240.21F–8, and 240.21F–9.

(4) Section 21F(h)(1) of the Exchange Act (15 U.S.C. 78u–6(h)(1)), including any rules promulgated thereunder, shall be enforceable in an action or proceeding brought by the Commission.

■ 3. Amend § 240.21F–3 by revising paragraphs (b)(1) and (3) to read as follows:

§ 240.21F–3 Payment of awards.

* * * * *

(b) * * *

(1) A *related action* is a judicial or administrative action that is brought by one of the governmental entities listed in paragraphs (b)(1)(i) through (iii) of this section or a self-regulatory organization as specified in paragraph (b)(1)(iv) of this section (collectively ''governmental/SRO authority''), that yields monetary sanctions, and that is based upon information that either the whistleblower provided directly to a governmental/SRO entity or the Commission itself passed along to the governmental/SRO entity pursuant to the Commission's procedures for sharing information, and which is the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than $1,000,000.

(i) The Attorney General of the United States;

(ii) An appropriate regulatory authority (as defined in § 240.21F–4); or

(iii) A state Attorney General in a criminal case; or

(iv) A self-regulatory organization (as defined in § 240.21F–4).

* * * * *

(3) The following provision shall apply where a claimant's application for a potential related action may also involve a potential recovery from another whistleblower award program for that same action.

(i) Notwithstanding paragraph (b)(1) of this section, if a judicial or administrative action is subject to a separate monetary award program established by the Federal Government, a state government, or a self-regulatory organization, the Commission will deem the action a related action only if the Commission finds (based on the facts and circumstances of the action) that its whistleblower program has the more direct or relevant connection to the action.

(ii) In determining whether a potential related action has a more direct or relevant connection to the Commission's whistleblower program than another award program, the Commission will consider the nature, scope, and impact of the misconduct charged in the potential related action, and its relationship to the Federal securities laws. This inquiry may include consideration of, among other things:

(A) The relative extent to which the misconduct charged in the potential related action implicates the public policy interests underlying the Federal securities laws (such as investor protection) rather than other law-enforcement or regulatory interests (such as tax collection or fraud against the Federal Government);

(B) The degree to which the monetary sanctions imposed in the potential related action are attributable to conduct that also underlies the Federal securities law violations that were the subject of the Commission's enforcement action; and

(C) Whether the potential related action involves state-law claims and the extent to which the state may have a whistleblower award program that potentially applies to that type of law-enforcement action.

(iii) If the Commission determines to deem the action a related action, the Commission will not make an award to you for the related action if you have already been granted an award by the governmental/SRO entity responsible for administering the other whistleblower award program. Further, if you were denied an award by the other award program, you will not be permitted to readjudicate any issues before the Commission that the governmental/SRO entity responsible for administering the other whistleblower award program resolved against you as part of the award denial. Additionally, if the Commission makes an award before an award determination is finalized by the governmental/SRO entity responsible for administering the other award program, the Commission shall condition its award on the meritorious whistleblower making a prompt, irrevocable waiver of any claim to an award from the other award program.

■ 4. Amend § 240.21F–4 by:

■ a. Revising paragraph (c)(2);

■ b. Adding paragraph (d)(3); and

■ c. Revising paragraph (e).

The revisions and addition read as follows:

§ 240.21F–4 Other definitions.

* * * * *

(c) * * *

* * * * *

(2) You gave the Commission original information about conduct that was already under examination or investigation by the Commission, the Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the PCAOB (except in cases where you were an original source of this information as defined in paragraph (b)(5) of this section), and your submission significantly contributed to the success of the action.

* * * * *

(d) * * *

* * * * *

(3) For purposes of making an award under §§ 240.21F–10 and 240.21F–11, the following will be deemed to be an administrative action and any money required to be paid thereunder will be deemed a monetary sanction under § 240.21F–4(e):

(i) A non-prosecution agreement or deferred prosecution agreement entered into by the U.S. Department of Justice; or

(ii) A similar settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws.

(e) *Monetary sanctions* means:

(1) An order to pay money that results from a Commission action or related action and which is either:

(i) Expressly designated as a penalty, disgorgement, or interest; or

(ii) Otherwise ordered as relief for the violations that are the subject of the covered action or related action; or

(2) Any money deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

* * * * *

■ 5. Amend § 240.21F–6 by:

■ a. Revising the first sentence of the introductory text; and

■ b. Adding paragraph (c).

The revision and addition read as follows:

§ 240.21F–6 Criteria for determining amount of award.

In exercising its discretion to determine the appropriate award, the Commission may consider the following factors (and only the following factors) in relation to the facts and circumstances of each case in setting the dollar or percentage amount of the award. * * *

* * * * *

(c) *Additional considerations in connection with certain awards of $5 million or less.* (1) This subpart applies when the Commission is considering any meritorious award application where:

(i) The statutory maximum award of 30 percent of the monetary sanctions collected in any covered and related action(s), in the aggregate, is $5 million or less, and the Commission determines that it does not reasonably anticipate that future collections would cause the statutory maximum award to be paid to any whistleblower to exceed $5 million in the aggregate;

(ii) None of the negative award factors specified in paragraphs §§ 240.21F–6(b)(1) or 240.21F–6(b)(3) were found present with respect to the claimant's award application, and the award claim does not trigger § 240.21F–16 (concerning awards to whistleblowers who engage in culpable conduct);

(iii) The claimant did not engage in unreasonable reporting delay under § 240.21F–(6)(b)(2) (although the Commission, in its sole discretion, may in certain limited circumstances determine to waive this criterion if the claimant can demonstrate that doing so based on the facts and circumstances of the matter is consistent with the public interest, the promotion of investor protection, and the objectives of the whistleblower program); and

(iv) The Commission does not otherwise determine in its sole discretion that application of the enhancement afforded by this subpart would be inappropriate because either:

(A) The whistleblower's assistance in the covered action or related action (as assessed under § 240.21F–6(a) of this section) was, under the relevant facts and circumstances, limited; or

(B) Providing the enhancement would be inconsistent with the public interest, the promotion of investor protection, or the objectives of the whistleblower program.

(2) If the Commission determines that the criteria in § 240.21F–6(c)(1) are satisfied, the resulting payout to a claimant for the original information that the claimant provided that led to one or more successful covered or related action(s), collectively, will be the maximum allowed under the statute.

(3) Notwithstanding § 240.21F–6(c)(2), if two or more claimants qualify for an award in connection with any covered action or related action and at least one of those claimant's award applications qualifies under § 240.21F–6(c)(1), the aggregate amount awarded to all meritorious claimants will be the statutory maximum. In allocating that amount among the meritorious claimants, the Commission will consider whether an individual claimant's award application satisfies §§ 240.21F–6(c)(1)(ii) and 240.21F–6(c)(1)(iii).

■ 6. Amend § Section 240.21F–7 by revising the introductory text of paragraph (a) to read as follows:

§ 240.21F–7 Confidentiality of submissions

(a) Pursuant to Section 21F(h)(2) of the Exchange Act (15 U.S.C. 78u–6(h)(2)) and § 240.21F–2(c), the Commission will not disclose information that could reasonably be expected to reveal the identity of a whistleblower provided that the whistleblower has submitted information utilizing the processes specified in § 240.21F–9(a), except that the Commission may disclose such information in the following circumstances:

* * * * *

■ 7. Amend § 240.21F–8 by:

■ a. Revising the section heading;

■ b. Revising paragraph (c)(7); and

■ c. Adding paragraphs (d) and (e).

The revisions and additions read as follows:

§ 240.21F–8 Eligibility and forms.

* * * * *

(c) * * *

(7) The Commission or a court of competent jurisdiction finds that, in your whistleblower submission, your other dealings with the Commission (including your dealings beyond the whistleblower program and covered action), or your dealings with another governmental/SRO entity (as specified in § 240.21F–3(b)(1)) in connection with a related action, you knowingly and willfully made any materially false, fictitious, or fraudulent statement or representation, or used any false writing or document knowing that it contains any materially false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or another governmental/SRO entity, provided that this provision should not apply if the Commission, in its discretion, finds it consistent with the public interest, the promotion of investor protection, and the objectives of the whistleblower program.

(d) The Commission may modify or revise Form TCR and Form WB–APP as provided below.

(1) The Commission will periodically designate on the Commission's web page a Form TCR (Tip, Complaint, or Referral) that individuals seeking to be eligible for an award through the process identified in § 240.21F–9(a)(2) shall use.

(2) The Commission will also periodically designate on the Commission's web page a Form WB–APP for use by individuals seeking to apply for an award in connection with a Commission-covered judicial or administrative action (15 U.S.C. 21F(a)(1)), or a related action (§ 240.21F–3(b)(1)).

(e) The Commission shall have the authority to impose a permanent bar on a claimant as provided below.

(1) *Grounds for a permanent bar.* Submissions or applications that are frivolous or fraudulent, or that would otherwise hinder the effective and efficient operation of the Whistleblower Program may result in the Commission issuing a permanent bar as part of a final order in the course of considering a whistleblower award application from you. If such a bar is issued, the Office of the Whistleblower will not accept or act on any other applications from you. A permanent bar may be issued in the following circumstances:

(i) If you make three or more award applications for Commission actions that the Commission finds to be frivolous or lacking a colorable connection between the tip (or tips) and the Commission actions for which you are seeking awards; or

(ii) If the Commission finds that you have violated paragraph (c)(7) of this section.

(2) *General procedures for issuance of a permanent bar.* The Commission will consider whether to issue a permanent bar in connection with an award application from you. In general, the Preliminary Determination or Preliminary Summary Disposition must state that a bar is being recommended, and you will then have an opportunity to respond in writing in accordance with the award processing procedures specified in §§ 240.21F–10(e)(2) and 240.21F–18(b)(3). If the basis for a bar arises or is discovered after the issuance of a Preliminary Determination or Preliminary Summary Disposition, the Office of the Whistleblower shall notify you and afford you an opportunity to submit a response before the

Commission determines whether to issue a bar.

(3) *Notice and opportunity to withdraw frivolous applications.* (i) Except as provided in paragraph (e)(3)(ii) of this section, before any Preliminary Determination or Preliminary Summary Disposition is issued that may recommend a bar, the Office of the Whistleblower shall advise you of any assessment by that Office that your award application is frivolous (''frivolous application'') or based on a tip that lacks a colorable connection to the action for which you have sought an award (''noncolorable application''). If you withdraw your award application within 30 days of the notification from the Office of the Whistleblower, it will not be considered by the Commission in determining whether to exercise its authority under this paragraph (e).

(ii) The notification and opportunity to withdraw provided for by paragraph (e)(3)(i) are limited to the first three applications submitted by you that are reviewed by the Office of the Whistleblower and preliminarily deemed by that Office to be either a frivolous application or a noncolorable application. After these first three award applications, you will not be provided notice or an opportunity to withdraw any other frivolous or noncolorable applications.

(iii) For purposes of determining whether a bar should be imposed under section (e) of this rule, you will not be permitted to withdraw your application:

(A) After the 30-day period to withdraw has run following notice from the Office of the Whistleblower with respect to the initial three applications assessed by that Office to be frivolous or lacking a colorable connection to the action; or

(B) After a Preliminary Determination or Preliminary Summary Disposition has issued in connection with any other such application.

(4) *Award applications pending before the effective date of paragraph (e).* (i) Paragraph (e) of this section shall apply to all award applications pending as of the effective date of paragraph (e) of this section. But with respect to any such pending award applications, the Office of the Whistleblower shall advise you, before any Preliminary Determination or Preliminary Summary Disposition is issued that may recommend a bar, of any assessment by that Office that the conditions for issuing a bar are satisfied because either:

(A) You submitted an award application prior to the effective date of this section (e) and that application is frivolous or lacking a colorable connection between the tip and the action for which you have sought an award; or

(B) You made a materially false, fictitious, or fraudulent statement or representation or used a false writing or document in violation of paragraph (c)(7) of this section prior to the effective date of this section (e).

(ii) If, within 30 days of the Office of the Whistleblower providing the foregoing notification, you withdraw the relevant award application(s), the withdrawn award application(s) will not be considered by the Commission in determining whether to exercise its authority under paragraph (e). Further, the procedures specified in paragraph (e)(3)(i) through (iii) of this section shall apply to any award application that is pending as of the effective date of this rule that is determined to be a frivolous or noncolorable application.

■ 8. Amend § 240.21F–9 by:

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

■ b. Removing the parenthetical phrase ''(referenced in § 249.1800 of this chapter)'' wherever it appears in paragraphs (c) introductory text, (c)(2), (c)(3), (c)(4), and (d); and

■ c. Adding paragraph (e).

The revisions read as follows:

§ 240.21F–9 Procedures for submitting original information.

(a) To submit information in a manner that satisfies § 240.21F–2(b) and § 240.21F–2(c) of this chapter you must submit your information to the Commission by any of these methods:

(1) Online, through the Commission's website located at *www.sec.gov*, using the Commission's electronic TCR portal (Tip, Complaint, or Referral);

(2) Mailing or faxing a Form TCR to the SEC Office of the Whistleblower at the mailing address or fax number designated on the SEC's web page for making such submissions; or

(3) By any other such method that the Commission may expressly designate on its website as a mechanism that satisfies §§ 240.21F–2(b) and 240.21F–2(c) of this chapter. For a 30-day period following the Commission's designation of any new forms by placing them on the Commission's website, the Commission shall also continue to accept submissions made using the prior version of the forms.

(b) Further, to be eligible for an award, you must declare under penalty of perjury at the time you submit your information pursuant to paragraph (a)(1), (a)(2), or (a)(3) of this section that your information is true and correct to the best of your knowledge and belief.

* * * * *

(e) You must follow the procedures specified in paragraphs (a) and (b) of this section within 30 days of when you first provide the Commission with original information that you rely upon as a basis for claiming an award. If you fail to do so, then you will be deemed ineligible for an award in connection with that information (even if you later resubmit that information in accordance with paragraphs (a) and (b) of this section). Notwithstanding the foregoing, the Commission shall waive your noncompliance with paragraphs (a) and (b) of this section if:

(1) You demonstrate to the satisfaction of the Commission that you complied with the requirements of paragraphs (a) and (b) of this section within 30 days of first obtaining actual or constructive notice about those requirements (or 30 days from the date you retain counsel to represent you in connection with your submission of original information, whichever occurs first); and

(2) The Commission can readily develop an administrative record that unambiguously demonstrates that you would otherwise qualify for an award.

■ 9. Amend § 240.21F–10 by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 240.21F–10 Procedures for making a claim for a whistleblower award in SEC actions that result in monetary sanctions in excess of $1,000,000.

* * * * *

(b) To file a claim for a whistleblower award, you must file Form WB–APP (as specified in § 240.21F–8(d)(2). You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail, email (as a PDF attachment), or fax (or any other manner that the Office permits).

(1) All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.

(2) Notwithstanding paragraphs (a) and (b)(1) of this section, the time period to file an application for an award based on a Commission settlement agreement covered by § 240.21F–4(d) of this chapter shall be governed exclusively by § 240.21F–11(b)(1) of this chapter if the settlement agreement was entered into after July 21, 2010 but before the effective date of this section as amended in 2020.

(c) If you provided your original information to the Commission anonymously, you must disclose your identity on the Form WB–APP, and your identity must be verified in a form and manner that is acceptable to the Office of the Whistleblower prior to the payment of any award.

(d) Once the time for filing any appeals of the Commission's judicial or administrative action has expired, or where an appeal has been filed, after all appeals in the action have been concluded, one or more staff members designated by the Director of the Division of Enforcement (''Claims Review Staff'') will evaluate all timely whistleblower award claims submitted on Form WB–APP in accordance with the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F–8(b) of this chapter. Following a determination by the Claims Review Staff (and an opportunity for the Commission to review that determination), the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award dollar and percentage amount, and the grounds therefore.

(e) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Office of the Whistleblower setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Office of the Whistleblower shall require. You may also include documentation or other evidentiary support for the grounds advanced in your response. In applying the award factors specified in § 240.21F–6 of this chapter and determining the award dollar and percentage amounts set forth in the Preliminary Determination, the award factors may be considered by the SEC staff and the Commission in dollar terms, percentage terms or some combination thereof. Should you choose to contest a Preliminary Determination, you may set forth the reasons for your objection to the proposed amount of an award, including the grounds therefore, in dollar terms, percentage terms or some combination thereof.

(1) Before determining whether to contest a Preliminary Determination, you may:

(i) Within thirty (30) days of the date of the Preliminary Determination, request that the Office of the Whistleblower make available for your review the materials from among those set forth in § 240.21F–12(a) of this chapter that formed the basis of the Claims Review Staff's Preliminary Determination.

(ii) Within thirty (30) calendar days of the date of the Preliminary Determination, request a meeting with the Office of the Whistleblower; however, such meetings are not required and the office may in its sole discretion decline the request.

(2) If you decide to contest the Preliminary Determination, you must submit your written response and supporting materials within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1) of this section, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for your review.

* * * * *

■ 10. Amend § 240.21F–11 by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 240.21F–11 Procedures for determining awards based upon a related action.

* * * * *

(b) You must also use Form WB–APP (as specified in § 240.21F–8(d)(2)) to submit a claim for an award in a potential related action. You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail, email (as a PDF attachment), or fax (or any other manner that the Office permits) as follows:

(1) If a final order imposing monetary sanctions has been entered in a potential related action at the time you submit your claim for an award in connection with a Commission action, you must submit your claim for an award in that related action on the same Form WB–APP that you use for the Commission action. For purposes of this paragraph and paragraph (b)(2) of this section, a final order imposing monetary sanctions is entered on the date of a court or administrative order imposing the monetary sanctions; however, with respect to any agreement covered by § 240.21F–4(d) of this chapter (such as a deferred prosecution agreement or a nonprosecution agreement entered by the Department of Justice), the Commission will deem the date of the entry of the final order to be the later of either:

(i) The effective date of this section as amended in 2020; or

(ii) The date of the earliest public availability of the instrument reflecting the arrangement if evidenced by a press release or similar dated publication notice (or otherwise, the date of the last signature necessary for the agreement).

(2) If a final order imposing monetary sanctions in a potential related action has not been entered at the time you submit your claim for an award in connection with a Commission action, you must submit your claim on Form WB–APP within ninety (90) days of the issuance of a final order imposing sanctions in the potential related action.

(c) The Office of the Whistleblower may request additional information from you in connection with your claim for an award in a related action to demonstrate that you directly (or through the Commission) voluntarily provided the governmental/SRO entity (as specified in § 240.21F–3(b)(1) of this chapter) the same original information that led to the Commission's successful covered action, and that this information led to the successful enforcement of the related action. Further, the Office of the Whistleblower, in its discretion, may seek assistance and confirmation from the governmental/SRO entity in making an award determination.

(d) Once the time for filing any appeals of the final judgment or order in a potential related action has expired, or if an appeal has been filed, after all appeals in the action have been concluded, the Claims Review Staff (as specified in § 240.21F–10(d) of this chapter) will evaluate all timely whistleblower award claims submitted on Form WB–APP in connection with the related action. The evaluation will be undertaken pursuant to the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F–(8)(b) of this chapter. Following a determination by the Claims Review Staff (and an opportunity for the Commission to review that determination), the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

(e) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Office of the Whistleblower setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Office of the Whistleblower shall require. You may also include documentation or other evidentiary support for the grounds advanced in your response. In applying the award factors specified in § 240.21F–6 of this chapter and determining the award dollar and percentage amounts set forth in the Preliminary Determination, the award factors may be considered by the SEC staff and the Commission in dollar terms, percentage terms or some combination thereof. Should you choose to contest a Preliminary Determination, you may set forth the reasons for your objection to the proposed amount of an award, including the grounds therefore, in dollar terms, percentage terms or some combination thereof.

(1) Before determining whether to contest a Preliminary Determination, you may:

(i) Within thirty (30) days of the date of the Preliminary Determination, request that the Office of the Whistleblower make available for your review the materials from among those set forth in § 240.21F–12(a) of this chapter that formed the basis of the Claims Review Staff's Preliminary Determination.

(ii) Within thirty (30) days of the date of the Preliminary Determination, request a meeting with the Office of the Whistleblower; however, such meetings are not required and the office may in its sole discretion decline the request.

(2) If you decide to contest the Preliminary Determination, you must submit your written response and supporting materials within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1)(i) of this section, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for your review.

* * * * *

■ 11. Amend § 240.21F–12 by:

■ a. Revising the introductory text of paragraph (a);

■ b. Amending paragraph (a)(2) by removing the parenthetical phrase ''(referenced in § 249.1800 of this chapter)''; and

■ c. Revising paragraphs (a)(3) and (6).

The revisions read as follows:

§ 240.21F–12 Materials that may form the basis of an award determination and that may be included in the record on appeal.

(a) The following items constitute the materials that the Commission, the Claims Review Staff (as specified in § 240.21F–10(d) of this chapter), and the Office of the Whistleblower may rely upon to make an award determination pursuant to §§ 240.21F–21F–10, 240.21F–11, and 240.21F–18 of this chapter:

* * * * *

(3) The whistleblower's Form WB–APP, including attachments, any supplemental materials submitted by the whistleblower before the deadline to file a claim for a whistleblower award for the relevant Notice of Covered Action, and any other materials timely submitted by the whistleblower in response either

(i) To a request from the Office of the Whistleblower or the Commission; or

(ii) To the Preliminary Determination or Preliminary Summary Disposition that was provided to the claimant;

* * * * *

(6) Any other documents or materials from third parties (including sworn declarations) that are received or obtained by the Office of the Whistleblower to resolve the claimant's award application, including information related to the claimant's eligibility. (The Commission, the Claims Review Staff, and the Office of the Whistleblower may not rely upon information that the third party has not authorized the Commission to share with the claimant.)

* * * * *

■ 12. Amend § 240.21F–13 by revising paragraph (b) to read as follows:

§ 240.21F–13 Appeals.

* * * * *

(b) The record on appeal shall consist of the Final Order, any materials that were considered by the Commission in issuing the Final Order, and any materials that were part of the claims process leading from the Notice of Covered Action to the Final Order (including, but not limited to, the Notice of Covered Action, whistleblower award applications filed by the claimant, the Preliminary Determination or Preliminary Summary Disposition, materials that were considered by the Claims Review Staff in issuing the Preliminary Determination or that were provided to the claimant by the Office of the Whistleblower in connection with a Preliminary Summary Disposition, and materials that were timely submitted by the claimant in response to the Preliminary Determination or Preliminary Summary Disposition). The record on appeal shall not include any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission and the Claims Review Staff (as specified in § 240.21F–10(d) of this chapter) in deciding the claim (including the staff's Proposed Final Determination or the Office of the Whistleblower's Proposed Final Summary Disposition, or any Draft Preliminary Determination or Draft Summary Disposition that were provided to the Commission for review). When more than one claimant has sought an award based on a single Notice of Covered Action, the Commission may exclude from the record on appeal any materials that do not relate directly to the claimant who is seeking judicial review.

■ 13. Add § 240.21F–18 to read as follows:

§ 240.21F–18 Summary disposition.

(a) Notwithstanding the procedures specified in § 240.21F–10(d) through (g) and in § 240.21F–11(d) through (g) of this chapter, the Office of the Whistleblower may determine that an award application that meets any of the following conditions for denial shall be resolved through the summary disposition process described further in paragraph (b) of this section:

(1) You submitted an untimely award application;

(2) You did not comply with the requirements of § 240.21F–9 of this chapter when submitting the tip upon which your award claim is based, and you otherwise are not eligible for a waiver under either § 240.21F–9(e) or the Commission's other waiver authorities;

(3) The information that you submitted was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with you;

(4) You did not comply with § 240.21F–8(b) of this chapter;

(5) You failed to specify in the award application the submission pursuant to § 240.21F–9(a) of this chapter upon which your claim to an award is based;

(6) Your application does not raise any novel or important legal or policy questions.

(b) The following procedures shall apply to any award application designated for summary disposition:

(1) The Office of the Whistleblower shall issue a Preliminary Summary Disposition that notifies you that your award application has been designated for resolution through the summary disposition process. The Preliminary Summary Disposition shall also state that the Office has preliminarily determined to recommend that the Commission deny the award application and identify the basis for the denial.

(2) Prior to issuing the Preliminary Summary Disposition, the Office of the Whistleblower shall prepare a staff

declaration that sets forth any pertinent facts regarding the Office's recommendation to deny your application. At the same time that it provides you with the Preliminary Summary Disposition, the Office of the Whistleblower shall, in its sole discretion, either

(i) Provide you with the staff declaration; or

(ii) Notify you that a staff declaration has been prepared and advise you that you may obtain the declaration only if within fifteen (15) calendar days you sign and complete a confidentiality agreement in a form and manner acceptable to the Office of the Whistleblower pursuant to § 240.21F–8(b)(4) of this chapter. If you fail to return the signed confidentiality agreement within fifteen (15) calendar days, you will be deemed to have waived your ability to receive the staff declaration.

(3) You may reply to the Preliminary Summary Disposition by submitting a response to the Office of the Whistleblower within thirty (30) calendar days of the later of:

(i) The date of the Preliminary Summary Disposition, or

(ii) The date that the Office of the Whistleblower sends the staff declaration to you following your timely return of a signed confidentiality agreement. The response must identify the grounds for your objection to the denial (or in the case of item (a)(5) of this section, correct the defect). The response must be in the form and manner that the Office of the Whistleblower shall require. You may include documentation or other evidentiary support for the grounds advanced in your response.

(4) If you fail to submit a timely response pursuant to paragraph (b)(3) of this section, the Preliminary Summary Disposition will become the Final Order of the Commission. Your failure to submit a timely written response will constitute a failure to exhaust administrative remedies.

(5) If you submit a timely response pursuant to paragraph (b)(3) of this section, the Office of the Whistleblower will consider the issues and grounds advanced in your response, along with any supporting documentation that you provided, and will prepare a Proposed Final Summary Disposition. The Office of the Whistleblower may supplement the administrative record as appropriate. (This provision does not prevent the Office of the Whistleblower from determining that, based on your written response, the award claim is no longer appropriate for summary disposition and that it should be resolved through the claims adjudication procedures specified in either §§ 240.21F–10 or 240.21F–11 of this chapter).

(6) The Office of the Whistleblower will then notify the Commission of the Proposed Final Summary Disposition. Within thirty (30) calendar days thereafter, any Commissioner may request that the Proposed Final Summary Disposition be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Summary Disposition will become the Final Order of the Commission. In the event a Commissioner requests a review, the Commission will consider the award application and issue a Final Order.

(7) The Office of the Whistleblower will provide you with the Final Order of the Commission.

(c) In considering an award determination pursuant to this rule, the Office of the Whistleblower and the Commission may rely upon the items specified in § 240.21F–12(a) of this chapter. Further, § 240.21F–12(b) of this chapter shall apply to summary dispositions.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 14. The general authority citation for part 249 continues to read as follows, and sectional authorities for 249.1800 and 249.1801 are removed:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Subpart S—[Removed and Reserved]

■ 15. Remove and reserve Subpart S, consisting of §§ 249.1800 through 249.1801.

By the Commission.

Dated: September 23, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–21444 Filed 11–4–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Thursday,

No. 215 November 5, 2020

Part IV

The President

Executive Order 13958—Establishing the President's Advisory 1776 Commission

Federal Register
Vol. 85, No. 215
Thursday, November 5, 2020

Presidential Documents

Title 3—

The President

Executive Order 13958 of November 2, 2020

Establishing the President's Advisory 1776 Commission

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to better enable a rising generation to understand the history and principles of the founding of the United States in 1776, and, through this, form a more perfect Union, it is hereby ordered as follows:

Section 1. *Purpose.* The American founding envisioned a political order in harmony with the design of ''the Laws of Nature and of Nature's God,'' seeing the rights to life, liberty, and the pursuit of happiness as embodied in and sanctioned by natural law and its traditions.

The formation of a republic around these principles marked a clear departure from previous forms of government, securing rights through a form of government that derives its legitimate power from the consent of the governed. Throughout its national life, our Republic's exploration of the full meaning of these principles has led it through the ratification of a Constitution, civil war, the abolition of slavery, Reconstruction, and a series of domestic crises and world conflicts. Those events establish a clear historical record of an exceptional Nation dedicated to the ideas and ideals of its founding.

Against this history, in recent years, a series of polemics grounded in poor scholarship has vilified our Founders and our founding. Despite the virtues and accomplishments of this Nation, many students are now taught in school to hate their own country, and to believe that the men and women who built it were not heroes, but rather villains. This radicalized view of American history lacks perspective, obscures virtues, twists motives, ignores or distorts facts, and magnifies flaws, resulting in the truth being concealed and history disfigured. Failing to identify, challenge, and correct this distorted perspective could fray and ultimately erase the bonds that knit our country and culture together.

The recent attacks on our founding have highlighted America's history related to race. These one-sided and divisive accounts too often ignore or fail to properly honor and recollect the great legacy of the American national experience—our country's valiant and successful effort to shake off the curse of slavery and to use the lessons of that struggle to guide our work toward equal rights for all citizens in the present. Viewing America as an irredeemably and systemically racist country cannot account for the extraordinary role of the great heroes of the American movement against slavery and for civil rights—a great moral endeavor that, from Abraham Lincoln to Martin Luther King, Jr., was marked by religious fellowship, good will, generosity of heart, an emphasis on our shared principles, and an inclusive vision for the future.

As these heroes demonstrated, the path to a renewed and confident national unity is through a rediscovery of a shared identity rooted in our founding principles. A loss of national confidence in these principles would place rising generations in jeopardy of a crippling self-doubt that could cause them to abandon faith in the common story that binds us to one another across our differences. Without our common faith in the equal right of every individual American to life, liberty, and the pursuit of happiness, authoritarian visions of government and society could become increasingly alluring alternatives to self-government based on the consent of the people. Thus it is necessary to provide America's young people access to what is genuinely inspiring and unifying in our history, as well as to the lessons imparted by the American experience of overcoming great national challenges. This is what makes possible the informed and honest patriotism that is essential for a successful republic.

A restoration of American education grounded in the principles of our founding that is accurate, honest, unifying, inspiring, and ennobling must ultimately succeed at the local level. Parents and local school boards must be empowered to achieve greater choice and variety in curriculum at the State and local levels.

The role of the Federal Government is to protect and preserve State and local control over the curriculum, program of instruction, administration, and personnel of educational institutions, schools, and school systems. Indeed, that is why my Administration rejects the Common Core curriculum and all efforts to have the Federal Government impose a national curriculum or national standards in education.

Vigorous participation in local government has always been America's laboratory of liberty and a key to what makes us exceptional. The best way to preserve the story of America's founding principles is to live it in action by local communities reasserting control of how children receive patriotic education in their schools.

Sec. 2. *The President's Advisory 1776 Commission.* (a) Within 120 days of the date of this order, the Secretary of Education shall establish in the Department of Education the President's Advisory 1776 Commission (''the 1776 Commission'') to better enable a rising generation to understand the history and principles of the founding of the United States in 1776 and to strive to form a more perfect Union.

(b) The 1776 Commission shall be composed of not more than 20 members, who shall be appointed by the President. Members shall serve for a term of 2 years and shall not be removed except for inefficiency, neglect of duty, or malfeasance. The 1776 Commission may include individuals from outside the Federal Government with relevant experience or subject-matter expertise. The 1776 Commission shall also include the following ex-officio members or such senior officials as those members may designate:

(i) the Secretary of State;

(ii) the Secretary of Defense;

(iii) the Secretary of the Interior;

(iv) the Secretary of Housing and Urban Development;

(v) the Secretary of Education;

(vi) the Assistant to the President for Domestic Policy; and

(vii) the Assistant to the President for Intergovernmental Affairs.

(c) The 1776 Commission shall:

(i) produce a report for the President, within 1 year of the date of this order, which shall be publicly disseminated, regarding the core principles of the American founding and how these principles may be understood to further enjoyment of ''the blessings of liberty'' and to promote our striving ''to form a more perfect Union.'' The Commission may solicit statements and contributions from intellectual and cultural figures in addition to the views of the Commission members;

(ii) advise and offer recommendations to the President and the United States Semiquincentennial Commission regarding the Federal Government's plans to celebrate the 250th anniversary of American Independence and coordinate with relevant external stakeholders on their plans;

(iii) facilitate the development and implementation of a ''Presidential 1776 Award'' to recognize student knowledge of the American founding, including knowledge about the Founders, the Declaration of Independence, the Constitutional Convention, and the great soldiers and battles of the American Revolutionary War;

(iv) advise executive departments and agencies (agencies) with regard to their efforts to ensure patriotic education—meaning the presentation of the history of the American founding and foundational principles, the examination of how the United States has grown closer to those principles throughout its history, and the explanation of why commitment to America's aspirations is beneficial and justified—is provided to the public at national parks, battlefields, monuments, museums, installations, landmarks, cemeteries, and other places important to the American Revolution and the American founding, as appropriate and consistent with applicable law;

(v) advise agencies on prioritizing the American founding in Federal grants and initiatives, including those described in section 4 of this order, and as appropriate and consistent with applicable law; and

(vi) facilitate, advise upon, and promote other activities to support public knowledge and patriotic education on the American Revolution and the American founding, as appropriate and consistent with applicable law.

(d) The 1776 Commission shall have a Chair and Vice Chair, designated by the President from among its members. An Executive Director, designated by the Secretary of Education in consultation with the Assistant to the President for Domestic Policy, shall coordinate the work of the 1776 Commission. The Chair and Vice Chair shall work with the Executive Director to convene regular meetings of the 1776 Commission, determine its agenda, and direct its work, consistent with this order.

(e) The Department of Education shall provide funding and administrative support for the 1776 Commission, to the extent permitted by law and subject to the availability of appropriations.

(f) Members of the 1776 Commission shall serve without compensation but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(g) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the 1776 Commission, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Secretary of Education, in accordance with the guidelines issued by the Administrator of General Services.

(h) The 1776 Commission shall terminate 2 years from the date of this order, unless extended by the President.

Sec. 3. *Celebration of Constitution Day.* All relevant agencies shall monitor compliance with Title I of Division J of Public Law 108–447, which provides that "each educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution," including by verifying compliance with each educational institution that receives Federal funds. All relevant agencies shall take action, as appropriate, to enhance compliance with that law.

Sec. 4. *Prioritize the American Founding in Available Federal Resources.* The following agencies shall prioritize Federal resources, consistent with applicable law, to promote patriotic education:

(a) the Department of Education, through the American History and Civics Academies and American History and Civics Education-National Activities;

(b) the Department of Defense, through the Pilot Program on Enhanced Civics Education; and

(c) the Department of State, through the Bureau of Educational and Cultural Affairs, and through opportunities in the Fulbright, U.S. Speakers, and International Visitors Leadership programs, as well as in American Spaces.

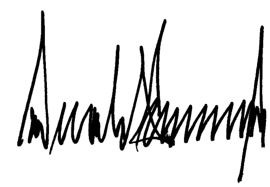
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
November 2, 2020.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 3, 2020

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