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Rules and Regulations

Federal Register

Vol. 85, No. 227

Tuesday, November 24, 2020

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, and 226

[FNS–2020–0037]

RIN 0584–AE84

Child Nutrition Programs: Rescission of Milk, Whole Grains, and Sodium Flexibilities: Notice of Vacatur

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule removes from the Code of Federal Regulations the final rule published on December 12, 2018, titled, ''Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements.'' This action responds to a decision of the U.S. District Court for the District of Maryland that vacated the rule.

DATES: The action is effective November 24, 2020. However, the court order had legal effect immediately upon its filing on April 13, 2020.

FOR FURTHER INFORMATION CONTACT: Tina Namian, Chief, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, telephone: 703–305–2590.

SUPPLEMENTARY INFORMATION: On December 12, 2018, the Food and Nutrition Service (FNS) published a final rule titled, ''Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements,'' (2018 Final Rule) (83 FR 63775). The 2018 Final Rule codified three menu planning flexibilities, with some extensions, temporarily established by the interim final rule of the same title published November 30, 2017, (82 FR 56703). First, the 2018 Final Rule broadened the milk options in the National School Lunch Program and School Breakfast Program by allowing local operators to permanently offer flavored, low-fat milk. For consistency across nutrition programs, it also allowed flavored, low-fat milk in the Special Milk Program for Children and in the Child and Adult Care Food Program for participants ages 6 and older. Second, the 2018 Final Rule allowed for half of the weekly grains in the school lunch and breakfast menus to be whole grain-rich, thus ending the need for an exemption process to serve enriched grains. Third, it provided schools in the lunch and breakfast programs more time for gradual sodium reduction by retaining Sodium Target 1 through the end of school year (SY) 2023–2024, continuing to Target 2 in SY 2024–2025, and eliminating the Final Target that would have gone into effect in SY 2022–2023. By codifying those flexibilities, USDA acknowledged the persistent menu planning challenges experienced by some schools, and affirmed its commitment to giving schools more control over food service decisions and greater ability to offer wholesome and appealing meals that reflect local preferences.

In an April 13, 2020, decision in the *Center for Science in the Public Interest et al.,* v. *Sonny Perdue, Secretary, et al.,* No. 8:19–cv–01004–GLS (D. Md. 2019), the U.S. District Court for the District of Maryland found a procedural error with the promulgation of the 2018 Final Rule, and therefore, vacated the regulation.

This rule is not subject to the requirement to provide notice and an opportunity for public comment because it falls under the good cause exception at 5 U.S.C. 553(b)(B). The good cause exception is satisfied when notice and comment is ''impracticable, unnecessary, or contrary to the public interest.'' Id. This rule is an administrative step that implements the court's order vacating the 2018 Final Rule. Additionally, because this rule implements a court order already in effect, FNS has good cause to waive the 30-day effective date under 5 U.S.C. 553(d).

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant program—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 215, 220, and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.10, revise the table in paragraph (c) introductory text and paragraphs (c)(2(iv)(B), (d)(l)(i), and (f)(3) to read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

* * * * *

(c) * * *

Food components	Lunch meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
	Amount of food [a] per week (minimum per day)		
Fruits (cups) [b]	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) [b]	3¾ (¾)	3¾ (¾)	5 (1)
Dark green [c]	½	½	½
Red/Orange [c]	¾	¾	1¼
Beans and peas (legumes) [c]	½	½	½
Starchy [c]	½	½	½
Other [c d]	½	½	¾
Additional Vegetables to Reach Total [e]	1	1	1½
Grains (oz eq) [f]	8–9 (1)	8–10 (1)	10–12 (2)
Meats/Meat Alternates (oz eq)	8–10 (1)	9–10 (1)	10–12 (2)
Fluid milk (cups) [g]	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week			
Min-max calories (kcal) [h]	550–650	600–700	750–850
Saturated fat (% of total calories) [h]	<10	<10	<10
Sodium (mg) [h i]	≤640	≤710	≤740
Trans fat [h]	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving.		

[a] Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ⅛ cup.
[b] One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.
[c] Larger amounts of these vegetables may be served.
[d] This category consists of ''Other vegetables'' as defined in paragraph (c)(2)(iii)(E) of this section. For the purposes of the NSLP, the ''Other vegetables'' requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in paragraph (c)(2)(iii) of this section.
[e] Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.
[f] All grains offered weekly must be whole grain-rich.
[g] All fluid milk must be low-fat (1 percent fat or less, unflavored) or fat-free (unflavored or flavored).
[h] The average daily calories for a 5-day school week menu must be within the range (at least the minimum and no more than the maximum values). Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent are not allowed.
[i] Final sodium targets (shown) must be met no later than July 1, 2022 (SY 2022–2023). The second intermediate target must be met no later than SY 2017–2018. See required intermediate specifications in § 210.10(f)(3).

* * * * *

(2) * * *

(iv) * * *

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving lunch 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. All grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance.

* * * * *

(d) * * *

(1) * * *

(i) Schools must offer students a variety (at least two different options) of fluid milk. All milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Fat-free fluid milk may be flavored or unflavored, and low-fat fluid milk must be unflavored. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered.

* * * * *

(f) * * *

(3) *Sodium.* School lunches offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

National school lunch program	Sodium timeline & limits	
Age/grade group	Target 2: July 1, 2017 (SY 2017–2018) (mg)	Final target: July 1, 2022 (SY 2022–2023) (mg)
K–5	≤935	≤640
6–8	≤1,035	≤710
9–12	≤1,080	≤740

* * * * *

§ 210.11 [Amended]

■ 3. In § 210.11, paragraphs (m)(1)(ii), (m)(2)(ii), and (m)(3)(ii), are amended by removing the words ''or flavored'' each time they appear.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 4. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 5. In § 215.7a, revise paragraph (a)(3) to read as follows:

§ 215.7a Fluid milk and non-dairy milk substitute requirements.

(a) * * *

(3) *Children 6 years old and older.* Children 6 years old and older must be served unflavored low-fat (1 percent fat or less), unflavored fat-free (skim), or flavored fat-free (skim) milk.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

■ 6. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 7. In § 220.8, revise the table in paragraph (c) introductory text and paragraphs (c)(2)(iv)(B), (d), and (f)(3) to read as follows:

§ 220.8 Meal requirements for breakfasts.

* * * * *

(c) * * *

Food components	Breakfast meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
	Amount of food [a] per week (minimum per day)		
Fruits (cups) [b c]	5 (1)	5 (1)	5 (1)
Vegetables (cups) [b c]	0	0	0
Dark green	0	0	0
Red/Orange	0	0	0
Beans and peas (legumes)	0	0	0
Starchy	0	0	0
Other	0	0	0
Grains (oz. eq.) [d]	7–10 (1)	8–10 (1)	9–10 (1)
Meats/Meat Alternates (oz eq) [e]	0	0	0
Fluid milk (cups) [f]	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week			
Min-max calories (kcal) [g h]	350–500	400–550	450–600
Saturated fat (% of total calories) [h]	<10	<10	<10
Sodium (mg) [h i]	≤430	≤470	≤500
Trans fat [h]	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving.		

[a] Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ⅛ cup.

[b] One quarter cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

[c] Schools must offer 1 cup of fruit daily and 5 cups of fruit weekly. Vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or "Other vegetables" subgroups, as defined in § 210.10(c)(2)(iii) of this chapter.

[d] All grains offered weekly must be whole grain-rich as specified in FNS guidance. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.

[e] There is no meat/meat alternate requirement.

[f] All fluid milk must be low-fat (1 percent fat or less, unflavored) or fat-free (unflavored or flavored).

[g] The average daily calories for a 5-day school week menu must be within the range (at least the minimum and no more than the maximum values).

[h] Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

[i] Final sodium targets (shown) must be met no later than July 1, 2022 (SY 2022–2023). The second intermediate target must be met no later than SY 2017–2018. See required intermediate specifications in § 220.8(f)(3).

* * * * *

(2) * * *

(iv) * * *

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving breakfast 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. All grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance.

* * * * *

(d) *Fluid milk requirement.* Breakfast must include a serving of fluid milk as a beverage or on cereal or used in part for each purpose. Schools must offer students a variety (at least two different options) of fluid milk. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Fat-free fluid milk may be flavored or unflavored, and low-fat fluid milk must be unflavored. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Schools must also comply with other applicable fluid milk requirements in § 210.10(d)(1) through (4) of this chapter.

* * * * *

(f) * * *

(3) *Sodium.* School breakfasts offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

School breakfast program	Sodium timeline & limits	
Age/grade group	Target 2: July 1, 2017 (SY 2017–2018) (mg)	Final target: July 1, 2022 (SY 2022–2023) (mg)
K–5	≤485	≤430
6–8	≤535	≤470
9–12	≤570	≤500

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 8. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 9. In § 226.20:

■ a. Revise paragraphs (a)(1)(iii) and (iv); and

■ b. Revise the tables to paragraphs (c)(1), (2), and (3).

The revisions read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(1) * * *

(iii) Children 6 years old and older. Children 6 years old and older must be served unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk.

(iv) Adults. Adults must be served unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk. Six ounces (weight) or ¾ cup (volume) of yogurt may be used to fulfill the equivalent of 8 ounces of fluid milk once per day. Yogurt may be counted as either a fluid milk substitute or as a meat alternate, but not as both in the same meal.

* * * * *

(c) * * *

(1) * * *

CHILD AND ADULT CARE FOOD PROGRAM BREAKFAST

[Select the appropriate components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Vegetables, fruits, or portions of both [4]	¼ cup	½ cup	½ cup	½ cup	½ cup.
Grains (oz. eq.) [5 6 7]:					
Whole grain-rich or enriched bread.	½ slice	½ slice	1 slice	1 slice	2 slices.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	½ serving	½ serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched, or fortified cooked breakfast cereal,[8] cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	1 cup.
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) [8]					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	2 cups.
Puffed cereal	¾ cup	¾ cup	1¼ cup	1¼ cup	2½ cup.
Granola	⅛ cup	⅛ cup	¼ cup	¼ cup	½ cup.

Endnotes:

[1] Must serve all three components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool participants.

[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent fat or less), unflavored or flavored fat-free (skim) milk for children 6 years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

[4] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[5] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

[6] Meat and meat alternates may be used to meet the entire grains requirement a maximum of three times a week. One ounce of meat and meat alternates is equal to one ounce equivalent of grains.

[7] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

[8] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(2) * * *

CHILD AND ADULT CARE FOOD PROGRAM
LUNCH AND SUPPER

[Select the appropriate components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces. [4]
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Tofu, soy products, or alternate protein products [5].	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Cheese	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Large egg	½	¾	1	1	1.
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½ cup	½ cup.
Peanut butter or soy nut butter or other nut or seed butters.	2 Tbsp	3 Tbsp	4 Tbsp	4 Tbsp	4 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened [6].	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup	8 ounces or 1 cup	8 ounces or 1 cup.
The following may be used to meet no more than 50% of the requirement:					
Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish).	½ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1 ounce = 50%	1 ounce = 50%.
Vegetables [7]	⅛ cup	¼ cup	½ cup	½ cup	½ cup.
Fruits [7 8]	⅛ cup	¼ cup	¼ cup	¼ cup	½ cup.
Grains (oz eq): [9 10]					
Whole grain-rich or enriched bread.	½ slice	½ slice	1 slice	1 slice	2 slices.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	½ serving	½ serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched, or fortified cooked breakfast cereal, [11] cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	1 cup.

Endnotes:

[1] Must serve all five components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool and adult participants.

[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent fat or less) or unflavoredor flavored fat-free (skim) milk for children 6 years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

[4] A serving of fluid milk is optional for suppers served to adult participants.

[5] Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.

[6] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

[7] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[8] A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

[9] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

[10] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of the creditable grain.

[11] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(3) * * *

CHILD AND ADULT CARE FOOD PROGRAM
SNACK
[Select two of the five components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Tofu, soy products, or alternate protein products [4].	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Large egg	½	½	½	½	½.
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup	¼ cup	¼ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp	1 Tbsp	2 Tbsp	2 Tbsp	2 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened [5].	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.
Peanuts, soy nuts, tree nuts, or seeds.	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Vegetables [6]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits [6]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains (oz. eq.): [7 8]					
Whole grain-rich or enriched bread.	½ slice	½ slice	1 slice	1 slice	1 slice.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	½ serving	½ serving	1 serving	1 serving	1 serving.
Whole grain-rich, enriched, or fortified cooked breakfast cereal,[9] cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	½ cup.
Whole grain-rich, enriched, or fortified ready-to-eat breakfast cereal (dry, cold) [9]					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	1 cup.
Puffed cereal	¾ cup	¾ cup	1¼ cup	1¼ cup	1¼ cup.
Granola	⅛ cup	⅛ cup	¼ cup	¼ cup	¼ cup.

Endnotes:

[1] Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.

[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent fat or less) or unflavored or flavored fat-free (skim) milk for children 6 years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

[4] Alternate protein products must meet the requirements in Appendix A to part 226 of this chapter.

[5] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

[6] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[7] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

[8] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of the creditable grains.

[9] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

* * * * *

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–25760 Filed 11–23–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0768; Airspace Docket No. 18–AWP–25]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Truckee, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace designated as an extension to a Class D or Class E surface area at Truckee-Tahoe Airport. This action also modifies the Class E airspace extending upward from 700 feet above the surface. Lastly, this action proposes an administrative correction to all of the airspaces' legal descriptions.

DATES: Effective 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class D and Class E airspace at Truckee-Tahoe Airport, Truckee, CA, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 53713; August 31, 2020) for Docket No. FAA–2020–0768 to modify Class D and Class E airspace at Truckee-Tahoe Airport, Truckee, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment, that is not germane to the proposed airspace action, was received.

Subsequent to publication, the FAA identified a technical error in the NPRM. The error is located in the description of the Class E airspace designated as an extension to a Class D or Class E surface area. The correction does not alter the external boundaries of the airspace area. The NPRM listed the area as follows: That airspace extending upward from the surface within 1.2 miles west and 0.9 miles east of the 316° bearing from the airport, extending from the 4.2-mile radius of the airport to 8.3 miles northwest of Truckee-Tahoe Airport. The airspace area is corrected to read as follows: That airspace extending upward from the surface within 1.1 miles west and 1 mile east of the 315° bearing from the airport, extending from the 4.2-mile radius of the airport to 8.3 miles northwest of Truckee-Tahoe Airport.

Class D, E2, E4, and E5 airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, 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 Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, 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.

The Rule

This amendment to Title 14 Code of Federal Regulations part 71 modifies the Class E airspace area designated as an extension to a Class D or Class E surface area at Truckee-Tahoe Airport. The airspace has been reduced and is described as follows: That airspace extending upward from the surface within 1 mile each side of the 017° bearing from the airport, extending from the 4.2-mile radius of the airport to 9.7 miles north of the airport; and within 1.1 miles west and 1 mile east of the 315° bearing from the airport, extending from the 4.2-mile radius of the airport to 8.3 miles northwest of Truckee-Tahoe Airport.

This action also modifies the Class E airspace extending upward from 700 feet above the surface. This airspace is designed to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. The airspace is described as follows: That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the airport, and within 2 miles each side of the 018° bearing from the airport, extending from 9.7 miles to 11.6 miles north of the airport, and within 1.1 miles each side of the 266° bearing from the airport, extending from the 4.2-mile radius to 13.5 miles west of the airport, and within 2.7 miles west and 1.9 miles east of the 321° bearing from the airport, extending from 8.3 miles to 14.8 miles northwest of the airport, and within an area beginning at 4.2 miles on the 324° bearing from the airport, then to 6.5 miles on the 324° bearing from the airport, then clockwise within a 6.5-mile radius of the airport to the 008° bearing from the airport, then along the 008° bearing to 4.2 miles, then counterclockwise within a 4.2-mile radius of the airport to the 324° bearing northwest of Truckee-Tahoe Airport.

Lastly, this action implements an administrative amendment to all of the airspaces' legal descriptions for Truckee-Tahoe Airport. To match the FAA aeronautical database, the airport's geographical coordinates are updated to Lat. 39°19′12″ N, long. 120°08′23″ W.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 5000 Class D Airspace.

* * * * *

AWP CA D Truckee, CA [Amended]

Truckee-Tahoe Airport, CA

(Lat. 39°19′12″ N, long. 120°08′23″ W)

That airspace extending upward from the surface to and including 8,400 feet MSL within a 4.2-mile radius of Truckee-Tahoe Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AWP CA E2 Truckee, CA [Amended]

Truckee-Tahoe Airport, CA

(Lat. 39°19′12″ N, long. 120°08′23″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Truckee-Tahoe Airport. This Class E surface area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP CA E4 Truckee, CA [Amended]

Truckee-Tahoe Airport, CA

(Lat. 39°19′12″ N, long. 120°08′23″ W)

That airspace extending upward from the surface within 1 mile each side of the 017° bearing from the airport, extending from the 4.2-mile radius of the airport to 9.7 miles north of the airport; and within 1.1 miles west and 1 mile east of the 315° bearing from the airport, extending from the 4.2-mile radius of the airport to 8.3 miles northwest of Truckee-Tahoe Airport.

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

* * * * *

AWP CA E5 Truckee, CA [Amended]

Truckee-Tahoe Airport, CA

(Lat. 39°19′12″ N, long. 120°08′23″ W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the airport, and within 2 miles each side of the 018° bearing from the airport, extending from 9.7 miles to 11.6 miles north of the airport, and within 1.1 miles each side of the 266° bearing from the airport, extending from the 4.2-mile radius to 13.5 miles west of the airport, and within 2.7 miles west and 1.9 miles east of the 321° bearing from the airport, extending from 8.3 miles to 14.8 miles northwest of the airport, and within an area beginning at 4.2 miles on the 324° bearing from the airport, then to 6.5 miles on the 324° bearing from the airport, then clockwise within a 6.5-mile radius of the airport to the 008° bearing from the airport, then along the 008° bearing to 4.2 miles, then counterclockwise within a 4.2-mile radius of the airport to the 324° bearing northwest of Truckee-Tahoe Airport.

Issued in Seattle, Washington, on November 17, 2020.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–25712 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0645; Airspace Docket No. 20–ASO–18]

RIN 2120–AA66

Amendment of Class E Airspace; Toccoa, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface in Toccoa, GA, due to the decommissioning of the Foothills Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and cancellation of the associated approaches at Toccoa RG Letourneau Field Airport. This action also updates the geographic coordinates of the airport, as well as Habersham County Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends

Class E airspace in the Toccoa, GA, area to support IFR operations.

History

The FAA published a notice of prosed rulemaking in the **Federal Register** (85 FR 46015, July 31, 2020) for Docket No. FAA–2020–0645 to amend Class E airspace extending upward from 700 feet above the surface at Toccoa RG Letourneau Field Airport, Toccoa, GA, by eliminating the extension. In addition, the FAA proposed to update the geographic coordinates of the airport and Habersham County Airport, to coincide with the FAA's aeronautical database.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, 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 routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Toccoa RG Letourneau Field Airport, Toccoa, GA, by eliminating the Foothills VOR/DME and the associated extension. In addition, the FAA updates the geographic coordinates of the airport and Habersham County Airport, to coincide with the FAA's aeronautical database. These changes are necessary for continued safety and management of IFR operations in the area.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, effective September 15, 2020, is amended as follows:

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

* * * * *

ASO GA E5 Toccoa, GA [Amended]

Toccoa RG Letourneau Field Airport, GA
(Lat. 34°35′34″ N, long. 83°17′47″ W)
Habersham County Airport
(Lat. 34°29′59″ N, long. 83°33′24″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Toccoa RG Letourneau Field, and an 8.2-mile radius of Habersham County Airport.

Issued in College Park, Georgia, on November 17, 2020.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–25769 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0741; Airspace Docket No. 19–AWP–79]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Fallon, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Fallon NAS (Van Voorhis Field) Airport by revoking the Class E airspace designated as an extension to a Class D or Class E surface area. This action also modified the Class E airspace extending upward from 700 feet above the surface. Further, this action modifies the Class E airspace extending upward from 1,200 feet above the surface. Lastly, the action implements numerous administrative amendments to the airspaces' legal descriptions.

DATES: Effective 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class D and Class E airspace at Fallon NAS (Van Voorhis Field) Airport, Fallon, NV, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 49983; August 17, 2020) for Docket No. FAA–2020–0741 to modify Class D and Class E at Fallon NAS (Van Voorhis Field) Airport, Fallon, NV. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D, E2, E4, and E5 airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, 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 Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, 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.

The Rule

This amendment to Title 14 Code of Federal Regulations part 71 modifies Class E airspace at Fallon NAS (Van Voorhis Field). The Class E airspace that is designated as an extension to a Class D or Class E surface area is not required and is revoked.

This action also modifies the Class E airspace extending upward from 700 feet above the surface. This area is designed to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area is described as follows: That airspace extending upward from 700 feet above the surface within an 8-mile radius of the airport, and within 2.5 miles each side of the 143° bearing from the airport, extending from the 8-mile radius to 11.5 miles southeast of the airport, and within 2.5 miles each side of the 270° bearing from the airport, extending from the 8-mile radius to 11.5 miles west of the airport, and within 2.5 miles each side of the 327° bearing from the airport, extending from the 8-mile radius to 11.5 miles northwest of Fallon NAS (Van Voorhis Field) Airport.

Further, this action modifies the Class E airspace extending upward from 1,200 feet above the surface. This area is designed to contain IFR aircraft transitioning to/from the terminal and en route environments. This airspace area is described as follows: That airspace extending upward from 1,200 feet above the surface within a 30-mile radius of the Fallon NAS (Van Voorhis Field) Airport.

Lastly, this action implements numerous administrative amendments to the airspaces' legal descriptions. To match the FAA database, the geographic coordinates in the Class D and Class E2 text headers for Fallon NAS (Van Voorhis Field) Airport and Fallon Municipal Airport have been updated. For Fallon NAS (Van Voorhis Field) Airport, the coordinates now read lat. 39°25′04″ N, long. 118°41′55″ W. For Fallon Municipal Airport the coordinates now read lat. 39°29′57″ N, long. 118°44′56″ W. The last two sentences in the Class D and Class E surface area legal descriptions are updated to read: ''This Class D (or E, as appropriate) airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.'' For the Class E airspace areas extending upward from 700 feet or more above the surface, the Fallon Navy TACAN, Mustang VORTAC, and all radials and distances from the navigational aids are removed from the text header and the airspace description.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 5000 Class D Airspace.

* * * * *

AWP NV D Fallon, NV [Amended]

Fallon NAS (Van Voorhis Field) Airport, NV
(Lat. 39°25′04″ N, long. 118°41′55″ W)
Fallon Municipal Airport, NV
(Lat. 39°29′57″ N, long. 118°44′56″ W)

That airspace extending upward from the surface to and including 6,400 feet MSL within a 5.5-mile radius of Fallon NAS (Van Voorhis Field) Airport, excluding that airspace within a 1-mile radius of Fallon Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AWP NV E2 Fallon, NV [Amended]

Fallon NAS (Van Voorhis Field) Airport, NV
(Lat. 39°25′04″ N, long. 118°41′55″ W)
Fallon Municipal Airport, NV
(Lat. 39°29′57″ N, long. 118°44′56″ W)

That airspace extending upward from the surface within a 5.5-mile radius of Fallon NAS (Van Voorhis Field) Airport, excluding that airspace within a 1-mile radius of Fallon Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP NV E4 Fallon NAS, NV [Revoked]

Fallon NAS (Van Voorhis Field), NV
(Lat. 39°25′00″ N, long. 118°42′04″ W)
Fallon Navy TACAN
(Lat. 39°25′01″ N, long. 118°42′18″ W)

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

* * * * *

AWP NV E5 Fallon, NV [Amended]

Fallon NAS (Van Voorhis Field) Airport, NV
(Lat. 39°25′04″ N, long. 118°41′55″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the airport, and within 2.5 miles each side of the 143° bearing from the airport, extending from the 8-mile radius to 11.5 miles southeast of the airport, and within 2.5 miles each side of the 270° bearing from the airport, extending from the 8-mile radius to 11.5 miles west of the airport, and within 2.5 miles each side of the 327° bearing from the airport, extending from the 8-mile radius to 11.5 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of the Fallon NAS (Van Voorhis Field) Airport.

Issued in Seattle, Washington, on November 17, 2020.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–25727 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0669; Airspace Docket No. 20–ANE–2]

RIN 2120–AA66

Establishment of Class E Airspace; Norway, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface for Norway Heliport, Norway, ME, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave, College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of prosed rulemaking in the **Federal Register** (85 FR 47322, August 5, 2020) for Docket No. FAA–2020–0669 to establish Class E airspace extending upward from 700 feet above the surface at Norway Heliport, Norway, ME. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, 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 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 6-mile radius at Norway Heliport, Norway, ME. These changes are necessary for continued safety and management of IFR operations in the area. Subsequent to publication of the NPRM, the FAA found excessive verbiage in the airport's description. The words 'or more' and 'of the earth' are not necessary to describe the airspace. This action makes the correction.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 20, 2020, effective September 15, 2020, is amended as follows:

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

* * * * *

ANE ME E5 Norway, ME [New]

Norway Heliport, ME
(Lat. 44°12′34″ N, long. 70°31′54″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Norway Heliport.

Issued in College Park, Georgia, on November 18, 2020.

Matthew N. Cathcart,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–25793 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31342 Amdt. No. 3932]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 24, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 2020.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

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

Availability

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

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

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 13, 2020.

Wade Terrell,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
31-Dec-20	MN	Waseca	Waseca Muni	0/0401	10/29/20	RNAV (GPS) RWY 15, Amdt 1A.
31-Dec-20	HI	Lanai City	Lanai	0/4673	10/28/20	VOR OR TACAN RWY 3, Amdt 7A.
31-Dec-20	HI	Lanai City	Lanai	0/4674	10/28/20	VOR OR TACAN OR GPS-A, Amdt 8.
31-Dec-20	SC	Charleston	Charleston Executive	0/5621	11/6/20	RNAV (GPS) RWY 9, Amdt 3A.
31-Dec-20	SC	Charleston	Charleston Executive	0/5626	11/6/20	ILS OR LOC RWY 9, Amdt 2B.
31-Dec-20	WI	La Crosse	La Crosse Rgnl	0/5679	11/6/20	RNAV (GPS) RWY 31, Orig-C.
31-Dec-20	VA	Martinsville	Blue Ridge	0/5798	11/5/20	Takeoff Minimums and Obstacle DP, Amdt 3.
31-Dec-20	GA	Atlanta	Dekalb-Peachtree	0/5967	10/21/20	RNAV (GPS)-A, Orig.
31-Dec-20	GA	Atlanta	Dekalb-Peachtree	0/5968	10/21/20	ILS OR LOC RWY 21L, Amdt 8D.
31-Dec-20	GA	Atlanta	Dekalb-Peachtree	0/5969	10/21/20	RNAV (GPS) Y RWY 21L, Amdt 1D.
31-Dec-20	NJ	Toms River	Ocean County	0/6023	10/21/20	RNAV (GPS) RWY 24, Amdt 1.
31-Dec-20	CA	Concord	Buchanan Field	0/6119	10/23/20	VOR RWY 19R, Amdt 14.
31-Dec-20	CA	Concord	Buchanan Field	0/6120	10/23/20	LDA RWY 19R, Amdt 9.
31-Dec-20	MT	Laurel	Laurel Muni	0/6162	10/23/20	RNAV (GPS) RWY 22, Amdt 1E.
31-Dec-20	MN	Tracy	Tracy Muni	0/6597	11/6/20	RNAV (GPS) RWY 29, Orig-A.
31-Dec-20	IN	Washington	Daviess County	0/6598	11/6/20	RNAV (GPS) RWY 18, Amdt 1A.
31-Dec-20	MI	Sparta	Paul C Miller-Sparta	0/6599	11/6/20	RNAV (GPS) RWY 7, Orig-A.
31-Dec-20	MI	Sparta	Paul C Miller-Sparta	0/6600	11/6/20	RNAV (GPS) RWY 25, Orig-A.
31-Dec-20	IN	Muncie	Delaware County Rgnl	0/6602	11/6/20	ILS OR LOC RWY 32, Amdt 9D.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
31-Dec-20	WY	Hulett	Hulett Muni	0/6607	11/9/20	RNAV (GPS)-A, Amdt 1A.
31-Dec-20	GA	Moultrie	Moultrie Muni	0/6753	10/22/20	RNAV (GPS) RWY 22, Amdt 2.
31-Dec-20	MA	Norwood	Norwood Memorial	0/7160	10/29/20	LOC RWY 35, Amdt 10E.
31-Dec-20	MA	Norwood	Norwood Memorial	0/7161	10/29/20	RNAV (GPS) RWY 35, Amdt 1D.
31-Dec-20	CO	Denver	Colorado Air And Space Port.	0/7488	10/19/20	ILS OR LOC RWY 26, Amdt 6A.
31-Dec-20	MN	Brainerd	Brainerd Lakes Rgnl	0/7830	10/21/20	RNAV (GPS) RWY 34, Orig-B.
31-Dec-20	MN	Brainerd	Brainerd Lakes Rgnl	0/7837	10/21/20	RNAV (GPS) RWY 23, Orig-A.
31-Dec-20	FL	Tampa	Tampa Intl	0/8275	10/23/20	LOC RWY 1R, Amdt 4.
31-Dec-20	FL	Tampa	Tampa Intl	0/8278	10/23/20	ILS OR LOC RWY 19L, ILS RWY 19L (SA CAT I), ILS RWY 19L (CAT II), Amdt 40D.
31-Dec-20	IN	Anderson	Anderson Muni-Darlington Field.	0/9468	10/21/20	RNAV (GPS) RWY 30, Orig-B.
31-Dec-20	IN	Anderson	Anderson Muni-Darlington Field.	0/9469	10/21/20	NDB RWY 30, Amdt 8A.
31-Dec-20	IN	Anderson	Anderson Muni-Darlington Field.	0/9470	10/21/20	ILS OR LOC RWY 30, Amdt 2.

[FR Doc. 2020–25768 Filed 11–23–20; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31341 Amdt. No. 3931]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 24, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 2020.

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

For Examination

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

Availability

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

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

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

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97;

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

Issued in Washington, DC, on November 13, 2020.

Wade Terrell,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 31 December 2020

Courtland, AL, Courtland, VOR RWY 13, Amdt 1B, CANCELLED
Bentonville, AR, Bentonville Muni/Louise M Thaden Field, VOR–A, Amdt 14, CANCELLED
Defuniak Springs, FL, 54J, RNAV (GPS) RWY 9, Amdt 1B
Defuniak Springs, FL, 54J, RNAV (GPS) RWY 27, Amdt 2A
Orlando, FL, Kissimmee Gateway, VOR/DME–A, Amdt 1, CANCELLED
Mc Rae, GA, Telfair-Wheeler, NDB RWY 21, Amdt 10A, CANCELLED
Montezuma, GA, 53A, NDB RWY 18, Amdt 2A, CANCELLED
Marion, IL, KMWA, RNAV (GPS) RWY 2, Amdt 1D
Marion, IL, KMWA, RNAV (GPS) RWY 20, Amdt 1D
Minneapolis, MN, KMIC, RNAV (GPS) RWY 14, Orig
Minneapolis, MN, KMIC, RNAV (GPS) RWY 14L, Orig-A, CANCELLED
Minneapolis, MN, KMIC, RNAV (GPS) RWY 32, Orig
Minneapolis, MN, Crystal, Takeoff Minimums and Obstacle DP, Amdt 4
Minneapolis, MN, KMIC, VOR OR GPS–A, Amdt 9E, CANCELLED
Laconia, NH, Laconia Muni, NDB RWY 8, Amdt 9B, CANCELLED
Rochester, NH, KDAW, NDB RWY 33, Amdt 4D
Memphis, TN, General Dewitt Spain, VOR RWY 17, Orig-B, CANCELLED
Millington, TN, Charles W Baker, VOR RWY 18, Amdt 2A, CANCELLED

Rescinded: On November 02, 2020 (85 FR 69149), the FAA published an Amendment in Docket No. 31337 Amdt No. 3927, to Part 97 of the Federal Aviation Regulations under section 97.35. The following entry for Petersburg, WV, effective October 16, 2020, is hereby rescinded in its entirety:

Petersburg, WV, W99, COPTER RNAV (GPS) X RWY 31, Orig-A

[FR Doc. 2020–25767 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is granting an exemption to certain member firms designated by the National Stock Exchange International Financial Service Centre Limited (NSE IFSC) from the application of certain of the Commission's foreign futures and option regulations based upon substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the regulations set forth in part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The Commission notes that this Order does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Commodity Exchange Act (Act).

DATES: This Order is effective November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Associate Chief Counsel, (202) 418–5465, *achapin@cftc.gov,* or C. Barry McCarty, Special Counsel, (202) 418–6627, *cmccarty@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Regulation 30.10 Exempting Firms Designated by NSE IFSC Limited (NSE IFSC) From the Application of Certain of the Foreign Futures and Option Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of Consents by Such Firms and NSE IFSC, as Appropriate, to the Terms and Conditions of the Order Herein

Commission Regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's regulations.[1] These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential impact of such a program. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.[2]

Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules'' (Appendix A), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Regulation 30.10.[3] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; and (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program. In addition, Appendix A to Part 30 further provides that any exemption of a general nature based on comparability requires appropriate information sharing arrangements between the Commission and the appropriate governmental agency and/or self-regulatory organization to ensure Commission access on an ''as needed'' basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Regulation 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (NFA); (2) agree to provide access to their books and records in the U.S. to the Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[4] Appendix A also specifically states that in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought.[5]

On November 26, 2018, NSE IFSC petitioned the Commission on behalf of its member firms, located and conducting a financial investment business in the Republic of India, for an exemption from the application of the Commission's Part 30 Regulations to those firms. NSE IFSC amended its petition on various occasions with additional information. In support of its petition, NSE IFSC stated that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and option transactions on behalf of customers located in the U.S. would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Act and the regulations thereunder.

Based upon a review of the petition and supplementary materials filed by NSE IFSC, the Commission has concluded that NSE IFSC has demonstrated to the Commission's satisfaction that the exemption for relief pursuant to § 30.10(a) is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought. Accordingly, the Commission has determined that compliance with applicable Indian law and NSE IFSC rules may be substituted for compliance with those sections of the Act and regulations thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by NSE IFSC as eligible for the relief granted herein from:

- Registration with the Commission for firms and for firm representatives;
- The requirement in Commission Regulation 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);
- The separate account requirement contained in Commission Regulation 30.7, 17 CFR 30.7;
- Those sections of Part 1 of the Commission's regulations that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
- Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in India.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing persons in India who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-

[1] Commission regulations referred to herein are found at 17 CFR Ch. I.

[2] ''Foreign Futures and Foreign Options Transactions,'' 52 FR 28290 (Aug. 5, 1987).

[3] 52 FR 28990, 29001.

[4] 52 FR 28980, 28981 and 29002.

[5] 17 CFR part 30, Appendix A.

market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, NSE IFSC and the Indian regulatory authorities on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in India, position data, and data on firms' standing to do business and financial condition.

Commission staff has concluded, upon review of the petition of NSE IFSC and accompanying exhibits, that NSE IFSC's regulation of futures and options intermediaries is comparable to that of the U.S. in the areas specified in Appendix A of Part 30, as described above.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in Regulation 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions entered on or subject to the rules of NSE IFSC for products that customers located in the U.S. may trade.[6] The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges, and does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Act. For example, a NSE IFSC member trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[7] Similarly, if such a firm were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as a futures commission merchant under the Act, it would be subject to the reporting requirements applicable to foreign brokers.[8] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The NSE IFSC, as the self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Regulation 30.10 petition, must represent in writing to the Commission that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in India; such firm is engaged in business with customers located in India as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers located in the U.S. will be made subject to the regulations of NSE IFSC;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than India customers under all relevant provisions of Indian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, including sharing the information specified in Appendix A on an ''as needed'' basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.,* banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Regulation 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in India upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program; *provided, however,* that the firm may require its customers located in the U.S. to execute a consent concerning the exhaustion of certain mediation or conciliation procedures made available by NSE IFSC prior to bringing an NFA arbitration proceeding; and

(f) Undertakes to comply with the applicable provisions of Indian laws and NSE IFSC rules that form the basis upon which this exemption from certain provisions of the Act and regulations thereunder is granted.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph

[6] *See, e.g.,* Sections 2(a)(1)(C) and (D) of the Act.

[7] *See, e.g.,* 17 CFR part 18.

[8] *See, e.g.,* 17 CFR parts 17 and 21.

(2) shall be filed with NFA.[9] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective as to any designated NSE IFSC firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraphs (2)(a)–(f). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and NSE IFSC.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may, after appropriate notice and opportunity to respond, condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate and as permitted by law, on its own motion. The process by which the Commission may terminate relief is set forth in § 30.10(c).[10]

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

[9] 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms.

[10] 17 CFR 30.10(c). See 85 FR 15359 (Mar. 18, 2020).

Issued in Washington, DC, on November 2, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendix to Foreign Futures and Options Transactions—Commission Voting Summary

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

[FR Doc. 2020–24659 Filed 11–23–20; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is granting an exemption to certain member firms designated by NZX Limited (NZX) from the application of certain of the Commission's foreign futures and option regulations based upon substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the regulations set forth in part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The Commission notes that this Order does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Commodity Exchange Act (Act).

DATES: This Order is effective November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Associate Chief Counsel, (202) 418–5465, *achapin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Regulation 30.10 Exempting Firms Designated by NZX Limited (NZX) From the Application of Certain of the Foreign Futures and Option Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of Consents by Such Firms and NZX, as Appropriate, to the Terms and Conditions of the Order Herein

Commission Regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's regulations.[1] These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential impact of such a program. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.[2]

Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules'' (Appendix A), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive

[1] Commission regulations referred to herein are found at 17 CFR Ch. I.

[2] ''Foreign Futures and Foreign Options Transactions,'' 52 FR 28290 (Aug. 5, 1987).

relief pursuant to Regulation 30.10.[3] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; and (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program. In addition, Appendix A to Part 30 further provides that any exemption of a general nature based on comparability requires appropriate information sharing arrangements between the Commission and the appropriate governmental agency and/or self-regulatory organization to ensure Commission access on an ''as needed'' basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Regulation 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (NFA); (2) agree to provide access to their books and records in the U.S. to the Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[4] Appendix A also specifically states that in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought.[5]

On May 25, 2017, NZX petitioned the Commission on behalf of its member firms, located and conducting a financial investment business in New Zealand, for an exemption from the application of the Commission's Part 30 Regulations to those firms. NZX supplemented its petition on various occasions with additional information. In support of its petition, NZX stated that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and option transactions on behalf of customers located in the U.S. would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Act and the regulations thereunder.

[3] 52 FR 28990, 29001.

[4] 52 FR 28980, 28981 and 29002.

[5] 17 CFR part 30, Appendix A.

Based upon a review of the petition and supplementary materials filed by NZX, the Commission has concluded that NZX has demonstrated to the Commission's satisfaction that the exemption for relief pursuant to § 30.10(a) is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought. Accordingly, the Commission has determined that compliance with applicable New Zealand law and NZX rules may be substituted for compliance with those sections of the Act and regulations thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by NZX as eligible for the relief granted herein from:

- Registration with the Commission for firms and for firm representatives;
- The requirement in Commission Regulation 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);
- The separate account requirement contained in Commission Regulation 30.7, 17 CFR 30.7;
- Those sections of Part 1 of the Commission's regulations that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
- Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in New Zealand.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing persons in New Zealand who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, NZX and the New Zealand regulatory authorities on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in New Zealand, position data, and data on firms' standing to do business and financial condition.

Commission staff has concluded, upon review of the petition of NZX and accompanying exhibits, that NZX's regulation of futures and options intermediaries is comparable to that of the U.S. in the areas specified in Appendix A of Part 30, as described above.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in Regulation 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions entered on or subject to the rules of NZX for products that customers located in the U.S. may trade.[6] The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges, and does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Act. For example, a NZX member trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[7] Similarly, if such a firm were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as a futures commission merchant under the Act, it would be subject to the reporting requirements applicable to foreign brokers.[8] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The NZX, as the self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Regulation 30.10 petition, must represent in writing to the Commission that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in New Zealand; such firm is engaged in business with customers located in New Zealand as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers located in the U.S. will be made subject to the regulations of NZX;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than New Zealand customers under all relevant provisions of New Zealand law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, including sharing the information specified in Appendix A on an ''as needed'' basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.,* banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Regulation 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in New Zealand upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program; *provided, however,* that the firm may require its customers located in the U.S. to execute a consent concerning the exhaustion of certain mediation or conciliation procedures made available by NZX prior to bringing an NFA arbitration proceeding; and

(f) Undertakes to comply with the applicable provisions of New Zealand laws and NZX rules that form the basis upon which this exemption from certain provisions of the Act and regulations thereunder is granted.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[9] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective as to any designated NZX firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraphs (2)(a)–(f). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and NZX.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may, after appropriate notice and opportunity to respond, condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate and as permitted by law, on its own motion. The process by which the

[6] *See, e.g.,* Sections 2(a)(1)(C) and (D) of the Act.

[7] *See, e.g.,*17 CFR part 18.

[8] *See, e.g.,*17 CFR parts 17 and 21.

[9] 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms.

Commission may terminate relief is set forth in § 30.10(c).[10]

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

Issued in Washington, DC, on November 2, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendix to Foreign Futures and Options Transactions—Commission Voting Summary

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

[FR Doc. 2020–24660 Filed 11–23–20; 8:45 am]

BILLING CODE 6351–01–P

[10] 17 CFR 30.10(c). See 85 FR 15359 (Mar. 18, 2020).

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is granting an exemption to UBS AG (UBS), a firm designated by the Swiss Financial Market Supervisory Authority (FINMA), from the application of certain of the Commission's foreign futures and option regulations based upon substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission § 30.10(a), which permits persons to file a petition with the Commission for exemption from the application of certain of the regulations set forth in part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The Commission notes that this Order does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Commodity Exchange Act (Act).

DATES: This Order is effective November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin, Associate Chief Counsel, (202) 418–5465, *achapin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under Commission Regulation 30.10 Exempting UBS AG, a Firm Designated by the Swiss Financial Market Authority, From the Application of Certain of the Foreign Futures and Option Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of Consents by UBS, as Appropriate, to the Terms and Conditions of the Order Herein

Commission Regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's regulations.[1] These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets. In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential impact of such a program. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.[2]

Pursuant to § 30.10(a), persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they are located may seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon compliance with the regulatory requirements of the person's home jurisdiction.[3] Although a petition for exemption pursuant to § 30.10(a) typically is filed on behalf of persons located and doing business outside the U.S. that seek access to U.S. customers by a governmental agency responsible for implementing and enforcing the foreign regulatory program, or a self-regulatory organization (SRO) of which such persons are members, there is nothing to prevent an individual or firm from submitting a petition on its own behalf. A petitioner who seeks an exemption pursuant to § 30.10(a) must set forth with particularity the comparable regulations applicable in the jurisdiction in which that person is located. Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules'' (Appendix A), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to § 30.10.[4] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; and (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program. In addition, Appendix A to Part 30 further provides that any exemption of a general nature based on comparability requires appropriate information sharing arrangements between the Commission and the appropriate governmental agency and/or self-regulatory organization to ensure Commission access on an ''as needed'' basis to information essential to maintaining standards of customer and market protection within the U.S.

The Commission specifically stated in adopting § 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for

[1] Commission regulations referred to herein are found at 17 CFR Ch. I.

[2] ''Foreign Futures and Foreign Options Transactions,'' 52 FR 28290 (Aug. 5, 1987).

[3] 17 CFR 30.10(a).

[4] 52 FR 28990, 29001.

service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (NFA); (2) agree to provide access to their books and records in the U.S. to the Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[5] Appendix A specifically states that in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought.[6]

On May 24, 2019, UBS, a financial investment business organized and located in Switzerland, petitioned the Commission for an exemption from the application of the Commission's Part 30 Regulations. In support of its petition, UBS stated that granting such an exemption to conduct foreign futures and option transactions on behalf of customers located in the U.S. without having to register as a futures commission merchant would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because UBS is subject to a regulatory framework comparable to that imposed by the Act and the regulations thereunder. Based upon a review of the UBS petition, the Commission has concluded that UBS has demonstrated to the Commission's satisfaction that the exemption for relief pursuant to § 30.10(a) is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought. Accordingly, the Commission has determined that compliance with applicable Swiss law may be substituted for compliance with those sections of the Act and regulations thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts UBS, subject to specified conditions, from the following regulatory requirements:

- Registration with the Commission for firm and for firm representatives;
- The requirement in Commission § 30.6(a) and (d), 17 CFR 30.6(a) and (d), that the firm provide customers located in the U.S. with the risk disclosure statements in Commission Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);
- The separate account requirement contained in Commission § 30.7, 17 CFR 30.7;
- Those sections of Part 1 of the Commission's regulations that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
- Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Switzerland.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing UBS hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, UBS, and the Swiss regulatory authority on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Switzerland, position data, and data on firms' standing to do business and financial condition.

In particular, Commission staff has concluded, upon review of the petition of UBS and accompanying exhibits, that FINMA's regulation of financial futures and options intermediaries is comparable to that of the U.S. in the areas specified in Appendix A of Part 30, as described above.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in § 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to otherwise permitted transactions on or subject to the rules of any other non-U.S. market where UBS is authorized by Swiss law to conduct brokerage activities. The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges, and does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Act. For example, UBS trading for its own account in U.S. markets would be subject to the Commission's large trader reporting requirements.[7] Similarly, if UBS were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as a futures commission merchant under the Act, it would be subject to the reporting requirements applicable to foreign brokers.[8] The relief herein is inapplicable where UBS solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, UBS must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of UBS to seek relief under this exemptive Order is subject to certain conditions. Specifically, UBS must represent in writing to the Commission that it:

(1) Is licensed as a financial investment business and is otherwise in good standing under the standards in place in Switzerland; and it will notify the Commission and NFA promptly of any change in its status as a financial investment business that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S., and of any information that affects its financial or operational viability

[5] 52 FR 28980, 28981 and 29002.

[6] 17 CFR part 30, Appendix A.

[7] *See, e.g.,* 17 CFR part 18.

[8] *See, e.g.,* 17 CFR parts 17 and 21.

under the exemption granted by this Order;

(2) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Commission § 30.5;

(3) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.,* banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(4) Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(5) Undertakes to comply with the applicable provisions of Swiss laws and FINMA rules that form the basis upon which this exemption from certain provisions of the Act and regulations thereunder is granted, and will notify the Commission promptly of all material changes to the relevant laws in Switzerland, any rules promulgated thereunder and FINMA rules;

(6) Will provide customers located in the U.S. no less stringent regulatory protection than Switzerland customers under all relevant provisions of Swiss law;

(7) Will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, and agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Switzerland upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request; and

(8) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program; *provided, however,* that the firm may require its customers located in the U.S. to execute a consent concerning the exhaustion of certain mediation or conciliation procedures made available by FINMA prior to bringing an NFA arbitration proceeding.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraphs (1)–(8) above shall be filed with NFA.[9]

This Order will become effective as to UBS the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth above. Should the Commission receive written notice from FINMA or UBS that any change in status of UBS affects its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S., the relief granted by this Order may be suspended immediately as to UBS. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to UBS and FINMA.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to UBS granted relief hereunder based upon the filing and representations of UBS required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. Further, if experience demonstrates that the continued effectiveness of this Order in general would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may, after appropriate notice and opportunity to respond, condition, modify, suspend, terminate, withhold as to UBS, or otherwise restrict the exemptive relief granted in this Order, as appropriate and as permitted by law, on its own motion. The process by which the Commission may terminate relief is set forth in § 30.10(c).[10]

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

[9] 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms.

[10] 17 CFR 30.10(c). See 85 FR 15359 (Mar. 18, 2020).

Issued in Washington, DC, on November 2, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendix to Foreign Futures and Options Transactions—Commission Voting Summary

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

[FR Doc. 2020–24661 Filed 11–23–20; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is granting an exemption to certain member firms designated by the BSE Limited (BSE) from the application of certain of the Commission's foreign futures and option regulations based upon substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the regulations set forth in part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The Commission notes that this Order does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Commodity Exchange Act (Act).

DATES: This Order is effective November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Associate Chief Counsel, (202) 418–5465, *achapin@cftc.gov,* or C. Barry McCarty, Special Counsel, (202) 418–6627, *cmccarty@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Regulation 30.10 Exempting Firms Designated by BSE Limited (BSE) From the Application of Certain of the Foreign Futures and Option Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of Consents by Such Firms and BSE, as Appropriate, to the Terms and Conditions of the Order Herein

Commission Regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's regulations.[1] These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential impact of such a program. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.[2]

Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules'' (Appendix A), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Regulation 30.10.[3] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; and (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program. In addition, Appendix A to Part 30 further provides that any exemption of a general nature based on comparability requires appropriate information sharing arrangements between the Commission and the appropriate governmental agency and/or self-regulatory organization to ensure Commission access on an ''as needed'' basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Regulation 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (NFA); (2) agree to provide access to their books and records in the U.S. to the Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[4] Appendix A also specifically states that in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought.[5]

On February 26, 2016, BSE petitioned the Commission on behalf of its member firms, located and conducting a financial investment business in the Republic of India, for an exemption from the application of the Commission's Part 30 Regulations to those firms. BSE amended its petition on various occasions with additional information. In support of its petition, BSE stated that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and option transactions on behalf of customers located in the U.S. would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Act and the regulations thereunder.

Based upon a review of the petition and supplementary materials filed by BSE, the Commission has concluded that BSE has demonstrated to the Commission's satisfaction that the exemption for relief pursuant to § 30.10(a) is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought. Accordingly, the Commission has determined that compliance with applicable Indian law and BSE rules may be substituted for compliance with those sections of the Act and regulations thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by BSE as eligible for the relief granted herein from:

- Registration with the Commission for firms and for firm representatives;
- The requirement in Commission Regulation 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);
- The separate account requirement contained in Commission Regulation 30.7, 17 CFR 30.7;
- Those sections of Part 1 of the Commission's regulations that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
- Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in India.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing persons in India who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in

[1] Commission regulations referred to herein are found at 17 CFR Ch. I.

[2] ''Foreign Futures and Foreign Options Transactions,'' 52 FR 28290 (Aug. 5, 1987).

[3] 52 FR 28990, 29001.

[4] 52 FR 28980, 28981 and 29002.

[5] 17 CFR part 30, Appendix A.

transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, BSE and the Indian regulatory authorities on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in India, position data, and data on firms' standing to do business and financial condition.

Commission staff has concluded, upon review of the petition of BSE and accompanying exhibits, that BSE's regulation of futures and options intermediaries is comparable to that of the U.S. in the areas specified in Appendix A of Part 30, as described above.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in Regulation 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions entered on or subject to the rules of BSE for products that customers located in the U.S. may trade.[6] The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges, and does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Act. For example, a BSE member trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[7] Similarly, if such a firm were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as a futures commission merchant under the Act, it would be subject to the reporting requirements applicable to foreign brokers.[8] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The BSE, as the self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Regulation 30.10 petition, must represent in writing to the Commission that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in India; such firm is engaged in business with customers located in India as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers located in the U.S. will be made subject to the regulations of BSE;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than India customers under all relevant provisions of Indian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, including sharing the information specified in Appendix A on an ''as needed'' basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.,* banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Regulation 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in India upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program; *provided, however,* that the firm may require its customers located in the U.S. to execute a consent concerning the exhaustion of certain mediation or conciliation procedures made available by BSE prior to bringing an NFA arbitration proceeding; and

(f) Undertakes to comply with the applicable provisions of Indian laws

[6] *See, e.g.,* Sections 2(a)(1)(C) and (D) of the Act.

[7] *See, e.g.,* 17 CFR part 18.

[8] *See, e.g.,* 17 CFR parts 17 and 21.

and BSE rules that form the basis upon which this exemption from certain provisions of the Act and regulations thereunder is granted.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[9] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective as to any designated BSE firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraphs (2)(a)–(f). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and BSE.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may, after appropriate notice and opportunity to respond, condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate and as permitted by law, on its own motion. The process by which the Commission may terminate relief is set forth in § 30.10(c).[10]

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

Issued in Washington, DC, on November 2, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendix to Foreign Futures and Options Transactions—Commission Voting Summary

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

[FR Doc. 2020–24662 Filed 11–23–20; 8:45 am]

BILLING CODE 6351–01–P

[9] 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms.

[10] 17 CFR 30.10(c). See 85 FR 15359 (Mar. 18, 2020).

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: By this Order, the Commodity Futures Trading Commission (Commission) is amending and consolidating prior relief issued in orders pursuant to Commission regulation 30.10 regarding the offer and sale of foreign futures and options contracts to customers located in the U.S. by firms designated by the Montreal Exchange (MX) to reflect changes to the local laws and regulations applicable to the segregation of customer funds.

DATES: This Order is effective November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin, Associate Chief Counsel, (202) 418–5465, *achapin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Amending and Consolidating the Terms and Conditions Set Forth in Prior Orders Issued Pursuant to Commission Regulation 30.10 Exempting Firms Designated by the Montreal Exchange From the Application of Certain of the Foreign Futures and Option Regulations

Part 30 of the Commission's regulations governs the offer and sale of futures and option contracts traded on or subject to the regulations of a foreign board of trade (foreign futures and options) to customers located in the U.S.[1] These regulations set forth requirements for foreign firms acting in the capacity of a futures commission merchant (FCM), introducing broker, commodity pool operator and commodity trading adviser with respect to the offer and sale of foreign futures and options to U.S. customers and are designed to ensure that such products offered and sold in the U.S. are subject to regulatory safeguards comparable to those applicable to transactions entered into on designated contract markets. Pursuant to § 30.10(a), persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they are located may seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon compliance with the regulatory requirements of the person's jurisdiction.[2] If the Commission determines that relief pursuant to § 30.10(a) is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought, the Commission issues an Order to the petitioner—typically a foreign regulator or self-regulatory organization (SRO)—that sets forth conditions governing such relief. Persons subject to regulatory oversight by the foreign regulator or SRO granted an exemption, as appropriate, and located and doing business outside the U.S. may solicit or accept orders directly from U.S. customers for foreign futures or options transactions and, in the case of a person acting in the capacity of an FCM, accept customer money or other property, without registering under the

[1] 17 CFR part 30. The Commission promulgated part 30 of its regulations in 1987. *See* Foreign Futures and Foreign Options Transactions, 52 FR 28980 (Aug. 5, 1987). Appendix A also specifically states that in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought. 17 CFR part 30, Appendix A.

[2] 17 CFR 30.10(a).

Commodity Exchange Act (CEA or Act) in the appropriate capacity.[3]

In 1989, the Commission issued an order to MX pursuant to § 30.10(a) permitting designated members of MX to intermediate on behalf of customers located in the U.S. foreign futures and options transactions executed on MX without having to register as FCMs with the Commission.[4] In 1997, the Commission issued another order expanding the exemptive relief for designated members to include foreign futures and options transactions on foreign boards of trade other than MX, as permitted by local law and regulation.[5] At the time that these orders were published, the local laws and regulations applicable to MX members did not require the segregation of customer funds consistent with those requirements applicable to FCMs set forth in Section 4d(f) of the CEA and those regulations promulgated thereunder, including § 30.7.[6] As a result, the Commission imposed a condition on each designated member of MX seeking confirmation of relief to comply with the secured amount requirement set forth in § 30.7. Specifically, among other representations, the 1989 Order stated that each MX member agrees to maintain, on behalf of customers located in the United States, funds equivalent to the ''secured amount'' described in Commission Rule 1.3(rr), 17 CFR 1.3(rr) (1988), in a separate account as set forth in Commission Rule 30.7, 17 CFR 30.7 (1988), and to treat those funds in the manner described by that rule.[7]

On July 15, 2019, MX petitioned the Commission on behalf of its member firms to amend the conditions for relief set forth in the 1989 and 1997 Orders. In particular, MX requested that the Commission remove the condition set forth in subparagraph (f) of the 1989 Order requiring MX members to comply with the secured amount requirement set forth in § 30.7. In support of its request, MX provided supplementary materials demonstrating that the relevant laws and regulations governing MX members require the segregation of customer funds consistent with § 30.7's secured amount requirement applicable to registered FCMs.

Based upon a review of the petition and supplementary materials filed by MX, the Commission has concluded that MX has demonstrated to the Commission's satisfaction that the exemption for relief pursuant to § 30.10(a) is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought. Accordingly, the Commission has determined that compliance with applicable Québec law and MX rules may be substituted for compliance with those sections of the Act and regulations regarding the separate account requirement set forth in § 30.7.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by MX as eligible for the relief granted herein from:

• Registration with the Commission for firms and for firm representatives;
• The requirement in Commission Regulation 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);
• The separate account requirement contained in Commission Regulation 30.7, 17 CFR 30.7;
• Those sections of Part 1 of the Commission's regulations that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
• Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Québec, Canada.

This determination to permit substituted compliance is based on, among other things, the Commission's previous finding and the finding today that the regulatory framework governing persons in Québec who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, MX and the Québec regulatory authorities on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Québec, position data, and data on firms' standing to do business and financial condition.

The relief set forth in this Order permits designated MX members to solicit and accept orders from U.S. customers for otherwise permitted transactions[8] on all non-U.S. exchanges where such members are authorized under local law and regulation to transact in futures and options. The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges, and does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Act. This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in § 30.9. For example, a MX member trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[9] Similarly, if such a firm were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as an FCM

[3] The term ''futures commission merchant'' is defined in § 1.3, 17 CFR 1.3.

[4] 54 FR 11179 (Mar. 17, 1989) (1989 Order).

[5] 62 FR 8875 (Feb. 27, 1997) (1997 Order). The expanded § 30.10 relief provided under the 1997 Order was contingent on the continued compliance by MX and its designated members with the 1989 Order along with certain additional conditions. *See* 62 FR at 8876–7.

[6] 7 U.S.C. 6d(f); 17 CFR 30.7.

[7] 54 FR at 11182. In the time since the 1989 Order was issued, the Commission has amended § 30.7. *See, e.g.,* 78 FR 68648, (Nov. 14, 2013), as amended at 79 FR 44126, (July 30, 2014).

[8] *See, e.g.,* Sections 2(a)(1)(C) and (D) of the Act.

[9] *See, e.g.,* 17 CFR part 18.

under the Act, it would be subject to the reporting requirements applicable to foreign brokers.[10] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) MX, as the SRO responsible for monitoring the compliance of such firms with the regulatory requirements described in the § 30.10 petition, must represent in writing to the Commission that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Québec; such firm is engaged in business with customers located in Québec as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) It will carry out its compliance, surveillance, and rule enforcement activities with respect to any transactions on any non-MX exchange to the same extent it carries out such activities with respect to MX business;

(d) All transactions with respect to customers located in the U.S. will be made subject to the regulations of MX, and the Commission will receive prompt notice of all material changes to the relevant laws in Québec, any rules promulgated thereunder and MX rules;

(e) Customers located in the U.S. will be provided no less stringent regulatory protection than customers in Québec under all relevant provisions of Québec law;

(f) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, including sharing the information specified in Appendix A on an ''as needed'' basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.,* banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in § 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30, including those transactions undertaken on any non-U.S. exchange, required to be maintained under the applicable statutes and regulations in effect in Québec upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Canadian laws and MX rules that form the basis upon which this exemption from certain provisions of the Act and regulations thereunder is granted; and

(g) Notwithstanding provisions of the Québec regulatory program, consents not to commingle the foreign futures and options funds or property of any customer located in the U.S. with funds of any account holders unrelated to trading foreign futures or foreign options; and refuse to any customer located in the U.S. the option of not segregating customer funds.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[11] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective immediately as to any designated MX firm which currently operates under the 1989 and 1997 Orders, who will be deemed to have consented to the amended conditions by effecting transactions pursuant to this Order. With respect to any other designated MX firms, the relief will be become effective the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraphs (2)(a)–(g). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and MX.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or to the purposes of the provision from which exemption is sought, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may, after appropriate notice and opportunity to respond, condition, modify, suspend, terminate,

[10] *See, e.g.,* 17 CFR parts 17 and 21.

[11] 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate § 30.10 Order and to grant exemptive relief from registration to qualifying firms.

withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate and as permitted by law, on its own motion. The process by which the Commission may terminate relief is set forth in § 30.10(c).[12]

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

Issued in Washington, DC, on November 2, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendix to Foreign Futures and Options Transactions—Commission Voting Summary

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

[FR Doc. 2020–24658 Filed 11–23–20; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 11218]

RIN 1400–AE99

Visas: Visa Bond Pilot Program

AGENCY: Department of State.

ACTION: Temporary final rule.

SUMMARY: This temporary final rule provides for a U.S. Department of State (Department) visa bond pilot program (Pilot Program) with specified parameters. The purpose of the Pilot Program is to assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with the Department of Homeland Security (DHS), to help assess the burden on government agencies and identify any practical challenges related to visa bonds. The Pilot Program does not aim to assess whether issuing visa bonds will be effective in reducing the number of aliens who overstay their temporary business visitor/tourist (B–1/B–2) visa. Visa applicants potentially subject to the Pilot Program include aliens who: Are applying for visas as temporary visitors for business or pleasure (B–1/B–2); are from countries with high visa overstay rates; and already have been approved by DHS for an inadmissibility waiver. Because this is a visa bond program, aliens traveling under the Visa Waiver Program fall outside the scope of the Pilot Program, as those travelers do not apply for visas. The Pilot Program is designed to apply to nationals of specified countries with high overstay rates to serve as a diplomatic tool to encourage foreign governments to take all appropriate actions to ensure their nationals timely depart the United States after making temporary visits. The Pilot Program will run for six months. During that period, consular officers may require nonimmigrant visa applicants falling within the scope of the Pilot Program to post a bond in the amount of $5,000, $10,000, or $15,000 as a condition of visa issuance. The amount of the bond, should a bond be appropriate, will be determined by the consular officer based on the circumstances of the visa applicant.

DATES:

Effective Date: This temporary final rule is effective from December 24, 2020 through June 24, 2021.

Pilot Program Dates: The Pilot Program will run for six months, from December 24, 2020 through June 24, 2021.

FOR FURTHER INFORMATION CONTACT: Megan Herndon, Senior Regulatory Coordinator, Visa Services Directorate, Bureau of Consular Affairs, Department of State; telephone (202) 485–7586, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Pilot Program

This temporary final rule establishes a Pilot Program under section 221(g)(3) of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1201(g)(3)), which authorizes consular officers to require the posting of a Maintenance of Status and Departure Bond (visa bond) by an alien applying for, and otherwise eligible to receive, a business visitor/tourist (B–1/B–2) visa, when a visa bond is required ''to insure that at the expiration of the time for which such alien has been admitted . . . or upon failure to maintain the status under which [the alien] was admitted, or to maintain any status subsequently acquired under section 1258 of this title (INA section 248), such alien will depart from the United States.'' The Pilot Program will begin on December 24, 2020, and end on June 24, 2021.

Historically, Department guidance generally discouraged consular officers from exercising their authority to require visa bonds under INA section 221(g)(3), as reflected in guidance published in Volume 9 of the Foreign Affairs Manual (9 FAM), section 403.9–8(A) *Bonds Should Rarely Be Used,*[1] which states, ''[t]he mechanics of posting, processing and discharging a bond are cumbersome,'' and notes possible misperception of a bond requirement by the public. The Pilot Program will help the Department assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with DHS, to inform any future decision concerning the possible use of visa bonds to address overstays. The Pilot Program responds to the President's initiative to lower visa overstay rates, as reflected in the April 22, 2019, *Presidential Memorandum on Combating High Nonimmigrant Overstay Rates*[2] (the *Presidential Memorandum*), the threat to U.S. interests described in the *Presidential Memorandum;* and the high nonimmigrant overstay rates for nationals of certain countries.

Under the Pilot Program, visa bonds may be required from certain applicants for B–1/B–2 visas who are nationals of listed countries that have overstay rates of ten percent or higher in the combined B–1/B–2 nonimmigrant visa category, as reported in the DHS Fiscal Year 2019 Entry/Exit Overstay Report (DHS FY 2019 Overstay Report), and who have been approved for a waiver of ineligibility by DHS under INA section 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)). Visa bonds will be posted with U.S. Immigration and Customs Enforcement (ICE) via ICE Form I–352, *Immigration Bond.* DHS regulations at 8 CFR 103.6 currently provide for the posting, processing, and cancellation of such visa bonds. DHS/ICE will collect all bonds and retain all fees in the instance that a bond is breached.

II. Purpose of This Rule

The Department is publishing this temporary final rule (TFR) to establish the Pilot Program, including: (1) The criteria for identifying visa applicants who will be required to post visa bonds; (2) three levels for the amount of the bond, with the level to be selected by the consular officer based on an applicant's individual circumstances; and (3) the duration of the Pilot

[12] 17 CFR 30.10(c). *See* 85 FR 15359 (Mar. 18, 2020).

[1] *https://fam.state.gov/FAM/09FAM/09FAM040309.html.*

[2] *https://www.whitehouse.gov/presidential-actions/presidential-memorandum-combating-high-nonimmigrant-overstay-rates/.*

Program. The Pilot Program will help the Department assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with DHS, which will inform any future decision concerning the possible use of visa bonds to address the national security and foreign policy objectives articulated in the *Presidential Memorandum,* which declares the Administration's commitment "to securing the borders of the United States and fostering respect for the laws of our country, both of which are cornerstones of our Republic." [3] The *Presidential Memorandum* highlights the fact that visa overstay rates are unacceptably high for nationals of certain countries and concludes that, "individuals who abuse the visa process and decline to abide by the terms and conditions of their visas, including their visa departure dates, undermine the integrity of our immigration system and harm the national interest." [4]

The *Presidential Memorandum* directs the Secretary of State, in consultation with the Attorney General and the Secretary of Homeland Security, to provide the President with recommendations to reduce B–1 and B–2 nonimmigrant visa overstay rates from countries with a total overstay rate greater than ten percent, and further directs the Secretary of State and the Secretary of Homeland Security to take, "appropriate actions that are within the scope of their respective authorities to reduce overstay rates for all classes of nonimmigrant visas." [5] The Department intends to use the results of the Pilot Program to assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with DHS, which will inform any future decision concerning the possible use of visa bonds to address visa overstay rates, relative to operational considerations. Determining operational feasibility of posting, processing, and discharging visa bonds focuses on assessing the burdens such a program places on government agencies and identifying challenges that might arise from the interagency process for implementing visa bonds. The purpose does not include, and this Pilot Program is not designed for, determining the effectiveness of visa bonds at reducing overstays. This Pilot Program evaluates the operational challenges, rather than the outcome. The Department recognizes that, because of the limited scope of the Pilot Program, it cannot be used to assess the effectiveness of visa bonds for reducing overstays.

III. Background

A. Foreign Policy Justification

The *Presidential Memorandum* notes that the number of aliens who overstay their period of lawful admission is unacceptably high for nationals of certain countries and concludes that, "individuals who abuse the visa process and decline to abide by the terms and conditions of their visas, including their visa departure dates, undermine the integrity of our immigration system and harm the national interest." [6] Furthermore, overstays "place significant strain on Department of Justice and Department of Homeland Security resources." [7] The volume of overstays highlights this concern. DHS reported to Congress in the DHS FY 2019 Overstay Report that,"[a]t the end of FY 2019, there were 574,740 Suspected In-Country Overstays" (i.e., aliens who remained in the country past the end of their authorized stay and had yet to depart the country) among nonimmigrants admitted through air or sea ports of entry.[8]

Studies reviewing data covering periods before DHS began publishing overstay data (the first DHS Overstay Report covered FY 2015) have suggested that the number of overstays has exceeded land border apprehensions for several years and that, over the past decade, unauthorized migration is attributable more to visa overstays than to unauthorized border crossings.[9] Furthermore, the number of total overstays annually among foreign nationals admitted to the United States at an air or sea port of entry as nonimmigrant visitors for business or pleasure on a B–1 or B–2 visa, excluding travelers from Mexico, Canada, and Visa Waiver Program (VWP) participating countries [10] has increased in recent years, based on statistics published by DHS. For fiscal years beginning with 2015, DHS has published an "Overstay Report" with a broad range of statistics relating to "overstays," which DHS defines, for purposes of these reports, as "a nonimmigrant who was lawfully admitted to the United States for an authorized period but stayed in the United States beyond his or her authorized admission period." [11] As explained in the report, if a nonimmigrant timely applies for an extension of the authorized period of admission or applies to change or adjust status, the authorized period of admission may be extended, thereby avoiding overstay status. The reports for fiscal years 2015 through 2019 include statistics on foreign nationals who entered the United States at an airport or seaport of entry as nonimmigrant visitors for business or pleasure on a B–1 or B–2 visa, excluding travelers from Mexico, Canada, and VWP participating countries. For fiscal year 2015, DHS reported a total of 228,783 overstays among this category of nonimmigrant visitors, including "out-of-country" overstays (*i.e.,* those who departed some time before the end of FY 2015) and in-country overstays (*i.e.,* those who remained in the United States at the end of FY 2015).[12] The number of such overstays grew in each of the consecutive years, to 287,107 for FY 2016,[13] to 301,716 for FY 2017,[14] to 305,215 for FY 2018,[15] and finally to 320,086 for FY 2019.[16]

Section 2 of the *Presidential Memorandum* directed the Secretary of State to engage with the governments of countries with a total overstay rate greater than ten percent in the combined

[3] *Presidential Memorandum* section 1(a).

[4] *Id.*

[5] *Presidential Memorandum* at Section 2.

[6] *Id.*

[7] *Presidential Memorandum* at Section 1(a).

[8] "Fiscal Year 2019 Entry/Exit Overstay Report" prepared by DHS and submitted to Congress pursuant to Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Pub. L. 106–215, 114 Stat. 337, June 15, 2000) (DHS FY 2019 Overstay Report), found at *https://www.dhs.gov/publication/entryexit-overstay-report.* In the Report, DHS further explained that by the end of December 2019, the number of Suspected In-Country Overstays for FY 2019 decreased to 497,272, due to departures and adjustments of status by aliens in that population. The report explains that overstay statistics reported do not take into account diplomats and other representatives, crewmembers, aliens in transit, and section 1367 special-protected classes, because they have "unspecified authorized periods of stay and legal protections." DHS FY 2019 Overstay Report at Section III(C).

[9] *See* Blas Nuñez-Neto, "Visa Overstays Outsize Role in Unauthorized Migration," Homeland Security Policy Paper #2, Harvard Kennedy School Belfer Center, at *https://www.belfercenter.org/sites/default/files/files/publication/HSP%20Paper%20Series-Visa%20Overstays_0.pdf, citing* Robert Warren and Donald Kerwin, "Beyond DAPA and DACA: Revisiting Legislative Reform in Light of Long-Term Trends in Unauthorized Immigration to the United States," Journal on Migration Human Security 3, no. 1 (Mar. 2015), 80–108.

[10] The Visa Waiver Program is described in INA 217 (8 U.S.C. 1187).

[11] DHS Fiscal Year 2019 Entry/Exit Overstay Report, *https://www.dhs.gov/publication/entryexit-overstay-report* (*DHS FY2019 Overstay Report*), at Section III(C).

[12] Id. at page 14, Table 2.

[13] DHS Entry/Exit Overstay Report for Fiscal Year 2016, *https://www.dhs.gov/publication/entryexit-overstay-report,* at page 13, Table 1.

[14] DHS Entry/Exit Overstay Report for Fiscal Year 2017, *https://www.dhs.gov/publication/entryexit-overstay-report,* at page 12, Table 1.

[15] DHS Entry and Exit Overstay Report for Fiscal Year 2018, *https://www.dhs.gov/publication/entryexit-overstay-report,* at page 13, Table 1.

[16] DHS Entry/Exit Overstay Report for Fiscal Year 2019, *https://www.dhs.gov/publication/entryexit-overstay-report,* at page 20, Table 1.

B–1 and B–2 nonimmigrant visa category, based on the DHS FY 2019 Overstay Report. By focusing the Pilot Program on certain countries identified in the DHS FY 2019 Overstay Report as having overstay rates of ten percent or higher among aliens admitted to the United States for business or pleasure (B–1/B–2) via air and sea ports of entry,[17] the U.S. Government sends a message to all countries that high overstay rates may result in measures that negatively affect broad categories of their nationals, thereby encouraging countries to take action to encourage their nationals to comply with U.S. immigration law. By establishing the Pilot Program, the U.S. Government focuses on travelers who are nationals of: Afghanistan, Angola, Bhutan, Burkina Faso, Burma, Burundi, Cabo Verde, Chad, Democratic Republic of the Congo (Kinshasa), Djibouti, Eritrea, the Gambia, Guinea-Bissau, Iran, Laos, Liberia, Libya, Mauritania, Papua New Guinea, Sao Tome and Principe, Sudan, Syria, and Yemen,[18] thereby sending a message to those countries in particular regarding the relevant overstay rates of their nationals. By its design and intention, the Pilot Program is a tool of diplomacy, intended to encourage foreign governments to take all appropriate actions to reduce the overstay rates of their nationals when traveling to the United States for temporary visits. As such, the rule properly is described as a component of U.S. foreign policy and involving a foreign affairs function.

B. Legal Framework Underlying the Pilot Program

As detailed below, the INA grants, and Department regulations implement, consular officer authority to require bonds in appropriate circumstances; however, historically, as a matter of policy, Department guidance has discouraged consular officers from exercising their authority to require bonds. See 9 FAM 403.9–8(A) *Bonds Should Rarely Be Used.*

1. INA Provisions

Section 221(g)(3) of the INA (8 U.S.C. 1201(g)(3)), authorizes consular officers to require the posting of a bond by an alien applying for, and otherwise eligible to receive, a business/tourist (B–1/B–2) visa ''to insure that at the expiration of the time for which such alien has been admitted . . . or upon failure to maintain the status under which [the alien] was admitted, or to maintain any status subsequently acquired under section 1258 of this title (INA section 248), such alien will depart from the United States.'' INA section 221(g)(3) (8 U.S.C. 1201(g)(3)), implicitly recognizes that there is no guarantee that an alien will depart in a timely fashion, even when an applicant is found otherwise eligible for the visa. Consequently, this INA section contemplates that it may be appropriate to require a bond when an applicant is otherwise eligible for a visa.

2. Department Regulations

Department regulations regarding visa bonds include 22 CFR 41.11(b)(2), which provides that, ''[i]n a borderline case in which an alien appears to be otherwise entitled to receive a visa under INA section 101(a)(15)(B) or (F) but the consular officer concludes that the maintenance of the alien's status or the departure of the alien from the United States as required is not fully assured, a visa may nevertheless be issued upon the posting of a bond with the Secretary of Homeland Security under terms and conditions prescribed by the consular officer.'' Additionally, 22 CFR 41.31(a)(1) references consular officer authority to require bonds from applicants for visas for temporary visits for business or pleasure (B–1/B–2) whose departure ''does not seem fully assured.'' These regulations reinforce the broad scope of the statutory authority of the Department and consular officers to require bonds to help ensure the timely departure from the United States of any visitor on a B–1/B–2 visa, when the alien is otherwise eligible for a visa, because an alien's departure after entering the United States can never be fully assured at the time of visa issuance or admission to this country.

3. FAM Guidance

Despite the regulatory foundation for consular officers to issue visa bonds, historically, as a matter of policy, the Department has discouraged consular officers from exercising their authority to require bonds, as reflected in volume 9 of the *Foreign Affairs Manual* at section 403.9–8(A), which provides, ''[a]lthough 22 CFR 41.11(b)(2) permits consular officers, in certain cases, to require a maintenance of status and departure bond, it is Department policy that such bonds will rarely, if ever, be used.'' The FAM section indicates that this policy relies, in part, on an assessment that ''[t]he mechanics of posting, processing and discharging a bond are cumbersome.'' The Pilot Program will help the Department assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with the Department of Homeland Security, and inform any future decision concerning the possible use of visa bonds to address overstays. The Pilot Program will constitute an exception to that general guidance with respect to the categories of aliens covered by the Pilot Program, during the six month duration of the Pilot Program.

IV. Parameters of the Pilot Program

The Pilot Program will last six months, beginning on the effective date of this TFR. The program will be limited to aliens who are: (1) Applying for B–1/B–2 nonimmigrant visas; (2) nationals of a listed country with an overstay rate of ten percent or higher per the DHS FY 2019 Overstay Report; [19] and (3) ineligible for a visa, but have been approved for a waiver of ineligibility by DHS under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A). Covered visa applicants will be required to post a bond in the amount of $5,000, $10,000, or $15,000, unless the bond requirement is waived. These parameters are explained below.

A. Countries With High Overstay Rates

For purposes of the Pilot Program, the countries with visa overstay rates of ten percent or higher were determined based on the DHS FY 2019 Overstay Report, which was published May 13, 2020.[20] The Pilot Program focuses only on visa overstays by nonimmigrants of listed nationalities. Those countries of nationality were determined based on DHS published data on overstays by nationals of the country admitted to the United States for business or pleasure (B–1/B–2 nonimmigrant status) via air and sea ports of entry. The data set excluded Canada, Mexico, and countries participating in the VWP.[21] The countries covered by the Pilot Program are: Afghanistan, Angola, Bhutan,

[17] This analysis excluded nationals of Canada, Mexico, and countries that participate in the Visa Waiver Program, because, among other reasons, the procedures or requirements for B–1/B–2 status for nationals of those countries differ from nationals of other countries and generally do not involve applying for visas.

[18] Although Palau had an overstay rate of 15%, according to the DHS FY19 Overstay Report, it is excluded from the Pilot Program due to its unique circumstances, which permit its citizens to travel and apply for admission to the United States as nonimmigrants without visas, based on the Compact of Free Association Approval Act (Pub. L. 99–658, 100 Stat. 3672, Nov. 14, 1986).

[19] *https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf.*

[20] *Id.*

[21] Eligibility for the Visa Waiver Program includes strict limits on overstay rates. INA section 217(c)(3) (8 U.S.C. 1187(c)(3)).

Burkina Faso, Burma, Burundi, Cabo Verde, Chad, Democratic Republic of the Congo (Kinshasa), Djibouti, Eritrea, the Gambia, Guinea-Bissau, Iran, Laos, Liberia, Libya, Mauritania, Papua New Guinea, Sao Tome and Principe, Sudan, Syria, and Yemen.[22] The DHS FY 2019 Overstay Report report provides data on departures and overstays, by country, for foreign visitors to the United States who were expected to depart in FY 2019 (October 1, 2018–September 30, 2019). For purposes of the DHS FY 2019 Overstay Report and this Pilot Program, a ''visa overstay'' is an alien who was lawfully admitted to the United States and remains in the United States beyond the period of admission authorized by DHS. The initial authorized admission period is a fixed period determined by DHS at the time B–1/B–2 visa holders apply for admission to the United States, but in some circumstances, admission periods may be extended by application to U.S. Citizenship and Immigration Services (USCIS) for an extension of stay or change or adjustment of status. The threshold of a ten percent overstay rate was based on Section 2 of the *Presidential Memorandum,* which directed the Secretary of State to engage with the governments of countries with a total overstay rate greater than ten percent in the combined B–1 and B–2 nonimmigrant visa category based on the DHS FY 2018 Overstay Report.

Before developing the parameters for this Pilot Program, the Department engaged with the governments of countries with high overstay rates in the combined B–1 and B–2 nonimmigrant visa category to identify conditions contributing to high overstay rates among nationals of those countries and considered methods to address those conditions, as required by the *Presidential Memorandum.* In countries where other tools are not sufficiently effective at reducing overstays, deployment of an additional tool, like a visa bond, may be warranted. In setting the ten percent threshold, the Department also considered the number of countries that would be implicated at the different overstay threshold levels, what impact their inclusion might have on the Pilot Program generally, and what impact alternative thresholds would have on the volume of bonds that would be required. For the Pilot Program, the Department wanted to be certain that, if the visa bond process does prove to be unduly cumbersome, the Pilot Program would not require a volume of bonds that might cripple consular sections overseas.

[22] *Id.,* Table 3 at page 23. For reasons explained in footnote 18, above, Palau is excluded from the Pilot Program, despite having an overstay rate of of 15 percent.

B. Applicants Requiring DHS Waivers of Ineligibility

As noted above, the purpose of the Pilot Program is to assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with DHS, to inform any future decision concerning the possible use of visa bonds to address overstays. The Department estimates that the parameters selected for the Pilot Program would result in 200–300 visas being issued following the posting of visa bonds, under normal travel conditions, with the actual number likely to be lower if travel is limited due to executive actions or unusual and unpredictable circumstances. The Department believes the operational feasibility of the visa bond process, as described above, can be assessed on the basis of a relatively small number of cases. Furthermore, the Department believes even if the burden of requiring visa bonds makes doing so operationally nonfeasible, requiring bonds in the relatively small number of cases anticipated under this pilot program will allow the Department and DHS to complete the Pilot Program without causing significant disruption to day-to-day operations. Accordingly, the Department is limiting the Pilot Program to aliens for whom DHS has granted a waiver of inadmissibility, relative to the pending B–1/B–2 visa application, to help ensure the volume of cases covered by the Pilot Program remains relatively small. Furthermore, the applicants covered by the Pilot Program would not be eligible for visas unless a consular officer or the Department exercises discretion to recommend a waiver of inadmissibility and DHS, at its discretion, grants the waiver. Selecting this criterion for the Pilot Program is not arbitrary; the covered applicants (those requiring a DHS waiver of inadmissibility) are distinguishable from other applicants issued visas in accordance with U.S. law, because their actions or particular circumstances rendered them otherwise ineligible for visas.

C. B–1/B–2 Visa Applicants Only

Although INA section 221(g)(3) (8 U.S.C. 1201(g)(3)), authorizes consular officers to require visa bonds from applicants for B–1/B–2 visas and F (student) visas, the Pilot Program is limited to B–1/B–2 visa applicants, because their authorized period of stay after admission to the United States is fixed by DHS Customs and Border Protection (CBP) officers at the port of entry and typically lasts a matter of months, with a maximum of one year for business visitors pursuant to 8 CFR 214.2(b)(1), and typically six months for tourists, in accordance with 8 CFR 214.2(b)(2). In contrast, F visa applicants generally are admitted for the duration of their status, pursuant to 8 CFR 214.2(f)(5), which commonly is multiple years. Because the Pilot Program will last only six months, F–1 nonimmigrant students, who are in most cases likely to be authorized to remain in the United States for multiple years, would be unlikely to complete the bond cycle (which ends with cancellation or breach of the bond), during the six-month duration of the Pilot Program. To help assess whether the bond process is operationally feasible, the Department needs the results of State and DHS experience at all stages of the bond process. B–1/B–2 visas issued to applicants covered by the Pilot Program will be annotated to reflect the visa bond requirement. That annotation may be taken into account by CBP when considering the appropriate authorized period of admission.

D. Bond Waiver Authority

Section 41.11(c)(3) of the Department's regulations in title 22 CFR grants the Deputy Assistant Secretary for Visa Services discretionary authority to waive the bond requirement, for an alien or a category of aliens, if the Deputy Assistant Secretary assesses that a waiver would not be contrary to the national interest. Waivers may be recommended by consular officers, if they believe a waiver would advance a humanitarian interest, based on the applicant's stated purpose of travel, or a national interest, based on the stated purpose of travel and the applicant's employment. Because all visa applicants will be presumed to want a waiver of the bond requirement, and because the only information that might be provided by an applicant that would be relevant to a waiver decision is the applicant's purpose of travel and possibly employment, which already is requested from all applicants, there will be no bond waiver application process.

E. Bond Amounts

In accordance with the statutory and regulatory framework described above, the Department, through consular officers, has broad authority to require a visa applicant to post a bond in such sum and with such conditions as would help ensure thealien's timely departure from the United States. To promote the efficiency of the Pilot Program and avoid arbitrary and inconsistent bond amounts, the Department is setting guidelines for the bond amount. Because INA section 221(g)(3) (8 U.S.C. 1201(g)(3)), indicates consular officers must consider each visa applicant's personal circumstances in setting the bond amount, by its reference to the consular officer prescribing a bond's sum and conditions to be sufficient to insure ''such alien will depart from the United States'' in a timely manner, the Department is providing consular officers three options for bond amounts: $5,000, $10,000, and $15,000. The Department believes these three levels will provide consular officers sufficient discretion to require, in each case, a bond in an amount that is sufficiently large to insure the applicant does not overstay, but not so burdensome as to be unpayable, taking into account the visa applicant's circumstances.

Consular officers will be expected to set the bond amount at $10,000, unless the officer has reason to believe the visa applicant's circumstances would render the applicant unable to pay that amount (but yet remain sufficiently financed to pay all travel expenses through the period of intended stay in the United States), in which case the bond would be set at $5,000. Alternatively, if the applicant's circumstances, including the nature and extent of the applicant's contacts in the United States, would suggest a $10,000 bond would not be sufficient to insure the applicant would timely depart the United States, the officer would require a $15,000 bond as a condition of visa issuance. In making such determinations, consular officers will take into account the totality of the circumstances, including any information provided by the visa applicant on the visa application or in the visa interview regarding the applicant's purpose of travel, current employment, income, skills, and education.

The consular officer's three options for bond amounts were set following consultations with DHS. In setting the amounts, the Department took into consideration costs associated with removal, including the full Immigration Enforcement Lifecycle cost (including mission support costs) ending with removal, as computed by DHS at approximately $14,000 per alien, and the total cost per alien associated with just the removal process, computed by DHS as $2,194. The Department viewed these costs as relevant, because an alien who overstays his or her visa and must be removed requires the U.S. government to incur immigration enforcement-related costs that otherwise would not be incurred. For the purposes of the Pilot Program, an alien who breaches a bond would generally forfeit the obligor's bond amount, which could be used, in part, to reimburse the U.S. government for expenses incurred in the collection of breached bonds and for expenses associated with the detention of illegal aliens, necessitated by the alien overstaying his or her visa.[23] DHS/ICE will collect all bonds and retain the funds, as appropriate, in the instance that a bond is breached.

F. Duration of Pilot Program

The Department will conduct the Pilot Program for six months, beginning on December 24, 2020. The Department determined, in consultation with DHS, that six months is an adequate period to ensure that multiple visa applicants will have completed the full bond cycle, from the visa interview, through travel to the United States, to a final determination of bond cancellation or breach. Experience with each of the steps of the bond cycle is necessary to assess the operational feasibility of posting, processing and discharging a visa bond, in coordination with the Department of Homeland Security. Following the end of the six-month period of the Pilot Program, consular officers no longer will require the posting of bonds based on the guidance set out in this TFR; however, any visa bonds posted as part of the Pilot Program will remain in effect until either breached or cancelled, in accordance with terms and conditions set out on ICE Form I–352, *Immigration Bond,* even after the six-month period has ended.

V. Visa Bond Procedures Under the Pilot Program

Following a visa interview, a consular officer will determine if an applicant is otherwise eligible for a visa following the approval of a waiver of inadmissibility by DHS under INA section 212(d)(3) (8 U.S.C. 1182(d)(3)), and if the applicant falls within the scope of the Pilot Program. If the consular officer does not have reason to believe a waiver of the bond requirement would advance a significant national interest or humanitarian interest, based on the applicants purpose of travel and employment, as described in the visa application and during the visa interview, then the consular officer will inform the applicant of the bond requirement and the amount of the required bond, whether $5,000, $10,000, or $15,000. The officer will present to the applicant: (1) A notice generally explaining the bond requirement and procedures for posting a cash bond or arranging for a U.S. Government-approved surety company to post the bond on the applicant's behalf and (2) ICE Form I–352, *Immigration Bond.* DHS regulations at 8 CFR 103.6 currently provide for the posting, processing, and cancellation of such visa bonds.

After advising an applicant that he or she must post a bond, the consular officer will deny the visa under INA section 221(g) (8 U.S.C. 1201(g)), but that denial may be overcome if a bond in the required amount is duly posted with ICE on the visa applicant's behalf. After being informed by DHS that a bond has been posted, the consular section where the visa applicant applied will rely on contact information provided by the applicant to contact the applicant regarding the final process to complete the visa adjudication. If the consular officer subsequently determines the applicant remains otherwise eligible for a visa, taking into account the DHS approval of a waiver of inadmissibility under INA section 212(d)(3) (8 U.S.C. 1182(d)(3)), the officer will issue the visa, valid for a single entry within three months of the date of visa issuance, with an annotation indicating the posting of a visa bond. This limited visa validity period is necessary to increase the likelihood travel is completed within a time frame conducive to data gathering from the Pilot Program. The visa annotation will alert CBP officers at ports of entry that the applicant is covered by the Pilot Program. If, upon further review, the consular officer determines the applicant is not eligible for the requested visa for reasons not covered by the waiver granted by DHS relative to the current visa application, the consular officer will deny the visa and the obligor on the bond will be entitled to cancellation of the visa bond.

Following the timely departure from the United States of a visa holder for whom a bond was posted, the visa holder may pursue cancellation of the bond. A visa bond will be canceled if the visa holder substantially performs with respect to the terms and conditions of the bond as set forth in paragraph G(4) of Form I–352. Conversely, a visa bond will be breached when there has been a substantial violation of the terms and conditions set forth in paragraph G(4) of Form I–352. There are various ways a visa holder may demonstrate substantial performance of the terms and condition of the bond. For example, visa holders who present themselves to consular officials outside of the United States within 30 days of their departure from the United States, confirm their

[23] 8 U.S.C. 1356(r)(3).

identify, and provide information demonstrating that they departed the United States on or before the expiration of their authorized period of stay will have substantially complied with the visa bond requirements, so long as they maintained the conditions of their status while admitted to the United States. Where a visa holder pursues that course, information received by the consular officer will be forwarded to ICE, which is responsible for determinations of whether a bond has been breached pursuant to 8 CFR 103.6(c)(3), based on whether there has been ''substantial performance'' of all the terms and conditions of the bond.

When presenting themselves to consular officials outside the United States, visa holders may confirm their identity by presenting a passport and responding to such questions as the consular officer deems necessary to confirm identity. There are no particular documents required to demonstrate timely departure from the United States.[24] An obligor on a visa bond also may request bond cancellation once the visa expires, if the visa holder did not travel to the United States. Generally, pursuant to 8 CFR 103.6(c)(3), the bond should be canceled when there has been ''substantial performance of all conditions imposed by the terms of the bond.'' The obligor on any canceled cash bond will be entitled to a full refund, along with any accrued interest. If a visa holder for whom a bond was posted fails to substantially comply with the terms and conditions set forth in paragraph G(4) of Form I–352, the bond will be considered breached, and the amount deposited as security for the bond with ICE will be forfeited. If the bond is breached, the bond obligor will still receive the amount of any accrued interest on the cash bond.

Following the end of the six-month period of the Pilot Program, consular officers no longer will require the posting of bonds based on the guidance set out in this TFR; however, any bonds posted under the Pilot Program will remain in effect until either breached or cancelled in accordance with their terms of issuance.

For visa applicants required to post a visa bond, an ICE Form I–352 must be submitted to, and approved by, ICE. All terms and conditions set out on ICE Form I–352 applicable to visa bonds shall apply. The obligor on the bond, whether a person who posts a cash bond on behalf of the visa applicant or a surety company that posts the bond, will be informed if the visa applicant fails to comply with the terms of the visa bond and, consequently, the bond has been breached. The procedures for determining and enforcing a breach are set out on ICE Form I–352 and in DHS regulations, including 8 CFR 103.6.

Appeal of a Bond Breach Determination

The rights relating to the appeal of an ICE determination of a bond breach, including which rights would accrue after ICE issues a breach determination on Form I–323, are detailed in the instructions on ICE Form I–352 and USCIS Form I–290B.

VI. Regulatory Findings

Administrative Procedure Act (APA)

This temporary final rule is exempt from notice and comment under the foreign affairs exception of the Administrative Procedure Act (APA), 5 U.S.C. 553(a). This temporary final rule codifies a necessary change to U.S. foreign policy, including its visa policy. In the *Presidential Memorandum,* President Trump referred to countries with overstay rates greater than ten percent in the combined B–1 and B–2 nonimmigrant visa category, based on the DHS FY 2018 Overstay Report, as having high overstay rates and ordered the Secretary of State to take action to address those high overstay rates, in consultation with the Attorney General and the Secretary of Homeland Security. *See Presidential Memorandum* at Section 2. Reducing the incidence of aliens remaining in the United States beyond their authorized period of stay has, particularly since issuance of the *Presidential Memorandum,* involved worldwide diplomatic engagement between the United States and foreign governments. The subject matter of this temporary final rule directly involves a foreign affairs function of the United States, directly implicating relationships between the United States and the specific countries whose nationals may be subject to the Pilot Program. The Pilot Program is being studied as a potential diplomatic tool to encourage foreign governments to take all appropriate actions to ensure that their nationals timely depart the United States after making temporary visits. Therefore, this temporary final rule clearly and directly impacts the foreign affairs functions of the United States and ''implicat[es] matters of diplomacy directly.'' *City of N.Y.* v. *Permanent Mission of India to the U.N.,* 618 F.3d 172, 202 (2d Cir. 2010).

The foreign-affairs exception covers the temporary final rule, as it is ''linked intimately with the Government's overall political agenda concerning relations with another country.'' *Am. Ass'n of Exporters & Importers-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985).

The Pilot Program is a tool of diplomacy to influence actions by certain foreign governments that are a high priority of the President, as reflected in the *Presidential Memorandum,* and important to the relationship between the United States and those countries. By requiring visa bonds for certain visa applicants from the listed countries with overstay rates for B–1/B–2 visa holders that are ten percent or higher, the Pilot Program aims to encourage those countries to cooperate with the United States in ensuring timely departure of their citizens/nationals from the United States. The Department's focus on these countries will demonstrate the United States' intolerance of high overstay rates and encourage the foreign governments to cooperate in addressing overstays by their nationals. Accordingly, this temporary final rule is properly viewed as one that ''clearly and directly involve[s] activities or actions characteristic to the conduct of international relations.'' *Capital Area Immigrants' Rights Coal.* v. *Trump,* No. CV 19–2117, 2020 WL 3542481,*18 (D.D.C. June. 30, 2020).

Additionally, undesirable international consequences would follow if the temporary final rule were subjected to a notice and comment period, because a limited number of countries had an overstay rate of ten percent or higher in FY 2019, so notice and comment would invite those countries to publish views on matters that are sensitive and inherently governmental, and require a public response from the U.S. government to country-specific concerns. Thus, opening the temporary final rule to

[24] While no particular documents are required to demonstrate timely departure, travelers may present to the consular officer a variety of information, including but not limited to:

1. Original boarding passes used to depart the United States;

2. Photocopies of entry or departure stamps in a passport indicating entry to another country after departure from the United States (the traveler should copy all passport pages that are not completely blank, and include the biographical page containing his or her photograph); and

3. Photocopies of other supporting evidence, such as:

a. Dated pay slips or vouchers from an employer to indicate work in another country after departure from the United States,

b. Dated bank records showing transactions to indicate presence in another country after departure from the United States,

c. School records showing attendance at a school outside the United States after departure from the United States, and

d. Dated credit card receipts showing the traveler's name, with the credit card number deleted, for purchases made after leaving the United States.

notice and comment would likely lead to ''the public airing of matters that might enflame or embarrass relations with other countries.'' *Zhang* v. *Slattery,* 55 F.3d 732, 744 (2d Cir. 1995), *superseded on other grounds by statute,* 8 U.S.C. 1101(a)(42).

Regulatory Flexibility Act/Executive Order 13272: Small Business

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires agencies to perform an analysis of the potential impact of regulations on small entities when regulations are subject to the notice and comment procedures of the APA. Because this temporary final rule is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Furthermore, this temporary final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act, as amended, is not required.

Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This temporary final rule does not require the Department to prepare a statement because it will not result in any such expenditure, nor will it significantly or directly affect small governments, including State, local, or tribal governments, or the private sector. This temporary final rule involves visas for aliens, and does not directly or substantially affect State, local, or tribal governments, or businesses.

Congressional Review Act of 1996

The Office of Information and Regulatory Affairs has determined that this temporary final rule is not a major rule as defined in 5 U.S.C. 804, for purposes of congressional review of agency rulemaking. This temporary final rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. This rule allows the Department to set out the scope and procedures for a Pilot Program under which consular officers will require a visa bond in the amount of $5,000, $10,000, or $15,000, as determined appropriate by the consular officer as a condition of visa issuance for certain aliens applying for visas as temporary visitors for business or pleasure (B–1/B–2). The Pilot Program is designed to assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with the Department of Homeland Security (DHS), including the burden it will place on the government and the challenges associated with implementation of a bond program. It is not designed to assess the effectiveness of visa bonds in effectuating timely departure from the United States. The result will inform any future decision on the possible use of visa bonds for combatting high nonimmigrant visa overstays which is a priority announced in the *Presidential Memorandum on Combating High Nonimmigrant Overstay Rates* issued on April 22, 2019.

Based on a review of visa statistics from recent years, the Department has determined that the number of nonimmigrants expected to fall within the scope of the Pilot Program will not be greater than 200 to 300. That estimate is based on normal travel conditions, with the actual number likely to be lower if travel is limited due to executive actions or unusual and unpredictable circumstances. If visa bonds are required for 300 visa applicants, and the average bond is $10,000 (from options of $5,000, $10,000, and $15,000), the initial cost of bonds will be $3,000,000. However, assuming all nonimmigrants for whom bonds are posted comply with the terms and conditions of the bond, the actual bond amount is a temporary expenditure that will be fully refunded, with applicable interest, if cash bonds are posted. If surety bonds are posted, then the cost to nonimmigrants for whom bonds must be posted would depend on the contractual arrangements underlying each surety bond. Due to the lack of precedent for this visa bond program, the Department does not have data to substantiate any estimate of the cost to nonimmigrants for whom surety bonds are posted; however, the maximum possible amount likely would be the full amount of the average bond multiplied by the maximum estimated number of visa applicants subject to the bond, for a total of $3,000,000, if surety companies were to charge 100 percent of the bond amount and all applicants posted surety bonds, rather than cash bonds.

The estimated amount of time needed for an average respondent to complete ICE Form I–352 is thirty minutes (.50 hours) per response. See 84 FR 44913. The estimated additional time burden associated with this temporary final rule for visa applicants, who will have to complete an ICE Form I–352, arrange for the posting of a bond, and return to a consular section following their departure from the United States, is two hours. Using the average hourly wage for all private, non-farm, payrolls as calculated by the Bureau of Labor Statistics for March 2019, $27.70, multiplied by a factor of 1.479 (to account for overhead costs) gives a fully-loaded wage of $40.97. That wage multiplied by the estimated time burden of two hours per visa applicant for 300 applicants yields a total burden on applicants of $24,582 in time plus up to $3,000,000 for bond costs, for a total to applicants of $3,024,582.

During the time that this temporary final rule is in effect, surety companies will need to learn about the Pilot Program and its requirements. The Department consulted DHS representatives to benefit from their experience in this area and, based on that consultation, estimates and assumes that: each Treasury-certified surety company currently issuing immigration bonds will conduct a regulatory review; this task is equally likely to be performed by either an in-house attorney or by a non-attorney at each surety company; it will take eight hours for the regulatory review by either an in-house attorney or a non-attorney, such as an insurance agent (or equivalent), at each surety. To calculate the familiarization costs, the estimated review time of eight hours was multipled by the average hourly loaded wage rate of an attorney and an insurance agent, $73.26.[25] The

[25] This represents an average of an in-house attorney's fully loaded hourly wage rate and an insurance agent's fully loaded hourly wage rate. Bureau of Labor Statistics, Occupational Employment Statistics May 2018, Standard Occupational Code 23–1011 Lawyers, Mean hourly wage $69.34, *http://www.bls.gov/oes/2018/may/oes231011.htm.* The fully loaded wage rate is calculated using the percentage of wages to total compensation, found in the Bureau of Labor Statistics, Employer Costs for Employee Compensation June 2018, Table 5. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: private industry workers, by major occupational group, Management, Professional, and related Group,

Continued

familiarization cost per surety company was calculated to be $586.08 (8 hours × $73.26). For FY 2019, nine sureties posted immigration bonds with ICE. The total estimated regulatory familiarization cost for all sureties currently issuing immigration bonds was calculated to be $5,275 ($73.26 × 8 hours × 9 sureties).

The total Government cost associated with this rule is $70,911. That amount includes printing costs, the collection and processing burden for each form, and additional work from consular officers. The total printing costs equates to $225, which is estimated by multiplying the maximum number of aliens subject to the Pilot Program under the temporary rule (300) by the cost of printing two forms per response for $0.75. The collection and processing of each Form I–352 takes an average of 6 hours and will be conducted by a government employee with an average hourly wage plus overhead estimated to be $28.02. The total cost to the government of collecting and processing the ICE Form I–352 for bonds issued under this temporary final rule, including costs associated with appeals, cancellation or bond breach, is estimated to be $50,436 ($28.02 × six hours × 300 bonds). The estimated additional time a consular officer with an average hourly wage of $135 will expend for each case subject to a bond is 30 minutes. The total cost associated with additional work from consular officers is estimated to be $20,250. If a traveler breaches a surety bond posted pursuant to this temporary final rule, ICE will incur some cost in collecting on the bond. Because ICE has no reliable basis for estimating the number of travelers that will post surety bonds, as opposed to cash bonds, or the percentage of travelers posting bonds who will breach the terms of the bond, ICE is unable to estimate the cost associated with enforcing bond breaches. Each agency will bear the costs associated with the activities of its personnel.

The Office of Management and Budget (OMB) has determined that this is a significant, though not economically significant, regulatory action under Executive Order 12866. As such, OMB has reviewed this regulation accordingly.

Executive Order 13563

Along with Executive Order 12866, Executive Order 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). The Department has reviewed the temporary final rule under Executive Order 13563 and has determined that this rulemaking is consistent with the guidance therein.

Executive Orders 12372 and 13132—Federalism

This temporary final rule 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. Nor will the temporary final rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Executive Order 12988—Civil Justice Reform

The Department has reviewed the temporary final rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771 directs all agencies to repeal at least two existing regulations for each new regulation issued in FY 2017 and thereafter. It further directs agencies that the ''total incremental costs of all regulations should be no greater than zero'' in FY 2017 and, for subsequent years, no greater than a total amount of incremental costs that the director of the Office of Management and Budget (OMB) determines. This temporary final rule is exempt from the Executive Order, however, because it is *de minimis.*

Paperwork Reduction Act

This temporary final rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Department of State will rely on form I–352 from the Department of Homeland Security, OMB Control Number 1653–0022, to implement the provisions of this rule. The Department of Homeland Security has accounted for this use of the form in its information collection requests to the Office of Management and Budget.

List of Subjects in 22 CFR Part 41

Administrative practice and procedure, Aliens, Passports and visas.

For the reasons stated in the preamble, the Department amends 22 CFR part 41 as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1101; 1102; 1104; 1182; 1184; 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295); 1323; 1361; 2651a.

■ 2. Amend § 41.11 by adding paragraph (c) to read as follows:

§ 41.11 Entitlement to nonimmigrant status.

* * * * *

(c) *Visa Bond Pilot Program*—(1) *Summary.* This paragraph (c) establishes a pilot program (Visa Bond Pilot Program) implementing section 221(g)(3) of the Immigration and Nationality Act (INA). Under the Visa Bond Pilot Program, consular officers will require a Maintenance of Status and Departure Bond (Visa Bond) be posted with the U.S. Department of Homeland Security, as a condition of visa issuance, for certain visa applicants.

(2) *Visa Bond Pilot Program parameters.* Under the Visa Bond Pilot Program, consular officers will require Visa Bonds be posted by visa applicants who meet the following three criteria:

(i) Apply for a B–1 and/or B–2 nonimmigrant visa;

http://www.bls.gov/news.release/archives/ecec_09182018.pdf. Wages are 68.7 percent of total compensation. $100.93 = $69.34/0.687. Bureau of Labor Statistics, Occupational Employment Statistics May 2018, Standard Occupational Code 41–3021 Insurance Sales Agents, Mean hourly wage $32.64, *http://www.bls.gov/oes/2018/may/oes413021.htm.* The fully loaded wage rate is calculated using the percentage of wages to total compensation, found in the Bureau of Labor Statistics, Employer Costs for Employee Compensation June 2018, Table 5. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: private industry workers, by major occupational group, Sales and Office Occupational Group, *http://www.bls.gov/news.release/archives/ecec_09182018.pdf.* Wages are 71.6 percent of total compensation. $45.59 = $32.64/0.716. $73.26 = ($45.59 + $100.93)/2.

(ii) Are nationals of one of the following countries, which had an overstay rate of ten percent or higher in Fiscal Year 2019, according to the DHS FY 2019 Overstay Report, *https://www.dhs.gov/publication/entryexit-overstay-report,* for B–1/B–2 visa applicants: Afghanistan, Angola, Bhutan, Burkina Faso, Burma, Burundi, Cabo Verde, Chad, Democratic Republic of the Congo (Kinshasa), Djibouti, Eritrea, the Gambia, Guinea-Bissau, Iran, Laos, Liberia, Libya, Mauritania, Papua New Guinea, Sao Tome and Principe, Sudan, Syria, and Yemen; and

(iii) Are granted a DHS waiver of inadmissibility under INA section 212(d)(3)(A) prior to visa issuance. Consular officers will set the Visa Bond amount at $5,000, $10,000, or $15,000, based on a consular officer's assessment of which amount is sufficient to ensure the alien will not remain in the United States beyond the end of the alien's authorized period of stay, while not exceeding what the alien can pay. Visas issued under the Visa Bond Pilot Program will be valid for a single entry to the United States within three months of the date of visa issuance.

(3) *Bond waiver authority.* The Deputy Assistant Secretary for Visa Services may waive the bond requirement, for an alien, country, or a category of aliens, if the Deputy Assistant Secretary assesses that such a waiver is not contrary to the national interest. A waiver of the bond requirement may be recommended to the Deputy Assistant Secretary for Visa Services by a consular officer where the consular officer has reason to believe the waiver would advance a national interest or humanitarian interest. There will be no procedure for visa applicants to apply for a waiver of the bond requirement. Consular officers will determine whether a waiver would advance a significant national interest or humanitarian interest based on the applicants purpose of travel and employment, as described in the visa application and during the visa interview.

(4) *Bond procedures.* A Visa Bond required under paragraph (c) of this section must be submitted to and approved by DHS. Upon the posting of such bond, DHS will notify the appropriate consular section overseas. Under this Visa Bond Pilot Program, Visa Bonds will be administered by U.S. Immigration and Customs Enforcement (ICE) in accordance with regulations, procedures, and instructions promulgated by DHS applicable to ICE Form I–352, *Immigration Bond.* A Visa Bond will be canceled when a visa holder substantially performs with respect to the terms and conditions of the Visa Bond as set forth in paragraph G(4) of Form I–352. Conversely, a Visa Bond will be breached when there has been a substantial violation of the terms and conditions set forth in paragraph G(4) of Form I–352. To demonstrate that they performed within the bond requirements, visa holders may, for example, schedule an appointment at a consular section outside the United States within 30 days of their departure from the United States and, after establishing their identity through personal appearance and presentation of a passport, provide information to a consular officer confirming they departed the United States on or before the expiration of their authorized period of stay. Upon doing so, visa holders will have substantially performed bond requirements, provided they maintained the conditions of their status while admitted to the United States. Visa holders who do not appear at a consular section still may ensure cancellation of the bond if the visa holder substantially complies with the terms and conditions of the Visa Bond as set forth in paragraph G(4) of Form I–352 and provides ICE probative documentation of timely departure, if required. Visa holders who timely file an application for extension of stay or change of status are not deemed to be in breach of bond.

(5) *Appeal of bond breach determination.* A determination of a breach bond may be appealed in accordance with instructions on the applicable DHS forms governing bond breach determinations and appeal rights.

(6) *Effect on other law.* Nothing in this paragraph (c) shall be construed as altering or affecting any other authority, process, or regulation provided by or established under any other provision of Federal law.

Carl C. Risch,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2020–24223 Filed 11–23–20; 8:45 am]

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Copyright Royalty Board

37 CFR Part 381

[Docket No. 20–CRB–0011–PBR (2018–2022) COLA (2021)]

Cost of Living Adjustment to Public Broadcasters Compulsory License Royalty Rate

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) to the royalty rate that noncommercial radio stations at certain colleges, universities, and other educational institutions that are not affiliated with National Public Radio must pay for the use in 2021 of published nondramatic musical compositions in the SESAC repertory pursuant to the statutory license under the Copyright Act for noncommercial broadcasting.

DATES:

Effective date: December 9, 2020.

Applicability dates: These rates are applicable to the period beginning January 1, 2021, and ending December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Assistant, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, title 17 of the United States Code, creates a statutory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting.

On January 19, 2018, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under section 118 of the Copyright Act for the license period 2018–2022. *See* 83 FR 2743. Pursuant to these regulations, on or before December 1 of each year, the Judges shall publish in the **Federal Register** notice of the change in the cost of living and a revised schedule of the rates codified at § 381.5(c)(3) relating to compositions in the repertory of SESAC. The adjustment, fixed to the nearest dollar, shall be the greater of (1) the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) (''CPI–U'') ''during the period from the most recent index published prior to the previous notice to the most recent index published prior to December 1, of that year'' or (2) 1.5%. 37 CFR 381.10.

The change in the cost of living as determined by the CPI–U during the period from the most recent index published prior to the previous notice, *i.e.,* before December 1, 2019, to the most recent index published before December 1, 2020, is 1.2%.[1] In

[1] On November 12, 2020, the Bureau of Labor Statistics announced that the CPI–U increased 1.2% over the last 12 months.

accordance with 37 CFR 381.10(b), the Judges announce that the COLA for calendar year 2021 shall be 1.5%. Application of the 1.5% COLA to the 2020 rate for the performance of published nondramatic musical compositions in the repertory of SESAC—$162 per station—results in an adjusted rate of $164 per station.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Final Regulations

In consideration of the foregoing, the Judges amend part 381 of title 37 of the Code of Federal Regulations as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1), and 803.

■ 2. Section 381.5 is amended by revising paragraph (c)(3)(iv) to read as follows:

§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(3) * * *

(iv) 2021: $164 per station.

* * * * *

Dated: November 17, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2020–25741 Filed 11–23–20; 8:45 am]

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Copyright Royalty Board

37 CFR Part 386

[Docket No. 20–CRB–0012–SA–COLA (2021)]

Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 1.2% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2019 to October 2020.

DATES:

Effective date: December 9, 2020.

Applicability dates: These rates are applicable to the period January 1, 2021, through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Assistant, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The satellite carrier compulsory license establishes a statutory copyright licensing scheme for the distant retransmission of television programming by satellite carriers. 17 U.S.C. 119. Congress created the license in 1988 and reauthorized the license for additional five-year periods until 2019 when it made the license permanent.[1]

On August 31, 2010, the Copyright Royalty Judges (Judges) adopted rates for the section 119 compulsory license for the 2010–2014 term. *See* 75 FR 53198. The rates were proposed by Copyright Owners and Satellite Carriers[2] and were unopposed. *Id.* Section 119(c)(2) of the Copyright Act provides that, effective January 1 of each year, the Judges shall adjust the royalty fee payable under Section 119(b)(1)(B) ‘‘to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) [CPI–U] published by the Secretary of Labor before December 1 of the preceding year.’’ Section 119 also requires that ‘‘[n]otification of the adjusted fees shall be published in the **Federal Register** at least 25 days before January 1.’’ 17 U.S.C. 119(c)(2).

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2019, to the most recent index published before December 1, 2020, is 1.2%.[3] Application of the 1.2% COLA to the current rate for the secondary transmission of broadcast stations by satellite carriers for private home viewing—30 cents per subscriber per month—results in an unchanged rate of 30 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(1). Application of the 1.2% COLA to the current rate for viewing in commercial establishments—60 cents per subscriber per month—results in a rate of 61 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(2).

[1] The most recent five-year reauthorization was pursuant to the STELA Reauthorization Act of 2014, Public Law 113–200. The license was made permanent by the Satellite Television Community Protection and Promotion Act of 2019, Public Law 116–94, div. P, title XI, § 1102(a), (c)(1), 133 Stat. 3201, 3203.

[2] Program Suppliers and Joint Sports Claimants comprised the Copyright Owners while DIRECTV, Inc., DISH Network, LLC, and National Programming Service, LLC, comprised the Satellite Carriers.

[3] On November 12, 2020, the Bureau of Labor Statistics announced that the CPI–U increased 1.2% over the last 12 months.

List of Subjects in 37 CFR Part 386

Copyright, Satellite, Television.

Final Regulations

In consideration of the foregoing, the Judges amend part 386 of title 37 of the Code of Federal Regulations as follows:

PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 17 U.S.C. 119(c), 801(b)(1).

■ 2. Section 386.2 is amended by adding paragraphs (b)(1)(xii) and (b)(2)(xii) to read as follows:

§ 386.2 Royalty fee for secondary transmission by satellite carriers.

* * * * *

(b) * * *

(1) * * *

(xii) 2021: 30 cents per subscriber per month.

(2) * * *

(xii) 2021: 61 cents per subscriber per month.

Dated: November 17, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2020–25742 Filed 11–23–20; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0001; FRL–10016–41 Region 4]

Air Plan Approval; NC; Blue Ridge Paper SO_2 Emission Limits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a source-specific State Implementation Plan (SIP) revision submitted by the State of North Carolina Department of Environmental

Quality, Division of Air Quality (DAQ), in final form, through a letter dated September 3, 2020. North Carolina's September 3, 2020, source-specific SIP revision requests that EPA incorporate into the SIP more stringent sulfur dioxide (SO_2) permit limits than those currently contained in the SIP for the Blue Ridge Paper Products, LLC (also known as BRPP) facility located in the Beaverdam Township Area of Haywood County, North Carolina. Specifically, EPA is approving, into the SIP, specific SO_2 permit limits and associated operating restrictions, monitoring, recordkeeping, reporting (MRR) and testing compliance requirements established in BRPP's title V operating permit as permanent and enforceable SO_2 control measures. North Carolina submitted these limits to support its recommendation that EPA designate the Beaverdam Township Area as ''attainment/unclassifiable'' under the 2010 primary SO_2 national ambient air quality standard (NAAQS or standard) (also referred to as the 2010 1-hour SO_2 NAAQS). The purpose of this rulemaking is not to take action on whether these SO_2 emissions limits are adequate for EPA to designate the Beaverdam Township Area as attainment under the 2010 1-hour SO_2 NAAQS. Instead, EPA will determine the air quality status and designate remaining undesignated areas for the 2010 1-hour SO_2 NAAQS, including the Beaverdam Township Area, in a separate action. This SIP approval does not prejudge that future designation action.

DATES: This rule is effective November 24, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0001. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

I. Background

On June 24, 2020, North Carolina submitted a draft source-specific SIP revision through parallel processing to EPA for approval. Specifically, North Carolina's June 24, 2020, draft SIP revision requested EPA incorporate specific SO_2 permit limits and associated operating restrictions, MRR, and testing compliance parameters contained in title V operating permit number 08961T29 (T29) issued to BRPP [1] by DAQ, on June 2, 2020, into the North Carolina SIP to establish these emission limits and parameters as permanent federally enforceable control measures and strengthen the North Carolina SIP. BRPP is a subsidiary of Evergreen Packaging and is located in the City of Canton in Beaverdam Township, Haywood County, North Carolina, 25 kilometers west of Asheville, North Carolina.

In a notice of proposed rulemaking (NPRM) published on August 31, 2020 (85 FR 53715), EPA proposed to approve North Carolina's June 24, 2020, draft source-specific SIP revision. In this action, EPA is now finalizing approval of North Carolina's source-specific SIP revision for BRPP which was submitted in final form on September 3, 2020. EPA reviewed the final submission, and it contains no substantive changes to North Carolina's June 24, 2020, draft source-specific SIP revision that EPA proposed to approve in the August 31, 2020, NPRM. Table 1 below lists the emissions limits to be incorporated in the North Carolina SIP for BRPP.[2]

TABLE 1—PERMIT T29 SO_2 EMISSION LIMITS FOR INCORPORATION INTO THE NORTH CAROLINA SIP

Emission unit ID	Emission unit description	SO_2 Permitted emission limit Title V permit No. 08961T29 (lb/hr)*
G08020	No. 10 Recovery Furnace-BLS-normal Operation	28.0
	No. 10 Recovery Furnace-ULSD—startup and shutdown	0.54
G08021	No. 11 Recovery Furnace-BLS—normal operation	28.0
	No. 11 Recovery Furnace-ULSD—startup and shutdown	0.54
G09028	No. 4 Lime Kiln	6.28
G09029	No. 5 Lime Kiln	10.47
G11039	Riley Coal Boiler	61.32
G11040	No. 4 Power Boiler	82.22
G11042	Riley Bark Boiler	68.00

*lb/hr = pounds per hour; BLS = black liquor solids; and ULSD = ultra low sulfur diesel.

[1] BRPP is a vertically integrated pulp and paper mill that produces specialty paperboard packaging products. BRPP's primary operations are classified under North American Industry Classification System 322121 (Paper Except Newsprint Mills). The facility utilizes multiple boilers to produce steam for energy generation and provide heat for the pulping and paper making processes.

[2] More detail on the emission units, emission limits, and operating, MRR, and testing requirements are provided in the August 31, 2020, NPRM. *See* 85 FR 53715.

The August 31, 2020, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the August 31, 2020, NPRM were due on or before September 30, 2020.

II. Response to Comments

EPA received five comments on the August 31, 2020, NPRM, all of which are included in the EPA docket under Docket Identification No. EPA–R04–OAR–2020–0001. All five comments are generally supportive of the stricter SO_2 emission limits and EPA's action to approve SO_2 emission limits and compliance parameters into the North Carolina SIP. One commenter also expressed their satisfaction with air permits and how they believe they prove to be an efficient way to limit SO_2 emissions. Furthermore, the BRPP facility provided comments in support of EPA's proposed action. EPA summarizes and responds to one specific comment below to provide clarification.

Comment: One commenter stated that the stricter SO_2 limits at the BRPP facility are a ''welcomed sight,'' and that they support the stricter limitations but also notes, ''The implementation of continuous monitoring devices is paramount for such standards to be met.'' The commenter also states that the limits ''although relatively strict, should strive to become more strict as there were no restrictions for SO_2 prior'' and that the limits should be monitored periodically to reduce emissions rather than wait until new equipment is added.

Response: EPA appreciates the commenter's support of the new SO_2 emission limits to strengthen the North Carolina SIP. Regarding the commenter's statements concerning monitoring, EPA notes that the permit conditions for five of the seven emission units at BRPP that EPA is incorporating into the North Carolina SIP require continuous monitoring to ensure proper operation of associated emissions control equipment and continuous compliance with the SO_2 emission limits.[3] As EPA explained in the August 31, 2020, NPRM, the type of monitoring required for these units is known as parametric monitoring, and it is a common method to ensure continuous compliance with an emissions limit in lieu of continuous direct sampling and monitoring of the subject pollutant. This is a common regulatory approach used in various Federal regulations such as the Maximum Achievable Control Technology standards and New Source Performance Standards.

In BRPP's permit T29, parametric monitoring is required for the five emissions units that use a scrubber to control SO_2 emissions. The parameters that are critical to proper operations of these scrubbers include scrubber liquid flow, pH, and pressure drop as provided in T29 and explained in more detail in the NPRM. T29 includes conditions restricting operating levels for each of the relevant parameters to minimum levels that demonstrate compliance with the underlying SO_2 emission limit as established during performance testing and requires continuous monitoring devices for these parameters. In addition, permit T29 requires periodic testing to confirm that the established operating levels for the relevant parameters continue to demonstrate compliance with the SO_2 emission limits and requires BRPP to comply with any revised operating parameters as needed to demonstrate continuous compliance with the SO_2 emission limits based on such future tests. EPA's final action approves these operating and continuous monitoring requirements and parameters into the North Carolina SIP.

Regarding the commenter's statement that the SO_2 emissions limits should strive to be more strict, states have flexibility in how to structure their SIPs and EPA is required to approve a SIP submission that complies with the provisions of the Clean Air Act (CAA or Act). North Carolina exercised this flexibility in developing its source-specific SIP revision for BRPP, and EPA is approving the SO_2 emissions limits contained therein as a SIP-strengthening measure because they are more stringent than any existing limits for BRPP in the North Carolina SIP and comply with the Act. Should North Carolina submit a SIP revision in the future with revised SO_2 limits, EPA would again evaluate the sufficiency of those limits based on the CAA criteria for approvability.

III. Incorporation by Reference

In this document, EPA is taking final action to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference into North Carolina's SIP the conditions identified below from title V operating Permit No. 08961T29 issued by DAQ to BRPP with an effective date of June 2, 2020. These permit conditions relate to enforcement of and compliance with SO_2 emission limitations at BRPP for seven SO_2 emitting units. Specifically, DAQ has requested EPA incorporate into the North Carolina SIP: (1) Condition 2.2 J.1.b; (2) the lb/hr SO_2 emission limitations in Table 2.2 J.1 for the No. 10 and No. 11 Recovery Furnaces (G08020 and G08021), No. 4 and No. 5 Lime Kilns (G09028 and G09029) and Riley Bark, Riley Coal, and No. 4 Power Boilers (G11042, G11039 and G11040); (3) for the No. 10 and No. 11 Recovery Furnaces (G08020 and G08021)—condition 2.2 J.1.c.i; (4) for No. 4 and No. 5 Lime Kilns (G09028 and G09029)—condition 2.2 J.1.c.iii; condition 2.2 D.1.f.ii; Table 2.2 D–2; condition 2.2 D.1.h; condition 2.2 D.1.i.ii; condition 2.2 D.1.j.ii; conditions 2.2 D.1.l.ii, 2.2 D.1.l.iii, 2.2 D.1.l.iv, 2.2 D.1.l.v, 2.2 D.1.l.vii, and 2.2 D.1.l.viii; condition 2.2 D.1.m; condition 2.2 D.1.n; condition 2.2 D.1.o; and condition 2.2 D.1.p.iii; (5) for the Riley Bark, Riley Coal and No. 4 Power Boilers (G11042, G11039 and G11040)—condition 2.2 J.1.c.vii and Table 2.2 J.2; (6) Testing—condition 2.2 J.1.d, Table 2.2 J.3, and condition 2.2 J.1.e; (7) Recordkeeping—conditions 2.2 J.1.g.i, 2.2 J.1.g.ii, and 2.2 J.1.g.iii; (8) Reporting—conditions 2.2 J.1.h and 2.2 J.1.i. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Final Action

EPA is approving SO_2 emissions limits and associated operating restrictions, MRR, and testing compliance parameters from BRPP's title V operating permit T29 into the North Carolina SIP. EPA confirms that the SO_2 emissions limits and associated operating restrictions, MRR, and testing compliance parameters for BRPP are more stringent than requirements that are currently approved into the North Carolina SIP for BRPP. By incorporating these SO_2 permit limits and associated operating restrictions, MRR, and testing compliance parameters into the North Carolina SIP, these requirements will become permanently federally enforceable and strengthen the North Carolina SIP.

Section 553(d)(3) of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(d)(3), provides that final rules shall not become effective until 30 days after date of publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior

[3] The permit conditions for other two emissions units EPA is incorporating into the North Carolina SIP require fuel usage restrictions and associated recordkeeping to ensure compliance with the SO_2 emissions limits.

before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' Gavrilovic, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately after balancing such considerations. Regarding affording affected persons reasonable time to prepare, BRPP does not need time to prepare for the effective date of this rule because the emissions limits and compliance parameters EPA is incorporating into the SIP are already federally enforceable through the facility's title V permit, and BRRP is already meeting those limits and compliance parameters. Thus, the only consequence of EPA's action is to make the terms and conditions of the permit submitted for SIP approval permanently federally enforceable, which has no immediate impact on BRPP. Regarding necessity for immediate implementation, delaying the effective date of the SIP approval for 30 days after publication in the **Federal Register** risks interfering with EPA's ability to consider these limits and compliance parameters when assessing the most current and accurate information reflecting the air quality status around BRRP in its upcoming final designation decision under the 2010 1-hour SO_2 NAAQS, as that designation decision is due under court order to be signed no later than December 31, 2020. Moreover, it is in the public's interest for EPA's approval and incorporation of these enforceable permit terms to be made permanently federally enforceable immediately. For these reasons, the agency finds that good cause exists under APA section 553(d)(3) to make this rule effective immediately upon publication.

This final rulemaking does not address whether the specific SO_2 permit limits and compliance permit conditions from operating permit T29 are adequate for EPA to promulgate an attainment/unclassifiable designation of the 2010 1-hour SO_2 NAAQS for the Beaverdam Township Area near BRPP. However, final approval of these SO_2 permit limits and associated compliance parameters into the SIP, allows EPA to evaluate a modeling demonstration that these limits provide for attainment as part of the rulemaking on the 2010 1-hour SO_2 NAAQS designation for the Beaverdam Township Area in Haywood County, North Carolina. Final approval of this SIP under CAA section 110, does not prejudge the outcome of EPA's forthcoming designation of the Beaverdam Township Area, as that future determination is occurring as part of a separate rulemaking under CAA section 107 for all remaining undesignated areas in the country.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, if they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These actions are not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 13, 2020.

Mary Walker,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart II—North Carolina

■ 2. In § 52.1770 is amended by adding paragraph (d) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(d) *EPA-Approved North Carolina Source-Specific Requirements.*

EPA-APPROVED NORTH CAROLINA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	**Federal Register** Citation	Explanation
Blue Ridge Paper Products, LLC.	Title V Operating Permit No. 08961T29.	6/2/2020	11/24/2020	[Insert citation of publication in the **Federal Register**].	Only the following provisions: (1) Condition 2.2 J.1.b. (2) The lb/hr SO_2 emission limitations in Table 2.2 J.1 for the No. 10 and No. 11 Recovery Furnaces (G08020 and G08021), No. 4 and No. 5 Lime Kilns (G09028 and G09029) and Riley Bark, Riley Coal, and No. 4 Power Boilers (G11042, G11039 and G11040). (3) No. 10 and No. 11 Recovery Furnaces (G08020 and G08021)—Condition 2.2 J.1.c.i. (4) No. 4 and No. 5 Lime Kilns (G09028 and G09029)—Condition 2.2 J.1.c.iii; Condition 2.2 D.1.f.ii: Table 2.2 D–2; Conditions 2.2 D.1.h, 2.2 D.1.i.ii; 2.2 D.1.j.ii, 2.2 D.1.l.ii, 2.2 D.1.l.iii, 2.2 D.1.1.iv, 2.2 D.1.l.v, 2.2 D.1.l.vii, 2.2 D.1.l.viii, 2.2 D.1.m, 2.2 D.1.n, 2.2 D.1.o, and 2.2 D.1.p.iii. (5) Riley Bark, Riley Coal, and No. 4 Power Boilers (G11042, G11039 and G11040)—Condition 2.2 J.1.c.vii and Table 2.2 J.2. (6) Testing—Condition 2.2 J.1.d, Table 2.2 J.3, and Condition 2.2 J.1.e. (7) Recordkeeping—Conditions 2.2 J.1.g.i, 2.2 J.1.g.ii, and 2.2 J.1.g.iii; (8) Reporting—Conditions 2.2 J.1.h and 2.2 J.1.i.

* * * * *

[FR Doc. 2020–25464 Filed 11–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2019–0678; FRL–10016–45–Region 3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; City of Philadelphia and District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the negative declarations submitted to satisfy the requirements of the Emission Guidelines and Compliance times for Municipal Solid Waste Landfills (MSW) for the City of Philadelphia, located in the Commonwealth of Pennsylvania, and the District of Columbia. The negative declaration certifies that there are no existing facilities in the City of Philadelphia or the District of Columbia that must comply with this rule.

DATES: This final rule is effective on December 24, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0678. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Matthew Willson, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5795. Mr. Willson can also be reached via electronic mail at *Willson.Matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 27, 2020 (85 FR 45154), EPA published a notice of proposed rulemaking (NPRM) for the City of Philadelphia, located in the Commonwealth of Pennsylvania, and the District of Columbia. In the NPRM, EPA proposed approval of negative declarations certifying that there are no existing municipal solid waste landfills in the City of Philadelphia or the District of Columbia that are subject to the requirements of 40 CFR part 60, subpart Cf. The negative declarations were submitted by The City of Philadelphia Air Management Services (AMS) and the District of Columbia Department of Energy and Environment (DOEE) on March 15, 2018 and November 15, 2019, respectively.

Section 111(d) of the Clean Air Act (CAA) establishes standards of performance for certain existing sources. Air pollutants included under this section are those which have not already been established as air quality criteria pollutants via 42 U.S.C. 7408(a) or hazardous air pollutants via 42 U.S.C. 7412. Section 111(d)(1) requires states to submit to EPA for approval a plan that establishes standards of performance. The plan must provide that the state will implement and enforce the standards of performance. A Federal plan is prescribed if a state does not submit a state-specific plan or the submitted plan is disapproved. If a state has no designated facilities for a standards of performance source category, it may submit a negative declaration in lieu of a state plan for that source category according to 40 CFR 60.23a(b) and 62.06.

II. Municipal Solid Waste Landfill Regulations

A MSW landfill is defined in 40 CFR 60.41f as, ''an entire disposal facility in a contiguous geographical space where household waste is placed in or on land.'' Other substances may be placed in the landfill which are regulated under the Resource Conservation and Recovery Act (RCRA) subtitle D, 40 CFR 257.2. MSW landfills emit gases generated by the decomposition of organic compounds or evolution of new organic compounds from the deposited waste. EPA regulations specifically delineate measures to control methane and nonmethane organic compound (NMOC) emissions, which can adversely impact public health.

The Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, as codified at 40 CFR part 60, subpart Cf (subpart Cf, or Emission Guidelines), apply to states with MSW landfills that accepted waste after November 8, 1987 and commenced construction, reconstruction, or modification before July 17, 2014. Such landfills are considered to be ''existing'' landfills. In states with facilities meeting the applicability criteria of an existing MSW landfill, the Administrator of an air quality program must submit a state plan to EPA that implements the Emission Guidelines.

III. Summary of State Submittal and EPA Analysis

AMS and DOEE have determined that there are no MSW landfills in their respective jurisdictions subject to Federal CAA landfill regulations pursuant to 40 CFR part 60, subpart Cf. The aforementioned negative declarations were made pursuant to the requirements at 40 CFR 60.23a(b) and 62.06, certifying that there are no existing source MSW landfills in their respective jurisdictions subject to the requirements of 40 CFR part 60, subpart Cf. A typographical error in the letter from AMS was noted and clarified by Philadelphia AMS in an email on May 1, 2020. A notice of proposed rulemaking was published in the **Federal Register** on July 27, 2020 (85 FR 45154). Due to a clerical error, the email clarification sent by AMS was not included in the docket for this action at the time of NPRM publication; however, this email has now been included in the docket. This error was not substantive, did not affect the public's ability to provide comments and has no impact on the final disposition. One comment was received in support of this action.

IV. Final Action

In this final action, EPA is approving the City of Philadelphia and the District of Columbia's negative declarations submitted to EPA on March 15, 2018 and November 15, 2019 respectively. The negative declarations satisfy the requirements of 40 CFR 60.23a(b) and 62.06, serving in lieu of a CAA 111(d) state plan for existing MSW landfills.

V. Statutory and Executive Order Reviews

A. General Requirements

EPA's role with regard to negative declarations for designated facilities received by EPA from states is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. This action merely proposes to approve the state's negative declaration as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the negative declarations submitted by the City of Philadelphia and the District of Columbia, certifying that there are no existing municipal solid waste landfills in the City of Philadelphia or the District of Columbia that are subject to the requirements of 40 CFR part 60 subpart Cf, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting andrecordkeeping requirements.

Dated: November 2, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart J—District of Columbia

■ 2. Revise § 62.2140 to read as follows:

§ 62.2140 Identification of plan—negative declaration.

Letter from the District of Columbia, Department of Energy and Environment, submitted November 15, 2019, certifying that there are no existing municipal solid waste landfills in the District of Columbia that are subject to 40 CFR part 60, subpart Cf.

Subpart NN—Pennsylvania

■ 3. Revise § 62.9633 to read as follows:

§ 62.9633 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted March 15, 2018 and amended by email on May 1, 2020, certifying that there are no existing municipal solid waste landfills in the City of Philadelphia that are subject to 40 CFR part 60, subpart Cf.

[FR Doc. 2020–24690 Filed 11–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2018–0048; FRL–10016–21–OAR]

RIN 2060–AT89

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating revisions to its major New Source Review (NSR) applicability regulations to clarify when the requirement to obtain a major NSR permit applies to a source proposing to undertake a physical change or a change in the method of operation (*i.e.,* a project) under the major NSR preconstruction permitting programs. Under these programs, an existing major stationary source proposing to undertake a project must determine whether that project will constitute a major modification subject to the major NSR preconstruction permitting requirements by following a two-step applicability test. The first step is to determine if the proposed project would result in a ''significant emissions increase'' of a regulated NSR pollutant (Step 1). If the proposed project is determined to result in such an increase, the second step is to determine if the project would also result in a ''significant net emissions increase'' of that pollutant from the source (Step 2). In this action, we are promulgating revisions to our major NSR applicability regulations to clarify that both increases and decreases in emissions resulting from a proposed project can be considered in Step 1 of the major NSR major modification applicability test. We refer to the consideration of emissions increases and decreases in Step 1 as project emissions accounting.

DATES: This final rule is effective on December 24, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0048. All documents in the docket are listed in the *https://www.regulations.gov* website. Although listed in the index, some information may not be 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. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

In addition, the EPA has a website for NSR rulemakings at: *https://www.epa.gov/nsr.* The website includes the EPA's proposed and final NSR regulations, as well as guidance documents and technical information related to preconstruction permitting.

FOR FURTHER INFORMATION CONTACT: For further information concerning this action, please contact Jessica Montañez, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504–03, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; by telephone at (919) 541–3407 or by email at *montanez.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA and wherever ''reviewing authorities,'' or ''air agencies'' is used, we mean air pollution control agencies.

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this action include sources in all industry categories. Entities potentially affected directly by this action also include state, local and tribal air pollution control agencies responsible for permitting sources pursuant to the major NSR programs requirements.

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 **Federal Register** document will be posted at *https://www.epa.gov/nsr.*

C. How is this document organized?

The information presented in this document is organized as follows:

II. Background

On August 9, 2019, the EPA proposed [1] to revise its major NSR applicability regulations to clarify when the requirement to obtain a permit applies to an existing major stationary source proposing to undertake a physical change or change in the method of operation (*i.e.,* project) under the major NSR preconstruction permitting programs. More specifically, the EPA proposed to revise its NSR applicability regulations to make it clear that both emissions increases and decreases that result from a given proposed project are to be considered in Step 1 of the NSR major modification applicability test in a process known as project emissions accounting.

In the subsections that follow, the EPA introduces the NSR program and summarizes information from the proposal, including: (1) What constitutes a major modification under the major NSR programs, (2) the project emissions accounting process and its place in the major modification applicability test, and (3) the legal rationale for the regulatory revisions that were proposed. The history of the EPA's treatment of emissions increases and decreases in Step 1 of the major modification applicability test, including the March 2018 Memorandum titled ''Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,'' [2] was provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on October 8, 2019.

A. The New Source Review Program

As established under the Clean Air Act (CAA), the NSR program is a preconstruction permitting program that requires certain stationary sources of air pollution to obtain permits prior to beginning construction. The NSR permitting program applies to both new construction and to modifications of existing sources, regardless of whether the source is in an area where the national ambient air quality standards (NAAQS) have been exceeded (nonattainment area) or if the source is in an area where the NAAQS have not been exceeded (attainment or unclassifiable area). New construction and modifications that emit ''regulated NSR pollutants'' [3] over certain thresholds are subject to major NSR requirements, while smaller emitting sources and modifications may be subject to minor NSR requirements or be excluded from NSR altogether.

Major NSR permits for sources that are located in attainment or unclassifiable areas are referred to as Prevention of Significant Deterioration (PSD) permits. These permits can also cover pollutants for which there are no NAAQS. Major NSR permits for sources located in nonattainment areas and that emit pollutants above the specified thresholds for which the area is in nonattainment are referred to as nonattainment NSR (NNSR) permits. The pollutant(s) at issue and the air quality designation of the area where the facility is located or proposed to be built determine the specific permitting requirements. The CAA requires sources subject to PSD to meet emission limits based on Best Available Control Technology (BACT) as specified by CAA section 165(a)(4), and sources subject to NNSR to meet Lowest Achievable Emissions Rate (LAER) pursuant to CAA section 173(a)(2). Other requirements to obtain a major NSR permit vary depending on whether it is a PSD or NNSR permit.

A new stationary source is subject to major NSR requirements if its potential to emit (PTE) a regulated NSR pollutant exceeds statutory emission thresholds.[4] If it exceeds the applicable threshold, the NSR regulations define it as a ''major stationary source.'' [5]

An existing major stationary source triggers major NSR permitting requirements when it undergoes a ''major modification.'' The EPA's implementing regulations for NSR establish a two-step process for determining major NSR applicability for projects at stationary sources. To be subject to major NSR requirements, the project must result in both (1) a significant emissions increase from the project (the determination of which is

[1] 84 FR 39244 (August 9, 2019).

[2] Letter from E. Scott Pruitt, to Regional Administrators, ''Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,'' March 13, 2018 (''March 2018 Memorandum'') available at: *https://www.epa.gov/sites/production/files/2018-03/documents/nsr_memo_03-13-2018.pdf.* As indicated in the proposal, the March 2018 Memorandum explained that ''the EPA interpreted the current NSR regulations as providing that emissions decreases as well as increases are to be considered in Step 1 of the NSR applicability process, where those decreases and increases are part of a single project.'' More specifically, in the March 2018 Memorandum the EPA interpreted the current major NSR regulations to mean that emissions increases and decreases could be considered in Step 1 for projects that involve multiple types of emissions units in the same manner as they are considered for projects that only involve new or only involve existing emissions units.

[3] 40 CFR 52.21(b)(50). The regulations at 40 CFR 52.21 apply to the federal PSD program. The EPA has other NSR regulations including 40 CFR 51.165, 51.166, and Appendix S of part 51, that contain analogous provisions. This final rule also applies to those analogous provisions as well. However, there are certain modification provisions under Title I, Subpart D of the CAA and the EPA nonattainment NSR regulations that apply to certain nonattainment area classifications. For example, CAA section182(e)(2) and 40 CFR part 51, Appendix S 11.A.5.(v). This final rule does not cover those provisions. We cite to 40 CFR 52.21 for convenience, but the regulatory revisions we are finalizing apply to other regulations as specified in the regulatory text section of this final rule.

[4] For PSD, the statute uses the term ''major emitting facility'' which is defined as a stationary source that emits, or has a PTE, at least 100 tons per year (tpy) if the source is in one of 28 listed source categories—or at least 250 tpy if the source is not—of ''any air pollutant.'' CAA section 169(1). For NNSR, the emissions threshold for a major stationary source is 100 tpy, although lower thresholds may apply depending on the degree of the nonattainment problem and the pollutant.

[5] 40 CFR 52.21(b)(1)(i).

called ''Step 1'' of the NSR applicability analysis); and (2) a significant net emissions increase at the stationary source, taking account of emission increases and emission decreases attributable to other projects undertaken at the stationary source within a specific time frame (called ''Step 2'' of the NSR applicability analysis, or ''contemporaneous netting''). For this two-step process, the NSR regulations define what emissions rate constitutes ''significant'' for each NSR pollutant.[6]

In many cases, these requirements of the major NSR program (or equivalent requirements) are formally adopted by a state or local air agency, and the agency submits a revised state implementation plan (SIP) to the EPA for approval. The EPA's regulations provide for the minimum requirements of these programs. Upon the EPA approving the SIP, the air agency becomes the ''reviewing authority'' for major NSR permits for sources within its boundaries. When a state or local air agency is not the permitting authority, either the EPA issues the major NSR permits or a state or local air agency issues the major NSR permits on behalf of the EPA by way of a delegation agreement. For sources located in Indian country, the EPA is currently the only permitting authority for major NSR. Currently, state and local air agencies issue the vast majority of major NSR permits each year.

New sources and modifications that do not require a major NSR permit may instead require a minor NSR permit prior to construction. Minor NSR permits are almost exclusively issued by state and local air agencies, although the EPA issues minor NSR permits in some areas of Indian country. Minor NSR requirements are approved into a SIP in order to achieve and maintain the NAAQS.[7] The CAA and the EPA's regulations are less prescriptive regarding minimum requirements for minor NSR, thus, air agencies generally have more flexibility in designing their minor NSR programs.

B. Major Modifications Under the NSR Program

In the proposal, the EPA explained that our NSR regulations define a major modification[8] as any physical change or change in the method of operation of an existing major stationary source that would result in a significant emissions increase of a regulated NSR pollutant[9] (as determined in Step 1 of the NSR major modification applicability test) and a significant net emissions increase of that pollutant (as determined in Step 2 of the major modification applicability test)[10] from the major stationary source. This two-step applicability test, which has been an element of the NSR programs since the 1980's, was codified by the 2002 NSR Reform Rule[11] to explicitly include the prior EPA practice of looking first at whether any emissions increase that would result from a project[12] by itself is significant before evaluating whether there would be a significant ''net emission increase''[13] from the major stationary source. In other words, Step 1 considers the effect of the project alone and Step 2 considers the effect of the project and any *other* emissions changes at the major stationary source that are contemporaneous to the project (*i.e.,* generally within a 5-year period) and creditable.

An emissions increase of a regulated NSR pollutant is considered significant if the emissions increase in Step 1 or 2, would be equal to or greater than any of the pollutant-specific Significant Emissions Rates (SERs) listed under the definition of ''significant'' in the applicable PSD or NNSR regulations.[14] The SERs in the existing NSR regulations are based on an EPA determination that increases in emissions below these levels are *de minimis* and thus need not be subject to major NSR permitting. For those regulated NSR pollutants not specifically listed, *any* increase in emissions is significant.[15] In addition, the procedure for calculating whether a proposed project would result in a significant emissions increase depends upon the type of emissions unit(s)[16] that would be included in the proposed project. The emissions units involved in a project can be new, existing, or a combination of new and existing units (*i.e.,* multiple types of emissions units).[17] For new units,[18] the NSR regulations require the difference in pre- and post-project emissions to be calculated based on the difference between a unit's baseline actual emissions (as applicable to new emissions units)[19] and its potential to emit[20] after the project. For existing units,[21] the NSR regulations require that the difference in pre- and post-project emissions be calculated based on the difference between a unit's baseline actual emissions (as applicable to existing emissions units)[22] and its projected actual emissions[23] after the project. Baseline actual emissions for new units are based on the units' potential to emit before the project.[24] Potential to emit represents a unit's maximum capacity to emit a pollutant under its physical and operational design. Baseline actual emissions for existing units are determined based on the rate of actual emissions (in tons per year) a unit has emitted in the past. Projected actual emissions for existing units are determined based on the maximum rate of actual emissions (in tons per year) a unit is projected to emit in the future.

Once a source determines that a significant emissions increase would occur in Step 1, then the source may deem the project to be a major

[6] 40 CFR 52.21(b)(23).

[7] CAA section 110(a)(2)(C).

[8] 40 CFR 52.21(b)(2).

[9] ''Regulated NSR pollutant'' is defined at 40 CFR 52.21(b)(50). A ''regulated NSR pollutant'' includes any pollutant for which a NAAQS has been promulgated and other pollutants such as sulfuric acid mist and hydrogen sulfide, among others.

[10] The NSR major modification applicability test is described in 40 CFR 52.21(a)(2)(iv)(*a*).

[11] In 2002, the EPA issued a final rule that revised the regulations governing the major NSR program. The agency refers generally to this rule as the ''NSR Reform Rule.'' As part of this 2002 rule, the EPA revised the NSR applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and plan for future investments in pollution control and prevention technologies. 67 FR 80185 (December 31, 2002).

[12] 40 CFR 52.21(b)(52). We use the term ''project'' to mean the physical change or change in method of operation under review, though this can encompass one or more activities at an existing major source. A subsequent section of this rule's preamble discusses how multiple activities should be evaluated to determine whether these activities constitute one project.

[13] 40 CFR 52.21(b)(3).

[14] 40 CFR 52.21(b)(23) defines when emissions of listed pollutants are considered significant under the federal PSD program. These pollutants include, but are not limited to, the following: Pollutants for which a NAAQS has been promulgated, fluorides, and sulfuric acid mist.

[15] 40 CFR 52.21(b)(23)(ii). Per 40 CFR 52.21(b)(23)(iii), *significant* also means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 μg/m^3, (24-hour average).

[16] 40 CFR 52.21(b)(7). There are two types of emissions units, new and existing. A ''replacement unit'' as defined in the NSR regulations is an existing emissions unit.

[17] 40 CFR 52.21(a)(2)(iv).

[18] 40 CFR 52.21(b)(7)(i). The NSR regulations define a ''new emissions unit'' as ''any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emission unit first operated.''

[19] 40 CFR 52.21(b)(48)(iii).

[20] 40 CFR 52.21(b)(4).

[21] 40 CFR 52.21(b)(7)(ii).

[22] 40 CFR 52.21(b)(48)(i) and (ii).

[23] 40 CFR 52.21(b)(41). A source may elect to use the potential to emit for the emissions unit in lieu of projected actual emissions as provided by 40 CFR 52.21(b)(41)(ii)(*d*).

[24] The ''baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.'' 40 CFR 52.21(b)(48)(iii).

modification or perform the Step 2 contemporaneous netting analysis to determine if there would be a significant net emissions increase at the major source and thus be subject to major NSR permitting.[25] A net emissions increase means, with respect to any regulated NSR pollutant emitted at a major stationary source, the amount by which the sum of the following exceeds zero: (a) [t]he increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to [40 CFR 52.21](a)(2)(iv); and (b) [a]ny other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.[26] The Step 2 contemporaneous netting analysis is conducted by adding the emissions increase [27] from the project as determined in Step 1 to all *other* increases and decreases in actual emissions at the major stationary source that are contemporaneous with the project and otherwise creditable.

Emissions increases and decreases are contemporaneous if they occur between ''[t]he date 5 years before construction on the particular change commences; and [t]he date that the increase from a particular change occurs.'' [28] An increase or decrease in actual emissions in Step 2 is creditable only if the EPA Administrator or other reviewing authority has not relied on it in issuing a PSD or NNSR permit for the source and the permit is still in effect at the time the major modification occurs.[29] Furthermore, emissions increases in Step 2 are only creditable if the new level of actual emissions exceeds the old level of actual emissions.[30] Emissions decreases in Step 2, on the other hand, are creditable only to the extent that the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions and the decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction of the particular change begins.[31] In nonattainment areas, emissions reductions are also only creditable if they have not been relied upon for demonstrating attainment or reasonable further progress.[32]

A project that results in a significant emissions increase in Step 1 and a significant net emissions increase in Step 2 of the NSR major modification applicability test is a major modification that requires a major NSR permit.

C. Project Emissions Accounting

As we stated in the March 2018 Memorandum, in 2017 the EPA ''identified certain elements of the NSR regulations and associated EPA policies that have been sources of confusion and uncertainty'' for both permitting authorities and stakeholders alike.[33] One such element was ''whether emissions decreases from a proposed project at an existing major stationary source may be taken into account under Step 1 of the major modification applicability process in the EPA NSR regulations.'' [34] Thus, in the Memorandum, we communicated that after review of past regulatory interpretations and the existing regulations as whole, we interpret our ''current NSR regulations [to] provide that emissions decreases as well as increases are to be considered at Step 1 of the NSR applicability process, provided they are part of a single project'' [35] in the process known as ''project emissions accounting.''

A project can involve new, existing, or a combination of new and existing units. Before the March 2018 Memorandum, there was uncertainty and confusion on whether both increases and decreases could be considered at Step 1 for all types of emissions units because of a slight variation in the regulatory text used for the NSR major modification applicability test that applies to projects that involve a combination of new and existing units (*i.e.,* hybrid test) as compared to the major modification applicability tests that apply to only new or only existing units. As we explained further in the March 2018 Memorandum and in this rule's proposal, the regulatory text for new units and existing units use the phrase ''sum of the difference,'' while the hybrid test used the phrase ''sum of the increases.'' In the March 2018 Memorandum, the EPA determined, after a review of past regulatory interpretations and the existing regulations as whole, that the best reading of our regulations is that both increases and decreases in emissions could be accounted for at Step 1 for all three types of emissions units under their respective NSR major modification applicability tests. However, recognizing the uncertainty described previously the proposal included revised regulatory text to clarify the regulations that define the major modification applicability test as it applies to projects involving multiple types of emissions units.[36] The proposed regulatory textmade clear that emissions increases and decreases for projects that involve multiple types of emissions units can be considered in the same manner as emissions increases and decreases for projects that only involve new units or only involve existing units in Step 1 of the NSR major modification applicability test. The regulatory text that governed this hybrid test prior to the finalization of this rule said that ''a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in [40 CFR 52.21] (a)(2)(iv)(*c*) [37] through (*d*) [38] . . . as applicable with respect to each emission unit, for each type of emissions unit equals or exceeds the significant amount

[25] Step 2, which is also known as contemporaneous netting, is voluntary and can add complexity to the NSR major modification applicability process in that it requires the additional accounting of all other increases and decreases in actual emissions that are contemporaneous to the project and creditable. This includes accounting of all creditable increases and decreases in emissions over the five-year period prior to the commence construction date for the project, regardless of whether those increases and decreases were associated with air permitting actions for which records would be readily available. It also requires that the source anticipate and include in the netting analysis any creditable increases or decreases in emissions that may occur after the commence construction date for the project and prior to the date the increase from the project is expected to occur, which can range from months to years. 40 CFR 52.21(b)(3)(i)(*b*). In aggregate, this accounting can span well over five years and involve many emissions units at large, complex sources. Additionally, to be creditable, emissions decreases accounted for in Step 2 must, among other things, be enforceable as a practical matter at and after the time actual construction on the project being evaluated in Step 1 begins, which may require one or more additional permitting actions to establish such enforceable emission limits. 40 CFR 52.21(b)(3)(vi)(*b*). If a project results in a significant emissions increase in Step 1, a source may choose to forego the potentially complex and cumbersome process of conducting a contemporaneous netting analysis and subject itself to major NSR permitting requirements after conducting the Step 1 analysis.

[26] 40 CFR 52.21(b)(3).

[27] This emissions increase is the aggregate increase in emissions from the project and, thus, it includes any emissions increases and decreases from the individual emissions units that are part of the project.

[28] 40 CFR 52.21(b)(3)(ii). The contemporaneous period could be different from a 5-year time period for states with approved State Implementation Plans.

[29] 40 CFR 52.21(b)(3)(iii)(*a*).

[30] 40 CFR 52.21(b)(3)(v).

[31] 40 CFR 52.21(b)(3)(vi).

[32] 40 CFR 51.165(a)(1)(vi)(E)(3).

[33] March 2018 Memorandum at 1.

[34] *Id.*

[35] *Id.*

[36] 40 CFR 52.21(a)(2)(iv)(*f*).

[37] Actual-to-projected-actual applicability test for projects that only involve existing emissions units.

[38] Actual-to-potential test for projects that only involve construction of a new emissions unit(s).

of that pollutant.'' [39] Thus, in the proposal, we proposed to revise the term ''sum of the emissions increases'' to ''sum of the difference'' to mirror the text in 40 CFR 52.21(a)(2)(iv)(*c*) through (*d*) to help clarify that projects that involve multiple types of emissions units should treat the calculation of the change in emissions from the project in Step 1 of the NSR major modification applicability test in the same way as the calculations for projects that only involve new units or only involve existing units (*i.e.,* considering both emissions increases and decreases from the proposed project in Step 1). We also proposed to clarify that the revised term ''sum of the difference'' would apply to ''all emissions units'' instead of ''for each emissions unit'' to make clear that for projects that involve multiple types of emissions units, the source owner or operator will first calculate the ''sum of the difference'' for each existing unit and ''sum of the difference'' for each new unit according to 40 CFR 52.21(a)(2)(iv)(*c*) and (*d*) respectively, and then, the owner or operator would proceed to add the ''sum of the difference'' from (c) and (d) according to 40 CFR 52.21(a)(2)(iv)(*f*), the hybrid test. In the proposal, we also added regulatory text to clarify that the term ''sum of the difference'' as used in the referenced subparagraphs shall include both increases and decreases in emissions as calculated in accordance with those subparagraphs.

D. Legal Analysis and Policy Rationale

In the March 2018 Memorandum, we explained that ''the CAA contains no statutory definition of the term ''major modification.'' The CAA does, however, define the term ''modification'' as ''any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' [40] The major NSR applicability regulations discussed previously reflect an interpretation of the statutory phrase ''increases the amount of any air pollutant emitted'' that is contained in this definition of ''modification'' in section 111 of the CAA [41] and as cross referenced in both Part C (PSD) and Part D (NNSR) of Title I of the CAA.[42] The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has recognized that the CAA ''is silent on how to calculate such 'increases' in emissions.'' [43] Thus, the question of how to determine whether a physical change or change in the method of operation ''increases'' emissions is ambiguous.[44] Accordingly, because the statutory text does not itself dictate how to determine whether a physical change or change in the method of operation ''increases'' emissions, under principles established by the Supreme Court,[45] the ''EPA has the authority to choose an interpretation'' of the term ''increases'' in ''administering the NSR program and filling in the gaps left by Congress.'' [46] And in choosing an interpretation of the term ''increases'' in relation to the administration of the NSR program, ''[t]here can be no doubt that the EPA is entitled to balance environmental concerns with economic and administrative concerns, at least to a point.'' [47]

The EPA believes that allowing for consideration of both emissions increases and decreases from a project is consistent with congressional intent for the PSD and NNSR preconstruction permitting programs to cover existing sources only when they undertake projects which result in a non-*de minimis* increase in emissions.[48] If the full scope of emissions changes from a project were *not* considered in Step 1, the regulations could subject a project to major NSR when the *actual* effect of that project would be to reduce emissions or result in a *de minimis* increase in emissions, which would be contrary to congressional intent for this program.[49] The EPA sees little policy support for such an outcome. Allowing the consideration of both increases and decreases in emissions in Step 1 allows sources to undertake projects that may be environmentally beneficial overall and that may be forgone if emissions decreases cannot be considered in Step 1. Therefore, the EPA continues to believe a two-step process—first determining the full scope of emissions changes, both increases and decreases, from the project under consideration and second, considering any increases or decreases from other projects at the source that are contemporaneous and creditable—is a reasonable and allowable interpretation of the phrase ''increases the amount of any air pollutant emitted'' within the definition of ''modification.''

Furthermore, the EPA continues to believe this approach represents sound policy to the extent it encourages sources to undertake projects that may result in emissions decreases that might not otherwise occur or could be delayed. As stated in the proposal preamble, various sources have indicated to the EPA that they have either significantly delayed or abandoned altogether projects that could have resulted in overall emissions decreases [50] given the complexities that Step 2 contemporaneous netting can

[39] 40 CFR 52.21(a)(2)(iv)(*f*) (2019).

[40] March 2018 Memorandum at 3. 42 U.S.C. 7411(a)(4); CAA section 111(a)(4). This definition of ''modification,'' originally enacted by Congress in 1970 as part of the New Source Performance Standards (NSPS) program, was incorporated by reference for purposes of the newly enacted PSD and nonattainment programs by the Clean Air Act Amendments of 1977. 42 U.S.C. 7479; CAA section 169(1)(C) (''The term 'construction' when used in connection with any source or facility includes the modification (as defined in section 7411(a) of this title) of any source or facility.''); 42 U.S.C. 7501(4); CAA section 171(4) (''The terms 'modifications' and 'modified' mean the same as the term 'modification' as used in section 7411(a)(4) of this title.'').

[41] 42 U.S.C. 7411(a)(4).

[42] 42 U.S.C. 7479(2)(C); 42 U.S.C.7501(4).

[43] *New York* v. *EPA,* 413 F.3d 3, 22 (D.C. Cir. 2005) (*New York I*).

[44] *New York* v. *EPA,* 443 F.3d 880, 888–89 (D.C. Cir. 2006) (*New York II*) (''Congress's use of the word 'increases' necessitated further definition regarding rate and measurement for the term to have any contextual meaning.'').

[45] *Chevron U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. 837, 843 (1984) (Where the ''statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.'')

[46] *New York I* v. *EPA,* 413 F.3d at 23, 24.

[47] *Id.* at 23.

[48] *Alabama Power* v. *Costle,* 636 F.2d 323, 401 (D.C. Cir. 1979) (''Congress wished to apply the permit process, then, only where industrial changes might increase pollution in an area, not where an existing plant changed its operations in ways that produced no pollution increase.''); *Id.* at 360 (''Categorical exemptions may also be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis.* It is commonplace, of course, that the law does not concern itself with trifling matters, and this principle has often found application in the administrative context.'').

[49] Emissions decreases may also be accounted for in Step 2; however, the text in the NSR regulations reads that such decreases are ones ''other'' than those associated with the project being evaluated in Step 1. 40 CFR 52.21(b)(3)(i)(*b*). Emissions decreases may also be accounted for in Step 2. However, if the source has had other creditable emissions increases that are contemporaneous with the project and must be accounted for at Step 2, the effect of these creditable emissions increases may be larger than the emissions decreases from the project. In this way, without project emissions accounting, a project that by itself results in a *de minimis* increase or even an overall emissions decrease could be subject to major NSR when emissions increases from other projects are considered in Step 2.

[50] For example, National Mining Association Response to Request for Comments on Regulations Appropriate for Repeal, Replacement, or Modification Pursuant to Executive Order 13777, 82 FR 17793, April 13, 2017, at 3–4, EPA–HQ–2017–0190–37770; Testimony of Paul Noe for American Forest & Paper Association (AF&PA) and American Wood Council (AWC), House Energy & Commerce Committee, Subcommittee on Environment, and Climate Change, Oversight Hearing on ''New Source Review Permitting Challenges for Manufacturing and Infrastructure,'' at 2, 5, 7–8, February 14, 2018; AF&PA and AWC April 25, 2019, Executive Order 12866 meeting materials (EPA–HQ–OAR–2018–0048).

entail, and given past EPA statements [51] that emissions decreases could not be accounted for in Step 1. Several commenters on the proposal also provided descriptions of actual projects that produced both increases and decreases in emissions to illustrate the types of projects that may result in overall emissions decreases in Step 1 of the NSR major modification applicability test.[52]

III. Final Action

A. Summary of Final Action

In this action, we are finalizing the proposed clarifications to the Step 1 provisions of the major modification applicability test at 40 CFR 52.21(a)(2)(iv).[53] More specifically, we are finalizing minor revisions to the regulations that apply to projects that involve multiple types of emissions units [54] to state that both emissions increases and decreases can be considered in Step 1 of the NSR major modification applicability test in the same manner as they are considered for projects that only involve existing emissions units [55] or only involve new emissions units.[56] These minor revisions include, but are not limited to, changing the term ''sum of the emissions increase'' to ''sum of the difference'' in the context of the hybrid test that applies to multiple types of emissions units and adding a provision that specifies that the term ''sum of the difference'' as used for all types of units (new, existing and the combination of new and existing units) shall include both increases and decreases in emissions as calculated in accordance with those subparagraphs.

The EPA is also concluding that it is appropriate to apply its ''project aggregation'' interpretation and policy, set forth in the 2018 final action that completed reconsideration of a 2009 action on this topic (''the 2018 final action on project aggregation''),[57] to Step 1 of the NSR major modification applicability test for projects that involve both increases and decreases in emissions. Application of this policy may assist sources that are responsible for determining the scope of a project to make that determination and avoid the over aggregation or under aggregation of activities that could subsequently be considered an effort to circumvent the NSR program. As discussed in the 2018 final action on project aggregation, the ''substantially related'' test in the project aggregation interpretation and policy calls for sources to aggregate emissions from nominally separate activities when there is an apparent technical or economical interconnection between those activities. This 2018 final action on project aggregation also includes a rebuttable presumption that activities that occur outside a 3-year period are not related and should not be grouped into one project.

Furthermore, the EPA is concluding that the provisions at 40 CFR 52.21(r)(6) are adequate to ensure sufficient monitoring, recordkeeping and reporting of emissions for projects determined not to trigger major NSR, after considering both emissions increases and decreases from the project in Step 1 of the NSR major modification applicability test. These requirements apply when there is a ''reasonable possibility'' that the project could still result in a significant emissions increase. Lastly, the EPA is not making the regulatory changes in this final rule mandatory for adoption by state and local air agencies with approved major NSR programs. Thus, state and local air agencies can adopt these changes at their discretion.

B. Comments Received and Basis for Final Action

1. General Comments on the Proposal

The EPA received approximately 36 detailed comments [58] on the project emissions accounting proposal, which included comments from industry and industry associations, state and local air agencies, other governmental agencies, environmental advocacy groups, and a policy advocacy group. The EPA also received several comments from individuals and more than 600 comments on the proposed rule from a mass mailer campaign.

The EPA's responses to these comments are provided in a separate Response to Comments (RTC) document included in the docket for this final action. This final rule preamble addresses the most significant comments received.

2. Revisions to Step 1 of the NSR Major Modification Applicability Test

As we explained in Section II.C. of this final rule preamble, the EPA proposed to revise a portion of the major NSR major modification applicability regulations to provide needed clarity over whether project emissions accounting is allowed for all project categories, including projects that involve multiple types of emissions units. Specifically, the EPA proposed to revise the text ''sum of the emissions increase'' in 40 CFR 52.21(a)(2)(iv)(*f*) to ''sum of the difference,'' as reflected in subparagraphs 40 CFR 52.21(a)(2)(iv)(*c*)–(*d*), the applicability test that applies to only existing units or only new units respectively, to clarify that both emissions increases and decreases in emissions resulting from a proposed project can be considered in Step 1 of the NSR major modification applicability test.

We also proposed to clarify that the revised term ''sum of the difference'' would apply to ''all emissions units'' instead of ''for each emissions unit'' to make clear that for projects that involve multiple types of emissions units, the source owner or operator will first calculate the ''sum of the difference'' for each existing unit and ''sum of the difference'' for each new unit according to 40 CFR 52.21(a)(2)(iv)(*c*) and (*d*) respectively, and then, the owner or operator would proceed to add the ''sum of the difference'' from (*c*) and (*d*) according to 40 CFR 52.21(a)(2)(iv)(*f*), the hybrid test.

In addition, the EPA proposed to add to the regulation a provision that specifies that the term ''sum of the difference,'' as used in the referenced subparagraphs, shall include both increases and decreases in emissions as calculated in accordance with those subparagraphs. With these proposed revisions, we believe the regulations make clear that accounting for emissions decreases in Step 1 of the major modification applicability test is allowed for all projects, including projects that involve multiple types of emissions units.

Several commenters supported the proposal's premise of revising the regulatory text to provide clarity that both emissions increases and decreases can be considered in Step 1 of the NSR major modification applicability test for projects that involve multiple types of emissions units. A few of these commenters also supported the specific regulatory text revisions proposed. The commenters stated that the proposal, if

[51] 84 FR 39244, at 39247–39248 (August 9, 2019). The proposal preamble includes a full description of these past statements.

[52] For example, see comments in the regulatory docket for this action at EPA–HQ–OAR–2018–0048–0056, EPA–HQ–OAR–2018–0048–0072 and EPA–HQ–OAR–2018–0048–0077.

[53] *Supra* n.03.

[54] 40 CFR 52.21(a)(2)(iv)(*f*).

[55] 40 CFR 52.21(a)(2)(iv)(*c*).

[56] 40 CFR 52.21(a)(2)(iv)(*d*).

[57] 83 FR 57324 (November 15, 2018). The EPA notes, however, that state and local air agencies with approved SIPs are and were not required to amend their plans to adopt the interpretation that projects should be aggregated when ''substantially related.''

[58] A few of the comments received include comments from separate entities that joined efforts to provide comments on the proposal for this final action and thus more than 36 associations, government agencies, groups or industry representatives commented on the proposal.

finalized, would improve and streamline the permitting process, provide for the timely issuance of permits, and spark economic growth, while still protecting the environment because sources would be more likely to undertake projects that would reduce emissions if those projects were not subject to the NSR major modification requirements.

The EPA agrees with the commenters who believe that the revisions being finalized in this rule will add clarity to Step 1 of the NSR major modification applicability test and provide a more accurate accounting of a project's actual emissions impact. This clarity and accuracy could potentially incentivize energy efficiency and/or other environmentally beneficial projects, thereby furthering the Congressional purpose of the NSR program which is to ensure environmental protection while allowing for economic growth.[59] We also agree with the commenters who supported the specific regulatory text revisions we proposed that were mentioned previously.

On the other hand, several commenters argued that, by allowing sources to take credit for emissions decreases from a project in Step 1, facilities may be able to avoid major NSR permitting requirements including the installation of controls based upon BACT or LAER determinations, leading to an increase in emissions. The commenters stated that the proposed rule, if adopted, would potentially reverse air quality gains that have been accomplished over the last few decades, thereby increasing the likelihood of adverse impacts to human health and the environment. These commenters urged the EPA to withdraw the proposed rule and one commenter also urged the EPA to withdraw the March 13, 2018 Memorandum on the same subject.

These comments were echoed by the mass mailer campaign commenters who added that the proposed rule would have the effect of allowing sources to increase emissions without control requirements, thereby enabling coal-fired power plants to operate longer and emit more pollution, reversing the progress that has been achieved in reducing acid rain in the Adirondacks.

The EPA respectfully disagrees with these commenters, including the mass mailer campaign commenters. First, this rule does not directly pertain to or impact acid rain production in the Adirondacks. Second, we do not have a reason to believe that the clarifications to the NSR regulations reflected in this rule will lead to significant and overall emissions increases as a result of construction at stationary sources. Projects that cause emissions increases are already not subject to major NSR requirements if the increases in emissions are below the SERs, with or without considering the associated emissions decreases in Step 1 of the NSR major modification applicability test. Nothing in this rule alters those requirements. For many projects, when considering both emission increases and decreases in Step 1, the project will likely not result in a significant emissions increase and should be treated as *de minimis.* This rule is only a clarification of our existing regulations regarding how to conduct projections of project emissions changes by including emissions increases and decreases in this projection as part of Step 1 of the NSR major modification applicability test for projects that involve multiple types of emissions units to make those requirements consistent with the applicability test for projects that only involve new units or only involve existing units. Those clarifications are based on a logical reading of the statute and consistent with the congressional intent for the NSR program, which is to ensure environmental protection while allowing for economic growth. Finally, even though certain projects may not be subject to the NSR major modification requirements, they may still be subject to the applicable minor NSR program permitting requirements.

These commenters did not provide information that demonstrates that it would always be more environmentally beneficial for each project potentially affected by this rule to proceed through the major NSR permitting process and thereby become subject to the applicable NSR permitting requirements, including the installation of BACT or LAER air pollution control technology. There may be environmental benefits from allowing a source to consider decreases in Step 1 and, therefore, not trigger major NSR based on a more accurate accounting of the emissions from the project. By clarifying that decreases may be considered in Step 1, the rule provides an incentive for sources to design their projects to include emissions decreases and pollution controls.[60] In addition, projects that avoid major NSR because they include emission decreases in their calculation of the proposed project's emissions in Step 1 would not necessarily otherwise trigger major NSR because they may not result in a significant net emissions increase in Step 2. Furthermore, the EPA has been told by stakeholders that some projects may not even move forward if the applicant cannot include emissions decreases in its calculation of the proposed' project emissions in Step 1.

However, quantifying the environmental impacts of this rule, as with any NSR rule, is difficult because NSR permitting actions are case-by-case determinations that vary based on the characteristics of the source of emissions (*e.g.,* location, magnitude of emissions and stack heights), the attainment status of the area, and many other characteristics, including business decisions on whether to proceed with a particular project at a certain point in time. The EPA does not have sufficient permitting data to make this quantification and even if the EPA were to request that information through an Information Collection Request for the entire United States or a subset of states, the permit application data do not include information on many important considerations including, for example, the records of any business decisions on whether to proceed with a particular project. We also do not have access to, nor do we require, reporting of any information regarding decisions made for projects that were not pursued.

Thus, to address this information gap, the EPA requested in its August 2019 proposal any examples of the emissions and cost impacts of considering both emissions increases and decreases in Step 1 of the NSR major modification applicability test. Several commenters answered that information request by providing descriptions of projects that produced both increases and decreases in emissions to illustrate the types of projects that may result in overall emissions decreases in Step 1 of the NSR major modification applicability test.[61] Two other commenters provided examples highlighting how finalizing this action would achieve emissions reductions while also reducing the NSR regulatory burden in the electric utility sector.[62] Others provided various comments that suggest that this rule

[59] *Wisconsin Elec. Power Co.* v. *Reilly,* 893 F.2d 901, 909–10 (7th Cir. 1990). (''[The] PSD program ''represented a balance between 'the economic interests in permitting capital improvements to continue and the environmental interest in improving air quality.' (quoting *Chevron,* 467 U.S. at 851)).

[60] By allowing decreases in Step 1, we are incentivizing sources to design their projects to include emissions decreases and controls that may be as stringent or more stringent than the BACT or LAER requirements.

[61] These comments can be found in Section 4.0 of the Response to Comments document for this action.

[62] These comments can be found in Section 5.0 of the Response to Comments document for this action.

may promote emissions reductions by encouraging industry to seek emissions reduction opportunities in their planning processes that they might otherwise forego if they were subject to the major NSR program. However, the information provided did not fill all the data gaps (as explained previously, these include emissions characteristics, cost impacts, business decisions on whether to proceed with a particular project, etc.), and it also did not show that consideration of emissions decreases in Step 1 would necessarily result in more emissions than would be allowed if major NSR requirements are triggered based on emissions increases alone.

In the face of this uncertainty over whether the clarification reflected in this rule will increase emissions from construction at stationary source of air pollution, we have placed greater importance on ensuring that the NSR regulations are clear, logical, and consistent with Congressional intent. As explained in greater detail in Section III.B.3. of this final rule's preamble and in the Response to Comments document for this action, the EPA views allowing for project emissions accounting to be more consistent with the requirement in the Act that a physical change or change in the method of operation at an existing major stationary source is subject to major NSR if it results in a significant increase in emissions. If project emissions accounting were not allowed, a project that does not result in an overall significant increase in emissions or that actually decreases emissions into the ambient air could be subject to NSR. The EPA believes that allowing for the consideration of the full effect of a project, including any associated decreases, is consistent with the 2002 NSR Reform Rule and more faithfully implements the intent of Congress for the NSR programs, which is to ensure environmental protection while allowing for economic growth. That is because projects that, in total, would result in insignificant emissions increases or overall emissions reductions might be delayed or foregone due to the potential complexities of undergoing a Step 2 major modification applicability process or requiring a major NSR permit.

3. Legal Rationale

As noted in Background Section II.D. of this rule's preamble, the major NSR applicability regulations reflect an interpretation of the statutory phrase ''increases the amount of any air pollutant emitted'' contained in the definition of ''modification.'' [63] This definition is cross referenced in both Part C (PSD) and Part D (NNSR) of Title I of the CAA.[64] The D.C. Circuit has recognized that the CAA ''is silent on how to calculate such 'increases' in emissions.'' [65] Thus, the question of how to determine whether a physical change or change in method of operation ''increases'' emissions is ambiguous.[66] Accordingly, because the statutory text does not itself dictate how to determine whether a physical change or change in the method of operation ''increases'' emissions, under principles established by the Supreme Court,[67] the ''EPA has the authority to choose an interpretation'' of the term ''increases'' in ''administering the NSR program and filling in the gaps left by Congress.'' [68] And in choosing an interpretation of the term ''increases'' in relation to the administration of the NSR program,'', ''[t]here can be no doubt that [the] EPA is entitled to balance environmental concerns with economic and administrative concerns, at least to a point.'' [69]

After reviewing comments received on the proposal, the EPA continues to believe that when determining whether a physical change or change in the method of operation ''increases'' emissions, allowing for project emissions accounting at Step 1 of the NSR major modification applicability test is more consistent with the Clean Air Act, the 2002 NSR Reform Rule, and the statutory purpose of the NSR program. Not allowing for project emissions accounting could lead to a project that actually results in a decrease in emissions being subject to the major NSR permitting requirements. The EPA believes this would undermine the congressional intent of the NSR program of ensuring environmental protection while allowing for economic growth because projects that, in total, would result in insignificant emissions increases or overall emissions reductions might be delayed or foregone due to the potential complexities of undergoing a Step 2 contemporaneous netting process or the time and expense of major NSR permitting. The EPA explains this conclusion in more detail in the Response to Comments document for this final action.

Several commenters objected to the proposal, however, claiming that project emissions accounting would create an exemption from NSR such that not every physical change or change in method of operation would be considered in the NSR major modification applicability determination. These commenters cited to a D.C. Circuit decision [70] to argue that ''any'' in the statutory phrase ''increases the amount of any air pollutant emitted'' contained in the definition of ''modification means ''any'' and the EPA was creating a ''project exemption,'' similar to the equipment replacement rule deemed unlawful in that D.C. Circuit decision, by allowing the source to include unrelated decreases in Step 1 to ensure a project did not result in a significant emissions increase.[71]

The EPA does not agree that the proposal was intended to create a ''project exemption'' because, unlike the equipment replacement rule found to be unlawful in that decision, this rule merely clarifies pre-existing applicability requirements and does not provide an exemption from major NSR. This rule simply conforms the regulatory text for projects that involve multiple types of emissions units with the regulatory text that applies to projects that only involve new units or that only involve existing units, and also expressly articulates a meaning of the term ''sum of the difference'' that is inherent in the phrase. The EPA has already applied a similar approach following the March 2018 Memorandum, and this final rule merely clarifies the regulations.

The EPA also disagrees with commenters that argue that this rule precludes consideration of ''any'' physical change or change in method of operation under the NSR major modification applicability test. Although we proposed that taking account of emissions decreases at Step 1 did not present any reasonable concerns regarding NSR circumvention [72] under the EPA's

[63] *Supra* n.41.

[64] *Supra* n.42.

[65] *Supra* n.43.

[66] *Supra* n.44.

[67] *Supra* n.45.

[68] *Supra* n.46.

[69] *Supra* n.47.

[70] *New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006) (*New York II*).

[71] *New York II,* 443 F.3d at 887–8 (by using the word expansive word ''any'' in describing the emissions-increasing changes that qualify as a ''modification'' under Clean Air Act section 111(a)(4), Congress precluded the EPA from excluding some such changes from NSR).

[72] 84 FR 39244, at 39251 (August 9, 2019). (''We do not believe it is necessary to adopt the same criteria that apply for separation of activities (*i.e.,* under aggregation) to the grouping of activities, by considering such grouping to potentially constitute ''over aggregation'' that, in turn, may constitute NSR circumvention. The circumvention policy speaks to the situation where a source carves up what is plainly a single project into multiple projects, where each of those separate projects may

Continued

project aggregation policy,[73] the EPA recognizes that certain aspects of the proposal could have led to the conclusion that the proposed rule change would allow sources to attempt to avoid NSR by allowing sources to include unrelated emissions decreases as part of the project under consideration. Thus, in response to the concerns raised by these and other commenters, the EPA has determined it is appropriate to limit the scope of emissions decreases that can be considered at Step 1 to only the project under review and to not allow sources to attempt to avoid NSR by expanding the scope of decreases to those that are not truly part of the project. As discussed in more detail in Section III.B.4 of this preamble, the EPA has concluded that it is appropriate to apply its project aggregation policy to both emissions increases and decreases to determine the scope of the project in Step 1 of the NSR applicability analysis. Many of the commenters' concerns regarding the review of ''any'' physical change or change in method of operation can be addressed by rationally defining the scope of a project, consistent with this policy. The application of the ''substantially-related'' test of the 2018 final action on project aggregation should be sufficient to prevent sources from arbitrarily grouping activities for the sole purpose of avoiding the NSR major modification requirements through project emissions accounting. That is because when applying the ''substantially related'' test to determine the scope of a project, sources should only aggregate emissions changes when there is an apparent technical or economical interconnection between the physical and operational changes. In addition, sources should include in a common project in Step 1 all activities (and only those activities) that meet this ''substantially related'' test.

Commenters also argued that the EPA had unlawfully not required that emissions decreases be contemporaneous or enforceable in Step 1 of the NSR major modification applicability test. However, the EPA believes that any emission decreases considered in Step 1 are and will need to be contemporaneous because, the ''substantially related'' test has a temporal component and, as discussed more in Section III.B.4 of this preamble and in the Response to Comments document for this final action, the decreases must be part of the same project.

Regarding the comments that emissions decreases are required to be enforceable,[74] the commenters correctly pointed to the requirement regarding the enforceability of Step 2 contemporaneous emissions decreases and the EPA is not changing those requirements as part of the rule. However, Step 2 contemporaneous netting is a distinct idea from project emissions accounting and parallel requirements are not necessarily warranted when the context is considered. Where a source is using emissions reductions from another project within a 5-year contemporaneous period to ''net out'' of major NSR permitting, it is important that decreases in emissions from another project that are used for this purpose be enforceable to ensure that the reduction is real and permanent. This is because a project that would result in a significant emissions increase is avoiding major NSR due to unrelated changes made at the facility. Project emissions accounting does not allow emissions reductions from another project to be used to avoid major NSR in this way. Rather, project emissions accounting is part of the process for projecting the actual emissions change at a facility resulting from a single project. In this distinct context, the EPA decided in 2002 against requiring that such a projection be enforceable. Instead, the EPA established recordkeeping and reporting requirements to help enforcement authorities hold sources accountable for their projections when there is a reasonable possibility the project could trigger major NSR. In addition, the NSR regulations provide that ''[r]egardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.''[75] Therefore, while the EPA is not requiring *projections* to be enforceable at Step 1 regardless of whether the source owner or operator projected increases or decreases in emissions, the NSR regulations do provide for an overall enforceable limitation on actual emission increases. If any emissions decreases are overstated, or any increases understated, the source may be subject to liability if its actual emissions due to the project exceed *de minimis* thresholds. Moreover, the EPA anticipates that even if, in accounting for the full impact of a project at Step 1, a source would not be required to obtain a major NSR permit, the vast majority of these projects would still be required to obtain a minor NSR permit under the state minor NSR permit program and the EPA anticipates that the emissions decrease(s) from the project would be documented in the permit record.

The EPA does not believe the policy rationale that the commenters provided for wanting the EPA to require that decreases in Step 1 be enforceable outweighs the EPA's policy rationale for not requiring projected actual emissions increases from a project to be enforceable and for treating emission decreases and increases in the same manner when calculating the proposed project emissions in Step 1.[76] As such, the EPA is not finalizing, as part of this action, a requirement that emissions increases or decreases be enforceable in Step 1 unless required by the applicable regulations.[77] As the EPA explained in the proposal, the EPA intends to treat projected actual emissions used in calculating emissions decreases from a project in the same manner as it does emissions increases since they are both part of the same project. Emission decreases should be considered simply part of the projected emissions for the

result in emissions increases below the significance threshold but which, if considered collectively as one project, would result in an emissions increase above the threshold. Separate activities that, when considered together, either decrease emissions or result in an increase that is not significant are not in view in the EPA's circumvention policy.'')

[73] 84 FR 39244, at 39250 (August 9, 2019). As explained in more detail in the proposal preamble for this action, the 2018 final action on project aggregation describes the procedure (*i.e.,* the ''substantially related'' test or ''circumvention policy'') ''for determining the circumstances under which nominally separate activities should reasonably be considered to be a single project.'' More specifically, the policy calls ''for sources and reviewing authorities to aggregate emissions from nominally-separate activities when they are ''substantially related.'' For a project to be substantially related, the ''interrelationship and interdependence of the activities [is expected], such that substantially related activities are likely to be jointly planned (*i.e.,* part of the same capital improvement project or engineering study), and occur close in time and at components that are functionally interconnected.'' In addition, the final ''project aggregation'' action adds that in general ''[to] be 'substantially related,' there should be an apparent interconnection—either technically or economically—between the physical and/or operational changes, or a complementary relationship whereby a change at a plant may exist and operate independently, however its benefit is significantly reduced without the other activity.''

[74] In this context, the term enforceable is intended to mean that the projections of a decrease in actual emissions for an existing emissions unit need to be enforceable as a practical matter (*e.g.,* accompanied by an emission limit).

[75] 40 CFR 52.21(a)(2)(iv)(*b*).

[76] 84 FR 39244, at 39251 (August 9, 2019). (''[T]he EPA currently believes that 'the same reasoning that underpinned the 2002 NSR Reform Rule's treatment of projected actual increases applies equally to projected emissions decreases at Step 1.'').

[77] For new emissions units (including any units that have been in operation for less than two years), any emissions increases and decreases would be enforceable because the applicability test for new units is the actual-to-potential test. 40 CFR 52.21(a)(2)(iv)(*d*); *id.* 52.21(b)(4); *id.* 52.21(b)(7).

project, not some discrete change from the project subject to different or additional requirements. A lower projected emission increase at an existing emissions unit involved in a project can have the same numerical effect on the result of the Step 1 applicability calculation by itself as a projected increase combined with a projected emissions decrease at another unit that is involved in the project. Therefore, we see no reason why enforceability of projected actual emissions should be required in one instance and not the other. Thus, the reasoning the EPA applied when declining to require that projected actual emissions be made enforceable as part of the 2002 NSR Reform rule continues to apply to projected actual emissions that are derived by combining increases and decreases from the same project in accordance with the clarification reflected in this rule.[78] As we explain in more detail in Section III.B 4 of this preamble, requiring that projected actual emissions decreases be enforceable in Step 1 could effectively replace the actual-to-projected-actual[79] applicability test for existing units with an actual-to-potential test,[80] or, more accurately, an actual-to-allowable test,[81] which would directly conflict with the EPA's reasoning for adopting the actual-to-projected-actual applicability test in 2002. Among other reasons, limiting projected actual emissions to allowable emissions (even if only for emissions decreases) could confiscate unused capacity of the source[82] and in some cases result in the source later retroactively becoming subject to major NSR requirements.[83] The EPA believes such an outcome would be unacceptable.

Another commenter added that the inclusion of emissions decreases in Step 1 in the NSR major modification applicability calculation must be enforceable, otherwise it would render Step 2 of the analysis meaningless. The commenter asserted that this rule would produce an absurd result by eviscerating Step 2's prohibition against crediting unenforceable emissions decreases for the purposes of netting out of NSR requirements.

The EPA disagrees that allowing for the consideration of emission decreases as part of the projected actual emissions from the project in Step 1 would render the contemporaneous netting provisions of the regulations superfluous or lead to absurd results. Allowing emissions decreases from the project under review to be considered in Step 1 does not mean that Step 2 is superfluous. Step 1 is limited to emissions increases and decreases from the *same* project. The source could still only account for emissions decreases from *another* project within the contemporaneous period in Step 2, subject to the other limitations of contemporaneous netting. In addition, the ''substantially related'' test mentioned previously, and further explained in Section III.B.4. of this preamble, applies to prevent aggregating into a single project those activities that do not represent such project, so decreases from activities that do not meet this test should not be considered in Step 1. Therefore, Step 2 is not superfluous because it clearly still serves a purpose of considering emissions increases and decreases from other projects that are contemporaneous with the proposed project and otherwise creditable. As discussed previously, if decreases from the project could not be considered in Step 1, that could potentially subject a project that decreases emissions overall to the major NSR permitting requirements. In addition, as noted previously, while the EPA is not requiring projections of decreases at Step 1 to be enforceable, the major NSR regulations contain a provision that ''[r]egardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.''[84] Therefore, there is an inherent enforceable limitation on increases of actual emissions.

Finally, an additional commenter asserted that the agency's proposal foregoes statutorily specified benefits—avoidance of air quality violations, improved pollution-control technologies, offsetting emission reductions—in a fashion that is incompatible with any lawful exercise of *de minimis* discretion. This contention is countered by other commenters, however, who stated that this final rule is not an exemption from NSR applicability and is instead a clarification of pre-existing regulatory text specifying how NSR applicability is to be determined for projects that involve multiple types of emissions units.

We agree with the latter commenters. The clarification reflected in this rule is not based on inherent *de minimis* exemption authority and does not alter the EPA's determination of the level of emissions that is significant for any pollutant. As stated previously, each physical change or change in method of operation must still be compared to the significance levels to determine whether or not the change results in an emissions increase that is *de minimis.* All this rule does is clarify that, in projecting whether a project will result in a non-*de minimis* increase in actual emissions, the source can quantify such an increase based on the full scope of the project, including any portions of the project that are projected to decrease actual emissions. The EPA believes that allowing a source to conduct projections of actual emissions in Step 1 for the full scope of the project, including any decreases in emissions caused by the project, is the best reading of CAA section 111(a)(4) because it will ensure that projects that overall decrease emissions or result in a *de minimis* increase in emissions will not be subject to the major NSR program.

4. Defining the Scope of a Project

In the proposal, we said that defining the scope of the project was within the discretion of the source. We also indicated that when a source is defining the scope of the project: (1) Separating activities into smaller projects (*i.e.,* under aggregation) to circumvent the NSR major modifications permitting requirements could be prevented by applying the interpretation and policy

[78] 67 FR 80185, at 80204 (December 31, 2002). In the 2002 NSR Reform rule, the EPA expressly declined to adopt a requirement under which a source's projected actual emissions would have become an enforceable emission limitation because: (1) ''we are concerned that such a requirement may place an unmanageable resource burden on reviewing authorities,'' and (2) ''we also believe that it is not necessary to make . . . future projections enforceable in order to adequately enforce the major NSR requirements. The Act provides ample authority to enforce the major NSR requirements if . . . [a] physical or operational change results in a significant net emissions increase at . . . [a] major stationary source.''

[79] The actual-to-projected-actual applicability test for projects that only involve existing emissions units is the test defined in 40 CFR 52.21(a)(2)(iv)(*c*).

[80] The actual-to-potential test for projects that only involve new emission units is the test defined in 40 CFR 52.21(a)(2)(iv)(*d*).

[81] This is because under the approach requiring enforceability of emissions decreases, the projected actual emissions for an emissions unit would become the allowable emissions for that unit. The definition of allowable emissions can be found at 40 CFR 52.21(b)(16).

[82] For example, if a source was required to establish an enforceable emission limit to consider a decrease that is the result of the project, the source may not be able to later increase production or hours of operation, which would otherwise not even be considered a physical change or change in method of operation subject to NSR applicability. 40 CFR 52.21(b)(2)(iii)(*f*).

[83] This is the opposite of the confiscation of unused capacity: if such an allowable emissions limitation was required and is subsequently relaxed to accommodate an unrelated increase in production rate or hours of operation, and that relaxation resulted in the modification becoming major, the source could become subject to major NSR requirements as if construction had not yet commenced. 40 CFR 52.21(r)(4).

[84] 40 CFR 52.21(a)(2)(iv)(*b*).

set forth in the 2018 final action on project aggregation and (2) adding multiple activities into bigger projects (*i.e.,* over aggregation) was not precluded by any prior interpretation or policy.[85] On this latter point, we added that separate activities which, when considered together, either decrease emissions or result in an increase that is not significant were not previously considered as part of the EPA's circumvention policy. However, we requested comment on whether we should instead apply the ''substantially related'' criteria to prevent over-aggregation in Step 1 and asked what the impact of applying such a standard would be.[86]

Multiple commenters expressed support for the proposed concept that the scope of a project be at the discretion of the source and that the absence of a provision defining the scope of a project does not create an incentive to over-aggregate.[87] Commenters supported this proposed concept on the grounds that this discretion would allow sources to undertake activities that would reduce overall emissions in cases where a project is comprised of multiple emissions units.

Several commenters, however, expressed concerns that the scope of a project to which project emissions accounting is applied should be defined.[88] Otherwise, any ambiguity in defining the scope of the project would constrain a reviewing authority's ability to verify whether the source has reasonably exercised its discretion in applying project emissions accounting to a project. Other commenters added that the lack of criteria for determining the scope of a project would allow sources to circumvent NSR requirements by selectively considering emissions decreases with unrelated and non-contemporaneous increases. To this point, commenters expressed concern that, under the proposed rule, sources would be able to circumvent NSR requirements by finding contemporaneous emission reductions within the facility and considering them to be part of the project, while not incorporating similar contemporaneous emission increases in the scope of the project.

The EPA does not concur with the commenters who stated that circumvention of the NSR permitting requirements is a likely outcome of the proposed rule because, while not previously contemplated by our project aggregation policy, the EPA has concluded after review of the comments received on the proposal for this action that the ''substantially related'' test from our 2018 final action on project aggregation interpretation and policy provides the appropriate basis for sources to determine the scope of a project in Step 1 of the NSR applicability analysis. We believe that applying the 2018 final action on project aggregation interpretation and policy in this context alleviates concerns about potential NSR circumvention in Step 1 of the NSR major modification applicability test. The ''substantially related'' test, which is reflected in the 2018 final action on project aggregation, calls for sources to aggregate emissions from nominally separate activities when there is an apparent technical or economical interconnection between the physical and operational changes. This 2018 final action on project aggregation also includes a policy of applying a rebuttable presumption that project activities that occur outside a 3-year period are not related and should not be grouped into one project. The EPA has observed that ''[w]hen activities are undertaken three or more years apart, there is less of a basis that they have a substantial technical or economic relationship because the activities are typically part of entirely different planning and capital funding cycles.'' [89]

Under this 2018 final action on project aggregation interpretation and policy, sources continue to have discretion in defining the scope of the project based on their business needs, but at the same time should not arbitrarily group project activities for the purpose of avoiding the NSR major modification requirements. Rather, in accordance with the 2018 final action on project aggregation, sources should define a project to include all activities, and only those activities, that meet the ''substantially related'' test.

Other commenters asserted that the EPA failed to address the possibility that facilities could circumvent NSR by proffering in Step 1 an emissions decrease that turns out to be nothing but a temporary reduction, thus avoiding the need to even modify equipment or install a pollution control device. A commenter added that some courts have imposed a statute of limitations that runs 5 years from the date of the modification and that the proposal, in conjunction with those rulings, invited a source to claim unenforceable decreases to avoid NSR, then simply avoid following through once the limitations period has passed.

We disagree with these commenters. The decrease in emissions in Step 1 will be calculated in most cases using the actual-to-projected-actual applicability test, and the projected actual emissions calculation in that test must be based on consideration of all relevant information.[90] If there is a ''reasonable possibility'' that the project may result in a significant emissions increase, as defined in the regulations at 40 CFR 52.21(r)(6), the source must meet applicable pre- and post-project recordkeeping, monitoring, and reporting requirements that apply for 5 or 10 years following the resumption of regular operation after the project, depending on the nature of the project. As such, the ''reasonable possibility'' provisions would provide the records necessary for reviewing authorities to ensure that the emissions reductions are not temporary and provide for enforcement of the major NSR program requirements, as necessary. The EPA also believes that the regulatory text at 40 CFR 52.21(a)(2)(iv)(*b*) that states, ''[r]egardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase'' provides a safeguard that will ensure that the emissions reductions are not temporary or illusory. If a source, upon resuming regular operation after a project, fails to realize a reduction in emissions that was projected from a particular unit, or if that reduction is less than was projected, such that the overall emissions increase from the project exceeds the applicable significant emissions rates, then the source could be subject to NSR at that time and potentially an enforcement action. While a commenter expressed concern that some sources may claim unenforceable decreases to avoid NSR and then simply avoid following through with those decreases once the statute of limitations period has passed, the EPA views this possibility as remote because of the safeguard at 40 CFR

[85] As stated previously, the term ''project'' is defined in our regulations at 40 CFR 52.21(b)(52). In general, we use the term ''project'' to mean the physical change or change in method of operation under review, though this can encompass one or more activities at an existing major source. On the other hand, the term ''project aggregation'' used in the agency's 2018 project aggregation interpretation and policy discusses how multiple activities should be evaluated to determine whether these activities constitute one project.

[86] 84 FR 39244 at 39251 (August 9, 2019).

[87] These comments can be found in Section 5.0 of the Response to Comments document for this action.

[88] These comments can be found in Section 5.0 of the Response to Comments document for this action.

[89] 74 FR 2376, at 2380 (January 15, 2009).

[90] 40 CFR 52.21(b)(41)(ii)(*a*).

52.21(a)(2)(iv)(*b*) and the potential for civil, or even criminal, enforcement.[91]

Finally, several commenters questioned the EPA's decision to forgo a requirement that emissions reductions be enforceable and creditable in order to be used in project emissions accounting. These commenters stated that allowing sources to include uncreditable and unenforceable projected project emission decreases with the knowledge that the EPA will not second-guess those projections, referring to the Actual-to-Projected-Actual Applicability Test Memorandum issued by the EPA in December 2017,[92] readily invited NSR circumvention and increased air pollution with no ability for third-party enforcement.

The EPA disagrees with these commenters. First, as explained in the August 2019 proposal and in the legal rationale section of this final action (Section III.B.3), the EPA intends to treat the calculation of emissions decreases from a proposed project in the same manner as it does emissions increases from the same proposed project (*i.e.,* including emissions increases and decreases in Step 1 because both are necessary to determine the emissions resulting from the project). Second, requiring that projected actual emissions be made enforceable at the time of the project could effectively replace the actual-to-projected-actual applicability test with an actual-to-potential test, or, more accurately, an actual-to-allowable test, which would directly conflict with the EPA's reasoning for adopting the actual-to-projected-actual applicability test in 2002 and with what the EPA believes is the best reading of CAA section 111(a)(4). Third, the EPA believes that a requirement that projected actual emissions be made enforceable at the time of the project would effectively confiscate any unused capacity at the effected emissions unit and potentially require that any future project(s) that might increase emissions from that unit trigger major NSR retroactively.[93] In responding to comments on the actual-to-potential methodology in 2002, the EPA noted that the establishment of an enforceable permit limit ''may restrict the ability of a source to increase its emissions in association with an increase in production or hours of operation, which when done alone are not normally considered as physical or operational changes.'' [94] The EPA also stated ''[w]e generally agree with commenters who have argued that existing emissions units in general (including replacement and reconstructed units) have ample track record such that the projection of the proposed project emissions alone is sufficiently reliable and enforceable and thus the burdens of up-front permit caps on emissions are unnecessary'' and ''[w]e disagree with the commenters who thought that the 'actual-to-potential' test should be retained because, among other things, the recordkeeping requirements associated with the 'actual-to-projected-actual' test would be burdensome . . . for most sources, the burden of recordkeeping [associated with use of the actual-to-projected-actual applicability test] is substantially less than the present burden of obtaining a permit containing an up-front cap on actual emissions.'' [95] Thus, consistent with our reasoning in 2002, the EPA does not believe that these outcomes and making emissions reductions enforceable in Step 1 are necessary in order for sources evaluating projects that involve existing emissions units to reasonably determine whether such projects would result in a significant increase in *actual* emissions just because the project includes a calculated decrease in emissions at one or more emissions units.

In any event, the regulations provide that ''[r]egardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.'' [96] Therefore, the EPA believes the NSR regulations do provide a mechanism for enforcement if a project is erroneously projected not to result in a significant emissions increase. In addition, many, if not most, of emissions decreases that result from a project will be due to the installation of controls or the removal of an emissions unit. The EPA still believes, as it did in 2002, that even if, in accounting for the full impact of a project in Step 1, a source would not be required to obtain a major NSR permit, the large majority of these projects would still be required, as noted earlier, to obtain a minor NSR permit under the state or local air agency minor NSR permitting program and, therefore, the project activities and any emissions decrease(s) accounted for would be documented in those permit records.[97] The EPA-approved implementation plans will also still need to include enforceable emission limits and other control measures intended to protect air quality and a program for ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter.'' [98] Nothing in this final rule conflicts with or diminishes these SIP requirements.

Finally, the December 2017 ATPA Memorandum is not within the scope of this rulemaking, nor does it have any bearing on this final rule. The December 2017 ATPA Memorandum communicated how the EPA intends to apply and exercise its enforcement discretion related to certain aspects of the applicability provisions of the NSR regulations. The policy contained in that Memorandum does not constitute a rule, regulation, or other legally binding requirement and it does not change or substitute for any law, rule or regulation, or other legally binding requirement. We, therefore, do not agree that this final rule or the December 2017 APTA Memorandum will place any limitations on third-party enforcement of the major NSR program. Nothing in this final rule changes the enforcement provisions available under the CAA to enforce the major NSR permitting requirements nor the ability of third parties to bring potential enforcement actions to the EPA's attention if they suspect that a source has avoided the major NSR permitting requirements.

5. Monitoring, Recordkeeping and Reporting of Emissions Decreases in Step 1 of the NSR Major Modification Applicability Test

The provisions of 40 CFR 52.21(r)(6) apply to projects involving existing emissions units at a major stationary source in circumstances where the

[91] If an activity that was included in an initial projection of actual emissions no longer falls within the scope of the project, the source should reevaluate the projected emissions change of the project without that activity. Therefore, contrary to the commenters concerns, if a source initially includes an activity that decreases emissions in its projection but subsequently decides that that activity is not within the scope of the project, it must redo the project's projected emissions without that emission decreasing activity.

[92] Letter from E. Scott Pruitt, to Regional Administrators, ''New Source Review Preconstruction Permitting Requirements; Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability,'' December 7, 2017 (''December 2017 ATPA Memorandum''), available at: *https://www.epa.gov/sites/production/files/2017-12/documents/nsr_policy_memo.12.7.17.pdf.*

[93] 40 CFR 52.21(r)(4).

[94] 2002 NSR Reform Rule Technical Support Document at I–4–7.

[95] *Id.* at I–4–7, 8.

[96] 40 CFR 52.21(a)(2)(iv)(*b*).

[97] The EPA expects that as part of the minor NSR permitting process, the emissions increases and decreases occurring from the project will be documented either in the permit application, demonstrating the non-applicability of major NSR, or as requirements in the minor NSR permit itself.

[98] 42 U.S.C. 7410(a)(2)(C).

owner or operator elects to use the actual-to-projected-actual applicability test for calculating projected actual emissions and there is a reasonable possibility (as defined in subparagraph (r)(6)(vi)) that a project that is not part of a major modification may result in a significant emissions increase. When the reasonable possibility criteria in subparagraph (r)(6)(vi) are triggered, specific pre- and post-project recordkeeping, monitoring and reporting requirements in paragraph (r)(6) must be met, depending on the circumstances. Those include the requirement that before beginning actual construction on the project, the owner or operator document and maintain a record including a description of the project, identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project, and a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant (including certain specified information).

The requirements of 40 CFR 52.21(r)(6) also include pre-project reporting (for electric utility steam generating units) and post-project monitoring and reporting of emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by *any emissions unit identified* in the pre-project record whose emissions could be ''affected'' by the project. Under these monitoring provisions, sources must calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5- or 10-years following resumption of regular operations after the change, depending on the type of change at the unit(s). Post-project reporting is required for electric utility steam generating units and is triggered when certain specific criteria that are applicable to all other categories of emissions units are met. In accordance with 40 CFR 52.21(r)(7), the information required to be documented and maintained pursuant to paragraph (r)(6) shall be available for review upon a request for inspection by the reviewing authority or the general public. As described in the proposal preamble, the requirements of 40 CFR 52.21(r)(6) apply equally to units with projected increases and projected decreases in emissions, as long as there is a reasonable possibility that the project could result in a significant emissions increase and those units are part of the project (*i.e.,* their emissions ''could be affected'' by the project).

Various commenters expressed that considering emissions increases and decreases in Step 1 of the NSR major modification applicability test would not necessitate any additional monitoring, recordkeeping, or reporting requirements to promote NSR compliance because the current requirements under 40 CFR 52.21(r)(6) are adequate for this purpose. A couple of these commenters came to this determination because, in the existing rules, the EPA has already determined that sources should not be required to track small projected increases that are well below the relevant significant emissions rates, and there is even less reason to track projected decreases, since the ''possibility'' of a significant increase is even more remote. Some of these commenters noted that existing monitoring, recordkeeping, and reporting provisions in state and federal laws that cover all NSR-affected ''major sources,'' and particularly the requirements for ''. . . semiannual reporting, compliance reporting and certifications, and periodic emissions inventory reporting under Title V permits, are stringent and adequate to assure that NSR violations will not occur as a result'' of considering emissions increases and decreases in Step 1. Another commenter added that minor source permitting requirements will often apply to projects that are not subject to major NSR permitting and that the reviewing authority will verify a source's rationale for determining that a project is minor.

Other commenters, however, felt that the ''reasonable possibility'' provisions of 40 CFR 52.21(r)(6) are insufficient to guard against potential circumvention of NSR requirements. Commenters in this group stated that sources would be able to forgo the reasonable possibility requirements by projecting that an emissions increase will be less than 50 percent of the significant emission increase level. A few commenters added that reliance on the provisions of 40 CFR 52.21(r)(6) would complicate enforcement actions because the calculations sources conduct to comply with these provisions often do not include all emissions units associated with a project, especially affected units that are not modified or constructed under a project. These commenters emphasized that while sources can explain if annual emissions from a project exceed the baseline emissions by an amount greater than the significant emission rate, assessing the validity of such explanations places an undue burden upon the reviewing authority.

Several commenters suggested that the problems related to the lack of monitoring, recordkeeping, and reporting requirements for sources whose emissions do not meet the ''reasonable possibility'' threshold is compounded by the EPA's decision to not require that emissions decreases considered in Step 1 be enforceable. According to these commenters, sources considering emissions increases and decreases in Step 1 of the NSR major modification applicability test would be able to pair an unenforceable emission decrease with an otherwise significant emission increase to avoid NSR, and can then avoid tracking the actual emission increase as a result of the changes by ''projecting'' that the Step 1 net emissions change would be less than 50 percent of the significant emissions increase level. These commenters asserted that the Administrator's directive that the EPA not question a source's NSR calculations (except in cases of ''clear error''), referring to the December 2017 APTA Memorandum, means there is little chance that facilities' calculations will be audited and even less chance that the EPA will be able to check the actual emission increases resulting from changes.

The EPA agrees with the commenters that concluded that the regulations at 40 CFR 52.21(r)(6) are sufficient and appropriate to ensure that adequate records are maintained in circumstances where there is a reasonable possibility, as defined in the regulations, that a project determined not to constitute a major modification could result in a significant emissions increase. Those provisions apply equally to projects that trigger the reasonable possibility criteria, regardless of whether those projects include only increases, or increases and decreases in emissions, consistent with the clarifications in this final rule. We also agree that other records required to be maintained and reported under CAA programs will support compliance with the NSR applicability regulations and enforcement of those regulations as necessary. In imposing reasonable possibility recordkeeping requirements, the EPA ''strove for a balance between ease of enforcement and avoidance of requirements that would be unnecessary or unduly burdensome on reviewing authorities or the regulated community.'' [99] Beyond alleging potential NSR circumvention, the commenters who oppose the use of the reasonable possibility provisions did not provide any persuasive rationale for

[99] 72 FR 72607, at 72610 (December 21, 2007). The ''reasonable possibility'' provisions of the existing regulations are currently in litigation. *State of New Jersey* v. *EPA,* No. 08–1065 (D.C. Cir.).

treating emissions increases and decreases differently for purposes of tracking emissions under those requirements. Since projected actual emissions must be based on all relevant information, sources may not arbitrarily project emissions below the applicability levels for these recordkeeping, monitoring, and reporting requirements.

We agree that in many or most cases, projects that involve both increases and decreases in emissions in Step 1 that do not trigger the reasonable possibility provisions will be subject to minor NSR permitting requirements. As such, records of the project activities, the emissions increases and any emissions decreases associated with those activities, the applicability test and the corresponding emissions calculations should be available or made available for review as part of the permit application and permit records for the project, which include the permit terms.

The EPA, however, disagrees that the ''reasonable possibility'' provisions at 40 CFR 52.21(r)(6) are insufficient to guard against NSR circumvention as a result of considering emissions increases and decreases in Step 1 and that reliance on those provisions would complicate enforcement and/or place undue burden on reviewing authorities for the reasons cited. First, as explained in Section III.B.4 of this final rule preamble, applying the EPA's 2018 final action on project aggregation interpretation and policy makes clear that any decreases from activities that are accounted for in Step 1 should be ''substantially related'' to any increases from activities that are part of the same project, meaning that those decreases in fact result from the project. Second, manipulating NSR major modification applicability calculations to circumvent NSR and/or avoid the ''reasonable possibility'' requirements in the regulations could subject a source to the NSR requirements, substantial civil penalties, and/or criminal liability. The regulations provide that ''[r]egardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.'' [100] Thus, if any emissions decreases are overstated, and/or any increases understated, such that the emissions projection at the time shows a source is not subject to NSR or the reasonable possibility requirements, the source will be subject to NSR if and when the project actually results in a major modification. Finally, and as stated previously, we do not agree that the December 2017 APTA Memorandum will have any effect on third-party enforcement of the major NSR program. Nothing in this final rule changes the enforcement provisions available under the CAA to enforce the major NSR permitting requirements nor the ability of third parties to alert the EPA if they suspect that a source has improperly avoided the major NSR permitting requirements.

Other commenters challenged the EPA's reference to the reasonable possibility standard in the proposal on procedural grounds. These commenters stated that the reasonable possibility provisions are not only insufficient, but that they are ''arbitrary and capricious'' because the EPA failed in the proposal of this rule to specify how the provisions of 40 CFR 52.21(r)(6) are applicable to the consideration of emissions increases and decreases in Step 1 project emissions accounting. One commenter added that ''at the outset, depending on how 'the project' is defined by the source operator, the plain text of [40 CFR 52.21(r)(6)], on its face, does not apply to emissions decreases.''

The EPA disagrees with these commenters. The requirements of 40 CFR 52.21(r)(6) apply when there is a reasonable possibility that the project could result in a significant emissions increase and that those units are part of the project (*i.e.,* their emissions ''could be affected'' by the project). While practically-speaking this would only apply to a project resulting in an overall increase in emissions because an overall decrease would clearly not have a reasonable possibility of triggering NSR, this does not mean that decreases cannot be considered when determining whether a project would result in an overall increase sufficient to trigger these requirements. When the reasonable possibility criteria in subparagraph (r)(6)(vi) are triggered by an overall increase, specific pre- and post-project recordkeeping, monitoring and reporting requirements in paragraph (r)(6) must be met, as described previously.

Based on the regulations themselves and the comments received, the EPA is concluding that the provisions of 40 CFR 52.21(r)(6) are sufficient for purposes of enforcing the NSR major modification applicability requirements including the clarifying revisions to those applicability requirements in this final rule.

6. Considering Emissions Decreases in Step 1 for Delegated and SIP-Approved Programs

In the proposal, we indicated that if this rule was finalized, any revisions to the regulations at 40 CFR 52.21 would apply to the EPA and reviewing authorities that have been delegated federal authority by the EPA to issue PSD permits on behalf of the EPA (via a delegation agreement with an EPA Regional Office).[101] The EPA also indicated that for state and local air agencies that implement the NSR program through EPA-approved SIPs,[102] the EPA also proposed to revise the regulations for approval of such programs (40 CFR 51.165 and 40 CFR 51.166) to be consistent with the proposed revisions to 40 CFR 52.21(a)(2)(iv).[103] For these SIP-approved programs, the EPA also indicated that if the EPA were to finalize the clarifications being proposed, reviewing authorities may not need to revise their state regulations and submit SIP revisions if the current NSR major modification applicability provisions in those regulations can be interpreted to allow for project emissions accounting or if those state and local air agencies incorporate the federal NSR regulations by reference without a date restriction. Lastly, the EPA mentioned that it was currently aware of a few states and local programs where the applicable SIP-approved regulations expressly preclude project emissions accounting. Thus, we requested comment on whether the EPA should determine that the proposed revisions to 40 CFR 51.165(a)(2)(ii)(F) and (G) and 40 CFR 51.166(a)(7)(iv)(*f*) and (*g*) constitute minimum program elements that must be included in order for state and local agency programs implementing part C or part D to be approvable under the SIP.[104]

Commenters expressed various positions regarding whether the proposed revisions should constitute minimum program elements that must be included for state and local programs implementing parts C or D of Title I of

[100] 40 CFR 52.21(a)(2)(iv)(*b*).

[101] There are currently 7 states that have full or partial delegation of authority to issue PSD permits on behalf of the EPA.

[102] The applicable regulations for state and local air agencies that implement the NSR program through the EPA-approved SIPs include 40 CFR 51.165(2)(ii)(F) and (G); to 40 CFR 51.166(a)(7)(iv)(*f*) and (*g*). Any references to SIP-approved plans also refer to the plans submitted by local air agencies to the EPA for approval.

[103] *Supra* n. 03. As indicated in footnote n. 03, the revisions being finalized in this action also apply to Appendix S of part 51.

[104] Such a determination was made with respect to the NSR regulatory revisions the EPA made in 2002. 67 FR 80185, at 80240 (December 31, 2002).

the CAA to be approvable under a SIP.[105] A few commenters stated that this final rule should constitute minimum program elements that must be included in an EPA-approved SIP on the basis that the changes in this final rule are clarifications of the regulations adopted by the 2002 NSR Reform Rule. Another one of these commenters stated that requiring the proposed rule revisions to be minimum program elements for programs implementing part C or part D to be approvable under a SIP would ensure national consistency.

Various commenters, however, opposed the concept of making project emissions accounting a minimum program element for programs implementing part C or part D to be approvable under a SIP. Some of these commenters noted that under section 116 of the CAA, states can adopt SIP provisions that are more stringent than those required by the EPA's regulations. A couple of commenters added that requiring the implementation of project emissions accounting would run afoul of the sovereign authority of state governments.

After reviewing the comments received on this matter, the EPA has determined that the revisions to the regulations at 40 CFR 52.21 adopted in this final rule apply to the EPA and reviewing authorities that have been delegated federal authority from the EPA to issue major NSR permits on behalf of the EPA.[106] For state and local air agencies that implement the NSR program through EPA-approved SIPs, the EPA agrees with those commenters who argued that section 116 of the CAA allows these states and local air agencies to adopt more stringent SIP emission control requirements than required by the EPA's regulations.[107] Thus, the EPA is concluding that reviewing authorities that do not allow for project emissions accounting have applicability requirements that are at least as stringent as those required by the Act or the EPA's implementing regulations and, therefore, are not required to submit SIP revisions or stringency determinations to the EPA as a result of this action. This is because sources that are not allowed to use project emissions accounting may be subject to major NSR even where a more-complete accounting of their emissions (*i.e.,* accounting of both emissions increases and decreases in Step 1 of the NSR major modification applicability test) would reveal that the project produced either an emissions decrease or a *de minimis* increase in emissions.

For SIPs approved under 40 CFR 51.166, the EPA has determined that conforming state/local plan revisions will not be subject to the deadline by which a reviewing authority is typically required to revise its implementation plan in response to amendments to the federal regulations.[108] Similarly, because the EPA views not allowing project emissions accounting to be at least as stringent as the requirements under 40 CFR 51.165, plans already approved under the current version of that section of the CFR will continue to be at least as stringent as the revised regulations and states and local air agencies will not need to submit revisions to already approved plans.[109]

7. Environmental and Economic Impact Considerations of Project Emissions Accounting

Two commenters asserted that the EPA was required to evaluate the environmental impacts of the proposed rule. One of these commenters argued that the EPA's lack of permitting data does not excuse the agency from conducting an analysis of the environmental impacts of the rule and that the EPA must use data from its own records and/or request data from state and local reviewing authorities to conduct such an analysis.

In the proposal preamble we indicated that we are unable at this time to estimate any potential environmental or economic impacts or changes in emissions associated with project emissions accounting because most NSR permits are issued by state and local air agencies and the EPA generally lacks information on the economic and environmental impacts of NSR permits. NSR permitting is a case-by-case process and sources make permitting decisions based on many factors. Furthermore, neither the EPA nor state and local reviewing authorities have access to any records of decisions made by sources which would indicate whether a project was or was not undertaken in view of the unavailability of project emissions accounting. We do not, for example, require the reporting of any information concerning projects that are not pursued. Thus, in the proposal, we asked that commenters provide information on particular examples that could assist the EPA in providing some level of qualitative impacts analysis when finalizing this action.

In response to this solicitation, a few commenters noted that project emissions accounting is consistent with the CAA and with the congressional intent that the PSD and NNSR preconstruction permitting programs only apply when an existing source undertakes a project resulting in a significant increase in emissions. Several commenters, however, indicated that this final rule would result in negative environmental impacts by allowing sources to forgo major NSR permitting and the associated BACT or LAER requirement. Commenters stated that the emissions increases that would result from this final rule would contravene the purpose of the NSR program to require permits where changes at industrial facilities might increase air pollution. Other commenters noted that this final rule may have the potential of reducing overall emissions by removing a disincentive for sources seeking to undertake projects that would improve the energy efficiency of their operations.

After consideration of the comments received on this matter, we would like to reiterate that this final rule will not allow projects that themselves result in a significant emissions increase (*i.e.,* an increase greater than *de minimis* levels) and a significant net emissions increase to proceed without obtaining a major NSR permit. Rather, the final rule merely clarifies the NSR major modification applicability test to allow for a more accurate accounting of a project's impacts on air quality to the surrounding area by allowing a source to consider all changes in emissions—both increase and decreases—that result from a project in its calculation of the proposed project emissions. This is consistent, rather than contrary, to the congressional intent for the NSR program. Additionally, despite a commenter's assertion that this rule will allow sources to emit more by circumventing the BACT or LAER requirements, there is no evidence to suggest that the final rule will result in greater overall emissions increases than would otherwise be allowed from projects affected by the rule. For example, as the EPA noted in the proposed rule and as indicated by some commenters, it is equally conceivable that accounting for emissions decreases in Step 1 of the NSR major modification

[105] A SIP refers to an implementation plan submitted by a State to the EPA for approval. In this preamble, this term also refers to implementation plans submitted by local agencies.

[106] PSD program provisions have been delegated to reviewing authorities. Reviewing authorities in Indian country can request delegation of the major NA NSR provisions, but to date, none have done so.

[107] *Union Electric* v. *EPA,* 427 U.S. 246,263–264 (1976).

[108] 40 CFR 51.166(a)(6). The EPA's view is that no state is ''required to revise its implementation plan by reason of'' the amendment to 51.166 reflected in this final rule.

[109] 40 CFR 51.165(a)(1), (a)(2)(ii), and (a)(6) (allowing deviations only when at least as stringent).

applicability test will incentivize sources to undertake energy efficiency and/or other environmentally beneficial projects that they might otherwise have forgone. In addition, just because a project might result in a significant increase in emissions in Step 1 without the accounting for emissions decreases from the project, does not mean that the project would be subject to the BACT or LAER requirements. Such a project could still result in a net emissions decrease, or a net emissions increase that is not significant and does not trigger the major NSR permitting requirements. It is therefore improper to compare the use of project emissions accounting to the application of BACT or LAER. These outcomes are not an either-or proposition for a project that would not result in a significant emissions increase when accounting for decreases but would result in a significant emissions increase when decreases from the project are not considered in Step 1.

Several commenters submitted examples of actual projects that involved emissions decreases that would be more likely to proceed with the availability of project emissions accounting. These examples included replacement projects, projects involving the installation of control equipment, and fuel changes—projects that may result in a reduction of overall emissions but may be forgone if decreases associated with the projects are not considered. For example commenters mentioned that, a source may forgo, the installation of an end-of-life replacement to avoid NSR permitting since the emissions would appear as an emissions increase in Step 1 of the applicability determination even when the replacement would have reduced the potential emissions. While the new unit in general may be larger in capacity, their design and material changes generally entail increased efficiency and lower emissions. Newer units may also generally contain inherent emissions controls (*e.g.,* heaters equipped with low NO_X burners) that also lower the source's overall emissions. If the source can count emissions decreases from this project under project emissions accounting, then the source may be more likely to undertake the project, or the source owner might expedite it. However, the project may be foregone if the emission decreases could only be considered as part of a more complex Step 2 contemporaneous netting analysis. Furthermore, commenters noted that proposing a project (*e.g.* expansion that results in increased tank throughput and cooling capacity) may also include the installation of emissions control equipment such as installing a geodesic dome to an external floating roof tank to control volatile organic content (VOC) emissions, retrofitting a cooling water tower with drift eliminators to reduce particulate matter emissions; and/or installing dual-seal pumps to reduce fugitive VOC emissions. If the consideration of emissions decreases as part of project emissions accounting at Step 1 were not available, a project that also involves the installation of emissions control equipment that reduces overall emissions could be foregone due to the complexities of Step 2 contemporaneous netting. Project emissions accounting may also expedite the environmental benefits associated with converting a unit to a lesser-emitting fuel source. For example, when emissions decreases are considered at Step 1, a source owner or operator proposing a project that replaces existing oil-fired boilers with lesser-emitting natural gas boilers might not trigger permitting at Step 1, but it would reduce its overall emissions. If project emissions accounting were not available, the source would likely trigger Step 1 and also undergo the Step 2 analysis to determine if it needs a major modification permit for its proposed project. Under Step 2, the source owner or operator would be required to consider all other contemporaneous emissions increases and decreases from the project, usually within a five-year time period, even though the project itself would have already resulted in a decrease in the actual emissions from the facility. Therefore, a source may decide to forgo transitioning to a lesser-emitting fuel to avoid going through some of the complexities of Step 2 contemporaneous netting or potentially having to receive a major NSR permit for a project that decreases emissions. The Response to Comments document for this final action contains more details about these projects.[110]

Based on the information and examples provided, the EPA believes that considering the full scope of the impact of a project ensures that congressional intent for the NSR program, to ensure environmental protection while allowing for economic growth, is met. That is to say, this rule provides more clarity to sources and reviewing authorities applying the NSR applicability test and potentially reduces the permitting burden for sources undertaking economically-beneficial projects that do not produce a greater than *de minimis* increase in emissions. The EPA has provided a more complete discussion of the potential environmental impacts of the rule as well as the difficulties of accurately projecting such impacts in the Environmental Justice Considerations Section of this preamble and the same analysis is provided in the Response to Comments document for this final action.

[110] These comments can be found in Section 4.0 and 5.0 of the Response to Comments document for this action.

IV. Environmental Justice Considerations

In the proposal, the EPA stated that we did not believe that the proposed revisions to the NSR major modification applicability regulations would have any effect on environmental justice communities because the EPA's NSR regulations in place since the 2002 NSR Reform Rule was finalized to allow project emissions accounting. As such, the EPA expected no increase in the permitting burden for sources, reviewing authorities or environmental justice communities after finalization of the proposed rule revisions.

Nevertheless, one commenter argued that because the proposed revisions would alter how major modifications are determined under the NSR program, they would result in fewer modifications being subject to major NSR and, therefore, the environmental justice impacts of the rule must be considered accordingly. The commenter added that it is clear that the intention of this rulemaking is to reduce the number of projects that are considered major modifications under NSR and this will reduce public health and welfare protection. According to the commenter, this is because fewer facilities will be required to ensure that the changes they are making are protective of ambient air quality and fewer facilities will be required to install pollution controls on new or modified units because their changes will not trigger NSR. Moreover, the commenter stated that environmental justice initiatives stem from the fact that facilities with the worst environmental impact are more likely to be located in areas with higher poverty rates, communities of color, or tribal lands.

We continue to believe that these rule revisions will not impact environmental justice communities in a manner that is different than any impact this rule might have in any other area of the country. As we explained in the proposal preamble, and as stated elsewhere in this preamble, we interpret our regulations to already allow for project emissions accounting even in the absence of this rule. This rulemaking will only serve to provide greater clarity with respect to the major NSR applicability procedures and, thus, will incentivize states to implement project emissions accounting at their discretion. This improved clarity itself confers potential benefits to environmental justice communities by removing a disincentive to the implementation of energy efficiency improvements and other environmentally beneficial projects at industrial sources for sources that might have forgone these projects due to the complexity of the Step 2 contemporaneous netting analysis.

However, to aid stakeholders in their assessment of the potential impacts of this action and to be responsive to the comments received, we did perform a qualitative analysis of a few examples of actual projects that may reduce air emissions due to the availability of project emissions accounting at Step 1 of the NSR major modification applicability test. These examples are based on the comments received during the public comment period for this final action, are included as part of the Response to Comments document for this final action and are also summarized in the next few paragraphs of this section of the preamble. This analysis, however, does not provide a qualitative estimate of the potential environmental impacts of accounting for emissions decreases at Step 1 of the NSR major modification applicability test since the commenters did not provide information of any potential emissions increases or decreases that would have occurred in these examples based on the availability of project emissions accounting at Step 1.[111]

Examples of replacement projects: A source may forgo, the installation of an end-of-life replacement to avoid NSR permitting since the emissions would appear as an emissions increase in Step 1 of the applicability determination even when the replacement would have reduced the potential emissions. While the new unit in general may be larger in capacity, their design and material changes generally entail increased efficiency and lower emissions. Newer units may also generally contain inherent emissions controls (*e.g.,* heaters equipped with low NO_X burners) that also lower the source's overall emissions. If the source can count emissions decreases from this project under project emissions accounting, then the source may be more likely to undertake the project, or the source owner might expedite it. However, the project may be foregone if the emission decreases could only be considered as part of a more complex Step 2 contemporaneous netting analysis.

Examples of projects involving the installation of emissions control equipment: Proposing a project (*e.g.* expansion that results in increased tank throughput and cooling capacity) may also include the installation of emissions control equipment such as installing a geodesic dome to an external floating roof tank to control volatile organic content (VOC) emissions, retrofitting a cooling water tower with drift eliminators to reduce particulate matter emissions; and/or installing dual-seal pumps to reduce fugitive VOC emissions. If the consideration of emissions decreases as part of project emissions accounting at Step 1 were not available, a project that also involves the installation of emissions control equipment that reduces overall emissions could be foregone due to the complexities of Step 2 contemporaneous netting.

Examples of projects involving fuel changes: Project emissions accounting may also expedite the environmental benefits associated with converting a unit to a lesser-emitting fuel source. For example, when emissions decreases are considered at Step 1, a source owner or operator proposing a project that replaces existing oil-fired boilers with lesser-emitting natural gas boilers might not trigger permitting at Step 1, but it would reduce its overall emissions. If project emissions accounting were not available, the source would likely trigger Step 1 and also undergo the Step 2 analysis to determine if it needs a major modification permit for its proposed project. Under Step 2, the source owner or operator would be required to consider all other contemporaneous emissions increases and decreases from the project, usually within a five-year time period, even though the project itself would have already resulted in a decrease in the actual emissions from the facility. Therefore, a source may decide to forgo transitioning to a lesser-emitting fuel to avoid going through some of the complexities of Step 2 contemporaneous netting or potentially having to receive a major NSR permit for a project that decreases emissions.

While this rule may allow projects that produce an overall *de minimis* increase in emissions to forgo the major NSR permitting process, the EPA believes that it is equally conceivable that the rule will create an incentive for sources to adopt emissions-reducing processes and technology (that may represent control beyond what would be required for BACT or LAER) that they would not have otherwise adopted if project emissions accounting were not available. At the very least, the final rule may expedite efficiency-enhancing projects that would have otherwise require a more complex and potentially burdensome Step 2 analysis to determine that the efficiency-enhancing projects would have ''netted out'' or not be subject to major NSR permitting. These efficiency improvements may have collateral benefits.

The EPA also notes that projects at existing major stationary sources that are determined not to trigger major NSR permitting requirements, will, in many or most cases, be subject to minor NSR permitting requirements, regardless of the accounting procedures used in determining major NSR applicability. Minor NSR permit actions require the opportunity for public comment,[112] which provides an opportunity for stakeholders to raise potential environmental justice concerns based on the characteristics of the project and the location of the project relative to any environmental justice communities within the vicinity of the source.

Furthermore, while the EPA shares the commenter's concerns regarding the potential impacts of air pollution on environmental justice communities, the EPA notes that the NSR program is but one of many programs that address air pollution under the Clean Air Act.

In addition, and as noted elsewhere in this preamble and in the Response to Comments document for this final action, the EPA views project emissions accounting as being fully consistent with the Act and the 2002 NSR Reform Rule. Allowing for project emissions accounting will ensure that a project that itself results in a *de minimis* increase in emissions, or even a decrease in emissions, will not be subject to major NSR. As stated previously, the NSR program was designed to ensure environmental protection while allowing for economic

[111] In its preamble to the proposal, the EPA also highlighted an example of a source that could have saved four additional months of the overall permitting process timeline and $80,000 had it had the opportunity to use project emissions accounting, but there were no emissions implications tied to this example. Thus, it is conceivable that the permitted source was not beholden to BACT/LAER emissions reductions or that the source, had it been able to institute the project earlier, could have instituted emissions reductions to offset any emissions reductions that may have been attributed to the resulting BACT/LAER requirements (assuming such requirements were imposed on the source), while reducing the permitting time burden and avoiding triggering the major NSR permitting requirements.

[112] 40 CFR 51.161.

growth by managing increases in emissions from economic development. The EPA believes that project emissions accounting properly balances those interests. In addition, as noted elsewhere, reviewing authorities have the discretion to not allow project emissions accounting and to create or maintain requirements under their SIPs that are at least as stringent as the requirements specified in the EPA's regulations.

Finally, current analytical tools and methods do not allow for a more quantitative analysis of environmental and economic costs associated with the NSR applicability test at this time. However, the EPA will consider whether any newly developed analytical tools or methods would allow for such a quantitative analysis in connection with some future NSR regulatory action.

V. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review since it raises policy issues arising from the President's priorities. Any changes made in response to OMB recommendations have been documented in the docket as required by section 6(a)(3)(E) of Executive Order 12866.

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

This action is considered an Executive Order 13771 deregulatory action. Before completing this rule, the EPA interpreted its NSR regulations to allow for project emissions accounting. To the extent the clarifications included in this rule influence the actions of sources and reviewing authorities to increase the use of project emissions accounting, this final rule will provide burden reduction.

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 regulations and has assigned OMB control numbers 2060–0003 for the PSD and NNSR permit programs. The burden associated with obtaining an NSR permit for a major stationary source undergoing a major modification is already accounted for under the approved information collection requests.

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. Before this rule was finalized, the EPA interpreted its NSR regulations to allow for project emissions accounting and, as such, no increased or decreased burden is expected for sources or reviewing authorities after the finalization of the clarifications included in this rule. Furthermore, the EPA is not making the regulatory changes in this final rule mandatory for adoption and, as such, only major stationary sources located in areas where reviewing authorities decide to newly implement project emissions accounting might see a burden reduction if the consideration of emissions increases and decreases in Step 1 does not trigger further permitting requirements that may have otherwise required these major stationary sources to obtain a major NSR permit.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded federal 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's NSR major modification applicability regulations in place after the 2002 NSR Reform Rule allow for the consideration of emissions increases and decreases in Step 1 of the NSR major modification applicability test and, as such, the clarifying revisions being proposed in this rule will not have exclusive tribal implications. Furthermore, the EPA is currently the reviewing authority for PSD and NNSR permits issued in tribal lands and, as such, the clarifying revisions being proposed will not impose direct burdens on tribal authorities. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because 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 a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. In addition, and before this rule was finalized, the EPA interpreted its NSR regulations to allow for project emissions accounting and, as such, no increased burden is expected for sources or reviewing authorities after the finalization of the clarifications included in this rule. Furthermore, the EPA is not making the regulatory changes in this final rule mandatory for adoption and, as such, only major stationary sources located in areas where state and local reviewing authorities decide to newly implement project emissions accounting might see a burden reduction if the consideration of emissions increases and decreases in Step 1 does not trigger further permitting requirements that may have otherwise required these major stationary sources to obtain a major NSR permit.

J. National Technology Transfer and Advancement Act

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).

Before this rule was finalized, the EPA interpreted its NSR regulations to allow for project emissions accounting and this action only finalized clarifying revisions to the NSR major modification applicability regulations. Further information on the Environmental Justice considerations are included in Section IV of this final action's preamble.

L. Congressional Review Act (CRA)

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

M. Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of any nationally applicable regulation, or any action the Administrator ''finds and publishes'' as based on a determination of nationwide scope or effect must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the date the promulgation, approval, or action appears in the **Federal Register**.[113] This action is nationally applicable, as it clarifies the applicability provisions that apply to Step 1 of the NSR major modification applicability test in 40 CFR 51.165, 51.166, 52, and appendix S to part 51. As a result, petitions for review of this final action must be filed in the United States Court of Appeals for the District of Columbia Circuit by January 25, 2021. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of this action.[114]

VI. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control.

[113] 42 U.S.C. 7607(b)(1).

[114] 42 U.S.C. 7607(d)(7)(B).

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Andrew Wheeler,

Administrator.

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

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—Review of New Sources and Modifications

■ 2. Section 51.165 is amended by revising paragraph (a)(2)(ii)(F) and adding paragraph (G) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(2) * * *

(ii) * * *

(F) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs (a)(2)(ii)(C) through (D) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(G) The ''sum of the difference'' as used in paragraphs (C), (D) and (F) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs.

* * * * *

■ 3. Section 51.166 is amended by revising paragraph (a)(7)(iv)(*f*) and adding paragraph (*g*) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(a) * * *

(7) * * *

(iv) * * *

(*f*) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs (a)(7)(iv)(*c*) through (*d*) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(*g*) The ''sum of the difference'' as used in paragraphs (*c*), (*d*) and (*f*) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs.

* * * * *

Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards

■ 4. Appendix S to part 51 is amended by revising section IV.I.1.(v) and adding paragraph (vi) to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

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IV. Sources That Would Locate in a Designated Nonattainment Area

* * * * *

I. *Applicability procedures.*

1. * * *

(v) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs IV.I.1(iii) through (iv) of this Ruling as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

(vi) The ''sum of the difference'' as used in paragraphs (iii), (iv) and (v) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 5. The authority citation for part 52 continues to read as follows:

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

Subpart A—General Provisions

■ 6. Section 52.21 is amended by revising paragraph (a)(2)(iv)(*f*) and adding paragraph (*g*) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(a) * * *

(2) * * *

(iv) * * *

(*f*) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs (a)(2)(iv)(*c*) through (*d*) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(*g*) The ''sum of the difference'' as used in paragraphs (*c*), (*d*) and (*f*) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs.

* * * * *

[FR Doc. 2020–23784 Filed 11–23–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2018–0348]

RIN 2126–AC24

Hours of Service of Drivers; Definition of Agricultural Commodity

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule with request for comment.

SUMMARY: FMCSA clarifies the definition of the terms ''any agricultural commodity,'' ''livestock,'' and ''non-processed food,'' as the terms are used in the definition of ''agricultural commodity'' for the purposes of the Agency's ''Hours of Service (HOS) of Drivers'' regulations. Under current regulations, drivers transporting agricultural commodities, including livestock, from the source of the commodities to a location within 150 air miles of the source, during harvest and planting seasons as defined by each State, are exempt from the HOS requirements. Furthermore, the HOS requirement for a 30-minute rest break does not apply to drivers transporting livestock in interstate commerce while the livestock are on the commercial motor vehicle. This interim final rule (IFR) clarifies the meaning of these existing definitional terms to ensure that the HOS exemptions are utilized as Congress intended.

DATES: This IFR is effective December 9, 2020. You must submit comments on or before December 24, 2020.

Petitions for Reconsideration of this IFR must be submitted to the FMCSA Administrator no later than December 24, 2020.

ADDRESSES: You may submit comments identified by docket number FMCSA–2018–0348 using any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0348.* Follow the online instructions for submitting comments.
- Fax: (202) 493–2251.
- *Mail:* Dockets Operations, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4325, *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: This IFR is organized as follows:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this IFR (FMCSA–2018–0348), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to: *http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0348,* click on the ''Comment Now!'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they have reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this IFR based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

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 IFR 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 IFR, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this IFR. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington DC 20590. Any comments that FMCSA receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0348* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at *https://www.transportation.gov/privacy.*

II. Executive Summary

Purpose of the Regulatory Action

Congress defined ''agricultural commodity'' as ''any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in [7 U.S.C. 1471] and insects.)'' The existing regulatory text in 49 CFR 395.2 adopts, without substantive change, the statutory definition of ''agricultural commodity.'' Currently, under Federal statute and regulation, commercial motor vehicle (CMV) drivers transporting agricultural commodities from the source of the commodities to a location within 150 air miles of the source, during harvest and planting seasons as defined by each State, are exempt from the HOS requirements (49 CFR 395.1(k)(1)). Furthermore, § 395.1(v) exempts drivers transporting livestock in interstate commerce from the 30-minute rest break requirement while the livestock are on the CMV. The definition of ''livestock'' in § 395.2 restates the definition in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 (the 1988 Act), as amended in 7 U.S.C. 1471.

In July 2019, FMCSA published an Advance Notice of Proposed Rulemaking (ANPRM) requesting assistance from stakeholders in determining whether, and to what extent, the Agency should clarify key terms used in the definition of ''agricultural commodity'' in § 395.2 (84 FR 36559 (July 29, 2019)). The Agency, noted, for example, that broad terms such as ''any agricultural commodity'' are subject to multiple interpretations, and have led to inconsistent application of the HOS exemption in § 395.1(k)(1). Based on comments to the ANPRM, discussed further below, as well as ongoing inquiries from the State enforcement partners, FMCSA codifies its interpretation of the meaning of the following terms in § 395.2: ''any agricultural commodity,'' ''non-processed food,'' and ''livestock.'' The purpose of the definitional clarifications is to ensure that the HOS exemptions in §§ 395.1(k)(1) and 395.1(v) are consistently understood and enforced. The definitional clarifications may affect the extent to which the HOS exemptions apply to transporters of certain agricultural commodities, including livestock. For reasons identified below, FMCSA currently does not have sufficient information to estimate the quantitative impact of these clarifications on carriers or drivers who use the exemptions or on the vehicle miles traveled (VMT). As discussed further below, the Agency asks stakeholders to address these issues when commenting on the impact of the IFR on their operations.

Benefits and Costs

The ambiguity associated with the definitions of the exemptions in §§ 395.1(k)(1) and 395.1(v) currently may be hindering consistent enforcement practices, thereby impacting business-related decisions for the hauling of agricultural commodities and livestock, resulting in unnecessary costs and disbenefits. By clarifying the definitions of ''agricultural commodity,'' ''non-processed food,'' and ''livestock,'' the IFR will create a common understanding between FMCSA, motor carriers, drivers, and enforcement officials.

While this rule merely clarifies an ambiguous definition without changing any substantive requirements, some regulated entities and enforcement officials may change their behavior in response to this rule. In theory, there are two groups of CMV drivers whose behavior may be impacted by this IFR: (1) Those to whom the definitions of ''agricultural commodity,'' ''non-processed food,'' and ''livestock'' apply but who currently do not use an exemption due to the existing definitional ambiguity, and (2) those who currently use an exemption in §§ 395.1(k)(1) or 395.1(v), and may no longer do so as a result of the clarifications. Drivers who use these exemptions as a result of the clarification provided in this interpretative rule may potentially realize cost savings, and those who no longer use an exemption as a result of this clarification may incur costs.

The Agency does not collect information on the number of drivers currently using the agricultural commodity or livestock exemptions, nor do we know the extent to which State-based enforcement practices vary due to definitional ambiguity. There is uncertainty surrounding the number of drivers who are currently not utilizing an exemption due to definitional ambiguity and may therefore realize the associated cost savings as a result of this rule. The Agency does not, therefore, estimate quantitative impacts associated with this IFR, opting instead for a qualitative analysis. Specifically, FMCSA expects any increase in the number of exemptions used will be by transporters of perishable horticultural commodities, non-processed food, or livestock, including aquatic animals.

III. Legal Basis for the Rulemaking

Section 204(a) of the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, 546, August 9, 1935), as codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (Secretary) to ''prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' This IFR pertains to the maximum HOS of drivers transporting agricultural commodities by CMV.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, CMVs, and vehicle equipment. Section 206(a) of the Act (98 Stat. 2834), codified at 49 U.S.C. 31136(a), grants the Secretary broad authority to issue regulations ''on commercial motor vehicle safety.'' The regulations must ensure that ''(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely. . .; (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title.'' (49 U.S.C. 31136(a)(1)–(5)).

This IFR primarily addresses the safety of the vehicle and driver (49 U.S.C. 31136(a)(1)–(2)), and secondarily, the health of the driver (section 31136(a)(4)). This IFR does not directly address medical standards for drivers (section 31136(a)(3)). FMCSA does not anticipate that drivers would be coerced as a result of the proposed clarifying changes (section 31136(a)(5)).

More specifically, this IFR is based on a statutory exemption from HOS requirements for CMV drivers transporting ''agricultural commodities . . . during planting and harvesting periods, as determined by each State.'' The exemption was initially enacted as Sec. 345(a)(1) of the National Highway System (NHS) Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568, 613, November 28, 1995).

Section 4115 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, 1726, August 10, 2005) retroactively amended the Motor Carrier Safety Improvement Act of 1999 (MCSIA, Pub. L. 106–159, 113 Stat. 1748, December 9, 1999) by transferring Sec. 345 to new Sec. 229 of MCSIA (113 Stat. 1773). Section 4130 of SAFETEA–LU then revised section 229, as transferred by section 4115, mainly by adding definitions of ''agricultural commodity'' and ''farm supplies for agricultural purposes'' (119 Stat. 1743), as discussed further below. These definitions are codified at 49 CFR 395.2. Section 32101(d) of the Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141, 126 Stat. 405, 778, July 6, 2012) revised section 229 again, mainly by expanding the 100 air-mile radius of the exemption to 150 air miles.

The IFR is also based on a statutory exemption from the HOS requirement for a 30-minute rest break for CMV drivers transporting livestock in interstate commerce, set forth in section 5206(b)(1)(C) of the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114–94, 129 Stat. 1312, 1537, December 4, 2015).

Before prescribing any regulations, FMCSA must also consider the ''costs and benefits'' of its proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

This IFR is consistent with DOT's regulations on rulemaking procedures set forth at 5 CFR part 5, subpart B. Specifically, the IFR embodies the regulatory policies that regulations should be straightforward and clear (49 CFR 5.5(d)) and that ''[o]nce issued, regulations and other agency actions should be reviewed periodically and revised to ensure that they continue to meet the needs they were designed to address and remain cost-effective and cost-justified'' (49 CFR 5.5(h)). This IFR also complies with the requirements that final rules shall be written in plain and understandable English (49 CFR 5.13(k)(3)(i)) and based on a reasonable and well-founded interpretation of relevant statutory text (49 CFR 5.13(k)(3)(ii)).

The Administrator of FMCSA is delegated authority under 49 CFR 1.87(f) and (i) to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311 and 315, respectively, as they relate to CMV operators, programs, and safety.

Prior Notice and Comment Not Required for Interpretative Rule

The Administrative Procedure Act (APA) (Pub. L. 79–404, 60 Stat. 237), codified at 5 U.S.C. 553, provides that notice and public comment procedures are not applicable to ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (5 U.S.C. 553(b)(A)). Furthermore, DOT's rulemaking procedures provide that prior notice and an opportunity for comment are not required for rules of interpretation (49 CFR 5.13(j)(1)(i)). The APA defines ''rule'' as ''the whole or part of an agency statement of general or particular applicability and future effect designed to implement, *interpret,* or prescribe law or policy'' (5 U.S.C. 551(4)) (emphasis added). The Attorney General's Manual on the Administrative Procedure Act further defines interpretative 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.'' [1] Because this IFR is an interpretative rule within the meaning of the APA, prior notice and public comment are not required.

In determining whether a rule is ''legislative'' (and thus generally subject to the APA's notice and comment requirements) rather than ''interpretative,'' among the factors courts consider are whether, in the absence of a legislative rule, an agency has adequate basis for enforcement action; whether the rule leaves the agency with any discretion; and whether the rule repudiates or is irreconcilable with a prior legislative rule. Each of these factors is addressed briefly below.

As explained below in Section V. Discussion of Interim Final Rule, the IFR clarifies the terms ''any agricultural commodity,'' ''non-processed food,'' and ''livestock,'' currently included in the definition of ''agricultural commodity'' in 49 CFR 395.2. The IFR does not establish any new terms not already included in the existing statutory and regulatory definitions of ''agricultural commodity,'' and does not create any new rights or impose new regulatory burdens.[2] Nor does the IFR expand the Agency's existing authority to enforce the exemptions set forth in 49 CFR 395.1(k) and (v); as noted in the Legal Basis discussion above, FMCSA currently has delegated authority to determine and enforce compliance with the exemptions.[3] FMCSA codifies these definitional clarifications to promote more consistent understanding of existing terms so the exemptions are utilized and applied consistently. Because this IFR amends the regulatory text in 49 CFR 395.2, the IFR has ''binding effect'' in the same sense that the existing definitions have binding effect. The Agency notes, however, the clarifications set forth in the IFR are inclusive rather than exclusive, and therefore permit the Agency continued discretion to determine whether the exemptions apply in specific circumstances [4] as discussed further below in Section V. Lastly, the IFR does not contradict a prior legislative rule

[1] Attorney General's Manual on the Administrative Procedure Act (1947), at 30, n.3.

[2] ''An interpretative rule simply states what the administrative agency thinks the [underlying] statute means, and only '''reminds' affected parties of existing duties.'' On the other hand, if by its action the agency intends to create new law, rights or duties, the rule is properly considered to be a legislative rule.'' *General Motors Corp.* v. *Ruckelshaus,* 742 F. 2d 1561, 1565 (DC Cir. 1984) (final rule amending CFR by interpreting Clean Air Act provision authorizing recall of all members of a non-conforming class was an interpretative rule not subject to prior notice and comment), quoting *Citizens to Save Spencer County* v. *U.S. Environmental Protection Agency,* et al., 600 F. 2d 844, 876 n. 153 (DC Cir. 1979) (final rule by which EPA amended the CFR by incorporating and explaining the immediately effective ''prevention of significant deterioration'' requirements identified in the Clean Air Act was an interpretative not a legislative rule; notice and comment not required), quoting *Pesikoff* v. *Secretary of Labor,* 501 F. 2d 757, 763, n. 12 (DC Cir. 1974).

[3] For example, on August 5, 2020 (85 FR 47565), FMCSA denied as moot the application of Turfgrass Producers International to extend the HOS exemption in 49 CFR 395.1(k) to CMV drivers transporting turfgrass sod. The Agency determined that, because sod falls within the current definition of ''agricultural commodity'' in 49 CFR 395.2, transporters of sod are already eligible for the exemption.

[4] ''[A]n action is not a [legislative] rule if it leaves the agency and its decision-makers free to exercise discretion.'' *Patriot, Inc.* v. *U.S. Dept. of Housing and Urban Development,* 963 F. Supp. 1, 4 (D.D.C. 1997), citing *American Bus Association* v. *United States,* 627 F. 2d 525, 529 (DC Cir. 1980).

simply by clarifying the meaning of current definitional terms.[5]

This IFR includes a 30-day post-publication comment period, and the Agency seeks input on specified issues. FMCSA will consider and address submitted comments in the final rule that will follow this IFR and may make changes to the rule in response to comments received.

In accordance with 5 U.S.C. 553(d)(2), this IFR will become effective less than 30 days after publication. As noted above, the effective date is December 9, 2020.

IV. Background

A. HOS Regulations

The HOS regulations, as set forth in 49 CFR part 395, limit property-carrying CMV drivers to 11 hours of driving time within a 14-hour period after coming on duty following 10 consecutive hours off duty. On June 1, 2020, the FMCSA published a final rule updating the HOS regulations for CMV drivers [85 FR 33396]. The rule, effective on September 29, 2020, revises the HOS requirements to provide greater flexibility for drivers without adversely affecting safety. The Agency expanded the short-haul exception to 150 air-miles and allows a 14-hour work shift to take place as part of the exception.

Under the HOS regulations, drivers may not drive after accumulating 60 hours of on-duty time in any 7 consecutive days, or 70 hours in any 8 consecutive days. Generally, drivers of property-carrying CMVs may restart the 60- or 70-hour clock by taking 34 consecutive hours off duty. As discussed further below, the time spent transporting an agricultural commodity within the 150 air-mile radius from the source does not count against the limits on maximum driving. On-duty time does not apply during harvest and planting periods, as determined by each State, to drivers transporting agricultural commodities (and farm supplies for agricultural purposes) from the source of the commodities to a location within a 150 air-mile radius of the source. In addition, the 30-minute rest break requirement does not apply, even outside of the 150-air-mile radius, to CMV drivers transporting livestock while the livestock are on the vehicle.

B. June 2018 Regulatory Guidance—Application of the 150 Air-Mile HOS Exemption

On June 7, 2018, FMCSA issued regulatory guidance on the transportation of agricultural commodities as defined in § 395.2 (83 FR 26374). The guidance addressed various issues related to the statutory term ''source of the commodities,'' but it did not directly address the scope or meaning of the term ''agricultural commodity.'' Specifically, the June 2018 guidance addressed: Drivers operating unladen CMVs en route to pick up an agricultural commodity or returning from a delivery point; drivers engaged in trips beyond the 150 air miles of the source of the commodity; determining the ''source'' of agricultural commodities for purposes of the exemption; and how the exemption applies when agricultural commodities are loaded at multiple sources during a trip.

C. Statutory/Regulatory Definitions of ''Agricultural Commodity'' and ''Livestock''

As noted above in Section III. Legal Basis for the Rulemaking, Congress initially adopted the HOS exemption for the transportation of agricultural commodities, during harvesting and planting seasons as defined by each State, in 1995 as part of the NHS Designation Act. Congress did not, however, define the term ''agricultural commodities'' at that time. The Agency added, verbatim, the statutory exemption to its HOS regulations (61 FR 14677, April 3, 1996). In 2005, as part of SAFETEA–LU, Congress adopted the current definition of agricultural commodity: ''The term '*agricultural commodity'* means any agricultural commodity, food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects), and any product thereof.''

The Agency subsequently added this statutory definition of ''agricultural commodity,'' verbatim, to § 395.2 (72 FR 36760, July 5, 2007). At that time, section 602 of the 1988 Act, cross-referenced in the SAFETEA–LU definition of ''agricultural commodity,'' defined ''livestock'' as ''cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits under the 1988 Act, as amended.''

On July 22, 2016, the Agency amended § 395.2 by adding a free-standing definition for the term ''livestock,'' which restated, without substantive change, the definition of livestock set forth in the 1988 Act, referenced above (81 FR 47721). The addition of a separate definition of the term ''livestock'' to § 395.2 was part of FMCSA's final rule implementing certain requirements of the FAST Act. Section 5206(b)(1)(C) of the FAST Act made permanent a regulatory exemption[6] from the 30-minute rest break required under the HOS regulations (§ 395.3(a)(3)(ii)), for drivers transporting livestock. The 2016 final rule implemented this FAST Act requirement by adding new § 395.1(v).

In section 12104 of the Agricultural Improvement Act of 2018 (2018 farm bill, Pub. L. 115–334, 132 Stat. 4490, December 20, 2018), Congress amended the definition of ''livestock'' in the 1988 Act by removing the term ''fish used for food'' and adding ''llamas, alpacas, live fish, crawfish, and other animals that'' to the phrase ''are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits [under the Act of 1988].'' The 2018 farm bill also removed the Secretary of Agriculture's discretion to designate animals as livestock in addition to those specifically listed in the statute. On September 30, 2019, FMCSA conformed the text of the definition of ''livestock'' in § 395.2 to the change made to the 1988 Act by the 2018 farm bill (84 FR 51427, 51430). The Agency's conforming change added llamas, alpacas, live fish and crawfish, and deleted the term ''fish used for food,'' and removed the reference to the Secretary of Agriculture's discretion to designate additional animals.

D. 2019 ANPRM Regarding Definitions of ''Agricultural Commodity'' and ''Livestock''

As noted above, in July 2019, FMCSA issued an ANPRM requesting input from stakeholders in determining how the Agency could clarify the definitions of

[5] ''A rule does not. . .become an amendment [to a prior legislative rule] merely because it supplies crisper and more detailed lines than the authority being interpreted.'' *American Min. Congress* v. *Mine Safety & Health Admin.*, 995 F. 2d 1106, 1112 (D.C. Cir. 1993).

[6] On June 12, 2015, FMCSA renewed an exemption, granted to the Agricultural and Food Transporters Conference of the American Trucking Associations, from the 30-minute rest break provision of the HOS regulations for CMV drivers transporting livestock (80 FR 33584). The Agency granted and renewed the exemption to protect the health and safety of livestock during interstate transportation by CMV. The exemption applied only during the transportation of livestock, as defined in the 1988 Act, and did not cover the operation of the CMV after livestock are unloaded from the vehicle.

the terms ''agricultural commodity'' or ''livestock'' in the HOS regulations, while remaining consistent with the underlying statutory requirement for a limited exemption from the HOS requirements for CMV drivers transporting these commodities. The ANPRM posed questions specifically addressing the need for FMCSA to clarify the current definitions of the terms ''agricultural commodity'' or ''livestock'' in § 395.2, and the benefits and costs of clarifying or revising these definitions, including related impacts on highway safety. Additionally, FMCSA requested comment on the extent to which the current definitions (as understood or applied) conflict, or are otherwise inconsistent, with regulations administered by the U.S. Department of Agriculture (USDA), such as the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 449a(1)).

The Agency received 140 comments in response to the ANPRM.[7] Commenters represented the following industries/organizational types: 12 commenters represented State agricultural bureaus; six from State agricultural trade associations; eight represented haulers of sod; 10 represented private-sector agricultural trade associations; two were from trucking associations; one from a trade safety organization; another represented a private company; and 100 others responded as individual commenters.

In the ANPRM, FMCSA asked how specific commodities, such as sod or other types of horticulture, fit within the definition of the term ''any agricultural commodity.''

Nearly half of the comments addressed Question 1, which asked whether specific products, such as sod or other types of horticulture, should be included in the definition of ''agricultural commodity.'' Commenters stated that various forms of horticulture, such as flowers, shrubs, sod, and Christmas trees, are agricultural commodities and that, due to the risk of perishability in transit, drivers transporting these products should be eligible for the HOS exemption in § 395.1(k)(1). Most commenters opposed including a finite list of types of agricultural commodities as part of the definition in § 395.2, though some favored cross-referencing the list of ''perishable'' commodities recognized by USDA under the PACA regulations.

The Agency received no information concerning the average and maximum length of trip for specific agricultural commodities, as requested in Question 5. Question 5 also asked whether the definition of ''livestock'' should include specific animals in addition to those already identified in the 1988 Act (including those added by the 2018 farm bill). While some commenters supported the idea of including a finite list of animals in the definition of ''livestock'' (in addition to the species already identified in the 1988 Act, as amended), most who addressed this issue said that FMCSA should interpret the term comprehensively to include all living animals. The Agency received limited response to question 10, concerning a motor carrier's exposure to financial liability resulting directly from a driver's compliance with the HOS regulations.

Several commenters noted that confusion caused by the current definition of ''agricultural commodity'' impacts safety by undermining uniformity of enforcement and the underlying safety benefits of the HOS regulations. One commenter suggested that FMCSA adopt a more specific definition of the term, but not in a way that could adversely impact safety by increasing the number of drivers eligible for the HOS exemption in § 395.1(k)(1). FMCSA notes that additional comments to the ANPRM, addressing specific aspects of the terms the Agency clarifies, are discussed below.

V. Discussion of Interim Final Rule

Based on issues raised by commenters to the ANPRM, summarized above, as well as ongoing inquiries from FMCSA's State partners who enforce State HOS requirements compatible with the Federal rules, the Agency concludes that the definitions of ''agricultural commodity'' and ''livestock,'' as used in § 395.2, are not uniformly understood among stakeholders. To facilitate more consistent understanding of these terms, and therefore more consistent enforcement of the HOS exemption in § 395.1(k)(1) and the 30-minute rest break exemption in § 395.1(v), FMCSA codifies its interpretation of their meaning. The Agency notes that the current regulatory definitions of ''agricultural commodity'' and ''livestock,'' restate, without substantive change, the text of the underlying statutes identified above. The Agency's interpretation of these terms does not fundamentally alter that statutory framework.

As noted above, Congress adopted the current definition of ''agricultural commodity'' in 2005, as currently restated in § 395.2: ''*Agricultural commodity* means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects).'' The Agency notes that, in setting forth this statutory definition, Congress drew from existing references in Title 7 (Agriculture) of the United States Code (U.S.C.): (1) The Agricultural Trade Act of 1978 (7 U.S.C. 5602);[8] and (2) the Act of 1988 (7 U.S.C. 1471(2)). In seeking to clarify the meaning of three key terms used in the definition of ''agricultural commodity,'' FMCSA also looks to Title 7 for guidance, as discussed below.

A. ''Any Agricultural Commodity''

In § 395.2, ''agricultural commodity'' is defined, in part, as ''any agricultural commodity.'' As noted in the ANPRM, this definition is ambiguous. On one hand, the term ''any agricultural commodity'' is broad. On the other hand, the term must be understood and interpreted within the context of the HOS requirements, which are intended to prevent CMV-involved crashes caused by driver fatigue due to working long hours. The exemption in § 395.1(k)(1), which allows additional driving and working hours for drivers transporting agricultural commodities, is intended to facilitate timely delivery of agricultural commodities during State-defined harvest and planting seasons. Because the statute includes the term ''any agricultural commodity,'' in the definition of ''agricultural commodity,'' the most direct reading of the statute is that the definition also covers agricultural products *not* otherwise considered to be ''non-processed food, feed, fiber, or livestock.''[9] The IFR therefore clarifies the meaning of ''any agricultural commodity'' when determining whether a driver is eligible for the HOS exemption in § 395.1(k)(1).

In the ANPRM, FMCSA asked how specific commodities, such as sod or other types of horticulture, fit within the definition of the term ''any agricultural commodity.'' Most commenters addressing this question urged FMCSA to clarify that perishable horticultural products are included in the definition

[7] The comments may be accessed at *https://www.regulations.gov/docket?D=FMCSA-2018-0348.*

[8] The Agricultural Trade Act of 1978 defines ''agricultural commodity'' as ''any agricultural commodity, food, feed, fiber, or livestock (including livestock as it is defined in [the Act of 1988]) *and any product thereof*'' (emphasis added). Congress, when adopting the definition of ''agricultural commodity'' in 2005 (119 Stat. 1743), to be used in applying the HOS exemption, inserted the phrase ''non-processed'' before ''food,'' and did not include the phrase ''and any product thereof.''

[9] A well-established canon of construction favors an interpretation that avoids rendering any statutory phrase or clause as ''surplusage.'' See *Freeman* v. *Quicken Loans, Inc.*, 566 U.S. 624, 636 (2012).

of ''any agricultural commodity.'' A number of commenters provided documentation that horticultural products not used for food or feed, and not sources of fiber, are nevertheless defined or considered as agricultural commodities in various statutes and programs administered by USDA, as well as by other Federal agencies (*e.g.,* the Internal Revenue Service, the Environmental Protection Agency). The New Jersey Department of Agriculture stated, for example, that ''sod is defined as an agricultural product by State Departments of Agriculture across the country, including the New Jersey Department of Agriculture.''

In addition, some commenters provided information, as requested in the ANPRM, addressing the perishability, or degradation in quality, of certain horticultural products during transport by CMV. They explained the impact of post-harvest transportation on factors that determine plant health, such as temperature, exposure to light, and humidity levels. Industry groups noted that plant health largely dictates the commercial value of these products. According to the University of Georgia's College of Agriculture & Environmental Science, Department of Horticulture (the University), although certain horticultural products, such as ornamental plants, are typically transported in a refrigerated environment, reducing the temperature in the cargo container does not prevent damage to plant tissue caused by the release of ethylene, it merely slows that process. The University concluded that ''[l]ive plants must be transported as quickly as possible from the producer to the consumer to mitigate damage.'' The Agency also heard from industry groups documenting the importance of transporting and laying sod within 24 hours of harvest to ensure ''quality establishment.''

The IFR clarifies that horticultural products subject to perishability or significant degradation in product quality during transport by CMV fall within the meaning of ''any agricultural commodity,'' as the term is used in the definition of ''agricultural commodity'' in § 395.2. For example, the Agency considers plants, including sod, flowers, ornamentals, seedlings, shrubs, live trees, and Christmas trees, within the scope of the definition. The definition does not include those horticultural products which are not sensitive to temperature and climate and do not risk perishability while in transit, such as timber harvested for lumber, or wood pulp or related products. FMCSA invites comment on whether this clarification, *i.e.,* ''horticultural products subject to perishability or significant degradation in product quality during transport by CMV,'' sufficiently delineates which products fall within the definition of ''any agricultural commodity'' for purposes of the exemption in § 395.1(k)(1).

Additionally, the Agency requests assistance in determining the number of CMV drivers transporting perishable horticultural commodities who currently use the exemption in § 395.1(k); the extent to which that number would be higher or lower as a result of the clarification; and the average and maximum times CMV drivers travel when transporting specific perishable horticultural commodities, as described above.

B. ''Non-Processed Food''

The ANPRM requested comment on how the term ''non-processed'' as used in the definition of ''agricultural commodity'' in § 395.2, is currently understood and applied.

All commenters who addressed this issue stated or implied that, in their understanding, ''non-processed'' modifies only the term ''food'' and does not modify ''feed, fiber, or livestock.'' The Agency agrees with this interpretation, and with commenters who noted that, as a matter of grammatical construction, the placement of a comma after ''non-processed food'' separates it from the other items listed.

The ANPRM also asked commenters to address the distinction between ''processed'' and ''non-processed,'' and requested specific examples of ''non-processed'' products. In response, some commenters noted confusion and inconsistency among State enforcement personnel concerning the extent to which certain types of ''processing'' render a food commodity to be considered ''processed'' instead of ''non-processed.'' For example, in some areas fresh fruits or vegetables are considered ''processed'' if they are bagged or cut (*e.g.,* cut and bagged lettuce) while in other locations, commodities subject to this type of minimal processing are deemed ''non-processed'' for the purpose of applying the HOS exemption.

In the ANPRM, FMCSA noted that USDA statutes and regulations define ''agricultural commodity'' in a variety of ways, depending on the underlying statutory framework. We asked whether transporters subject to both the HOS and USDA regulations, such as PACA,[10] are impacted by not having consistent definitions of the term ''agricultural commodity.'' FMCSA also asked whether specific food commodities, such as fresh fruits and vegetables (in non-frozen form) individually identified in the PACA regulations, should be added to the definition of ''agricultural commodity'' in § 395.2. Most commenters who responded to these questions believed FMCSA should identify the categories of non-processed food included in the definition, rather than adopt, or incorporate by reference, a specific list of fruits and vegetables and other non-processed food commodities.

When considering this issue, FMCSA relied on the relevant statutory limitations: To use the HOS exemption in § 395.1(k)(1), the CMV driver must be transporting *non-processed* food products; and the transportation must occur within planting and harvesting seasons, as defined by each State. Harvest denotes the time of year that a crop is ripe, ready, and needs to be gathered or reaped, to avoid losses in quality and commercial value; the exemption is thus intended to accommodate the transportation of ''harvested'' food commodities. In keeping with the statutory parameters noted above, the Agency clarifies that ''non-processed food'' means food commodities in a raw or natural state and not subjected to significant post-harvest changes to enhance shelf life. For definitional purposes, it is difficult to determine precisely the point at which food commodities are no longer ''non-processed'' within the meaning of the exemption; indeed, that point may vary depending on the nature of the food product. Therefore, some degree of enforcement discretion must be expected in determining whether the exemption applies to CMV drivers transporting these products.

The guiding principle here is whether the product has been processed to the point that it loses its original post-harvest identity and becomes a different item. Accordingly, FMCSA clarifies that ''non-processed food,'' as the term is used in § 395.2, includes fruits, vegetables, and cereal and oilseed crops which have been minimally processed by cleaning, cooling, trimming, cutting, shucking, chopping, bagging, or

[10] The Perishable Agricultural Commodities Act (''PACA''), 7 U.S.C. 499a–499t, was enacted in 1930 to regulate the marketing of fresh and frozen fruits and vegetables by establishing and enforcing a code of fair business practices and by helping companies resolve business disputes. The primary purposes of the PACA are to prevent unfair and fraudulent conduct in the marketing and selling of these commodities in interstate and foreign commerce. The PACA regulations, set forth in 7 CFR part 46, are administered by the Agricultural Marketing Service, an agency within USDA.

packaging to facilitate transport by CMV. Products subject to post-harvest changes, such as jarring, canning, drying, or freezing, are not ''non-processed food.'' This clarification is consistent with FMCSA's regulatory guidance addressing application of the 150 air-mile exemption in § 395.1(k)(1), in which the Agency noted that a ''source'' of the commodity may be an intermediate storage or handling location away from the farm or field, ''*provided the commodity retains its original form and is not significantly changed by any processing or packing.*'' [11]

The Agency's interpretation of the term ''non-processed food'' is also generally consistent with the definition of fresh fruits and vegetables in the PACA regulations, except that frozen fruits and vegetables do not fall within the definition of ''non-processed food'' [12] described above. Accordingly, drivers transporting non-frozen fresh fruits and vegetables subject to the PACA regulations in 7 CFR part 46 are eligible for the exemption in § 395.1(k)(1), as long as the fruits and vegetables are ''non-processed food'' within the meaning of § 395.2.

The Agency requests comment on whether the clarification will result in more consistent application of the HOS exemption for drivers transporting ''non-processed food.'' If not, how could the meaning of the term be further clarified? FMCSA also seeks qualitative and quantitative data to determine whether the clarification will affect the number of CMV drivers transporting ''non-processed food'' who would use the HOS exemption in § 395.1(k)(1), and the average and maximum travel times when transporting ''non-processed food,'' as described above.

C. ''Livestock''

As previously discussed, the definition of ''livestock'' in § 395.2 restates, without substantive change the current definition of the term in Sec. 602 of the 1988 Act, as amended by the 2018 farm bill: ''Livestock means cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), llamas, alpacas, live fish, crawfish, and other animals that are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits under the Emergency Livestock Feed Assistance Act of 1988, as amended.''

In the ANPRM, FMCSA noted that the definition of the term ''livestock,'' as used in the statutory definition of ''agricultural commodity'' and restated in § 395.2, includes, but is not limited to, the animals identified in the 1988 Act. In other words, when Congress adopted the statutory definition of ''agricultural commodity'' in 2005, it set a definitional floor for the term ''livestock'' by including the animals identified in the 1988 Act but did not limit the term only to those animals. Accordingly, FMCSA asked whether other animals, including aquatic animals, should be included within the definition of ''livestock'' in § 395.2. Most commenters who responded to this question supported the inclusion of aquatic animals, and rather than recommending additional species, suggested that all living animals be included in the definition of ''livestock.''

The Agency notes the HOS exemptions in § 395.1(k)(1) and the 30-minute rest break exemption in § 395.1(v) recognize that live animals being transported in a CMV are a unique form of cargo, subject to distinct health and safety risks while in transit. Considering the expansive list of animals included in the definition of ''livestock'' in the 1988 Act, and the inclusive use of the term ''livestock'' in the statutory definition of ''agricultural commodity,'' codified in § 395.2, the most direct reading of the statute is that the exemptions be broadly applied when livestock are being transported. The Agency therefore interprets the term to include all living animals cultivated, grown, or raised for commercial purposes, including aquatic animals, in addition to those animals already identified in the 1988 Act, and amends the definition ''livestock'' in § 395.2 accordingly. Because the current list of animals in the 1988 Act already includes most animals likely to be transported by CMV, FMCSA anticipates that the revised definition will only minimally increase the number of CMV drivers using the exemptions, if at all. The Agency requests comment on this issue, particularly regarding the number of drivers transporting aquatic animals, including live shellfish, and as previously noted ''crawfish,'' and their average and maximum travel times.

VI. Questions

When submitting comments, the Agency requests that commenters number their responses to correspond with the questions as stated below.

1. Will the clarifications of the terms ''any agricultural commodity,'' ''non-processed food,'' and ''livestock'' result in more consistent application of the HOS exemptions in §§ 395.1(k)(1) and 395.1(v)? Why or why not? Please address each term separately when answering this question.

2. Will the clarifications impact the number of drivers who would use the exemptions in § 395.1(k)(1) or 395.1(v)? If so, how and to what extent? For example, how, if at all, will including all living animals cultivated, grown, or raised for commercial purposes, including aquatic animals, within the definition of ''livestock'' impact the number of drivers? Please provide data to support your answer.

3. Will any of the clarifications result in higher or lower costs for the transportation of agricultural commodities and livestock? Please provide data to support your answer.

4. Will any of the clarifications result in other benefits to stakeholders, including consumers and State enforcement personnel? Please explain your answer by providing specific examples.

VII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations in which they operate. Canada- and Mexico-domiciled drivers must ensure compliance with U.S. HOS requirements while they are driving in the U.S.

A driver domiciled in the United States may comply with the Canadian hours of service regulations while driving in Canada. Upon re-entering the United States, however, the driver is subject to all the requirements of Part 395, including the 11- and 14-hour rules, and the 60- or 70-hour rules applicable to the previous 7 or 8 consecutive days. In other words, a driver who takes full advantage of Canadian requirements may have to stop driving for a time immediately after returning to the U.S. to restore

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[11] 83 FR 26374, 26376 (June 7, 2018) (emphasis added).

[12] The PACA regulations define fresh fruits and vegetables, in part, as ''all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character.'' (7 CFR 46.2(u).) As FMCSA noted in the ANPRM, ''because frozen fruits and vegetables are processed and packaged, Congress did not intend to include frozen commodities within the scope of the definition [of 'agricultural commodity'] as codified in § 395.2'' (84 FR 36559, 36562, July 29, 2019).

compliance with Part 395. Despite its possible effect on decisions a U.S. driver must make while in Canada, this interpretation does not involve an exercise of extraterritorial jurisdiction (62 FR 16379, 16424 (Apr. 4, 1997)).

Currently, under Federal statute and regulation, CMV drivers transporting agricultural commodities from the source of the commodities to a location within 150 air miles of the source, during harvest and planting seasons as defined by each State, are exempt from the HOS requirements (49 CFR 395.1(k)(1)). Furthermore, § 395.1(v) exempts drivers transporting livestock in interstate commerce from the required 30-minute rest break requirement while the livestock are on the CMV.

VIII. Section-by-Section Analysis

FMCSA amends 49 CFR part 395 by revising the definition of ''agricultural commodity'' in § 395.2 by: (1) Deleting the parenthetical phrase after the word ''livestock'' and adding in its place the following: ''as defined in this section.''; and (2) adding to the end of the definition of ''agricultural commodity'' the following: ''As used in this definition, the term 'any agricultural commodity' means horticultural products at risk of perishing, or degrading in quality, during transport by commercial motor vehicle, including plants, sod, flowers, shrubs, ornamentals, seedlings, live trees, and Christmas trees.''

FMCSA amends the definition of ''livestock'' in § 395.2 by deleting all text that appears after ''livestock means'' and adding in its place the following: ''livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471], as amended, insects, and all other living animals cultivated, grown, or raised for commercial purposes, including aquatic animals.''

FMCSA adds the term ''non-processed food'' to § 395.2, to be defined as follows: ''*Non-processed food* means food commodities in a raw or natural state and not subjected to significant post-harvest changes to enhance shelf life, such as canning, jarring, freezing, or drying. The term 'non-processed food' includes fresh fruits and vegetables, and cereal and oilseed crops which have been minimally processed by cleaning, cooling, trimming, cutting, chopping, shucking, bagging, or packaging to facilitate transport by commercial motor vehicle.''

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

OIRA has determined this rulemaking is a significant regulatory action under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review. This IFR is also significant within the meaning of DOT regulations (49 CFR 5.13(a)) because of the substantial Congressional and public interest concerning the transportation of agricultural commodities, including livestock.

Agriculture, food, and related industries contributed $1.053 trillion to U.S. gross domestic product (GDP) in 2017, a 5.4 percent share. Output from farms contributed $132.8 billion of this sum—about 1 percent of GDP. The overall contribution of the agriculture sector to GDP is larger than this because sectors related to agriculture—forestry, fishing, and related activities; food, beverages, textiles, and leather products; food and beverage stores; and food service—rely on agricultural inputs in order to contribute added value to the economy.[13] Truck transportation is an integral component of the supply chain for agricultural commodities and livestock, constituting the sole mode of transportation for 66.2 percent (715.9 million tons) of the 1,080.7 million tons of agricultural commodities and livestock transported annually as of 2012.[14]

This IFR clarifies the definition of ''agricultural commodity'' to ensure carriers are aware that drivers transporting perishable horticultural commodities, non-processed food, or livestock, including aquatic animals, are eligible for the HOS exemptions in §§ 395.1(k)(1) and 395.1(v). The exemption in § 395.1(k)(1), which allows additional driving and working hours for drivers transporting agricultural commodities, is intended to facilitate timely delivery of such commodities during State-defined harvest and planting seasons. Section 395.1(v), which exempts drivers transporting livestock in interstate commerce from the 30-minute rest break requirement, is intended to protect the health and welfare of live animals.

This rule will help ensure that all affected entities understand how FMCSA interprets the terms ''agricultural commodity'' and ''livestock,'' and how the Agency applies the exemptions when these commodities are transported by CMV. The clarifications could provide additional flexibility to transporters of certain commodities.

Currently, during harvesting and planting seasons as determined by each State, drivers transporting agricultural commodities are exempt from the HOS requirements from the source of the commodities to a location within a 150 air-mile radius from the source. As noted above, the current definition in § 395.2 states that an ''Agricultural commodity means any agricultural commodity, non-processed food, feed, fiber, or livestock . . . .'' Commenters to the ANPRM confirmed that broad terms such as ''any agricultural commodity'' are not consistently understood or applied. Differences in interpretation between regulated entities and enforcement officials may be hindering consistent enforcement practices, thereby impacting business-related decisions for the hauling of agricultural commodities and livestock. The IFR will create a common understanding between FMCSA, motor carriers, drivers, and enforcement officials.

In theory, there are two groups of CMV drivers whose behavior will be affected by this IFR: (1) Those to whom the definitions of ''agricultural commodity'' and ''livestock'' apply, but who currently do not use an exemption due to the existing definitional ambiguity; and (2) those who currently use an exemption in §§ 395.1(k)(1) or 395.1(v), and may no longer do so as a result of the definitional clarifications. There is uncertainty surrounding the number of drivers who are, or are not, currently utilizing an exemption due to the current definitional ambiguity, as FMCSA does not collect quantitative data on the use of these exemptions. The Agency does not, therefore, estimate quantitative impacts associated with this IFR, opting instead for a qualitative analysis. FMCSA relies on the Motor Carrier Management Information System (MCMIS) database

[13] USDA Economic Research Service. ''Ag and Food Statistics: Charting the Essentials, Ag and Food Sectors and the Economy.'' *https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/#:~:text=Agriculture%2C%20food%2C%20and%20related%20industries,about%201%20percent%20of%20GDP* (accessed June 12, 2020).

[14] Based on data from the 2012 Commodity Flow Survey (CFS), which is the most recent publication of the CFS for which data specific to mode of transportation by commodity are available. Available at: *https://www.census.gov/library/publications/2015/econ/ec12tcf-us.html* (accessed July 14, 2020).

to obtain information on commercial motor carriers subject to the FMCSRs. While MCMIS does contain data on certain cargo classifications, it does not track individual cargo carried or hours traveled, nor whether cargo is transported during State-defined planting and harvesting seasons. Consequently, the Agency knows neither the degree to which CMV drivers are currently using the exemptions, nor the magnitude of the population that will be affected by this IFR. However, as noted above, the IFR clarifies that transporters of non-perishable horticultural commodities are not eligible for the exemption in § 395.1(k)(1). FMCSA is aware that at least one State includes ''wood chips'' within its definition of agricultural commodity, and several States categorize timber as an agricultural product. If these States currently permit transporters of those products to use the HOS exemption, they will no longer be permitted to do so under the IFR.

The Agency assumes that drivers will elect to utilize an agricultural commodity exemption only if the cost impact to them is less than or equal to zero. Moreover, these changes will not require new forms of training for enforcement personnel, as the HOS exemptions for agricultural commodities and livestock currently exist. The Agency expects that the definitional clarifications set forth in this IFR will be communicated to FMCSA personnel and the Agency's State-based enforcement partners through existing means, such as policy updates and ongoing training.

Though requested in the ANPRM, FMCSA did not receive relevant data related to average and maximum transportation times of specific commodities, nor did the Agency receive relevant information addressing financial liability resulting from HOS compliance. In Section VI. Questions, the Agency requests data on the number of drivers impacted by the clarifications.

The rule could conceivably impact the number of drivers utilizing the exemptions; however, as noted above, the Agency does not collect data regarding the use of these exemptions, nor can we predict whether the number of drivers using the exemption would increase or decrease as a result of the clarifications. FMCSA requests information on this issue in Section VI.

Congress, when enacting both exemptions, implicitly recognized the trade-off between the purpose of the HOS regulations—CMV safety—and other economic costs of transporting agricultural commodities and livestock by truck. On the one hand, the HOS requirements are intended to improve safety by preventing driver fatigue. On the other hand, there are certain circumstances, such as hauling live animals or transporting agricultural commodities during planting and harvesting seasons, where those requirements may pose significant additional costs. Congress determined that the exemptions, set forth in §§ 395.1(k)(1) and 395.1(v), are justified in these situations.

The rule may provide consumers with access to agricultural commodities of higher quality. For example, as discussed above in Section V. Discussion of Interim Final Rule, some commenters described perishability, or degradation in quality, of certain horticultural products during transport by CMV. The effects of post-harvest transportation such as exposure to changes in temperature, light, and humidity levels can impact plant health. Plant health significantly affects the commercial value of these products, and reduced time in transit from the producer to the consumer helps to mitigate damage. The Agency sought input from the USDA regarding these potential benefits. USDA does not have a model with which to quantify these impacts, but, in informal discussions with FMCSA, USDA confirmed that incrementally shorter transit times generally improve the freshness, quality, nutrition, and safety of food, reduce weight loss for livestock, and enhance animal welfare. If producers choose to adjust their behavior based on reduced travel times resulting from this IFR, there may be benefits to consumers from having access to higher quality products on the market; there may also be disbenefits from additional usage of the exemption due to possible longer drive times or limited breaks.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This IFR is neither a regulatory nor deregulatory action under E.O. 13771.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).[15]

D. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, March 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, September 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000. In addition, the DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in Section III. Legal Basis, this IFR is an interpretative rule not subject to prior notice and comment under section 553(b)(A) of the APA.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this IFR so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the IFR will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement

[15] A ''major rule'' means any rule that the Administrator of Office of Information and Regulatory Affairs at the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $168 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2019 levels) or more in any one year. Though this IFR will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This IFR does not call for any new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Part 395 of the Federal Motor Carrier Safety Regulations, ''Hours of Service of Drivers,'' requires drivers and motor carriers to collect, transmit and maintain information about driver daily activities. The part 395 ICR is assigned OMB Control Number 2126–0001. On July 31, 2019, OMB approved the Agency's estimate of 99.5 million burden hours as the annual IC burden of part 395. As explained earlier, there are two groups of CMV drivers whose behavior may change as a result of this IFR: (1) Those to whom the definitions of ''agricultural commodity'' and ''livestock'' apply, but who currently do not use an exemption due to the existing definitional ambiguity; and (2) those who currently use an exemption in §§ 395.1(k)(1) or 395.1(v), and may no longer do so as a result of the definitional clarifications. Those in the former group could see a reduction in their paperwork burden under this IFR, and those in the latter group could see an increase in their paperwork burden. As FMCSA does not have data on the number of drivers using the exemptions, or the extent to which their behavior will change as a result of this IFR, the Agency is not estimating any changes to the paperwork burden at this time. FMCSA will be in a better position to estimate the use of these exemptions when the currently approved collection is renewed in 2022.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA determined that this IFR does not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation; the HOS requirements do not have preemptive effect. As set forth in 49 U.S.C. 31102, States and other political jurisdictions are eligible to participate in the Motor Carrier Safety Assistance Program, by, among other things, adopting and enforcing State regulations, that are compatible with Federal regulations on CMV safety, including the HOS requirements in part 395, and the safe transportation of hazardous materials. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,[16] requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002 [17] requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment to evaluate the risks and effects the IFR might have on collecting, storing, and sharing personally identifiable information. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

[16] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

[17] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

K. Environment

FMCSA analyzed this IFR consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (6)(b). The Categorical Exclusion (CE) in paragraph (6)(b) relates to regulations which are editorial or procedural, such as those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations. The requirements in this rule are covered by this CE, there are no extraordinary circumstances present, and this action does not have the potential to affect the quality of the environment significantly. The CE determination is available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

FMCSA amends 49 CFR chapter 3, part 395 as follows:

PART 395—HOURS OF SERVICE OF DRIVERS

■ 1. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5206(b), Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 2. Amending § 395.2 by:

■ a. Revising the definitions of the terms ''Agricultural commodity'' and ''Livestock'' and

■ b. Adding, in alphabetical order, a definition of ''Non-processed food.''

The addition and revisions read as follows:

§ 395.2 Definitions.

* * * * *

Agricultural commodity means:

(1) Any agricultural commodity, non-processed food, feed, fiber, or livestock as defined in this section.

(2) As used in this definition, the term ''any agricultural commodity'' means horticultural products at risk of perishing, or degrading in quality, during transport by commercial motor vehicle, including plants, sod, flowers, shrubs, ornamentals, seedlings, live trees, and Christmas trees.

* * * * *

Livestock means livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471], as amended, insects, and all other living animals cultivated, grown, or raised for commercial purposes, including aquatic animals.

* * * * *

Non-processed food means food commodities in a raw or natural state and not subjected to significant post-harvest changes to enhance shelf life, such as canning, jarring, freezing, or drying. The term ''non-processed food'' includes fresh fruits and vegetables, and cereal and oilseed crops which have been minimally processed by cleaning, cooling, trimming, cutting, chopping, shucking, bagging, or packaging to facilitate transport by commercial motor vehicle.

* * * * *

Issued under authority delegated in 49 CFR 1.87.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–25971 Filed 11–20–20; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200212–0053; RTID 0648–XA663]

Fisheries of the Northeastern United States; Blueline Tilefish Fishery; 2020 Blueline Tilefish Commercial Quota Harvested

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

ACTION: Temporary rule; closure of the blueline tilefish commercial fishery.

SUMMARY: Federal commercial tilefish permit holders are prohibited from fishing for, catching, possessing, transferring or landing tilefish in the Tilefish Management Unit for the remainder of the 2020 fishing year. This action is required when NMFS projects that 100 percent of the 2020 total allowable landings will have been caught by the effective date. This action is intended to prevent over-harvest of blueline tilefish for the fishing year.

DATES: Effective 0001 hr local time, November 21, 2020, through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION: Regulations for the blueline tilefish fishery are at 50 CFR part 648. The regulations at § 648.295(b)(2)(ii) require that when NMFS projects that blueline tilefish catch will reach 100 percent of the total allowable landings (TAL), the Regional Administrator must close the commercial blueline tilefish fishery for the remainder of the fishing year. No vessel may retain or land blueline tilefish in or from the Tilefish Management Unit after the announced closure date. NMFS monitors the blueline tilefish fishery catch based on dealer reports, state data, and other available information. When 100 percent of the TAL is projected to be landed, NMFS must publish a notice in the **Federal Register** notifying blueline tilefish vessel and dealer permit holders of the closure date.

The Regional Administrator has determined, based on dealer reports and other available information, that the blueline tilefish commercial fishery will catch 100 percent of the TAL by November 21, 2020. Effective 0001 November 21, 2020, vessels may not retain or land blueline tilefish in or from the Tilefish Management Unit through December 31, 2020.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the delayed effectiveness period because it would be contrary to the public interest and impracticable. Data and other information indicating the blueline tilefish commercial fishery will have landed 100 percent of the TAL have only recently become available. Landings data are updated by dealer reports dealers on a weekly basis, and NMFS monitors data as catch increases toward the limit. This action is routine and formulaic. The regulations at § 648.295(b)(2)(ii) require such action to ensure that blueline tilefish commercial vessels do not exceed the 2020 TAL. If implementation of this action is delayed, the TAL for the 2020 fishing year may be exceeded, thereby undermining the conservation objectives of the Tilefish Fishery Management Plan. Also, the public had prior notice and full opportunity to comment on this process when the provisions regarding closures and the 2020 quota levels were put in place.

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

Dated: November 18, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–25925 Filed 11–19–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200522–0145]

RIN 0648–BJ80

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Extend an Emergency Action To Extend Portions of the Fishing Year 2019 Scallop Carryover Provisions

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

ACTION: Temporary rule; emergency action extension.

SUMMARY: This temporary rule extends emergency measures that extend portions of the fishing year 2019 carryover provisions in the Atlantic Sea Scallop Fishery Management Plan into the 2020 fishing year published on June 1, 2020 (85 FR 33027), which is scheduled to expire on November 29, 2020. This action is necessary to prevent the Limited Access General Category Individual Fishery Quota vessels from losing any carryover granted by this emergency action and to prevent the Nantucket Lightship-West Access Area from opening on November 29, 2020. This action is intended to provide additional time for Limited Access General Category Individual Fishery Quota vessels to land the 2019 carryover allocation granted by the original emergency action and to provide the New England Fishery Management Council additional time to develop a

plan for the management of the Nantucket Lightship-West Access Area while it remains closed.

DATES: Effective November 29, 2020, through June 1, 2021. The expiration date of the temporary rule published June 1, 2020, is extended to June 1, 2021, unless superseded by another action, which will publish in the **Federal Register**.

ADDRESSES: For this action, NMFS developed a Supplemental Impact Report (SIR) for the Environmental Assessment (EA) for Framework 32 to the Atlantic Sea Scallop Fishery Management Plan (FMP) that describes the measures in this temporary rule. Copies of the SIR and the Regulatory Impact Review of this rulemaking are available on the internet at *https://www.fisheries.noaa.gov/region/new-england-mid-atlantic.*

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

At the request of the New England Fishery Management Council, NMFS published an emergency action on June 1, 2020, (85 FR 33027), for the Atlantic Sea Scallop Fishery Management Plan (FMP) that:

- Allowed limited access general category (LAGC) individual fishing quota (IFQ) vessels to carryover all fishing year 2019 unharvested quota into fishing year 2020;
- Allowed any access area carryover pounds and unharvested research set-aside (RSA) compensation pounds from fishing year 2019 to be available for harvest through August 31, 2020; and
- Closed the Nantucket Lightship-West Access Area (NLS–W) to scallop fishing beginning on September 1, 2020, to reduce bycatch.

These measures allowed for more flexibility to harvest 2019 carryover allocations and were intended to mitigate the negative impacts experienced by the scallop industry that began at the end of the 2019 fishing year (March 2020) due to ongoing health mandates and travel restrictions that made it difficult for vessels to make trips. These impacts include disruptions in getting supplies and the inability for crew to access ports.

This action extends portions of this emergency action to prevent the LAGC IFQ vessels from losing any carryover granted by this emergency action and to prevent NLS–W from opening on November 29, 2020, when the emergency action expires under the Magnuson-Stevens Fishery Conservation and Management Act's (Magnuson-Stevens Act) limitation on the duration of an emergency action. Therefore, this action would extend the following emergency action measures through June 1, 2021, or until replaced by a subsequent action, whichever comes first:

- Extend the ability of LAGC IFQ vessels to harvest any fishing year 2019 carryover granted by this emergency action through the end of the 2020 fishing year (March 31, 2021); and
- Maintain the closure of NLS–W for an additional 186 days unless it is opened or closed by the Council in another action.

The NLS–W closure extension is intended to minimize unwanted bycatch of flatfish and is not expected to adversely impact the scallop fleet because these vessels have flexibility to fish in other areas. There is no need to extend the access area and RSA compensation pounds from fishing year 2019 because the Council only requested to allow for that harvest through August 31, 2020.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. As noted in the June 1, 2020, emergency rule, NMFS has determined that extending portions of the fishing year 2019 scallop carryover provisions meets the three criteria for emergency action.

The Council is developing Framework Adjustment 33 to the Scallop FMP, which we expect to implement in May 2021, prior to the expiration of the emergency action extension. Framework 33 will set specifications for the 2021 fishing year.

Comments and Responses

NMFS received two comments in response to the emergency action. The first comment was in opposition to the action due to concern that some fishermen may already be receiving additional aid because of their inability to fish. As described above, this action does not add any new allocation, it only extends the time period that carryover can be fished. Extending these carryover provisions will not cause any annual catch limits to be exceeded in the scallop fishery. The second comment was unrelated to this action.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis, coupled with the fact that the public has had the opportunity to comment on NMFS' intent to extend this emergency, make solicitation of public comment unnecessary, impractical, and contrary to the public interest. In the interest of receiving public input on this action, the SIR analyzing this action was made available to the public and the original temporary final rule solicited public comment.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the full 30-day delay in effectiveness for this rule. This rule extends some measures of the rule currently in place for an additional 186 days. The need for this extension was fully anticipated and announced to the public in the initial emergency rule which published on June 1, 2020. Accordingly, the entities affected by this rule and the public have no need to be made aware of or adjust to this rule by delaying its effectiveness for 30 days. The primary reason for delaying the effectiveness of Federal regulations is not present, and, therefore, such a delay would serve no public purpose. It would be contrary to the public interest if this rule does not become effective on November 29, 2020, because LAGC IFQ vessels would lose any carryover granted by this emergency action and the NLS–W would open to fishing. Moreover, failing to have the rule effective on November 29, 2020, may lead to confusion in the fishing community. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

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

Dated: November 19, 2020.

Samuel D. Rauch, III,

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

[FR Doc. 2020–25995 Filed 11–23–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 227

Tuesday, November 24, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2020–1091]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Flirtey Inc. Flirtey F4.5

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed airworthiness criteria.

SUMMARY: The FAA announces the availability of and requests comments on proposed airworthiness criteria for the Flirtey Inc. Model Flirtey F4.5 unmanned aircraft system (UAS). This document proposes airworthiness criteria the FAA finds to be appropriate and applicable for the UAS design.

DATES: Send comments on or before December 24, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–1091 using any of the following methods:

☐ *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

☐ *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

☐ *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

☐ *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

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, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Hieu Nguyen, AIR–692, Federal Aviation Administration, Policy and Innovation Division, Small Airplane Standards Branch, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106, telephone (816) 329–4123, facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of these airworthiness criteria by sending written comments, data, or views. The most helpful comments reference a specific portion of the airworthiness criteria, explain the reason for any recommended change, and include supporting data. Comments on operational, pilot certification, and maintenance requirements would address issues that are beyond the scope of this document.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed airworthiness criteria. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these airworthiness criteria based on received comments.

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 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 notice, 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 notice. Submissions containing CBI should be sent to the individual listed under **FOR FURTHER INFORMATION CONTACT.** Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this notice.

Background

Flirtey Inc. (Flirtey) applied to the FAA on November 12, 2018, for a special class type certificate under Title 14, Code of Federal Regulations (14 CFR) 21.17(b) for the Model Flirtey F4.5 UAS.

The Model Flirtey F4.5 consists of an unmanned aircraft (UA) and its associated elements that include communication links and the components that control the UA. The Model Flirtey F4.5 UA has a maximum gross takeoff weight of 38 pounds. It is approximately 78 inches in width, is 78 inches in length, and 21 inches in height. The Model Flirtey F4.5 UA is battery powered using electric motors for vertical takeoff, landing, and forward flight. The UAS operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Flirtey anticipates operators will use the Model Flirtey F4.5 for delivering medical supplies and packages. The proposed concept of operations for the Model Flirtey F4.5 identifies a maximum operating altitude of 400 feet above ground level, a maximum cruise speed of 24 knots, operations beyond visual line of sight of the pilot, and operations over human beings. Flirtey has not requested type certification for flight into known icing for the Model Flirtey F4.5.

Discussion

The FAA establishes airworthiness criteria to ensure the safe operation of aircraft in accordance with 49 U.S.C. 44701(a) and 44704. UAS are type certificated by the FAA as special class aircraft for which airworthiness standards have not been established by regulation. Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are those the FAA finds to be appropriate and applicable to the specific type design.

The applicant has proposed a design with constraints upon its operations and an unusual design characteristic: The pilot is remotely located. The FAA developed existing airworthiness standards to establish an appropriate level of safety for each product and its intended use. The FAA's existing airworthiness standards did not envision aircraft with no pilot in the cockpit and the technologies associated with that capability.

The FAA has reviewed the proposed design and assessed the potential risk to the National Airspace System. The FAA considered the size of the proposed aircraft, its maximum airspeed and altitude, and operational limitations to address the number of unmanned aircraft per operator and to address operations in which the aircraft would operate beyond the visual line of sight of the pilot. These factors allowed the FAA to assess the potential risk the aircraft could pose to other aircraft and to human beings on the ground. Using these parameters, the FAA developed airworthiness criteria to address those potential risks to ensure the aircraft remains reliable, controllable, safe, and airworthy.

The proposed criteria focus on mitigating hazards by establishing safety outcomes that must be achieved, rather than by establishing prescriptive requirements that must be met. This is in contrast to many current airworthiness standards, used to certificate traditional aircraft systems, which prescribe specific indicators and instruments for a pilot in a cockpit that would be inappropriate for UAS. The FAA finds that the proposed criteria are appropriate and applicable for the UAS design, based on the intended operational concepts for the UAS as identified by the applicant.

The FAA selected the particular airworthiness criteria proposed by this notice for the following reasons:

General: In order to determine appropriate and applicable airworthiness standards for UAS as a special class of aircraft, the FAA determined that the applicant must provide information describing the characteristics and capabilities of the UAS and how it will be used.

UAS.001 Concept of Operations: To assist the FAA in identifying and analyzing the risks and impacts associated with integrating the proposed UAS design into the National Airspace System, the applicant would be required to submit a Concept of Operations (CONOPS). The proposed criteria would require the applicant's CONOPS to identify the intended operational concepts for the UAS and describe the UAS and its operation. The information in the CONOPS would determine parameters and extent of testing, as well as operating limitations that will be placed in the UAS Flight Manual.

Design and Construction: The FAA selected the design and construction criteria in this section to address airworthiness requirements where the flight testing demonstration alone may not be sufficient to demonstrate an appropriate level of safety.

UAS.100 Control Station: The control station, which is located separately from the UA, is a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this part of the system. The FAA based some of the proposed criteria on existing regulations that address the information that must be provided to a pilot in the cockpit of a manned aircraft, and modified them as appropriate to this UAS. Thus, to address the risks associated with loss of control of the UAS, the applicant would be required to design the control station to provide the pilot with the information necessary for continued safe flight and operation. The proposed criteria contain the specific minimum types of information the FAA finds are necessary for this requirement; however, the applicant must determine whether additional parameters are necessary.

UAS.110 Software: Software for manned aircraft is certified under the regulations applicable to systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, or 29.1309). There are two regulations that specifically prescribe airworthiness standards for software: Engine airworthiness standards (§ 33.28) and propeller airworthiness standards (§ 35.23). The proposed UAS software criteria was based on these regulations and tailored for the risks posed by UAS software.

UAS.115 Cyber Security: The location of the pilot separate from the UA requires a continuous wireless connection (command and control link) with the UA for the pilot to monitor and control it. Because the purpose of this link is to control the aircraft, this makes the UAS susceptible to cyber security threats in a unique way.

The current regulations for the certification of systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, and 29.1309) do not adequately address potential security vulnerabilities that could be exploited by unauthorized access to aircraft systems, data buses, and services. For manned aircraft, the FAA therefore issues special conditions for particular designs with network security vulnerabilities.

To address the risks to the UAS associated with intentional unauthorized electronic interactions, the applicant would be required to design the UAS's systems and networks to protect against intentional unauthorized electronic interactions and mitigate potential adverse effects. The FAA based the language for the proposed criteria on recommendations in the final report dated August 22, 2016, from the Aircraft System Information Security/Protection (ASISP) working group, under the FAA's Aviation Rulemaking Advisory Committee. Although the recommendations pertained to manned aircraft, the FAA has reviewed the report and determined the recommendations are also appropriate for UAS. The wireless connections used by UAS make these aircraft susceptible to the same cyber security risks, and therefore require similar criteria, as manned aircraft.

UAS.120 Contingency Planning: The location of the pilot and the controls for the UAS, separate from the UA, is a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this feature of the system.

To address the risks associated with loss of communication between the pilot and the UA, and thus the pilot's inability to control the UA, the proposed criteria would require that the UAS be designed to automatically execute a predetermined action. Because the pilot needs to be aware of the particular predetermined action the UA will take when there is a loss of communication between the pilot and the UA, the proposed criteria would require that the applicant identify the predetermined action in the UAS Flight Manual. The proposed criteria would also include requirements for preventing takeoff when quality of service is inadequate.

UAS.125 Lightning: Because of the size and physical limitations of this UAS, it would be unlikely that this UAS would incorporate traditional lightning protection features. To address the risks that would result from a lightning strike, the proposed criteria would require an operating limitation in the UAS Flight Manual that prohibits flight into weather conditions conducive to lightning. The proposed criteria would also allow design characteristics to protect the UAS from lightning as an alternative to the prohibition.

UAS.130 Adverse Weather Conditions: Because of the size and physical limitations of this UAS, adverse weather such as rain, snow, and icing pose a greater hazard to the UAS than to manned aircraft. For the same reason, it would be unlikely that this UAS would incorporate traditional protection features from icing. The FAA based the proposed criteria on the icing requirements in 14 CFR 23.2165(b) and (c), and applied them to all of these adverse weather conditions. The proposed criteria would allow design characteristics to protect the UAS from adverse weather conditions. As an alternative, the proposed criteria would require an operating limitation in the UAS Flight Manual that prohibits flight into known adverse weather conditions, and either also prevent inadvertent flight into adverse weather or provide a means to detect and to avoid or exit adverse weather conditions.

UAS.135 Critical Parts: The proposed criteria for critical parts are substantively the same as that in § 27.602, with changes to reflect UAS terminology and failure condition.

Operating Limitations and Information: Similar to manned aircraft, the FAA determined that the UAS applicant must provide airworthiness instructions, operating limitations, and flight and performance information necessary for the safe operation and continued operational safety of the UAS.

UAS.200 Flight Manual: The proposed criteria for the UAS Flight Manual are substantively the same as that in § 23.2620, with minor changes to reflect UAS terminology.

UAS.205 Instructions for Continued Airworthiness: The proposed criteria for the Instructions for Continued Airworthiness (ICA) are substantively the same as that in § 23.1529, with minor changes to reflect UAS terminology.

Testing: Traditional certification methodologies for manned aircraft are based on design requirements verified at the component level by inspection, analysis, demonstration, or test. Due to the difference in size and complexity, the FAA determined testing methodologies that demonstrate reliability at the aircraft (UAS) level, in addition to the design and construction criteria identified in this proposal, will achieve the same safety objective. The proposed testing criteria in sections UAS.300 through UAS.320 utilize these methodologies.

UAS.300 Durability and Reliability: The FAA intends the proposed testing criteria in this section to cover key design aspects and prevent unsafe features at an appropriate level tailored for this UAS. The proposed durability and reliability testing would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations. The UAS would only be certificated for operations within the limitations, and for flight over the maximum population density, as demonstrated by test. The proposed criteria would require that all flights during the testing be completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone.

For some aircraft design requirements imposed by existing airworthiness standards (*e.g.,* §§ 23.2135, 23.2600, 25.105, 25.125, 27.141, 27.173, 29.51, 29.177) the aircraft must not require exceptional piloting skill or alertness. These rules recognize that pilots have varying levels of ability and attention. In a similar manner, the proposed criteria would require that the durability and reliability flight testing be performed by a pilot with average skill and alertness.

Flight testing will be used to determine the aircraft's ability to withstand flight loads across the range of operating limits and the flight envelope. Because small UAS may be subjected to significant ground loads when handled, lifted, carried, loaded, maintained, and transported physically by hand, the proposed criteria would require that the aircraft used for testing endure the same worst-case ground loads as those the UAS will experience in operation after type certification.

UAS.305 Probable Failures: The FAA intends the proposed testing criteria to evaluate how the UAS functions after failures that are probable to occur. The applicant will test the UAS by inducing certain failures and demonstrating that the failure will not result in a loss of containment or control of the UA. The proposed criteria contain the minimum types of failures the FAA finds are probable; however, the applicant must determine the probable failures related to any other equipment that will be addressed for this requirement.

UAS.310 Capabilities and Functions: The proposed criteria for this section address the minimum capabilities and functions the FAA finds are necessary in the design of the UAS and would require the applicant to demonstrate these capabilities and functions by test. Due to the location of the pilot and the controls for UAS, separate from the UA, communication between the pilot and the UA is significant to the design. Thus, the proposed criteria would require the applicant to demonstrate the capability of the UAS to regain command and control after a loss. As with manned aircraft, the electrical system of the UAS must have a capacity sufficient for all anticipated loads; the proposed criteria would require the applicant to demonstrate this by test.

The proposed criteria contain functions that would allow the pilot to command the UA to deviate from its flight plan or from its pre-programmed flight path. For example, in the event the pilot needs to deconflict the airspace, the UA must be able to respond to pilot inputs that override any pre-programming.

In the event an applicant requests approval for certain features, such as geo-fencing or external cargo, the proposed criteria contain requirements to address the associated risks. The proposed criteria in this section would also require design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

UAS.315 Fatigue: The FAA intends the proposed criteria in this section to address the risks from reduced structural integrity and structural failure due to fatigue. The proposed criteria would require the applicant to establish an airframe life limit and demonstrate that loss of flight or loss of control due to structural failure will be avoided throughout the operational life of the UA. These proposed criteria would require the applicant to demonstrate this by test, while maintaining the UA in accordance with the ICA.

UAS.320 Verification of Limits: This section would evaluate structural safety and address the risks associated with inadequate structural design. While the proposed criteria in UAS.300 address testing to demonstrate that the UAS structure adequately supports expected loads throughout the flight and operational envelopes, the proposed criteria in this section would require an evaluation of the performance, maneuverability, stability, and control of the UA with a factor of safety.

Proposed Airworthiness Criteria

The FAA proposes to establish the following airworthiness criteria for type certification of the Flirtey Model Flirtey F4.5. The FAA proposes that compliance with the following would mitigate the risks associated with the proposed design and Concept of Operations appropriately and would provide an equivalent level of safety to existing rules:

General

UAS.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the Unmanned Aircraft System (UAS) operation in the National Airspace System for which certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information.

(a) The intended type of operations;

(b) Unmanned aircraft (UA) specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station and support equipment;

(f) Command, control, and communication functions; and

(g) Operational parameters, such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation.

Design and Construction

UAS.100 Control Station

The control station must be designed to provide the pilot with all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Alerts, such as an alert following the loss of the command and control (C2) link and function.

(b) The status of all critical parameters for all energy storage systems.

(c) The status of all critical parameters for all propulsion systems.

(d) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location.

(e) C2 link signal strength, quality, or status.

UAS.110 Software

To minimize the existence of errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UAS;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

UAS.115 Cyber Security

(a) UAS equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UAS. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the Instructions for Continued Airworthiness (ICA).

UAS.120 Contingency Planning

(a) The UAS must be designed so that, in the event of a loss of the C2 link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UAS Flight Manual.

(c) The UAS Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UAS Flight Manual.

UAS.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UAS must have design characteristics that will protect the UAS from loss of flight or loss of control due to lightning.

(b) If the UAS has not been shown to protect against lightning, the UAS Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

UAS.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UAS must have design characteristics that will allow the UAS to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UAS is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UAS is not certificated to operate and show the UAS's ability to avoid or exit those conditions.

UAS.135 Critical Parts

(a) A critical part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UAS control.

(b) If the type design includes critical parts, the applicant must establish a critical parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of critical parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

Operating Limitations and Information

UAS.200 Flight Manual

The applicant must provide a UAS Flight Manual with each UAS.

(a) The UAS Flight Manual must contain the following information:

(1) UAS operating limitations;

(2) UAS normal and emergency operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UAS Flight Manual containing the information specified in paragraphs (a)(1) through (4) of this section must be approved by the FAA.

UAS.205 Instructions for Continued Airworthiness

The applicant must prepare ICA for the UAS in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UAS or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

UAS.300 Durability and Reliability

The UAS must be designed to be durable and reliable commensurate to the maximum population density specified in the operating limitations. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UAS has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;
(2) Flight durations;
(3) Route complexity;
(4) Weight;
(5) Center of gravity;
(6) Density altitude;
(7) Outside air temperature;
(8) Airspeed;
(9) Wind;
(10) Weather;
(11) Operation at night, if requested;
(12) Energy storage system capacity; and
(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and High Intensity Radiated Fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UAS used for testing must be maintained and operated in accordance with the ICA and UAS Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(i) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) the UA is safely controllable and maneuverable; and

(2) the cargo or external-load are retainable and transportable.

UAS.305 Probable Failures

The UAS must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed.

(1) Propulsion systems;
(2) C2 link;
(3) Global Positioning System (GPS);
(4) Critical flight control components with a single point of failure;
(5) Control station; and
(6) Any other equipment identified by the applicant.

(b) Any UAS used for testing must be operated in accordance with the UAS Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

UAS.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UAS must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external-load.

UAS.315 Fatigue

The structure of the UA must be shown to be able to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

UAS.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UAS Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Kansas City, Missouri, on November 16, 2020.

Patrick R. Mullen,

Manager, Small Airplane Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–25660 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2020–1083]

Airworthiness Criteria: Special Class Airworthiness Criteria for the 3DRobotics Government Services 3DR–GS H520–G

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed airworthiness criteria.

SUMMARY: The FAA announces the availability of and requests comments on proposed airworthiness criteria for the 3DRobotics Government Services Model 3DR–GS H520–G unmanned aircraft system (UAS). This document proposes airworthiness criteria the FAA finds to be appropriate and applicable for the UAS design.

DATES: Send comments on or before December 24, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–1083 using any of the following methods:

☐ *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

☐ *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

☐ *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building

Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

☐ *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

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, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Hieu Nguyen, AIR–692, Federal Aviation Administration, Policy and Innovation Division, Small Airplane Standards Branch, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106, telephone (816) 329–4123, facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of these airworthiness criteria by sending written comments, data, or views. The most helpful comments reference a specific portion of the airworthiness criteria, explain the reason for any recommended change, and include supporting data. Comments on operational, pilot certification, and maintenance requirements would address issues that are beyond the scope of this document.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed airworthiness criteria. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these airworthiness criteria based on received comments.

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 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 notice, 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 notice. Submissions containing CBI should be sent to the individual listed under **FOR FURTHER INFORMATION CONTACT.** Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this notice.

Background

3DRobotics Government Services (3DR) applied to the FAA on May 1, 2019, for a special class type certificate under Title 14, Code of Federal Regulations (14 CFR) 21.17(b) for the Model 3DR–GS H520–G UAS.

The Model 3DR–GS H520–G consists of an unmanned aircraft (UA) and its associated elements that include communication links and the components that control the UA. The Model 3DR–GS H520–G UA has a maximum gross takeoff weight of 5 pounds. It is approximately 20 inches in width, 18 inches in length, and 12 inches in height. The Model 3DR–GS H520–G UA is battery powered using electric motors for vertical takeoff, landing, and forward flight. The UAS may be manually operated or may rely on high levels of automation. The UAS may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. 3DR anticipates operators will use the Model 3DR–GS H520–G for inspection or surveying of critical infrastructure. The proposed concept of operations for the Model 3DR–GS H520–G identifies a maximum operating altitude of 400 feet above ground level, a maximum cruise speed of 33 knots (38 mph), operations within visual line of sight of the pilot, operations at night, and operations in sparsely populated areas. 3DR has not requested type certification for flight into known icing for the Model 3DR–GS H520–G.

Discussion

The FAA establishes airworthiness criteria to ensure the safe operation of aircraft in accordance with 49 U.S.C. 44701(a) and 44704. UAS are type certificated by the FAA as special class aircraft for which airworthiness standards have not been established by regulation. Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are those the FAA finds to be appropriate and applicable to the specific type design.

The applicant has proposed a design with constraints upon its operations and an unusual design characteristic: The pilot is remotely located. The FAA developed existing airworthiness standards to establish an appropriate level of safety for each product and its intended use. The FAA's existing airworthiness standards did not envision aircraft with no pilot in the cockpit and the technologies associated with that capability.

The FAA has reviewed the proposed design and assessed the potential risk to the National Airspace System. The FAA considered the size of the proposed aircraft, its maximum airspeed and altitude, and operational limitations to address the number of unmanned aircraft per operator and to address operations in which the aircraft would operate beyond the visual line of sight of the pilot. These factors allowed the FAA to assess the potential risk the aircraft could pose to other aircraft and to human beings on the ground. Using these parameters, the FAA developed airworthiness criteria to address those potential risks to ensure the aircraft remains reliable, controllable, safe, and airworthy.

The proposed criteria focus on mitigating hazards by establishing safety outcomes that must be achieved, rather than by establishing prescriptive requirements that must be met. This is in contrast to many current airworthiness standards, used to certificate traditional aircraft systems, which prescribe specific indicators and instruments for a pilot in a cockpit that would be inappropriate for UAS. The FAA finds that the proposed criteria are appropriate and applicable for the UAS design, based on the intended operational concepts for the UAS as identified by the applicant.

The FAA selected the particular airworthiness criteria proposed by this notice for the following reasons:

General: In order to determine appropriate and applicable airworthiness standards for UAS as a special class of aircraft, the FAA determined that the applicant must provide information describing the characteristics and capabilities of the UAS and how it will be used.

UAS.001 Concept of Operations: To assist the FAA in identifying and analyzing the risks and impacts associated with integrating the proposed UAS design into the National Airspace System, the applicant would be required to submit a Concept of Operations (CONOPS). The proposed criteria would require the applicant's CONOPS to identify the intended operational concepts for the UAS and describe the UAS and its operation. The information in the CONOPS would determine parameters and extent of testing, as well as operating limitations that will be placed in the UAS Flight Manual.

Design and Construction: The FAA selected the design and construction criteria in this section to address airworthiness requirements where the flight testing demonstration alone may not be sufficient to demonstrate an appropriate level of safety.

UAS.100 Control Station: The control station, which is located separately from the UA, is a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this part of the system. The FAA based some of the proposed criteria on existing regulations that address the information that must be provided to a pilot in the cockpit of a manned aircraft, and modified them as appropriate to this UAS. Thus, to address the risks associated with loss of control of the UAS, the applicant would be required to design the control station to provide the pilot with the information necessary for continued safe flight and operation. The proposed criteria contain the specific minimum types of information the FAA finds are necessary for this requirement; however, the applicant must determine whether additional parameters are necessary.

UAS.110 Software: Software for manned aircraft is certified under the regulations applicable to systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, or 29.1309). There are two regulations that specifically prescribe airworthiness standards for software: Engine airworthiness standards (§ 33.28) and propeller airworthiness standards (§ 35.23). The proposed UAS software criteria was based on these regulations and tailored for the risks posed by UAS software.

UAS.115 Cyber Security: The location of the pilot separate from the UA requires a continuous wireless connection (command and control link) with the UA for the pilot to monitor and control it. Because the purpose of this link is to control the aircraft, this makes the UAS susceptible to cyber security threats in a unique way.

The current regulations for the certification of systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, and 29.1309) do not adequately address potential security vulnerabilities that could be exploited by unauthorized access to aircraft systems, data buses, and services. For manned aircraft, the FAA therefore issues special conditions for particular designs with network security vulnerabilities.

To address the risks to the UAS associated with intentional unauthorized electronic interactions, the applicant would be required to design the UAS's systems and networks to protect against intentional unauthorized electronic interactions and mitigate potential adverse effects. The FAA based the language for the proposed criteria on recommendations in the final report dated August 22, 2016, from the Aircraft System Information Security/Protection (ASISP) working group, under the FAA's Aviation Rulemaking Advisory Committee. Although the recommendations pertained to manned aircraft, the FAA has reviewed the report and determined the recommendations are also appropriate for UAS. The wireless connections used by UAS make these aircraft susceptible to the same cyber security risks, and therefore require similar criteria, as manned aircraft.

UAS.120 Contingency Planning: The location of the pilot and the controls for the UAS, separate from the UA, is a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this feature of the system.

To address the risks associated with loss of communication between the pilot and the UA, and thus the pilot's inability to control the UA, the proposed criteria would require that the UAS be designed to automatically execute a predetermined action. Because the pilot needs to be aware of the particular predetermined action the UA will take when there is a loss of communication between the pilot and the UA, the proposed criteria would require that the applicant identify the predetermined action in the UAS Flight Manual. The proposed criteria would also include requirements for preventing takeoff when quality of service is inadequate.

UAS.125 Lightning: Because of the size and physical limitations of this UAS, it would be unlikely that this UAS would incorporate traditional lightning protection features. To address the risks that would result from a lightning strike, the proposed criteria would require an operating limitation in the UAS Flight Manual that prohibits flight into weather conditions conducive to lightning. The proposed criteria would also allow design characteristics to protect the UAS from lightning as an alternative to the prohibition.

UAS.130 Adverse Weather Conditions: Because of the size and physical limitations of this UAS, adverse weather such as rain, snow, and icing pose a greater hazard to the UAS than to manned aircraft. For the same reason, it would be unlikely that this UAS would incorporate traditional protection features from icing. The FAA based the proposed criteria on the icing requirements in 14 CFR 23.2165(b) and (c), and applied them to all of these adverse weather conditions. The proposed criteria would allow design characteristics to protect the UAS from adverse weather conditions. As an alternative, the proposed criteria would require an operating limitation in the UAS Flight Manual that prohibits flight into known adverse weather conditions, and either also prevent inadvertent flight into adverse weather or provide a means to detect and to avoid or exit adverse weather conditions.

UAS.135 Critical Parts: The proposed criteria for critical parts are substantively the same as that in § 27.602, with changes to reflect UAS terminology and failure condition.

Operating Limitations and Information: Similar to manned aircraft, the FAA determined that the UAS applicant must provide airworthiness instructions, operating limitations, and flight and performance information necessary for the safe operation and continued operational safety of the UAS.

UAS.200 Flight Manual: The proposed criteria for the UAS Flight Manual are substantively the same as that in § 23.2620, with minor changes to reflect UAS terminology.

UAS.205 Instructions for Continued Airworthiness: The proposed criteria for the Instructions for Continued Airworthiness (ICA) are substantively the same as that in § 23.1529, with minor changes to reflect UAS terminology.

Testing: Traditional certification methodologies for manned aircraft are based on design requirements verified at the component level by inspection, analysis, demonstration, or test. Due to the difference in size and complexity, the FAA determined testing methodologies that demonstrate reliability at the aircraft (UAS) level, in addition to the design and construction criteria identified in this proposal, will achieve the same safety objective. The proposed testing criteria in sections UAS.300 through UAS.320 utilize these methodologies.

UAS.300 Durability and Reliability: The FAA intends the proposed testing criteria in this section to cover key design aspects and prevent unsafe features at an appropriate level tailored for this UAS. The proposed durability and reliability testing would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations. The UAS would only be certificated for operations within the limitations, and for flight over the maximum population density, as demonstrated by test. The proposed criteria would require that all flights during the testing be completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone.

For some aircraft design requirements imposed by existing airworthiness standards (*e.g.,* §§ 23.2135, 23.2600, 25.105, 25.125, 27.141, 27.173, 29.51, 29.177) the aircraft must not require exceptional piloting skill or alertness. These rules recognize that pilots have varying levels of ability and attention. In a similar manner, the proposed criteria would require that the durability and reliability flight testing be performed by a pilot with average skill and alertness.

Flight testing will be used to determine the aircraft's ability to withstand flight loads across the range of operating limits and the flight envelope. Because small UAS may be subjected to significant ground loads when handled, lifted, carried, loaded, maintained, and transported physically by hand, the proposed criteria would require that the aircraft used for testing endure the same worst-case ground loads as those the UAS will experience in operation after type certification.

UAS.305 Probable Failures: The FAA intends the proposed testing criteria to evaluate how the UAS functions after failures that are probable to occur. The applicant will test the UAS by inducing certain failures and demonstrating that the failure will not result in a loss of containment or control of the UA. The proposed criteria contain the minimum types of failures the FAA finds are probable; however, the applicant must determine the probable failures related to any other equipment that will be addressed for this requirement.

UAS.310 Capabilities and Functions: The proposed criteria for this section address the minimum capabilities and functions the FAA finds are necessary in the design of the UAS and would require the applicant to demonstrate these capabilities and functions by test. Due to the location of the pilot and the controls for UAS, separate from the UA, communication between the pilot and the UA is significant to the design. Thus, the proposed criteria would require the applicant to demonstrate the capability of the UAS to regain command and control after a loss. As with manned aircraft, the electrical system of the UAS must have a capacity sufficient for all anticipated loads; the proposed criteria would require the applicant to demonstrate this by test.

The proposed criteria contain functions that would allow the pilot to command the UA to deviate from its flight plan or from its pre-programmed flight path. For example, in the event the pilot needs to deconflict the airspace, the UA must be able to respond to pilot inputs that override any pre-programming.

In the event an applicant requests approval for certain features, such as geo-fencing or external cargo, the proposed criteria contain requirements to address the associated risks. The proposed criteria in this section would also require design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

UAS.315 Fatigue: The FAA intends the proposed criteria in this section to address the risks from reduced structural integrity and structural failure due to fatigue. The proposed criteria would require the applicant to establish an airframe life limit and demonstrate that loss of flight or loss of control due to structural failure will be avoided throughout the operational life of the UA. These proposed criteria would require the applicant to demonstrate this by test, while maintaining the UA in accordance with the ICA.

UAS.320 Verification of Limits: This section would evaluate structural safety and address the risks associated with inadequate structural design. While the proposed criteria in UAS.300 address testing to demonstrate that the UAS structure adequately supports expected loads throughout the flight and operational envelopes, the proposed criteria in this section would require an evaluation of the performance, maneuverability, stability, and control of the UA with a factor of safety.

Proposed Airworthiness Criteria

The FAA proposes to establish the following airworthiness criteria for type certification of the 3DR Model H520–G. The FAA proposes that compliance with the following would mitigate the risks associated with the proposed design and Concept of Operations appropriately and would provide an equivalent level of safety to existing rules:

General

UAS.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the Unmanned Aircraft System (UAS) operation in the National Airspace System for which certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information.

(a) The intended type of operations;

(b) Unmanned aircraft (UA) specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station and support equipment;

(f) Command, control, and communication functions; and

(g) Operational parameters, such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation.

Design and Construction

UAS.100 Control Station

The control station must be designed to provide the pilot with all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Alerts, such as an alert following the loss of the command and control (C2) link and function.

(b) The status of all critical parameters for all energy storage systems.

(c) The status of all critical parameters for all propulsion systems.

(d) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location.

(e) C2 link signal strength, quality, or status.

UAS.110 Software

To minimize the existence of errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UAS;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

UAS.115 Cyber Security

(a) UAS equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UAS. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the Instructions for Continued Airworthiness (ICA).

AS.120 Contingency Planning

(a) The UAS must be designed so that, in the event of a loss of the C2 link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UAS Flight Manual.

(c) The UAS Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UAS Flight Manual.

UAS.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UAS must have design characteristics that will protect the UAS from loss of flight or loss of control due to lightning.

(b) If the UAS has not been shown to protect against lightning, the UAS Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

UAS.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UAS must have design characteristics that will allow the UAS to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UAS is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UAS is not certificated to operate and show the UAS's ability to avoid or exit those conditions.

UAS.135 Critical Parts

(a) A critical part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UAS control.

(b) If the type design includes critical parts, the applicant must establish a critical parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of critical parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

Operating Limitations and Information

UAS.200 Flight Manual

The applicant must provide a UAS Flight Manual with each UAS.

(a) The UAS Flight Manual must contain the following information:

(1) UAS operating limitations;

(2) UAS normal and emergency operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UAS Flight Manual containing the information specified in paragraphs (a)(1) through (4) of this section must be approved by the FAA.

UAS.205 Instructions for Continued Airworthiness

The applicant must prepare ICA for the UAS in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UAS or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

UAS.300 Durability and Reliability

The UAS must be designed to be durable and reliable commensurate to the maximum population density specified in the operating limitations. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UAS has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and High Intensity Radiated Fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UAS used for testing must be maintained and operated in accordance with the ICA and UAS Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(i) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) the UA is safely controllable and maneuverable; and

(2) the cargo or external-load are retainable and transportable.

UAS.305 Probable Failures

The UAS must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed.

(1) Propulsion systems;

(2) C2 link;

(3) Global Positioning System (GPS);

(4) Critical flight control components with a single point of failure;

(5) Control station; and

(6) Any other equipment identified by the applicant.

(b) Any UAS used for testing must be operated in accordance with the UAS Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

UAS.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UAS must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external-load.

UAS.315 Fatigue

The structure of the UA must be shown to be able to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

UAS.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UAS Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Kansas City, Missouri, on November 16, 2020.

Patrick R. Mullen,

Manager, Small Airplane Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–25661 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1033; Project Identifier MCAI–2020–01393–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–17–01, which applies to certain Airbus Helicopters Model AS332L2 and EC225LP helicopters. AD 2017–17–01 requires repetitive inspections of the main rotor blade (MRB) attachment pins. Since issuing AD 2017–17–01, the FAA has determined that it is necessary to measure the attachment pin chamfer after corrosion removal, that replacement of an attachment pin after four corrosion removals is no longer necessary, and that all Airbus Helicopters Model AS332L2 and EC225LP helicopters are affected by the unsafe condition. This proposed AD would continue to require the repetitive inspections of the MRB attachment pins, and would include a new requirement to repetitively measure the attachment pin chamfer at certain intervals after corrosion removal, as specified in a European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. This proposed AD would also continue to require replacing the attachment pin if there is corrosion pitting. 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 January 8, 2021.

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, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1033.

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–2020–1033; 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: Katherine Venegas, Aviation Safety Engineer, Cabin Safety, Mechanical and Environmental Systems Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5353; email: *katherine.venegas@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 2020–1033; Project Identifier MCAI–2020–01393–R'' 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 NPRM 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 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 Katherine Venegas, Aviation Safety Engineer, Cabin Safety, Mechanical and Environmental Systems Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5353; email: *katherine.venegas@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2017–17–01, Amendment 39–18991 (82 FR 39506, August 21, 2017) (AD 2017–17–01), which applies to certain Airbus Helicopters Model AS332L2 and EC225LP helicopters. AD 2017–17–01 requires repetitive inspections of the MRB attachment pins and corrective actions, if necessary. The FAA issued AD 2017–17–01 to address cracked attachment pins which could result in loss of a MRB and subsequent loss of control of the helicopter.

Actions Since AD 2017–17–01 Was Issued

Since the FAA issued AD 2017–17–01, the FAA has determined that it is necessary to measure the attachment pin chamfer after corrosion removal, that replacement of an attachment pin after four corrosion removals is no longer necessary, and that all Airbus Helicopters Model AS332L2 and EC225LP helicopters are affected by the unsafe condition.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0172, dated August 7, 2018 (EASA AD 2018–0172) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model AS332L2 and EC225LP helicopters. EASA AD 2018–0172 superseded EASA AD 2015–0016, dated January 30, 2015 (which corresponds to FAA AD 2017–17–01).

This proposed AD was prompted by a report of three cracked MRB attachment pins and a determination that additional actions are necessary since the FAA issued AD 2017–17–01. The FAA is proposing this AD to address cracked attachment pins which could result in loss of an MRB and subsequent loss of control of the helicopter. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2018–0172 describes procedures for repetitive inspections for corrosion and cracking of the attachment pins and corrective actions if necessary, and repetitive conditional measurement of the thickness of the chamfer of the attachment pins at certain intervals after corrosion removal. Corrective actions include corrosion removal and replacement of the attachment pins. 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 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.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2017–17–01, this proposed AD would retain certain requirements of AD 2017–17–01. Those requirements are referenced in EASA AD 2018–0172, which, in turn, is referenced in paragraphs (g), (h)(4), and (h)(5) of this proposed AD.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2018–0172 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

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 2018–0172 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2018–0172 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 2018–0172 that is required for compliance with EASA AD 2018–0172 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1033 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

EASA AD 2018–0172 requires an inspection of the affected part in accordance with the applicable service information. The service information for Model AS332L helicopters and the service information for Model EC225LP helicopters both describe procedures for an inspection for corrosion and cracking of the attachment pins. However, the service information for Model AS332L helicopters also describes an inspection of the protective coating of each attachment pin for scratches and missing protective coating and sanding if necessary; the service information for Model EC225LP helicopters does not describe those actions.

Although EASA AD 2018–0172 requires corrective actions if there is corrosion or cracking of the attachment pins, EASA AD 2018–0172 does not require any corrective actions if there is any scratch or any missing protective coating.

This proposed AD would require inspecting the protective coating of each attachment pin for scratches and missing protective coating, and sanding if there is any scratch or any missing protective coating, for all affected helicopters.

EASA AD 2018–0172 requires removing corrosion but does not provide a corrective action if there are corrosion pits. This proposed AD would require replacing an attachment pin that has any corrosion pitting.

The service information referenced in EASA AD 2018–0172 specifies to do a non-destructive inspection if in doubt about whether there is a crack; that action is not required by this proposed AD.

The service information referenced in EASA AD 2018–0172 specifies contacting Airbus Helicopters if any attachment pin with a crack is found and returning that part to Airbus Helicopters; those actions are not required by this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 28 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2017-17-01.	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle	$2,380 per inspection cycle.

The FAA estimates the following costs to do any necessary on-condition measurements (new proposed action), corrosion removal, and replacements that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition measurements, corrosion removal, and replacements:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 11 work-hours × $85 per hour = Up to $935	Up to $5,720	Up to $6,655.

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 removing Airworthiness Directive (AD) 2017–17–01, Amendment 39–18991 (82 FR 39506, August 21, 2017), and adding the following new AD:

Airbus Helicopters: Docket No. FAA–2020–1033; Project Identifier MCAI–2020–01393–R.

(a) Comments Due Date

The FAA must receive comments by January 8, 2021.

(b) Affected Airworthiness Directives (ADs)

This AD removes AD 2017–17–01, Amendment 39–18991 (82 FR 39506, August 21, 2017) (AD 2017–17–01).

(c) Applicability

This AD applies to all Airbus Helicopters Model AS332L2 and EC225LP helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Codes 6200, Main Rotor System.

(e) Reason

This AD was prompted by a report of three cracked main rotor blade (MRB) attachment pins. The FAA is issuing this AD to address cracked MRB attachment pins which could result in loss of an MRB and subsequent loss of control of the helicopter.

(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 Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0172, dated August 7, 2018 (EASA AD 2018–0172).

(h) Exceptions to EASA AD 2018–0172

(1) Where EASA AD 2018–0172 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2018–0172 refers to February 13, 2015 (the effective date of EASA AD 2015–0016, dated January 30, 2015), this AD requires using September 25, 2017 (the effective date of AD 2017–17–01).

(3) The ''Remarks'' section of EASA AD 2018–0172 does not apply to this AD.

(4) Where paragraph (1) of EASA AD 2018–0172 specifies to inspect each affected part, for this AD, prior to the inspection for corrosion, inspect the protective coating on the inside of the attachment pin for scratches and missing protective coating. If there is any scratch or any missing protective coating, prior to the inspection for corrosion, sand the attachment pin to remove the varnish in the area depicted as ''Area A'' in Figure 1 of the ''applicable ASB'' as defined in EASA AD 2018–0172.

(5) Where paragraph (3) of EASA AD 2018–0172 requires removing corrosion, for this AD, if there is any corrosion pitting, before further flight, replace the affected attachment pin. Do not sand the attachment pin to remove a corrosion pit.

(6) Although the service information referenced in EASA AD 2018–0172 specifies to do a non-destructive inspection if in doubt about whether there is a crack, that action is not required by this AD.

(7) Although the service information referenced in EASA AD 2018–0172 specifies contacting Airbus Helicopters if any attachment pin with a crack is found and returning that part to Airbus Helicopters, those actions are not required by this AD.

(8) Although the service information referenced in EASA AD 2018–0172 specifies discarding certain parts, that action is not required by this AD.

(9) Where EASA AD 2018–0172 refers to flight hours (FH), this AD requires using hours time-in-service.

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Manager, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5110; email: *9-ASW-FTW-AMOC-Requests@faa.gov.*

(k) Related Information

(1) For EASA AD 2018–0172, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. 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–2020–1033.

(2) For more information about this AD, contact Katherine Venegas, Aviation Safety Engineer, Cabin Safety, Mechanical and Environmental Systems Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5353; email: *katherine.venegas@faa.gov.*

Issued on November 17, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–25738 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[Docket No. FHWA–2019–0030]

RIN 2125–AF88

Design Standards for Highways

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FHWA requests comments on a proposed revision to the design standards and standard specifications applicable to new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, and rehabilitation projects on the National Highway System (NHS). The proposed rule would allow States to undertake resurfacing, restoration, and rehabilitation (RRR) projects on freeways, including Interstate highways. The proposed rule would incorporate by reference the latest versions of design standards and standard specifications previously adopted and incorporated by reference, and would remove the corresponding outdated or superseded versions of these standards and specifications.

DATES: Comments must be received on or before December 24, 2020. Late comments will be considered to the extent practicable.

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

- *Fax*: 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Electronically through the Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number (FHWA–2017–001) or Regulatory Identification Number (RIN) for this rulemaking (2125–AF88). Note that all comments received will be posted without change to: *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Hilton, Office of Preconstruction, Construction and Pavements (HICP–10), (202) 924–8618, or via email at *Elizabeth.Hilton@dot.gov,* or Mr. Lev Gabrilovich, Office of the Chief Counsel (HCC–30), (202) 366–3813, or via email at *Lev.Gabrilovich@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document may be viewed online under the docket number noted above through the Federal eRulemaking portal at: *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the website. Please follow the online instructions.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at: *http://www.archives.gov/federal-register* and the Government Publishing Office's website at: *http://www.gpo.gov/fdsys.* In accordance with 5 U.S.C. 553(c), FHWA solicits comments from the public to better inform its rulemaking process. FHWA 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 viewed at: *www.dot.gov/privacy.*

Physical access to the docket is available at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background and Legal Authority

Pursuant to 23 U.S.C. 315 and under the authority delegated to FHWA in 49 CFR 1.85, FHWA proposes to modify its regulations governing design standards for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, and rehabilitation projects on the NHS (including the Interstate System). This rulemaking is not expressly required by statute. However, this rulemaking is necessary to implement provisions of 23 U.S.C. 109 regarding design standards and criteria.

State departments of transportation (State DOTs) are tasked with preserving the safety and usability of a vast network of existing highways. FHWA's existing design standards require State DOTs to meet new construction standards on freeway RRR projects, unless a design exception is approved. Recent national research has provided a better understanding of the relationship between geometric design features and crash frequency and severity. Therefore, to improve the efficiency of developing RRR projects on existing freeways, FHWA proposes to allow State DOTs to adopt procedures or design criteria, as approved by FHWA, that would enable the State to undertake RRR projects on freeways, including Interstate highways, without utilizing design exceptions. FHWA also proposes to incorporate by reference updated versions of design standards and standard specifications previously adopted and incorporated by reference under 23 CFR part 625.4, and to remove the corresponding outdated or superseded versions of these standards and specifications.

Several of these design standards and standard specifications were established by the American Association of State Highway and Transportation Officials (AASHTO) and the American Welding Society (AWS) and were previously adopted by FHWA through rulemaking. (83 FR 54876; November 1, 2018). AASHTO is an organization that represents 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those agencies. The Secretary of Transportation is an ex-officio member, and DOT staff participates in various AASHTO activities as nonvoting representatives. Among other functions, AASHTO develops and issues standards, specifications, policies, guides, and related materials for use by the States for highway projects. FHWA has historically incorporated many AASHTO standards, policies, and standard specifications in 23 CFR part 625. AWS is a nonprofit organization known for its code and certification procedures, providing industry standards for welding, including in the transportation field. AWS reports about 66,000 members worldwide and develops updated materials for welding professionals and other interested parties, including those related to bridge welding and structural welding.

The new standards or specifications replace previous versions of these standards or specifications and represent the most recent refinements that professional organizations have formally accepted. After review of the various standards and specifications, FHWA proposes to adopt them for NHS projects.

The proposed revisions include adopting the 2018 edition of the AASHTO *A Policy on Geometric Design Highways and Streets* (Green Book); the 2016 second printing of the AWS D1.1/D1.1M:2015 *Structural Welding Code—Steel;* the 2018 Interim Revisions to the AASHTO *Load and Resistance Factor Design (LRFD) Movable Highway Bridge Design* Specifications; the 2019 and 2020 Interim Revisions to the AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals;* and the 2019 and 2020 Interim Revisions to the AASHTO *LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals.* FHWA proposes to delete the incorporation by reference of the 2018 Interim Revisions to the AASHTO/AWS D1.5M/D1.5: 2015–AMD1, *Bridge Welding Code* and the AASHTO *Standard Specifications for Transportation Materials and Methods of Sampling and Testing.* Each of these standards is discussed in more detail below.

These proposed standards and specifications apply to all projects on the NHS (including the Interstate System). FHWA also encourages the use of flexibility and a context-sensitive approach to consider a full range of project and user needs and the impacts to the community and natural and human environment. These proposed design standards provide a range of acceptable values for highway features, allowing for flexibility that best suits the desires of the community while satisfying the purpose for the project and needs of its users.

State DOTs and local agencies should select design values based on factors including the context of the facility, needs of all the various project users, safety, mobility (*i.e.,* traffic performance), human and natural environmental impacts, and project costs. For most situations, there is sufficient flexibility within the range of acceptable values to achieve a balanced design. However, when this is not possible, a design exception may be appropriate. Since 1985, FHWA has designated the criteria that have the most impact on roadway safety and operations as ''controlling criteria.'' (81 FR 27187; May 5, 2016). State and local agencies may consider designs that deviate from the design standards when warranted based on the conditions, context, and consequences of the proposed projects. FHWA encourages State DOTs and local agencies to document design decisionmaking, particularly when standards cannot be met. Additional information on FHWA's adopted design standards and design exceptions is available at: *http://www.fhwa.dot.gov/design/standards.*

Discussion Under 1 CFR Part 51

The documents that FHWA proposes to incorporate by reference are reasonably available to interested parties, primarily State DOTs and local agencies carrying out Federal-aid highway projects. These documents represent the most recent refinements that professional organizations have formally accepted and are currently in use by the transportation industry. The documents are also available for review at FHWA Headquarters or may be obtained from AASHTO or AWS. The specific standards are discussed in greater detail elsewhere in this preamble.

Section-by-Section Discussion of the Proposed Changes to 23 CFR Part 625

FHWA proposes to revise 23 CFR 625.2(b), 625.3(a)(1), and 625.4(a)(3) to allow States to adopt procedures or design criteria, as approved by FHWA, that would enable the State to undertake RRR work on all NHS roadways without utilizing design exceptions. Under 23 U.S.C. 109(a), the Secretary must ensure proposed highway projects are designed and constructed in accordance with criteria best suited to serve adequately the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance. More than 20 years ago, FHWA had opined that the application of standards other than those for new construction or reconstruction projects on freeway facilities might compromise safety and was not considered appropriate. (62 FR 15392; April 1, 1997). Since that time, national research has provided a better understanding of the relationship between geometric design features and crash frequency and severity. Much of this information is presented in the AASHTO *Highway Safety Manual* (*www.highwaysafetymanual.org*), which incorporates the findings of extensive research on various roadway types and issues. As a result, the practice of roadway design is changing to a more performance-based, flexible approach, particularly for RRR projects. This performance-based approach has been advanced under several research projects conducted by the National Cooperative Highway Research Program (NCHRP) as documented in NCHRP Report 839: A Performance-Based Highway Geometric Design Process (*http://www.trb.org/Publications/Blurbs/175375.aspx*), NCHRP Report 785: Performance-Based Analysis of Geometric Design of Highways and Streets (*http://www.trb.org/Publications/Blurbs/171431.aspx*), and NCHRP Report 876: Guidelines for Integrating Safety and Cost-Effectiveness into Resurfacing, Restoration, and Rehabilitation (3R) Projects (*http://www.trb.org/Main/Blurbs/177914.aspx*). Rather than focusing solely on meeting dimensional design criteria, RRR projects can be developed based on project-specific conditions and existing and expected future roadway performance. State DOTs operating under constrained budgets can make the best use of limited resources by developing RRR projects on all classes of roadways, including freeways, to maximize the safety and operational benefit of the overall transportation network.

In § 625.3(a)(1), FHWA proposes revisions necessary to update the regulation in accordance with 23 U.S.C. 109(c)(1), as amended by section 1404(a) of the 2015 Fixing America's Surface Transportation (FAST) Act. Revisions include changing these factors from optional to mandatory consideration, and the addition of a new factor to consider—the cost savings that can be achieved by utilizing flexibility that exists in current design guidance and regulations.

FHWA proposes new paragraph (a)(3) to add to the regulation a long-standing exception to the Interstate design standards for Alaska and Puerto Rico, found in 23 U.S.C. 103(c)(1)(B)(ii).

FHWA proposes new paragraph (a)(4) to incorporate the provisions of FAST Act section 1404(b) that allow, if certain conditions are met, a local jurisdiction that is a direct recipient of Federal funds to design a project using a roadway design publication that is different from the roadway design publication used by the State in which the local jurisdiction resides. One of the statutory requirements is that the roadway design publication must be recognized by FHWA. For the purpose of implementing section 1404(b), the design publications that FHWA currently recognizes are those listed in either the FHWA Memorandum dated August 20, 2013, regarding Bicycle and Pedestrian Facility Design Flexibility (available at *www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility.cfm*) or the related Questions and Answers (Q&As) (available at *www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility_qa.cfm*).

In 23 CFR 625.3(f), FHWA proposes to establish, in paragraph (f)(2), as redesignated, a programmatic exception for the limited purpose of allowing States to use a more recent edition of a standard or specification adopted in § 625.4(d). This change will remove an administrative barrier to utilization of most recent refinements that professional organizations have formally accepted. FHWA intends to retain approval for such a programmatic exception at the appropriate Headquarters program office to ensure that the agency is satisfied that interim implementation of a new edition is in the public interest. In addition, FHWA proposes to revise § 625.3(f)(1)(i), as redesignated, to clarify that the provisions governing project exceptions only apply to projects on the NHS because States may develop their own standards for projects not on the NHS under § 625.3(a)(2) and 23 U.S.C. 109(o).

In § 625.4, FHWA proposes to incorporate by reference the updated versions of design standards and standard specifications previously adopted and incorporated by reference, and to remove the corresponding outdated or superseded versions of these standards and specifications. In addition, FHWA proposes to delete two previously adopted specifications and add one new specification.

In § 625.4(a)(1), FHWA proposes to remove the edition and date from the AASHTO *A Policy on Geometric Design Highways and Streets* because the edition and date are more properly included in paragraph (d)(1)(i) of this section.

In § 625.4(a)(3), FHWA proposes to focus on statewide procedures and design criteria because under risk-based stewardship and oversight, design plans for individual RRR projects are typically delegated to the State. In addition, FHWA proposes to clarify that, if a State does not adopt design procedures or criteria for RRR projects as approved by FHWA, the standards listed in paragraphs (a)(1) and (a)(2) shall apply. This change is consistent with current practice.

In § 625.4(b)(7), FHWA proposes to insert ''AASHTO'' in front of the name of the two documents incorporated by reference for clarity.

In § 625.4(b)(9) and (d)(2)(ii), FHWA proposes to incorporate a new reference to the AWS D1.1/D1.1M:2015 *Structural Welding Code—Steel* because many projects require welding of miscellaneous metal components for items such as light poles, sign supports, and railings. FHWA adopts minimum design standards to ensure the safety of the transportation infrastructure by ensuring all fabrication and manufacturing processes are performed to an acceptable standard. For instance, the AASHTO/AWS D1.5/D1.5M Bridge Welding Code is a minimum standard to ensure all steel bridges are welded to a standard that covers welding consumables, welding procedure requirements, qualification requirements, personal requirements, inspection and acceptance criteria. However, numerous transportation products are not covered by the Bridge Welding Code including light poles, high mast towers, sign structures, guard rail systems, and even pedestrian bridges. Because these other product types are not covered by the Bridge Welding Code, and because they are in or over the right-of-way, they should be fabricated or manufactured to a minimum design standard, and FHWA proposes the AWS D1.1/D1.1M:2015 Structural Welding Code-Steel. The Structural Welding Code-Steel provides many similar requirements in the Bridge Welding Code but is applicable to the other product types not covered specifically by the Bridge Welding Code.

In § 625.4(c)(2) and (d)(1)(x), FHWA proposes to delete the reference to the AASHTO *Standard Specifications for Transportation Materials and Methods of Sampling and Testing* (described as ''Transportation Materials'' in the existing text). This AASHTO publication covers a broad range of material specifications and testing procedures. While these standards represent effective, nationally recognized practices, adherence to these standards is not mandatory in all circumstances. Removal of these standards from the incorporation by reference is meant to clarify that use of these standards is not a mandatory requirement as a design standard for highways covered in this part. Some of these material specifications and testing procedures remain individually incorporated by reference in other parts of this title.

In § 625.4(d)(1)(i), FHWA proposes to adopt the 2018 edition of the AASHTO *A Policy on Geometric Design Highways and Streets* (Green Book), replacing the 2011 edition. The Green Book provides geometric design guidance based on established practices that are supplemented by recent research. The 2018 edition of the Green Book incorporates the latest research and current industry practices, and is primarily applicable to new construction and reconstruction projects. It emphasizes the need to utilize a flexible design approach to balance the needs of all users and modes of travel. It expands project context categories from two to five—adding rural town, suburban, and urban core to the previous contexts of urban and rural. It incorporates a performance-based approach for considering the effects of geometric design decisions. It better describes the various types of projects—new construction, reconstruction, and projects on existing roads where the basic road type is unchanged—and provides design flexibility for each project type. This third project type is similar to what has historically been referred to as RRR projects. FHWA continues to use the term RRR in this part to be consistent with language in title 23 of the U.S. Code. Although AASHTO does not define the phrase ''change in basic road type,'' FHWA generally interprets this phrase to include projects that change the general geometric character of a highway, such as widening to provide additional through motor vehicle lanes, widening to add a raised or depressed median where none currently exists, and projects that substantially modify horizontal or vertical alignments. Road changes that are accomplished with no, or only minimal, widening, such as lane reconfigurations (road diets), adding turn lanes, adding channelizing islands, or adding median curbs for access management are not considered a ''change in the basic road type.'' In addition, for the purposes of determining geometric design criteria when applying the 2018 Green Book, full-depth pavement replacement projects that retain existing geometrics are not considered a ''change in the basic road type.'' Under a performance-based design approach, the scope of geometric improvements for projects on existing roads that retain the existing basic road type should be driven by past safety and operational performance and predicted future performance. Consistent with 23 U.S.C. 109(n), RRR projects must preserve and extend the service life of the existing road and enhance highway safety.

In § 625.4(d)(1)(vi), FHWA proposes to add the 2018 Interim Revisions to the AASHTO *LRFD Movable Highway Bridge Design* Specifications. These standards are applicable to the design of bridge spans, mechanical systems (motors, hydraulics, etc.), electrical systems, and bridge protection systems for movable highway bridges. Changes in the 2018 Interim Revisions reflect the latest research, developments, and specifications promulgated by AASHTO and includes important updates to the provisions for the mechanical and structural design requirements for span lock devices.

In § 625.4(d)(1)(vii)(A), FHWA proposes to delete the 2018 Interim Revisions to the AASHTO/AWS D1.5M/D1.5: 2015–AMD1, *Bridge Welding Code.* This interim revision was provided by AASHTO to owners and fabricators for informational purposes only to alert them to proposed revisions to the AASHTO/AWS D1.5M/D1.5:2015 Bridge Welding Code. AASHTO will not officially revise the Bridge Welding Code until they have gone through the complete AWS consensus review and approval process and final changes are incorporated into the next published edition of the AASHTO/AWS D1.5M/D1.5 Bridge Welding Code. FHWA proposes to allow the use of the interim revisions, but not to adopt them as a minimum design standard.

In § 625.4(d)(1)(viii), FHWA proposes to add the 2019 and 2020 Interim Revisions to the AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals.* In § 625.4(d)(1)(ix), FHWA proposes to add the 2019 and 2020 Interim Revisions to the AASHTO *LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals.* These standards are applicable to the structural design of supports for highway signs, luminaires, and traffic signals. They are intended to serve as a standard and guide for the design, fabrication, and erection of these types of supports. Changes in the 2019 and 2020 Interim Revisions to both publications reflect the latest research, developments, and specifications promulgated by AASHTO and address items such as providing updated dimensional and detailing requirements for certain support connections to control fatigue and providing updated requirements on the testing of welds in certain connections.

Use of the updated standards will be required for all NHS projects authorized to proceed with design activities on or after 1 year following the effective date of the final rule, unless an extension is granted for unique or extenuating circumstances.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons may be interested in continuing to examine the docket for new material. A final rule may be published at any time after close of the comment period and after FHWA has had the opportunity to review the comments submitted.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FHWA has determined preliminarily that this action does not constitute a significant regulatory action within the meaning of Executive Order (E.O.) 12866 or within the meaning of DOT's regulatory policies and procedures. This action complies with E.O.s 12866, 13563, and 13771 to improve regulation. The proposed amendments would allow the development of RRR procedures or design criteria for projects on freeways and update several industry design standards and standard specifications adopted and incorporated by reference under 23 CFR part 625 and would remove the corresponding outdated or superseded versions of these standards and specifications.

After evaluating the costs and benefits of these proposed amendments, FHWA does not have the data to quantify anticipated cost savings but anticipates that the economic impact of this rulemaking would be minimal. Based on project data captured in FHWA's Fiscal Management Information System (FMIS) from October 2014 to September 2018, an average of 2,379 Interstate and freeway projects (totaling $86 billion) on the NHS were authorized for construction each year. Of those projects, an average of 261 projects per year were coded by the States as being reconstruction projects with no added capacity (FMIS Improvement Code 04) and 424 projects per year were coded as being restoration and rehabilitation projects (FMIS Improvement Code 06). Under this proposal, we estimate that all projects in both categories, an average of 685 projects (totaling $18.5 billion) per year, would be eligible to be designed to State-specific RRR standards, rather than to new construction standards as currently required. However, existing regulations allow for States to seek design exceptions when the standards cannot be met. FHWA recognizes that, on many existing freeways, it is often not possible to widen the roadway and flatten curves to meet new construction standards due to context-specific considerations. Absent existing or anticipated safety or operational problems, FHWA expects that State DOTs generally pursue design exceptions to make the best use of limited resources.

FHWA does not have data to determine how many of the 685 projects per year do not meet the new construction standard through the implementation of design exceptions, nor does FHWA have data to demonstrate how many hours State DOTs spend developing design exception requests on freeway projects undertaken to perform RRR-type work (FMIS Improvement Codes 04 and 06). FHWA requests that State DOTs provide comments to the docket if they have any data that would be relevant to this analysis. Specifically, FHWA seeks data on (1) the percentage of RRR-type freeway projects developed by State DOTs that utilized a design exception because the project could not meet a new construction standard, (2) the average number of employee hours spent developing, reviewing, and approving each design exception, (3) the average hourly compensation of employees involved with these design exception activities, (4) reasons for requesting exceptions (operational, safety, resource constraint, innovation, etc.), and (5) cost savings associated with the proposed design exception.

Most State DOTs already have staff dedicated to developing RRR standards for non-freeway projects, and any additional staff time needed to develop RRR standards for freeways is anticipated to be minimal. The National Cooperative Highway Research Program recently released a pre-publication version of Research Report 876 entitled ''Guidelines for Integrating Safety and Cost-Effectiveness into Resurfacing, Restoration, and Rehabilitation (3R) Projects,'' which provides guidance and assistance to States for developing these standards. See *http://www.trb.org/NCHRP/Blurbs/177914.aspx.* Under this proposal, the resulting design of the freeway project is anticipated to be the same, but FHWA expects that net cost savings will be realized by allowing the States to develop their own standards and eliminate the need for many design exceptions.

FHWA does not anticipate any cost or safety impacts due to removing the AASHTO *Standard Specifications for Transportation Materials and Methods of Sampling and Testing* and the 2018 Interim Revisions to the AASHTO/AWS D1.5M/D1.5: 2015–AMD1, *Bridge Welding Code* from the list of standards incorporated by reference. Nor does FHWA anticipate any cost or safety impacts due to incorporating by reference the AWS D1.1/D1.1M: Structural Welding Code—Steel, as most States are already using this standard for the welding of miscellaneous structural steel items. FHWA anticipates that the economic impact of updating several industry design standards and standard specifications adopted and incorporated by reference would be minimal. These updated standards and specifications represent the most recent refinements that professional organizations have formally accepted and are widely used for projects off the NHS.

For these reasons, FHWA finds that the expected economic benefits of the proposed rule will outweigh the estimated costs of the proposed rule. The proposed changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. FHWA anticipates that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not necessary.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities, such as local governments and businesses. Based on the evaluation, FHWA anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendments would update several industry design standards and standard specifications adopted and incorporated by reference under 23 CFR part 625. FHWA believes the projected impact upon small entities that utilize Federal-aid highway program funding for the development of highway improvement projects on the NHS would be negligible. Therefore, FHWA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FHWA has determined that this NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $155 million or more in any 1 year (when adjusted for inflation) in 2014 dollars for either State, local, and Tribal governments in the aggregate, or by the private sector. FHWA will publish a final analysis, including its response to public comments, when it publishes a final rule. In addition, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

FHWA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132. FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. This E.O. applies because State and local governments would be directly affected by the proposed regulation, which is a condition on Federal highway funding. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. FHWA has determined that the proposed rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

FHWA has analyzed this proposed rule for the purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that this action would not have any effect on the quality of the human and natural environment because it only would make technical changes and incorporate by reference the latest versions of design standards and standard specifications previously adopted and incorporated by reference under 23 CFR part 625 and would remove the corresponding outdated or superseded versions of these standards and specifications. The proposed rule qualifies as a categorical exclusion to NEPA under 23 CFR 771.117(c)(20).

Executive Order 13175 (Tribal Consultation)

FHWA has analyzed this proposed rule under E.O. 13175, and believes that it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal law. This proposed rule would not impose any direct compliance requirements on Indian Tribal governments nor would it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference.

Issued under authority delegated in 49 CFR 1.85.

Nicole R. Nason,

Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to amend 23 CFR part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

■ 1. Revise the authority citation for part 625 to read as follows:

Authority: 23 U.S.C. 103, 109, 315, and 402; Sec. 1073 of Pub. L. 102–240, 105 Stat. 1914, 2012; Sec. 1404 of Pub. L. 114–94, 129 Stat. 1312; 49 CFR 1.85.

■ 2. Amend § 625.2 by revising the first sentence of paragraph (b) to read as follows:

§ 625.2 Policy.

* * * * *

(b) Resurfacing, restoration, and rehabilitation (RRR) projects shall be constructed in accordance with standards that preserve and extend the service life of highways and enhance highway safety. * * *

* * * * *

■ 3. Amend § 625.3 by:

■ a. Revising paragraph (a)(1) introductory text and (a)(1)(ii) and (iii);

■ b. Adding paragraphs (a)(1)(iv) and (a)(3) and (4); and

■ c. Revising paragraphs (f)(1) and (2).

The revisions and additions read as follows:

§ 625.3 Application.

(a) * * *

(1) Design and construction standards for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the NHS shall be those approved by the Secretary in cooperation with the State DOTs. These standards must consider, in addition to the criteria described in § 625.2(a), the following:

* * * * *

(ii) The environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity;

(iii) Cost savings by utilizing flexibility that exists in current design guidance and regulations; and

(iv) Access for other modes of transportation.

* * * * *

(3) Interstate highways located in Alaska and Puerto Rico shall be designed in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and the needs of the locality of the highway.

(4) A State may allow a local jurisdiction to design a project using a roadway design publication that is different from the roadway design publication used by the State in which the local jurisdiction resides if—

(i) The local jurisdiction is a direct recipient of Federal funds for the project;

(ii) The roadway design publication is adopted by the local jurisdiction and recognized by FHWA;

(iii) The design complies with all applicable Federal laws and regulations; and

(iv) The project is located on a roadway that is owned by the local jurisdiction and is not part of the Interstate system.

* * * * *

(f) * * *

(1) *Project exception.* (i) Approval within the delegated authority provided by FHWA Order M1100.1A may be given on a project basis to designs on

the NHS which do not conform to the minimum criteria as set forth in the standards, policies, and standard specifications for:

(A) Experimental features on projects; and

(B) Projects where conditions warrant that exceptions be made.

(ii) The determination to approve a project design that does not conform to the minimum criteria is to be made only after due consideration is given to all project conditions such as maximum service and safety benefits for the dollar invested, compatibility with adjacent sections of roadway and the probable time before reconstruction of the section due to increased traffic demands or changed conditions.

(2) *Programmatic exception.* Approval within the delegated authority provided by FHWA Order M1100.1A may be given, on a programmatic basis, a more recent edition of any standard or specification incorporated by reference under § 625.4(d).

■ 4. Amend § 625.4 by;

■ a. Revising paragraphs (a)(1) and (3) and (b)(7);

■ b. Adding paragraph (b)(9);

■ c. Removing paragraph (c)(2) and redesignating paragraph (c)(3) as paragraph (c)(2);

■ d. Revising the last sentence in the paragraph (d) introductory text and paragraph (d)(1)(i);

■ e. Revising paragraphs (d)(1)(vi)(E) and (F) and adding paragraph (d)(1)(vi)(G);

■ f. Revising paragraphs (d)(1)(vii);

■ g. Revising paragraph (viii)(A) and adding paragraphs (d)(1)(viii)(B) and (C);

■ h. Revising paragraphs (d)(1)(ix)(A) and (B) and adding paragraphs (d)(1)(ix)(C) and (D);

■ i. Removing paragraph (d)(1)(x); and

■ j. Redesignating paragraph (d)(2)(i) as paragraph (d)(2)(ii), and adding new paragraph (d)(2)(i).

The revisions and additions read as follows:

§ 625.4 Standards, policies, and standard specifications.

(a) * * *

(1) A Policy on Geometric Design of Highways and Streets, AASHTO (paragraph (d) of this section).

* * * * *

(3) The geometric design standards for resurfacing, restoration, and rehabilitation (RRR) projects on NHS highways shall be the procedures or the design criteria established for individual projects, groups of projects, or all RRR projects in a State, and as approved by FHWA. The RRR design standards shall reflect the consideration of the traffic, safety, economic, physical, community, and environmental needs of the projects. If a State does not adopt design procedures or criteria for RRR projects as approved by FHWA, the standards listed in paragraphs (a)(1) and (2) of this section shall apply.

* * * * *

(b) * * *

(7) AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, (paragraph (d) of this section); or AASHTO LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals (paragraph (d) of this section).

* * * * *

(9) AWS D1.1/D1.1M Structural Welding Code—Steel (paragraph (d) of this section).

* * * * *

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

(1) * * *

(i) A Policy on Geometric Design of Highways and Streets, 7th Edition, 2018.

* * * * *

(vi) * * *

(E) Interim Revisions, 2014,

(F) Interim Revisions, 2015, and

(G) Interim Revisions, 2018.

(vii) AASHTO/AWS D1.5M/D1.5: 2015–AMD1, Bridge Welding Code, Amendment: Second Printing December 12, 2016.

(viii) * * *

(A) AASHTO LTS–6–I1, 2015 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2014,

(B) AASHTO LTS–6–I2–OL, 2019 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2018, and

(C) AASHTO LTS–6–I3–OL, 2020 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2019.

(ix) * * *

(A) AASHTO LRFDLTS–1–I1–OL, 2017 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2016,

(B) AASHTO LRFDLTS–1–I2–OL, 2018 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2017,

(C) AASHTO LRFDLTS–1–I3–OL, 2019 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2018, and

(D) AASHTO LRFDLTS–1–I4–OL, 2020 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2019.

(2) * * *

(i) D1.1/D1.1M:2015 Structural Welding Code—Steel, Second printing, copyright 2016, and

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[FR Doc. 2020–25679 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–123652–18]

RIN 1545–BP01

Treatment of Special Enforcement Matters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to except certain partnership-related items from the centralized partnership audit regime that was created by the Bipartisan Budget Act of 2015, and sets forth alternative rules that will apply. The centralized partnership audit regime does not apply to a partnership-related item if the item involves a special enforcement matter described in these regulations. Additionally, these regulations propose changes to the regulations to account for changes to the Internal Revenue Code (Code). Finally, these proposed regulations also make related and clarifying amendments to the final regulations under the centralized partnership audit regime. The proposed regulations would affect partnerships and partners to whom special enforcement matters apply.

DATES: Written or electronic comments must be received by January 25, 2021.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–123652–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–123652–18), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer M. Black of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6834; and concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) regarding special enforcement matters under section 6241(11) of the Code and the collection of amounts due under the centralized partnership audit regime pursuant to section 6241(7) of the Code. Section 6241(11) was enacted by section 206 of the Tax Technical Corrections Act of 2018, contained in Title II of Division U of the Consolidated Appropriations Act of 2018, Public Law 115–141 (TTCA). This document also contains several proposed amendments to the final regulations on the centralized partnership audit regime published in TD 9844 (84 FR 6468) on February 27, 2019.

Section 1101(a) of the Bipartisan Budget Act of 2015, Public Law 114–74 (BBA) amended chapter 63 of the Code (chapter 63) by removing former subchapter C of chapter 63 effective for partnership taxable years beginning after December 31, 2017. Former subchapter C of chapter 63 contained the unified partnership audit and litigation rules enacted by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (TEFRA) that were commonly referred to as the TEFRA partnership procedures or simply, TEFRA. Section 1101(b) of the BBA removed subchapter D of chapter 63 and amended chapter 1 of the Code (chapter 1) by removing part IV of subchapter K of chapter 1, rules applicable to electing large partnerships, effective for partnership taxable years beginning after December 31, 2017. Section 1101(c) of the BBA replaced the TEFRA partnership procedures and the rules applicable to electing large partnerships with a centralized partnership audit regime that determines adjustments and, in general, determines, assesses, and collects tax at the partnership level. Section 1101(g) of the BBA set forth the effective dates for these statutory amendments, which are effective generally for returns filed for partnership taxable years beginning after December 31, 2017. On December 18, 2015, section 1101 of the BBA was amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113 (PATH Act). The amendments under the PATH Act are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

Enacted on March 23, 2018, the TTCA made a number of technical corrections to the centralized partnership audit regime, including adding sections 6241(11) (regarding the treatment of special enforcement matters) and 6232(f) (regarding the collection of the imputed underpayment and other amounts due from partners of the partnership in the event the amounts are not paid by the partnership) to the Code. The amendments to subchapter C of chapter 63 included in the TTCA are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On January 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (82 FR 28398) final regulations under section 6221(b) providing rules for electing out of the centralized partnership audit regime (TD 9829).

On August 9, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 39331) final regulations under section 6223 providing rules relating to partnership representatives and final regulations under § 301.9100–22 providing rules for electing into the centralized partnership audit regime for taxable years beginning on or after November 2, 2015, and before January 1, 2018. Corresponding temporary regulations under § 301.9100–22T were also withdrawn (TD 9839).

On February 27, 2019, the Treasury Department and the IRS published in the **Federal Register** (84 FR 6468) final regulations implementing sections 6221(a), 6222, and 6225 through 6241 of the centralized partnership audit regime (TD 9844).

Under section 6241(11), in the case of partnership-related items involving special enforcement matters, the Secretary of the Treasury or his delegate (Secretary) may prescribe regulations providing that the centralized partnership audit regime (or any portion thereof) does not apply to such items and that such items are subject to special rules as the Secretary determines to be necessary for the effective and efficient enforcement of the Code. For purposes of section 6241(11), the term ''special enforcement matters'' means: (1) Failure to comply with the requirements of section 6226(b)(4)(A)(ii) (regarding the requirement for a partnership-partner or S corporation partner to furnish statements or compute and pay an imputed underpayment); (2) assessments under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income, estate, gift, and certain excise taxes); (3) criminal investigations; (4) indirect methods of proof of income; (5) foreign partners or partnerships; and (6) other matters that the Secretary determines by regulation present special enforcement considerations.

Explanation of Provisions

On January 14, 2019, the IRS published in the Internal Revenue Bulletin Notice 2019–06, 2019–03 IRB 353 (Notice 2019–06), informing taxpayers that the Treasury Department and the IRS intended to propose regulations addressing two special enforcement matters under section 6241(11). These regulations propose the rules addressed in Notice 2019–06 and several other rules regarding special enforcement matters under section 6241(11).

These regulations also propose several changes to regulations finalized in TD 9844 to provide clarity regarding certain provisions. Changes are required to the regulations finalized in TD 9844 to address the treatment of chapter 1 taxes, penalties, additions to tax, additional amounts, and any imputed underpayments previously reported by the partnership adjusted as part of an examination under the centralized partnership audit regime to correspond to the addition of proposed § 301.6241–7(g), which is discussed in part 5.F of this Explanations of Provisions. Additional edits are proposed to modify the rules implementing section 6241(7) regarding the treatment of adjustments when a partnership ceases to exist to account for the addition of section 6232(f) to the Code. Finally, minor clarifying edits are proposed.

In addition to the changes listed above, certain regulations have been reordered or renumbered, typographical errors have been corrected, and nonsubstantive editorial changes have been made.

1. Election Out of the Centralized Partnership Audit Regime

Certain partnerships may elect out of the centralized partnership audit regime under section 6221(b). Section 301.6221(b)–1 provides the rules for electing out of the centralized partnership audit regime, including determining whether a partnership is eligible to elect out of the centralized partnership audit regime. A partnership is eligible to make an election out if it has 100 or fewer partners for the taxable year, each partner in the partnership is an eligible partner, the election is timely made in the manner prescribed by the Secretary, and the partnership notifies its partners of the election in the manner prescribed by the Secretary. Section 301.6221(b)–1(b)(2)(i) generally provides that a partnership has 100 or fewer partners if the partnership is required to furnish 100 or fewer statements under section 6031(b) for the taxable year. As part of determining whether a partnership has 100 or fewer partners, section 6221(b)(2)(A) and § 301.6221(b)–1(b)(2)(ii) require a partnership with a partner that is an S corporation (as defined in section 1361(a)(1)) to take into account each statement required to be furnished by the S corporation to its shareholders under section 6037(b) for the taxable year of the S corporation ending with or within the partnership's taxable year.

Eligible partners are those persons prescribed in section 6221(b)(1)(C) and § 301.6221(b)–1(b)(3)(i). Under § 301.6221(b)–1(b)(3)(ii)(D) a partner is not an eligible partner if the partner is a ''disregarded entity described in § 301.7701–2(c)(2)(i).'' Proposed § 301.6221(b)–1(b)(3)(ii)(D) changes ''disregarded entity described in § 301.7701–2(c)(2)(i)'' to ''a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes'' and would include, for example, a qualified REIT subsidiary (as defined in section 856(i)(2)) or grantor trust. This change is made to be consistent with the description of a disregarded entity used elsewhere in the regulations under the centralized partnership audit regime. *See, e.g.,* §§ 301.6225–2; 301.6226–3; 301.6241–1.

The proposed regulations also add § 301.6221(b)–1(b)(3)(ii)(G), which addresses partnerships with qualified subchapter S subsidiaries (QSubs) as partners to remove any ambiguity regarding whether a partnership with a QSub as a partner can elect out of the centralized partnership audit regime. A QSub is defined in section 1361(b)(3)(B) as any domestic corporation that is not an ineligible corporation (as defined in section 1361(b)(2)) if 100 percent of the stock of such corporation is held by an S corporation and the S corporation elects to treat such corporation as a QSub. *See* § 1.1361–4(a)(1). However, section 1361(b)(3)(A) provides that, ''[e]xcept as provided in regulations prescribed by the Secretary, for purposes of *this title*'' (that is, the Code): (i) A corporation that is a QSub is not treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit, of a QSub are treated as assets, liabilities, and such items (as the case may be) of its parent S corporation. Further, section 1361(b)(3)(E) provides that, except to the extent provided by the Secretary, the rules of section 1361(b)(3) do not apply with respect to the provisions of part III of subchapter A of chapter 61 of the Code (relating to information reporting). That is, a QSub is treated as a separate corporation for information reporting purposes. *See* § 1.1361–4(a)(9). Section 6031(b), one of the provisions of part III of subchapter A of chapter 61, provides that each partnership required to file a return must furnish to each person who is a partner or who holds an interest in the partnership as a nominee for another person at any time during a partnership taxable year a copy of the information required to be shown on the return as may be required by regulations. Thus, if a QSub is treated as a partner in a partnership, then under section 6031(b) the partnership is required to furnish a statement containing its return information to the QSub.

Notice 2019–06 states that partnership structures with QSubs as partners present special enforcement concerns because allowing a partnership with a QSub partner to elect out of the centralized partnership audit regime would enable a partnership to elect out in situations where there are over 100 ultimate taxpayers. If a partnership elects out of the centralized partnership audit regime, any adjustments must be made in examinations of the ultimate taxpayers who own interests in the partnership. To limit the number of examinations the IRS must conduct, Congress determined that only partnerships with 100 or fewer partners could elect out of the centralized partnership audit regime. Section 6221(b). In addition, under section 6221(b), partnerships with partners that are flow-through entities, except for partners that are S corporations, are ineligible to elect out of the centralized partnership audit regime. For partnerships with S corporation partners, the shareholders of the S corporation partner are counted in determining if the partnership has 100 or fewer partners. Section 6221(b)(2)(A). Accordingly, if such partnerships elect out of the centralized partnership audit regime, this will generally result in there being less than 101 ultimate taxpayers to potentially examine. However, as described above, if partnerships with QSubs as partners are eligible to elect out, this may result in the IRS having to examine more than 100 ultimate taxpayers for a particular partnership.

For example, in contrast to S corporations, if a QSub was an eligible partner for purposes of section 6221, because a QSub is not an S corporation, the special rules for S corporations under section 6221(b)(2)(A) and § 301.6221(b)–1(b)(2)(ii) would not apply to a QSub partner. These special rules require the partnership to count the number of statements required to be furnished by the S corporation partner in determining if the partnership has 100 or fewer partners for the taxable year. Therefore, in a situation where a partnership that has a QSub as a partner and 99 other individual partners for purposes of section 6031(b), the stock of the S corporation that wholly owned the stock of the QSub could be owned by well over 100 ultimate taxpayers who satisfy the requirements of section 1361(b)(1)(A) (limiting the number of shareholders of an S corporation to 100) by reason of section 1361(c)(1) (treating members of a family as one shareholder for purposes of section 1361(b)(1)(A)). Allowing such a partnership to elect out of the centralized partnership regime would clearly frustrate the efficiencies the regime was intended to create.

To avoid this result and the attendant special enforcement concerns, Notice 2019–06 states that the Treasury Department and the IRS intend to propose regulations under section 6241(11)(B)(vi) providing that the ability to elect out of the centralized partnership audit regime under section 6221(b) generally does not apply to a partnership with a QSub as a partner. Notice 2019–06 states that the proposed regulations would apply a rule similar to the rules for S corporations under section 6221(b)(2)(A), which would require an S corporation holding the QSub stock to disclose the name and taxpayer identification number of each person with respect to whom the S corporation is required to furnish a statement under section 6037(b) for the taxable year of the S corporation ending with or within the partnership taxable year. Such statements are treated as if they were furnished by the partnership. *See* section 6221(b)(2)(A)(ii). Therefore, under Notice 2019–06, each statement furnished by the partnership to the S corporation, and by the S corporation to its shareholders, would be included in determining if the partnership has 100 or fewer partners for the taxable year for purposes of the election out of the centralized partnership audit regime.

In determining whether a QSub is an eligible partner under section 6221(b), Notice 2019–06 cites to section 1361(a)(2), which provides that a corporation, other than an S corporation (as defined in section 1361(b)(1)), is a C corporation. Comments to the centralized partnership audit regime and Notice 2019–06 revealed a lack of consensus regarding how section 1361 should be interpreted.

A comment relating to rules for electing out of the centralized partnership audit regime requested guidance confirming that a partner's status as a QSub does not prevent a partnership from electing out of the centralized partnership audit regime based on the belief that current law under section 1361 treats a QSub as an eligible partner (that is, a C corporation) and so requires this result. Further, the comment stated that a QSub is not a disregarded entity as described in § 301.7701–2(c)(2)(i) and even if a QSub is ignored for most Federal tax purposes, such treatment is afforded by section 1361(b)(3)(A)(i) and not § 301.7701–2(c)(2)(i). Section 301.7701–2(c)(2)(i) provides that a business entity that has a single owner and is not a ''per se'' corporation under § 301.7701–2(b) is disregarded as an entity separate from its owner. Thus, the comment concluded that a QSub could never be the type of disregarded entity that Treasury regulations identify as an ineligible partner.

In contrast, another comment in response to Notice 2019–06 stated that Notice 2019–06 incorrectly states that, because a QSub is not an S corporation, it is a C corporation and therefore, an eligible partner under section 6221(b). The comment provided the rationale that, when a corporation makes a QSub election, it is treated under section 1361(b)(3)(A) as if it liquidated into its parent S corporation and accordingly, no longer exists, for purposes of the Code, as a separate entity for Federal tax purposes (even though for state law purposes, such as limited liability, it still exists). Therefore, the comment stated that a QSub is not a partner under section 6221(b) and concluded that the parent S corporation is treated as the partner and that the S corporation, not the QSub, should provide its shareholder information to the partnership under section 6221(b)(2) for purposes of determining whether the partnership may elect out of the centralized partnership audit regime.

Although Notice 2019–06 states that the proposed regulations would have applied a rule similar to the rules for S corporations under section 6221(b)(2)(A) to partnerships with a QSub as a partner, the Treasury Department and the IRS have reconsidered that approach. Under § 301.6221(b)–1(b)(3)(ii), partnerships that have disregarded entities as partners may not elect out of the centralized partnership audit regime. QSubs are treated similarly to disregarded entities for most purposes under the Code in that both QSubs and disregarded entities do not file income tax returns but instead report their items of income and loss on the returns of the person who wholly owns the entity. Thus, as described earlier in this part and in Notice 2019–06, the Treasury Department and the IRS have determined that partnership structures with QSubs as partners present special enforcement concerns because allowing a partnership with a QSub partner to elect out of the centralized partnership audit regime would enable a partnership to elect out in situations where there are over 100 ultimate taxpayers, thereby frustrating the efficiencies the regime was intended to create. To make clear to taxpayers that a QSub cannot be used to facilitate the election out of the centralized partnership audit regime by a partnership with greater than 100 ultimate taxpayers, the Treasury Department and the IRS have determined it is necessary for the proposed regulations to address such a special enforcement concern by treating QSubs as ineligible partners for purposes of section 6221. Accordingly, proposed § 301.6221(b)–1(b)(3)(ii)(G) provides that a QSub is not an eligible partner for purposes of making an election out of the centralized partnership audit regime under section 6221(b). Therefore, if a QSub is a partner in a partnership and required to be furnished a statement by the partnership under section 6031(b), that partnership will not be eligible to make an election under section 6221(b) to elect out of the centralized partnership audit regime.

2. Imputed Underpayments, Chapter 1 Taxes, Penalties, Additions to Tax, and Additional Amounts

If the IRS adjusts a partnership's chapter 1 taxes, penalties, additions to tax, or similar amounts utilizing the centralized partnership audit regime, there must be a mechanism for including these amounts in the imputed underpayment and accounting for these amounts if the partnership elects to push out the adjustments under section 6226. In addition, there must also be a mechanism to account for any adjustments to a previously determined imputed underpayment. Accordingly, these proposed rules apply to the calculation of the imputed underpayment during an IRS examination and to adjustments to the imputed underpayment as calculated by the partnership. For example, the rules apply to the filing of an administrative adjustment request (AAR) when the partnership-partner computes and pays an imputed underpayment. For proposed changes related to § 301.6241–3, see part 4, Cease to Exist.

A. Inclusion of Adjustments to an Imputed Underpayment and the Partnership's Chapter 1 Taxes, Penalties, Additions to Tax, or Additional Amounts in an Imputed Underpayment

Section 301.6225–1 provides rules for how to calculate the imputed underpayment. First, all adjustments are placed into groups of similar adjustment types and netted appropriately, resulting in net positive or negative adjustments (as described in § 301.6225–1(e)(4)(i)). Most net positive adjustments to items of income, gain, loss, and deduction are then added together to create a total netted partnership adjustment and a tax rate is then applied. That amount is then increased or decreased by any adjustments to credits. Credits are not included in earlier steps of the imputed underpayment calculation because credits generally adjust a taxpayer's amount of tax owed on a dollar-for-dollar basis after a tax rate has been applied. If adjustments to credits were taken into account as part of the total netted partnership adjustment before the tax rate was applied, the value of the credits would be reduced by the tax rate applied and, because of that reduction, would no longer operate as an increase or decrease in tax on a dollar-for-dollar basis.

Proposed § 301.6225–1 modifies the final regulations under § 301.6225–1 to provide a mechanism for including the partnership's chapter 1 taxes, penalties, additions to tax, or additional amounts, as well as any adjustment to a previously determined imputed underpayment (chapter 1 liabilities), in the calculation of the imputed underpayment. Under proposed § 301.6225–1(c)(3), any adjustments to the partnership's chapter 1 liabilities will be placed in the credit grouping and treated similarly to credit adjustments for purposes of calculating the imputed underpayment. Adjustments to these amounts are placed into the credit grouping because, similar to credits, they change the amount the partnership owes on a dollar-per-dollar basis. Multiplying these adjustments to chapter 1 liabilities by a tax rate after the amount has been calculated would be inappropriate because, like credits, these amounts increase or decrease the amount owed on a dollar-per-dollar basis. If these chapter 1 liabilities were included with the other partnership adjustments, they would be multiplied by a tax rate, which would inappropriately reduce the amount of the partnership's chapter 1 liabilities. Thus, treating adjustments to chapter 1 liabilities similarly to credit adjustments allows for appropriate increases or decreases to the imputed underpayment.

The proposed addition to § 301.6225–1(d)(2)(ii) provides that a decrease in a chapter 1 liability is treated as a negative adjustment. Because § 301.6225–1(d)(2)(iii) provides that a positive adjustment is any adjustment that is not a negative adjustment as defined in § 301.6225–1(d)(2)(ii), the proposed addition to the definition of a negative adjustment has the result of making an increase in a chapter 1 liability a positive adjustment. Because § 301.6225–1(e)(4) defines net positive adjustments and net negative adjustments with respect to the definitions of positive and negative adjustments, the proposed addition to § 301.6225–1(d)(2)(ii) affects those definitions as well.

In general, net positive adjustments are used to calculate the imputed underpayment, and net negative adjustments are adjustments that do not result in an imputed underpayment as described in § 301.6225–1(f). An exception to that rule is the treatment of credit adjustments. Both net positive and net negative adjustments to credits may be included in the calculation of the imputed underpayment to increase or decrease the imputed underpayment amount after the tax rate is applied to other adjustments. *See* § 301.6225–1(b)(1)(v) and (e)(3)(ii). If a net negative adjustment applied to the imputed underpayment reduces the amount of the imputed underpayment to zero or below zero, the imputed underpayment adjustments are treated as adjustments that do not result in an imputed underpayment under § 301.6225–1(f)(1)(ii). These adjustments would then be taken into account by the partnership on the adjustment year return pursuant to § 301.6225–3 or by the reviewed year partners pursuant to § 301.6226–3.

This rule does not operate well, however, when the adjustment that has reduced the imputed underpayment below zero is a net negative adjustment to chapter 1 liabilities because the chapter 1 liabilities at issue are adjustments to the liability of the partnership, not the partners, and they are thus neither properly allocated to the partners after they are reported on the partnership's next filed return nor properly pushed out to the partners under section 6226. These amounts could be used to offset another chapter 1 liability of the partnership, but partnerships may not have those types of items on their returns each year because partnerships are often not liable for tax under chapter 1. Treating these amounts similarly to other adjustments could result in an amount reported on the partnership's return that would not result in an overpayment to the partnership and for which there may not be an item to offset in the adjustment year. Accordingly, for partnerships to take advantage of a net negative adjustment to these chapter 1 liabilities, a special rule is required.

The proposed addition to § 301.6225–1(e)(3)(ii), along with proposed § 301.6225–1(f)(1)(ii) and (f)(3), provides two special rules for the treatment of a net negative adjustment to chapter 1 liabilities. Under the first rule, a net negative adjustment to a credit is normally treated as an adjustment that does not result in an imputed underpayment under § 301.6225–1(f)(1)(i), unless the IRS makes a determination to have it offset the imputed underpayment. The proposed addition to § 301.6225–1(e)(3)(ii) states that a net negative adjustment to one of the chapter 1 liabilities is not an adjustment described in § 301.6225–1(f).

The second rule creates an exception to § 301.6225–1(f)(1)(ii), which provides that if the calculation of the imputed underpayment under § 301.6225–1(b)(1) results in a number that is zero or less than zero, the partnership adjustments associated with that calculation are treated as adjustments that do not result in an imputed underpayment. Proposed § 301.6225–1(f)(3) provides a new method for calculating the imputed underpayment if the imputed underpayment calculation results in zero or less than zero and includes a net negative adjustment to one of the chapter 1 liabilities at issue. This new calculation provides that the imputed underpayment be recalculated using all partnership adjustments under § 301.6225–1(b)(1) except for the net negative adjustments to the chapter 1 liabilities. Once that calculation is complete, if the imputed underpayment is a number greater than zero, the imputed underpayment may be reduced, but not below zero, using the net negative adjustment to the chapter 1 liabilities at issue. If this happens, the adjustments that went into the calculation are not adjustments that do not result in an imputed underpayment because the partnership has effectively paid the imputed underpayment calculated on these adjustments through the application of the net negative adjustment to chapter 1 liabilities (or a portion thereof). Any remaining portion of the net negative adjustment to chapter 1 liabilities is not an adjustment that does not result in an imputed underpayment. If, however, the imputed underpayment is already zero or less than zero, the net negative adjustments to the chapter 1 liabilities are not added back to the imputed underpayment calculation, and the net negative adjustments to the chapter 1 liabilities are not treated as adjustments that do not result in an imputed underpayment.

If there is an additional amount of the net negative adjustment to chapter 1 liabilities that was not included in the imputed underpayment calculation (that is, there was excess after the imputed underpayment was reduced to zero or if the imputed underpayment was zero or less than zero regardless of the net negative adjustment to chapter 1 liabilities), the partnership may be able to recoup that amount to offset a prior payment. For instance, if the adjustment related to an amount previously paid by the partnership, the partnership may file a claim for refund of the amount in accordance with section 6511. Alternatively, if the amount has not been previously paid by the partnership, the remaining net negative adjustment to a chapter 1 liability will reduce the amount of chapter 1 tax, penalty, additional amount, addition to tax, or imputed underpayment owed by the partnership.

B. Exception to the Section 6226 Push Out Election

Proposed § 301.6226–2(g)(4) provides that a partnership that makes an election under section 6226 (sometimes called a ''push out election'') must pay any chapter 1 taxes, penalties, additions to tax, and additional amounts or the amount of any adjustment to an imputed underpayment at the time statements are furnished to its partners in accordance with § 301.6226–2. Because these amounts are the partnership's liability, partnerships are not permitted to push out any adjustments to these items when making the push out election.

3. Adjustments to Items That Are Not Items of Income, Gain, Loss, Deduction, or Credit

The final regulations implementing section 6225 do not expressly explain how adjustments to items that are not items of income, gain, loss, deduction, or credit (collectively referred to as ''non-income items'') are taken into account (1) in the calculation of the imputed underpayment; (2) as adjustments that do not result in an imputed underpayment; or (3) if the partnership elects to push out the adjustments to its reviewed year partners. Examples of non-income items include the partnership's assets, liabilities, and capital accounts. Accordingly, amendments are proposed to the final regulations to clarify the treatment of adjustments to non-income items.

Under section 6241(2)(A) and § 301.6241–1(a)(6)(i), a partnership adjustment is any adjustment to a partnership-related item. Under section 6241(2)(B) and § 301.6241–1(a)(6)(ii), a partnership-related item is any item or amount that is relevant in determining the chapter 1 liability of any person that is reflected, or required to be reflected, on the partnership's return under section 6031 for the taxable year or required to be maintained in the partnership's books and records, any partner's distributive share of such items, and the imputed underpayment. Accordingly, adjustments to non-income items that meet this definition are partnership-related items. *See, e.g.,* § 301.6241–1(a)(6)(ii)(C)–(E). Under § 301.6225–1(a)(1), all partnership adjustments, including adjustments to non-income items, are taken into account in determining whether the adjustments result in an imputed underpayment.

In some cases, adjustments to non-income items will be related to adjustments to items of income, gain, loss, deduction, or credit (for example, if an item was expensed that was required to be capitalized). Under § 301.6225–1(b)(4), the IRS may treat an adjustment as zero solely for purposes of calculating an imputed underpayment if that adjustment is reflected in one or more partnership adjustments. Accordingly, the IRS could, if appropriate, treat an adjustment to a non-income item as zero solely for purposes of calculating the imputed underpayment if the effect of the adjustment is already reflected in an adjustment to an item of income, gain, loss, deduction, or credit. However, § 301.6225–1(b)(4) only provides this authority to the IRS. Accordingly, an addition is proposed to § 301.6225–1(b)(4) to provide that, generally, an adjustment to a non-income item that is related to, or results from, an adjustment to an item of income, gain, loss, deduction, or credit is treated as zero as part of the calculation of an imputed underpayment unless the IRS determines that the adjustment should be included in the imputed underpayment. This proposed addition not only clarifies the rule in § 301.6225–1(b)(4) but also extends the rule in § 301.6225–1(b)(4) to persons other than the IRS. Consequently, when filing an AAR a partnership may treat an adjustment to a non-income item as zero if the adjustment is related to, and the effect is reflected in, an adjustment to an item of income, gain, loss, deduction, or credit unless the IRS subsequently determines, in an examination of the AAR, that both adjustments should be included in the calculation of the imputed underpayment.

As discussed in part 2.A of this Explanation of Provisions, § 301.6225–1(d)(2)(iii)(A) defines a ''positive adjustment'' as any adjustment that is not a negative adjustment. An adjustment to a non-income item, by definition, is not an adjustment to an item of income, gain, loss, deduction, credit, or chapter 1 liability, therefore, and is a positive adjustment. However, as with any other adjustment, an adjustment to a non-income item may be an adjustment that does not result in an imputed underpayment, as defined in § 301.6225–1(f), if the adjustment is included in a calculation that results in an amount that is zero or less than zero.

Proposed § 301.6225–3(b)(8) clarifies the rules for taking into account adjustments to non-income items if they are adjustments that do not result in an imputed underpayment. Under proposed § 301.6225–3(b)(8), a partnership takes into account adjustments to non-income items in the adjustment year by adjusting the item on its adjustment year return to be consistent with the adjustment (for example, in amount, character, or classification). However, this only applies to the extent the item would appear on the adjustment year return without regard to the adjustment. If the item already appears on the partnership's adjustment year return as a non-income item or the item appeared as a non-income item on any return of the partnership for a taxable year between the reviewed year and the adjustment year, the partnership does not create a new item on the partnership's adjustment year return. For example, if the adjustment results in the addition of a liability in the reviewed year but the partnership had reported the liability on its return for the year immediately following the reviewed year and the liability was paid off prior to the adjustment year, then the adjustment to the liability does not create a new liability in the adjustment year and the adjustment is disregarded when the partnership takes into account the adjustments that did not result in an imputed underpayment on its adjustment year return. Accordingly, the partnership takes into account the adjustment to the non-income item by, for example, changing the character or amount of the item on the adjustment year return consistent with the adjustment to the non-income item. Proposed § 301.6225–3(d)(3) provides an example of the application of this rule.

4. Cease To Exist

Section 6241(7) provides that if a partnership ceases to exist prior to the partnership adjustments taking effect, the adjustments are taken into account by the former partners of the partnership. To utilize the provisions of section 6241(7) the partnership must first have ceased to exist, as defined in proposed § 301.6241–3(b), prior to the adjustments taking effect. In addition to the provisions of section 6241(7), if a partnership has ceased to exist, section 6232(f) provides rules that allow the IRS to assess a former partner for that partner's proportionate share of any amounts owed by the partnership under the centralized partnership audit regime.

A. When Partnership Adjustments Take Effect

Section 301.6241–3(c) provides that the partnership adjustments take effect when there is full payment of the tax and other amounts owed as a result of the partnership adjustments. If the partnership ceases to exist prior to the amounts due being fully paid, the former partners must take into account the adjustments. This interpretation could potentially preclude the use of section 6232(f) because if there is an amount due from the partnership any determination that a partnership has ceased to exist will trigger the rules under section 6241(7) as it would occur prior to the adjustments taking effect (*i.e.,* full payment).

Section 6232(f) expressly provides for rules that govern the use of section 6232(f) in situations when a partnership has ceased to exist. Accordingly, it would be inconsistent with the intent of Congress to define when the adjustments take effect in a way that precludes the use of section 6232(f) when a partnership has ceased to exist. Therefore, proposed § 301.6241–3 amends § 301.6241–3(b) to provide that a partnership adjustment takes effect when the adjustments become finally determined as described in § 301.6226–2(b)(1); when the partnership and IRS enter into a settlement agreement regarding the adjustment; or, for adjustments reflected in an AAR, when the AAR is filed. After this amendment, the rules under section 6241(7) would apply prior to the adjustments taking effect and the rules under section 6232(f) would apply once the adjustments have taken effect.

As a result of this change, the proposed regulations contain additional conforming changes to other provisions in § 301.6241–3. Proposed § 301.6241–3(b)(1)(ii) was modified to provide that a partnership ceases to exist if the IRS determines that the partnership does not have the ability to pay in full any amount that the partnership may become liable for under the centralized partnership audit regime. Previously, § 301.6241–3(b)(1)(ii) provided that the partnership ceases to exist if the IRS determines that the partnership does not have the ability to pay any amounts due under the centralized partnership audit regime. As proposed § 301.6241–3 only applies prior to the adjustments becoming finally determined, the partnership would not have an amount due under the centralized partnership audit regime at that time. Because the partnership would not have an amount due, § 301.6241–3 is incompatible with section 6232(f). Accordingly, proposed § 301.6241–3 reconciles section 6232(f) with section 6241(7) in a way that gives meaning to both sections.

Additionally, proposed § 301.6241–3 would remove § 301.6241–3(b)(2). Section 301.6241–3(b)(2) provides situations for when the IRS will not determine that a partnership ceases to exist. Under § 301.6241–3(b)(2), the IRS would not make such determination if the partnership has a valid election under section 6226 in effect, if a pass-through partner receives a statement under section 6226 and furnishes statements to its partners, or if the partnership has not paid any amount due under the centralized partnership audit regime, but was able to pay such amount. As all these exceptions cover situations where the partnership adjustments have already been finally determined, this provision is no longer necessary. Similarly, § 301.6241–3(c)(2) regarding partial payments by the partnership is also proposed to be removed because it is impossible to have an amount due until after the adjustments become finally determined. Accordingly, after the changes introduced by proposed § 301.6241–3, there would be nothing upon which to make a partial payment before the adjustments take effect.

Finally, § 301.6241–3(e)(2)(ii) is proposed to be modified to provide that statements under § 301.6241–3 must be furnished to the former partners and filed with the IRS no later than 60 days after the later of the date the IRS notifies the partnership that it has ceased to exist or the date the adjustments take effect, as described in § 301.6241–3(c). Section 301.6241–3(e)(2)(ii) provides that statements must be furnished no later than 30 days after the date the IRS notifies the partnership that the partnership has ceased to exist. Now, with the proposed change to when adjustments take effect, the IRS may determine that a partnership has ceased to exist prior to the date the adjustments become finally determined. To prevent confusion, statements should not be issued until the adjustments become final. Section 301.6241–3(e)(2)(ii) is proposed to be adjusted accordingly. The proposed change from 30 days to 60 days for furnishing statements is intended to conform the rules for statements in § 301.6241–3 with those in § 301.6226–2.

B. Former Partners

As described previously, if a partnership ceases to exist prior to the adjustments taking effect, the former partners of the partnership must take the adjustments into account. Section 301.6241–3(d) defines former partners as the partners from the adjustment year of the partnership or, if there were no adjustment year partners, the partners from the partnership taxable year for which a final partnership return is filed. Proposed § 301.6241–3(d) modifies the definition of former partners to be partners of the partnership during the last taxable year for which a partnership return or AAR was filed or the most recent persons determined to be the partners of the partnership in a final determination (for example, final court decision, defaulted notice of final partnership adjustment (FPA), or settlement agreement). As discussed previously, proposed § 301.6241–3 applies prior to the adjustments taking effect. Because the adjustment year does not exist until the adjustments become final, proposed § 301.6241–3 would not apply after that point. Accordingly, the definition of former partners is modified to reflect the partners that are the partners of the partnership before the partnership adjustments take effect.

Finally, the examples under § 301.6241–3(f) are modified to reflect the changes to § 301.6241–3 previously described in this Explanation of Provisions.

5. Miscellaneous Amendments to Regulations Finalized in TD 9844

In addition to the amendments described above, two other miscellaneous clarifications to the regulations finalized in TD 9844 are being proposed in these regulations.

First, under § 301.6225–2(d)(2)(vi)(A), as part of a request for modification of an imputed underpayment a pass-through partner may file an amended return, take into account its share of the partnership adjustments, and determine and pay an amount calculated in the same manner as the amount computed under § 301.6226–3(e)(4)(iii). In calculating the amount due under § 301.6225–2(d)(2)(vi)(A), a pass-through partner may, as described in § 301.6225–2(d)(2)(vi)(B), take into account any modifications approved with respect to its direct and indirect partners. Under § 301.6226–3(e)(4)(iii), a pass-through partner calculates an imputed underpayment on its allocable share of the adjustments, taking into account any modifications approved with respect to its direct and indirect partners. Accordingly, § 301.6225–2(d)(2)(vi)(B) is redundant in that, under § 301.6225–2(d)(2)(vi)(A), a pass-through partner computes the amount due by reference to § 301.6226–3(e)(4)(iii), which also allows a pass-through partner to take into account modifications approved with respect to its direct and indirect owners when computing its amount due. Therefore, the proposed regulations propose to remove § 301.6225–2(d)(2)(vi)(B) as in the final regulations and replace it as described below. Also, additional language is added to the end of § 301.6225–2(d)(2)(vi)(A) by the proposed regulations to clarify the reference to § 301.6226–3(e)(4)(iii) for the needs of a partnership-partner pursuing modification under section 6225.

Section 301.6225–2(d)(2)(vi)(A) is silent as to how the pass-through partner would take into account any adjustments that do not result in an imputed underpayment. Under § 301.6226–3(e)(4)(v), a pass-through partner who pays an imputed underpayment takes into account any adjustments that did not result in an imputed underpayment in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the imputed underpayment is paid. Under § 301.6226–3(e)(4)(v), if there are only adjustments that do not result in an imputed underpayment, the pass-through partner takes into account those adjustments in the taxable year of the pass-through partner that includes the date the statement under section 6226 is furnished to that pass-through partner.

The Treasury Department and the IRS have determined that a pass-through partner that pays an amount as part of an amended return submitted for purposes of modifying an imputed underpayment should take into account any adjustments that do not result in an imputed underpayment in the taxable year the amount is paid by the pass-through partner. However, unlike under § 301.6226–3(e)(4)(v), a pass-through partner should not be able to take adjustments that do not result in an imputed underpayment into account as part of a request for modification unless the partnership pays an amount on the corresponding adjustments that resulted in an imputed underpayment. If there are solely adjustments that do not result in an imputed underpayment, those adjustments should be subject to modification by the ultimate taxpayers who reported the original amounts and not by any new partners of the pass-through partner. Accordingly, proposed § 301.6225–3(d)(2)(vi)(B) provides that a pass-through partner that is paying an amount as part of an amended return filed during modification takes into account any adjustments that do not result in an imputed underpayment in the taxable year of the pass-through partner that includes the date the payment is made. This provision, however, does not apply if no payment is made by the partnership because no payment is required.

Finally, under § 301.6225–3(b)(1), a partnership adjustment that does not result in an imputed underpayment is taken into account as a reduction in non-separately stated income or as an increase in non-separately stated loss for the adjustment year. However, not all adjustments that do not result in an imputed underpayment are negative adjustments. For example, adjustments may not result in an imputed underpayment because, after the application of adjustments to credits, the imputed underpayment is zero or less than zero. In those cases, it would be inappropriate for a positive adjustment to reduce non-separately stated income or increase non-separately stated loss. Accordingly, the proposed change to § 301.6225–3(b)(1) clarifies that adjustments that do not result in an imputed underpayment, except as provided in § 301.6225–3(b)(2) through (7), can increase or decrease non-separately stated income or loss, as appropriate, depending on whether the adjustment is to an item of income or loss.

6. Special Enforcement Matters

Proposed § 301.6241–7(a) provides the general rule that the partnership-related items described in proposed § 301.6241–7 involve special enforcement matters.

A. Partnership-Related Item Components of Non-Partnership-Related Items

Section 6221(a) requires that any adjustment to a partnership-related item must be determined at the partnership level under the centralized partnership audit regime, except to the extent otherwise provided in subchapter C of chapter 63. Section 6241(2)(B) defines a partnership-related item as any item or amount with respect to the partnership which is relevant in determining the tax liability of any person under chapter 1, including any distributive share of such an item or amount.

Generally, adjusting partnership-related items in a centralized proceeding at the partnership level is the most efficient way to determine adjustments to partnership-related items. Under the centralized partnership audit procedures, the IRS can then efficiently assess and collect any tax associated with the adjustments. Requiring the IRS to adjust certain partnership-related items at the partnership level in a centralized proceeding, however, would interfere with the efficient enforcement of the Code. These circumstances present special enforcement considerations.

Specifically, the Treasury Department and the IRS have determined that special enforcement considerations are presented where the partnership's treatment of a partnership-related item on its return or in its books and records is based in whole, or in part, on information provided by a person other than the partnership. In these circumstances, it is more efficient for the IRS and the partner if the IRS makes an adjustment to a partnership-related item during an examination of the partner rather than opening a separate examination of the partnership to first adjust the partnership-related item at issue in the examination of the partner. It also is likely that the partnership is not in the best position to substantiate the information upon which the partnership's treatment of that partnership-related item is based and may not have detailed or adequate records regarding the information. In situations in which the number of partners potentially impacted by an adjustment is limited, adjusting the partnership-related items in direct examinations of those partners does not raise inefficiency or inconsistency concerns that the centralized partnership audit regime is designed to alleviate. As a result, it may be a more efficient use of both IRS and taxpayer resources to examine and adjust that partnership-related item in an examination of the person who provided this information. The IRS anticipates making these adjustments in cases in which the adjustments are likely only relevant to a single partner or a small group of partners and are unlikely to involve items that are allocable to all partners generally or that impact the partnership as a whole.

For example, if a partner contributes a non-depreciable asset to a partnership in exchange for a partnership interest, any issues regarding the basis in the asset may be more easily identified in an examination of the partner who contributes the asset than in an examination of the partnership. Because the asset is not depreciable the partnership does not take any depreciation deductions with respect to the asset. Proper deductions are likely to be the focus of an examination of the partnership, but the basis of the asset is not until the partnership disposes of the asset. In contrast, the contribution of the asset itself is a partnership-related item, and the basis of the asset that is contributed is taken into account in determining the partner's basis in the partnership interest (not a partnership-related item). The partner's basis in the partnership interest may affect the ability of the partner to claim a distributive share of deductions or losses or the computation of gain or loss the partner would recognize on the sale of the partnership interest, items that are commonly reviewed in an examination of a partner. These types of partnership-related items are therefore more likely to be identified during examinations of a single partner or a small group of partners, not during an examination of the partnership alone.

The ability to adjust certain partnership-related items at the partner level under these circumstances should be beneficial to partnerships and partners, as well as the IRS. For partnerships, this special rule alleviates the need to open an examination of the partnership under the centralized partnership audit procedures solely to adjust the partnership-related items based on information provided by the partner who is already independently under examination. This relieves the partnership from having to expend resources during an examination for items related primarily to the partner who provided the information.

This rule allows those partners whose non-partnership-related items are being adjusted during an examination of their return to more fully control and participate in any adjustments or determinations that need to be made to partnership-related items that underlie or affect the non-partnership-related item that is being adjusted. Further, after adjustments to certain partnership-related items impacting a single partner or a small group of partners are made there are cases in which it may not be necessary to adjust any other partnership-related item of the partnership, and an examination at the partnership level would be unnecessary. Adjusting these partnership-related items (or portions thereof) outside of subchapter C of chapter 63 also allows the IRS to effectively and efficiently focus on a single partner or a small group of partners with respect to a limited set of partnership-related items without unduly burdening the partnership.

Therefore, under proposed § 301.6241–7(b), the IRS may determine that subchapter C of chapter 63 does not apply to an adjustment or determination of a partnership-related item if an adjustment or determination of that partnership-related item is part of, or underlies, an adjustment to a non-partnership-related item during an examination of a person other than the partnership. However, this rule only applies if the treatment of the partnership-related item on the return of the partnership (or in its books and records) is based in whole or in part on information provided by the person under examination. Accordingly, if the IRS determines that subchapter C of chapter 63 (of a portion thereof) does not apply, the IRS may adjust, or make determinations regarding, partnership-related items that underlie, or are part of adjustments or determinations regarding a non-partnership-related item of the person under examination. Proposed § 301.6241–7(b)(2) provides an example that illustrates this provision.

B. Termination and Jeopardy Assessments

Section 6241(11)(B)(ii) provides that assessments under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income, estate, gift, and certain excise taxes) are special enforcement matters. Consequently, the Secretary may prescribe rules under which subchapter C of chapter 63 (or a portion thereof) does not apply to partnership-related items allocable to a partner or indirect partner subject to a termination or jeopardy assessment and those partnership-related items are subject to special rules as is necessary for the effective and efficient enforcement of the Code. Section 6241(11)(A).

In termination and jeopardy assessment situations, the IRS makes an immediate assessment against a taxpayer to collect tax where the collection of tax is in jeopardy. In these special circumstances, the IRS needs to be able to make a full assessment of any amounts determined to be owed or risk being unable to collect tax in the future.

To address this special enforcement matter, proposed § 301.6241–7(c) provides that for any taxable year of a partner or indirect partner for which an assessment of income tax under section 6851 or section 6861 is made, the IRS may adjust any partnership-related item with respect to such partner or indirect partner as part of making that assessment without regard to subchapter C of chapter 63. When making a termination or jeopardy assessment against a partner or indirect partner, the IRS will be able to protect the government's interest quickly with respect to a particular partner or indirect partner without having to conduct a proceeding under subchapter C of chapter 63 at the partnership level.

C. Criminal Investigations

Section 6241(11)(B)(iii) provides that criminal investigations constitute a special enforcement matter. As such, the Secretary may prescribe rules under which subchapter C of chapter 63 (or a portion thereof) does not apply to partnership-related items with respect to a taxpayer subject to criminal investigation and these partnership-related items are subject to special rules as is necessary for the effective and efficient enforcement of the Code. Section 6241(11)(A). The IRS needs to preserve flexibility in addressing potential adjustments so as to not interfere with criminal investigations.

To address this special enforcement matter, proposed § 301.6241–7(d) provides that the IRS may adjust any partnership-related item with respect to any partner or indirect partner for any taxable year of a partner or indirect partner for which the partner or indirect partner is under criminal investigation without regard to subchapter C of chapter 63.

D. Indirect Methods of Proof

Section 6241(11)(B)(iv) provides that indirect methods of proof of income constitute a special enforcement matter. As such, the Secretary may prescribe rules under which subchapter C of chapter 63 (or a portion thereof) does not apply to partnership-related items with respect to a taxpayer whose income is subject to an indirect method of proof and these partnership-related items are subject to special rules as is necessary for the effective and efficient enforcement of the Code. Section 6241(11)(A).

When using an indirect method of proving a person's income, the IRS may not be able to determine whether the income is derived from partnership-related items of a partnership subject to the centralized partnership audit regime. Accordingly, the IRS must be able to determine a person's income without determining whether any of the income identified using an indirect method of proof are partnership-related items that must be adjusted under the centralized partnership audit regime. Requiring the IRS to determine what amount of income identified using an indirect method of proof is attributable to a partnership-related item would frustrate the administration of the Code by making it nearly impossible to utilize an indirect method of proof because the source of the specific income is generally not readily apparent when an indirect method of proof is being utilized.

To address this special enforcement matter, proposed § 301.6241–7(e)(1) provides that the IRS may adjust any partnership-related item as part of a determination of any deficiency (or portion thereof) of the partner or indirect partner that is based on an indirect method of proof without regard to subchapter C of chapter 63.

E. Controlled Partnerships and the Partner's Period of Limitations

Under section 6221, any adjustments to partnership-related items must be made at the partnership level. Section 6235 sets the period of limitations in which those adjustments to partnership-related items must be made. Although the items of a partnership are reported on the partnership's return, a partnership itself does not pay income tax. *See* section 701. The true tax impact and completeness of the partnership's reporting may not be apparent except by reviewing the partners' returns that report the partnership-related items. Additionally, in allocating resources and determining whether to open an examination, the IRS may identify issues either by reviewing the partners' returns or the partnership's return. Certain partnership issues may only become apparent at a future date or during an examination of a partner, which can frustrate the IRS's ability to allocate resources and examine taxpayers timely, especially in situations where the partnership structure includes many related and controlled entities.

Many partnerships, through many related and controlled entities, are ultimately controlled by a single or small number of individuals. The ultimate tax impact of the partnership's reporting would not be evident until the items were traced through a network of entities until they reach the single, or small group, of ultimate taxpayers. Many of these structures are examined as a group or as part of an examination of the controlling individual. In these situations, the existence of the partnership or the ultimate tax impact may not be known until the period of limitations on making adjustments to the partnership has expired, even though the controlling taxpayer may still be under examination. In those cases, the most efficient way to examine the partnership's reporting might be as part of a consolidated examination or during the examination of the controlling individual. In these cases, all of the related and controlled entities and their transactions can be considered together, benefiting both the IRS and the taxpayer by eliminating the need for separate examinations. These situations also present special enforcement considerations.

Specifically, the Treasury Department and the IRS have determined that special enforcement considerations are presented when the period of limitations on making adjustments to the partnership has expired for a taxable year but a controlling partner's period of limitations on assessment of chapter 1 tax has not expired or where the partner has voluntarily agreed to extend the period of limitation. When examining a partner that has control of a partnership through multiple tiered entities it may not be evident that an adjustment to an item on the controlling partner's return requires an adjustment to a partnership-related item until the controlling partner's interest is finally traced to a partnership. It may not be possible for this tracing to be completed before the period of limitations to make adjustments to the partnership has expired. In these circumstances, it is necessary for the effective and efficient enforcement of the Code to make adjustments or determinations regarding partnership-related items at the partner level during an examination of the controlling partner who has an open period to assess chapter 1 tax with respect to that item or amount. The same principles apply with respect to a partner who has consented to extend the period of limitations.

Under proposed § 301.6241–7(f), the IRS may only make adjustments or determinations as to partnership-related items without regard to subchapter C of chapter 63 if the partner has control of the partnership or if the partner has voluntarily agreed to extend his or her period of limitations on making assessments under section 6501. The extension agreement must expressly provide that the partner is extending the time to adjust and assess any tax attributable to partnership-related items for the taxable year.

To determine if a direct or indirect partner has control of the partnership, proposed § 301.6241–7(f)(1) incorporates the rules under sections 267(b) and 707(b). Accordingly, a direct or indirect partner will be deemed to be in control of the partnership if the partner is related to the partnership under sections 267(b) or 707(b).

F. Penalties and Taxes Imposed on the Partnership Under Chapter 1

Except as otherwise provided under subchapter C of section 63, under section 6221(a), adjustments to partnership-related items and the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment to partnership-related items must be determined at the partnership level. To be a partnership-related item, the item must be relevant in determining the tax liability of any person under chapter 1. Section 6241(2)(B)(i); § 301.6241–1(a)(6)(iv). A tax, penalty, addition to tax, or additional amount that is imposed on, and which is the liability of, the partnership under chapter 1 could qualify as a partnership-related item that would need to be adjusted under the centralized partnership audit regime.

The purpose of the centralized partnership audit regime is to create a centralized and efficient means of examining partnerships instead of examining partners. This purpose would not be served if these chapter 1 taxes and penalties were adjusted in an examination under this regime because these taxes and penalties are imposed on the partnership itself and are not the liability of the partners. As a liability of the partnership, these chapter 1 penalties and taxes are incompatible with the centralized partnership audit regime, which is designed to approximate the chapter 1 liability on the adjustments that would have been owed by the partners, not the partnership. On the other hand, when a liability is owed by the partnership itself, the partnership's exact liability should be determined and paid by that partnership. As such, the centralized partnership audit regime is generally not compatible with chapter 1 penalties and taxes imposed on partnerships. However, there could be situations where an adjustment to a chapter 1 tax or penalty owed by the partnership would be more appropriately adjusted at the partnership level, such as when the adjustment relates to, or results from, other adjustments being made at the partnership level. Accordingly, for the reasons stated above, the Treasury Department and the IRS have determined that special enforcement considerations are presented where a tax, penalty, addition to tax, or additional amount is imposed on, and is the liability of, a partnership under chapter 1.

Therefore, under proposed § 301.6241–7(g), the IRS may determine that the centralized partnership audit regime does not apply to any taxes, penalties, additions to tax, or additional amounts imposed on a partnership under chapter 1 and to any determination made to determine whether the partnership meets the requirements for the tax or penalty, addition to tax, or additional amount. Accordingly, these taxes and penalties may be determined outside the centralized partnership audit regime in the same manner as they would be determined and imposed for entities not subject to the centralized partnership audit regime, such as corporations. Additionally, if the IRS is determining any chapter 1 tax or penalty imposed on the partnership outside of the centralized partnership audit regime, the IRS may also adjust any partnership-related item, outside of the centralized partnership audit regime, as part of any determination necessary to determine the amount and applicability of the chapter 1 tax or penalty. This rule does not apply to determinations surrounding the actual payment of the chapter 1 tax or penalty, such as whether the payment is deductible and any determinations regarding how the payment must be allocated amongst the partners. For the rules for when a chapter 1 tax or penalty is determined under the centralized partnership audit regime, see part 2 of this Explanation of Provisions.

G. Determining That Subchapter C of Chapter 63 Does Not Apply

Proposed § 301.6241–7(h)(1) provides that if the IRS determines that all or some of the rules under the centralized partnership audit regime do not apply to a partnership-related item (or portion thereof) under the rules described in paragraphs (b) (partnership-related items underlying adjustments to non-partnership-related items), (c) (termination and jeopardy assessments), (d) (criminal investigations), (e) (indirect methods of proof of income), (f) (controlled partnerships and extensions of the partner's period of limitations), or (g) (penalties and taxes imposed on the partnership under chapter 1), then the IRS will notify, in writing, the taxpayer to whom the adjustments are being made. The Treasury Department and the IRS request comments on the timing of notices to be provided under proposed § 301.6241–7(h)(1) including comments regarding whether the timing should be different based on the specific provision that is applicable.

Proposed § 301.6241–7(h)(2) provides that any final decision with respect to any partnership-related item adjusted outside of the centralized partnership audit regime is not binding on the partnership, any partner, or any indirect partner that is not a party to the proceeding because there is no provision which would make them liable for any adjustments in a proceeding to which they are not a party.

H. Coordination With Adjustments Made at the Partnership Level

If the IRS makes adjustments to partnership-related items in an examination of a person other than the partnership and adjustments are made to the same partnership-related items in an examination of the partnership, there is a potential for the same adjustments to be subject to tax at both the partner and partnership level. Proposed § 301.6241–7(i) sets forth a rule that would prevent taxing the same partnership-related item twice. Under this rule, if a deficiency is calculated or an adjustment is proposed by the IRS that includes amounts based on adjustments to partnership-related items and the person can establish that specific amounts included within the deficiency or adjustment were previously taxed to the partner in one of two sets of circumstances, the amounts will not be included in the deficiency or adjustment.

First, the partner or indirect partner can exclude amounts previously taken into account by the partner or indirect partner under the centralized partnership audit regime. For example, the partner could demonstrate that the amounts were taken into account through an amended return modification, the alternative to amended return modification, or through a push out election.

Second, a partner can exclude amounts included in an imputed underpayment that was paid by a partnership (or pass-through partner) in which the partner was a reviewed year partner or indirect partner. The amounts included as part of an imputed underpayment may only be excluded from the deficiency or adjustment if the amount included in the imputed underpayment exceeds the amount reported by the partnership to the partner (for example, on a Schedule K–1 or statement under section 6227) or is otherwise included in the deficiency or adjustment determined by the IRS (for example, as part of the deficiency based on a means other than an indirect method of proof). In other words, a partner may only exclude amounts included in an imputed underpayment paid by a partnership if the partner was taxed on the original amounts reported by the partnership to the partner. This puts the partner in parity with other partners in the partnership that are not subject to a special rule. Those partners are required to report consistently with the statements furnished by the partnership to the partner and are not taxed on any additional amounts included in an imputed underpayment paid by a partnership.

I. Applicability Dates

If this proposed rule is finalized, the revisions to the regulations finalized in TD 9829 and TD 9844 will be applicable on November 20, 2020.

Proposed § 301.6241–7(j) provides the applicability dates for the rules contained in proposed § 301.6241–7. Proposed § 301.6241–7(j) provides that, except for the rules contained in proposed § 301.6241–7(b) (partnership-related items that underlie non-partnership-related items), the rules contained in proposed § 301.6241–7 apply to partnership taxable years ending after November 20, 2020, or any examination or investigation beginning after [DATE THE FINAL RULE IS FILED FOR PUBLIC INSPECTION AT THE OFFICE OF THE FEDERAL REGISTER]. Proposed § 301.6241–7(j) provides that the rules contained in proposed § 301.6241–7(b) apply to partnership taxable years beginning after December 20, 2018, or to any examinations or investigations beginning after [DATE THE FINAL RULE IS FILED FOR PUBLIC INSPECTION AT THE OFFICE OF THE FEDERAL REGISTER].

Section 7805(b)(7) permits the Secretary to allow taxpayers to elect to apply a regulation retroactively. Accordingly, proposed § 301.6241–7(j) contains a provision that provides that, notwithstanding the applicability dates provided in proposed § 301.6241–7(j), the IRS and a partner may agree to apply any provision of proposed § 301.6241–7 to any taxable year of a partner that corresponds to a partnership taxable year that is subject to the centralized partnership audit regime.

Special Analyses

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

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The proposed rules directly affect any partnership subject to the centralized partnership audit regime under subchapter C of chapter 63. As all partnerships are subject to the centralized partnership audit regime unless they make a valid election out of the regime, the proposed rules are expected to affect a substantial number of small entities. However, the IRS has determined that the economic impact on small entities affected by the proposed rule would not be significant.

The proposed rules under § 301.6241–7 implement section 6241(11) and allow the IRS, for partnership-related items that involve special enforcement matters, to provide that the centralized partnership audit regime (or a portion thereof) does not apply to such partnership-related items and that such items are subject to special rules as is necessary for the efficient and effective enforcement of the Code. As such, except for one circumstance, the proposed rules provide for certain situations where partnership-related items may be adjusted outside of the centralized partnership audit regime. In all but one of these situations, if the rules in proposed § 301.6241–7 were utilized, then the adjustments would be made to partners of the partnership, rather than the partnership itself and, thus, utilizing the proposed rules would not have an impact on small entities. Additionally, many small entities may be eligible to elect out of the centralized partnership audit regime under section 6221(b). Accordingly, if a small entity is eligible to elect out, they may choose to elect out of the regime at which point the rules contained in proposed

§ 301.6241–7 would be inapplicable to those entities.

Finally, the proposed rules under § 301.6241–7 address the process for conducting an examination and do not have a significant economic impact on small entities as the rules do not affect entities' substantive tax, such as the requirement to include items in income or the deductibility of items. The proposed rules promulgated under other Code sections simply clarify sections of regulations previously published. Accordingly, any significant economic impact on small entities will result from the application of the substantive tax provisions and will not be as a result of the procedural rules contained in proposed § 301.6241–7.

The Secretary hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS invite comment from members of the public about potential impacts on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Comments and Requests for Public Hearing

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

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

Drafting Information

The principal author of these proposed regulations is Jennifer M. Black of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 1.** The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.6221(b)–1 also issued under sections 6221 and 6241.

* * * * *

Section 301.6241–7 also issued under section 6241.

* * * * *

■ **Par. 2.** Section 301.6221(b)–1 is amended by revising paragraphs (b)(3)(ii)(D) and (F), adding paragraph (b)(3)(ii)(G), and adding a sentence to the end of paragraph (f) to read as follows:

§ 301.6221 (b)–1 Election out for certain partnerships with 100 or fewer partners.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(D) A wholly owned entity disregarded as separate from its owner for Federal income tax purposes,

* * * * *

(F) Any person who holds an interest in the partnership on behalf of another person, or

(G) A qualified subchapter S subsidiary, as defined in section 1361(b)(3)(B).

* * * * *

(f) * * * Notwithstanding the preceding sentence, paragraph (b)(3)(ii)(D), (F), and (G) of this section are applicable on November 20, 2020.

§ 301.6223–1 [Amended]

■ **Par. 3.** Section 301.6223–1 is amended by removing ''B'' and ''B's'' and adding ''PR'' and ''PR's'' in its place, respectively, wherever either appears in Examples 1 and 2 in paragraph (e)(8).

■ **Par. 4.** Section 301.6225–1 is amended:

■ 1. By revising the paragraph (b)(3) subject heading;

■ 2. By adding a sentence to the end of paragraph (b)(4);

■ 3. By adding a sentence to the end of paragraph (c)(3);

■ 4. By revising paragraph (d)(2)(ii);

■ 5. By removing reserved paragraph (d)(3)(iii)(C);

■ 6. By adding a sentence to the end of paragraph (e)(3)(ii);

■ 7. By revising paragraph (f)(1)(ii);

■ 8. By adding paragraph (f)(3);

■ 9. By adding paragraphs (h)(13) and (14); and

■ 10. By adding a sentence to the end of paragraph (i)(1).

The revisions and additions read as follows:

§ 301.6225–1 Partnership adjustment by the Internal Revenue Service.

* * * * *

(b) * * *

(3) *Adjustments to items for which tax has been collected under chapters 3 and 4 of the Internal Revenue Code (Code).* * * *

(4) * * * If an adjustment to an item of income, gain, loss, deduction, or credit is related to, or results from, an adjustment to an item that is not an item of income, gain, loss, deduction, or credit, the adjustment to the item that is not an item of income, gain, loss, deduction, or credit will generally be treated as zero solely for purposes of calculating the imputed underpayment unless the IRS determines that the adjustment should be included in the imputed underpayment.

* * * * *

(c) * * *

(3) * * * Each adjustment to any tax, penalty, addition to tax, or additional amount for the taxable year for which the partnership is liable under chapter 1 of the Code (chapter 1) and each adjustment to an imputed underpayment calculated by the partnership is placed in the credit grouping.

* * * * *

(d) * * *

(2) * * *

(ii) *Negative adjustment.* A *negative adjustment* is any adjustment that is a decrease in an item of income; a partnership adjustment treated under paragraph (d)(2)(i) of this section as a decrease in an item of income; an increase in an item of credit; a decrease in an item of tax, penalty, addition to tax, or additional amount for which the partnership is liable under chapter 1; or a decrease to an imputed underpayment calculated by the partnership for the taxable year.

* * * * *

(e) * * *

(3) * * *

(ii) * * * A net negative adjustment to a tax, penalty, addition to tax, or additional amount for which the partnership is liable under chapter 1 or an adjustment to any imputed underpayment calculated by the partnership for the taxable year is not an adjustment described in paragraph (f) of this section.

* * * * *

(f) * * *

(1) * * *

(ii) The calculation under paragraph (b)(1) of this section results in an amount that is zero or less than zero, unless paragraph (f)(3) of this section applies.

* * * * *

(3) *Exception to treatment as an adjustment that does not result in an imputed underpayment*—(i) *Application of this paragraph (f)(3).* If the calculation under paragraph (b)(1) of this section results in an amount that is zero or less than zero due to the inclusion of a net negative adjustment to a tax, penalty, addition to tax, or additional amount for which the partnership is liable under chapter 1 or an adjustment to any imputed underpayment calculated by the partnership for the taxable year, this paragraph (f)(3) applies, and paragraph (f)(1) of this section does not apply except as provided in paragraph (f)(3)(ii)(C) of this section.

(ii) *Recalculation if paragraph (f)(3) of this section applies*—(A) *In general.* If this paragraph (f)(3) applies, the imputed underpayment is recalculated under paragraph (b)(1) of this section without regard to a net negative adjustment to a tax, penalty, addition to tax, or additional amount for which the partnership is liable under chapter 1 or an adjustment to any imputed underpayment calculated by the partnership for the taxable year. The net negative adjustment that was excluded from the imputed underpayment recalculation is then treated in one of two ways under paragraphs (f)(3)(ii)(B) and (C) of this section depending on the results of the recalculation.

(B) *Recalculation is greater than zero.* If the result of the recalculation under paragraph (f)(3)(ii) of this section is greater than zero, the IRS may apply the portion of the net negative adjustment(s) that was excluded from the recalculation to reduce the imputed underpayment to zero, but not below zero. In this case, the imputed underpayment is zero but the adjustments included in the recalculation and the remaining net negative adjustment(s) excluded from the recalculation under paragraph (f)(3)(ii)(A) of this section are not adjustments that do not result in an imputed underpayment subject to treatment as described in paragraph (f)(2) of this section. See paragraph (h)(13) of this section (*Example 13*).

(C) *Recalculation is zero or less than zero.* If the result of the recalculation under paragraph (f)(3)(ii) of this section is zero or less than zero, the adjustments included in the recalculation are treated as adjustments that do not result in an imputed underpayment under paragraph (f)(1)(ii) of this section. The net negative adjustment(s) that was excluded from the recalculation is not an adjustment that does not result in an imputed underpayment subject to treatment as described in paragraph (f)(2) of this section. See paragraph (h)(14) of this section (*Example 14*).

* * * * *

(h) * * *

(13) *Example 13.* The IRS initiates an administrative proceeding with respect to Partnership's 2019 partnership return and makes adjustments as follows: Net positive adjustment of $100 ordinary income, net negative adjustment of $20 in credits, and a net negative adjustment of $25 to a chapter 1 tax liability of the partnership. The IRS determines that the net negative adjustment in credits should be taken into account in the calculation of the imputed underpayment in accordance with paragraph (b)(1)(v) of this section. Pursuant to paragraph (b)(1) of this section, the $100 net positive adjustment to ordinary income is multiplied by 40 percent (highest tax rate in effect), which results in $40. The adjustments in the credits grouping are then applied, which include the adjustment to credits and the adjustment to the chapter 1 tax liability. Applying the credits results in an amount less than zero as described in paragraph (f)(3)(i) of this section ($40 − $20 − $25 = −$5). Pursuant to paragraph (f)(3)(ii) of this section, the imputed underpayment is recalculated without regard to the adjustment to the chapter 1 tax liability, resulting in a recalculation amount greater than zero as described in paragraph (f)(3)(ii)(B) of this section ($40 − $20 = $20). Pursuant to paragraph (f)(3)(ii)(B) of this section, the IRS may apply a portion of the adjustment to chapter 1 tax liability to reduce the recalculation to zero but not below zero. In this case, the recalculation amount would be reduced to zero using $20 of the $25 adjustment to chapter 1 tax liability. Because the imputed underpayment was reduced to zero, pursuant to paragraph (f)(3)(ii)(B), the adjustments that went into the recalculation are not adjustments that do not result in an imputed underpayment. These adjustments are the $100 adjustment to ordinary income and the $20 adjustment to credits. The remaining $5 adjustment to the chapter 1 tax liability of the partnership is an adjustment that is treated as described in paragraph (e)(3)(ii) of this section and is therefore not taken into account on the partnership's adjustment year return.

(14) *Example 14.* The facts are the same as in paragraph (h)(13) of this section (*Example 13*), but the negative adjustment to credits is $50 instead of $20. Applying the credits results in an amount less than zero as described in paragraph (f)(3)(i) of this section ($40 − $50 − $25 = −$35). Pursuant to paragraph (f)(3)(ii) of this section, the imputed underpayment is recalculated without regard to the adjustment to the chapter 1 tax liability, resulting in a recalculation amount less than zero as described in paragraph (f)(3)(ii)(C) of this section ($40 − $50 = −$10). Pursuant to paragraph (f)(3)(ii)(C) of this section, the partnership adjustments resulting in the −$10 recalculation amount are adjustments that do not result in an imputed underpayment treated in accordance with paragraph (f)(1)(ii) of this section, and the $25 adjustment to chapter 1 tax liability is not treated as such an adjustment and is therefore not taken into account on the partnership's adjustment year return.

(i) * * *

(1) * * * Notwithstanding the preceding sentence, paragraphs (b)(4), (c)(3), (d)(2)(ii), (d)(3)(iii)(C), (e)(3)(ii), (e)(3)(iii)(B), (f)(1)(ii), (f)(3), and (h)(13) and (14) of this section are applicable on November 20, 2020.

■ **Par. 5.** Section 301.6225–2 is amended:

■ 1. In paragraph (d)(2)(vi)(A), by removing the period and the end of the paragraph and adding in its place '', by treating any approved modifications and partnership adjustments allocable to the pass-through partner as items reflected on the statement furnished to the pass-through partner.'';

■ 2. By revising paragraph (d)(2)(vi)(B); and

■ 3. By adding a sentence to the end of the paragraph (g)(1).

The additions and revisions read as follows:

§ 301.6225–2 Modification of imputed underpayment.

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(B) *Adjustments that do not result in an imputed underpayment.* If a pass-through partner takes into account its share of the adjustments by paying an amount described in paragraph (d)(2)(vi)(A) of this section and there are any adjustments that do not result in an imputed underpayment (as defined in § 301.6225–1(f)), those adjustments are taken into account by the pass-through partner in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the payment described in paragraph (d)(2)(iv)(A) of this section is paid. This paragraph does not apply if, after making the calculation described in paragraph (d)(2)(iv)(A) of this section, no amount exists and therefore no payment is required under paragraph (d)(2)(iv)(A) of this section.

* * * * *

(g) * * *

(1) * * * Notwithstanding the preceding sentence, paragraph (d)(2)(vi)(B) of this section is applicable on November 20, 2020.

■ **Par. 6.** Section 301.6225–3 is amended:

■ 1. In paragraph (b)(1) by removing ''a reduction in non-separately stated income or as an increase in non-separately stated loss'' and adding in its place ''part of non-separately stated income or loss'';

■ 2. By adding paragraphs (b)(8) and (d)(3); and

■ 3. By adding a sentence to the end of paragraph (e)(1).

The additions read as follows:

§ 301.6225–3 Treatment of partnership adjustments that do not result in an imputed underpayment.

* * * * *

(b) * * *

(8) *Adjustments to items that are not items of income, gain, loss, deduction, or credit.* The partnership takes into account an adjustment that does not result in an imputed underpayment that resulted from an adjustment to an item that is not an item of income, gain, loss, deduction, or credit by adjusting the item on its adjustment year return but only to the extent the item would appear on the adjustment year return without regard to the adjustment. If the item is already reflected on the partnership's adjustment year return as an item that is not an item of income, gain, loss, deduction, or credit, or in any year between the reviewed year and the adjustment year, a partnership should not create a new item in the amount of the adjustment on the partnership's adjustment year return.

* * * * *

(d) * * *

(3) *Example 3.* On its partnership return for the 2020 taxable year, Partnership placed Asset into service, reporting that Asset, a non-depreciable asset, had a basis of $100. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that Asset has a basis of $90 instead of $100. The IRS also determines that Partnership has a negative adjustment to credits of $4. There are no other adjustments for the 2020 partnership taxable year. Under paragraph (d)(2) of this section, the adjustment to the basis of an asset is not an adjustment to an item of income. Therefore, the $10 adjustment to the basis of Asset is treated as a $10 positive adjustment. The IRS determines that the net negative adjustment to credits should be taken into account as part of the calculation of the imputed underpayment. The total netted partnership adjustment is $10, which, after applying the highest rate and decreasing the product by the $4 adjustment to credits results in an imputed underpayment of $0. Accordingly, both adjustments are adjustments that do not result in an imputed underpayment under paragraph (f) of this section. The adjustment year is 2022 and Partnership still owns Asset. Under paragraph (b)(8) of this section, the partnership takes into account the $10 adjustment to Asset on its 2022 return by reducing its basis in Asset by $10.

(e) * * *

(1) * * * Notwithstanding the preceding sentence, paragraphs (b)(8) and (d)(3) of this section are applicable on November 20, 2020.

* * * * *

■ **Par. 7.** Section 301.6226–2 is amended by removing ''Internal Revenue'' from the paragraph (g)(3) subject heading, adding paragraph (g)(4), and adding a sentence to the end of paragraph (h)(1).

The additions read as follows:

§ 301.6226–2 Statements furnished to partners and filed with the IRS.

* * * * *

(g) * * *

(4) *Liability for chapter 1 taxes and penalties.* A partnership that makes an election under § 301.6226–1 with respect to an imputed underpayment must pay any taxes, penalties, additions to tax, additional amounts, or the amount of any adjustments to any imputed underpayment calculated by the partnership that is determined under subchapter C of chapter 63 for which the partnership is liable under chapter 1 of the Code or subchapter C of chapter 63 at the time the partnership furnishes statements to its partners in accordance with paragraph (b) of this section. Any adjustments to such items are not included in the statements the partnership furnishes to its partners or files with the IRS under this section.

(h) * * *

(1) * * * Notwithstanding the prior sentence, paragraph (c)(1) of this section is applicable on November 20, 2020.

* * * * *

■ **Par. 8.** Section 301.6241–3 is amended:

■ 1. By revising paragraph (b)(1)(ii);

■ 2. By removing paragraph (b)(2);

■ 3. By redesignating paragraphs (b)(3) and (4) as paragraphs (b)(2) and (3) respectively; and

■ 4. By revising paragraphs (c), (d), (e)(2)(ii), (f)(1) and (2), and (g).

The revisions read as follows:

§ 301.6241–3 Treatment where a partnership ceases to exist.

* * * * *

(b) * * *

(1) * * *

(ii) The partnership does not have the ability to pay, in full, any amount that may be due under the provisions of subchapter C of chapter 63 for which the partnership is or may become liable. For purposes of this section, a partnership does not have the ability to pay if the IRS determines that the partnership is currently not collectible based on the information the IRS has at the time of such determination.

* * * * *

(c) *Partnership adjustment takes effect.* For purposes of this section, a partnership adjustment under subchapter C of chapter 63 takes effect when the adjustment becomes finally determined as described in § 301.6226–2(b)(1); when the partnership and the IRS enter into a settlement agreement regarding the adjustment; or, for adjustments appearing on an administrative adjustment request (AAR), when the request is filed.

(d) *Former partners*—(1) *In general.* Except as described in paragraph (d)(2) of this section, the term *former partners* means the partners of the partnership during the last taxable year for which a partnership return under section 6031 or AAR was filed for such partnership or the most recent persons determined to be partners of the partnership in a final determination (for example, a defaulted notice of final partnership adjustment, final court decision, or settlement agreement) binding upon the partnership.

(2) *Partnership-partner ceases to exist.* If any former partner is a partnership-partner that the IRS has determined ceased to exist, the former partners for purposes of this section are the partners of such partnership-partner during the last partnership taxable year for which a partnership return of the partnership-partner under section 6031 or AAR was filed or the most recent persons determined to be partners of the partnership-partner in a final determination (for example, a defaulted notice of final partnership adjustment, final court decision, or settlement agreement) binding upon the partnership-partner.

(e) * * *

(2) * * *

(ii) The partnership must furnish statements to the former partners and file the statements with the IRS no later than 60 days after the later of the date of the notification to the partnership that the IRS has determined that the partnership has ceased to exist or the date the adjustment takes effect, as described in paragraph (c) of this section.

* * * * *

(f) * * *

(1) *Example 1.* The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of Partnership. During 2023, in accordance with section 6235(b), Partnership extends the period of limitations on adjustments under section 6235(a) until December 31, 2025. However, on July 31, 2024, Partnership terminates within the meaning of section 708(b)(1). Based on the prior termination under section 708(b)(1), the IRS determines that Partnership ceased to exist, as defined in paragraph (b) of this section, on September 16, 2024. On February 1, 2025, the IRS mails Partnership a notice of final partnership adjustment (FPA) that determines partnership adjustments that result in a single imputed underpayment. Partnership does not timely file a petition under section 6234 and does not make a valid election under section 6226. Partnership files its final return of partnership income on October 15, 2024 listing A and B, both individuals, as the partners for its final taxable year ending July 31, 2024. Accordingly, under paragraph (d)(1) of this section, A and B are former partners. Therefore, A and B are required to take their share of the partnership adjustments determined in the FPA into account under paragraph (e) of this section.

(2) *Example 2.* The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of P, a partnership. G, a partnership that has an election under section 6221(b) in effect for the 2020 taxable year, is a partner of P during 2020 and for every year thereafter. On February 3, 2025, the IRS mails P an FPA that determines partnership adjustments that result in a single imputed underpayment. P does not timely file a petition under section 6234 and does not make a timely election under section 6226. On March 21, 2025, the IRS determines that P has ceased to exist because P did not make an election under section 6226, P is currently not collectible, and the IRS does not expect P will be able to pay any imputed underpayment. G terminated under section 708(b)(1) on December 31, 2024. On March 3, 2025, the IRS determines that G ceased to exist in 2024 for purposes of this section in accordance with paragraph (b) of this section. J and K, individuals, were the only partners of G during 2024. Therefore, under paragraph (d)(2) of this section, J and K, the partners of G during G's 2024 partnership taxable year, are the former partners of G for purposes of this section. Therefore, J and K are required to take into account their share of the adjustments contained in the statement furnished by P to G in accordance with paragraph (e) of this section.

(g) *Applicability date.* This section applies to any determinations made after November 20, 2020.

■ **Par. 9.** Section 301.6241–7 is added to read as follows:

§ 301.6241–7 Treatment of special enforcement matters.

(a) *Items that involve special enforcement matters.* In accordance with section 6241(11)(B) of the Internal Revenue Code (Code), the partnership-related items (as defined in § 301.6241–1(a)(6)(ii)) described in this section have been determined to involve special enforcement matters.

(b) *Partnership-related items underlying non-partnership-related items*—(1) *In general.* The Internal Revenue Service (IRS) may determine that the rules of subchapter C of chapter 63 of the Code (subchapter C of chapter 63) do not apply to an adjustment to a partnership-related item of a partnership if—

(i) An examination is being conducted of a person other than the partnership;

(ii) A partnership-related item is adjusted, or a determination regarding a partnership-related item is made, as part of, or underlying, an adjustment to a non-partnership-related item of the person whose return is being examined; and

(iii) The treatment of the partnership-related item on the return of the partnership under section 6031(b) or in the partnership's books and records is based in whole or in part on information provided by the person whose return is being examined.

(2) *Example.* The following example illustrates the provisions of paragraph (b) of this section. For purposes of this example, the partnership has no liabilities, is subject to subchapter C of chapter 63, and the partnership and partner each has a calendar year taxable year. On June 1, 2018, A acquires an interest in Partnership by contributing Asset to Partnership in a section 721 contribution (Contribution). Partnership claims a basis in Asset of $50 under section 723 equal to A's purported adjusted basis in Asset as of June 1, 2018, based on information A provided to Partnership. There is no activity in Partnership that gives rise to any other partnership-related items between June 1, 2018 and June 2, 2019. On June 2, 2019, A sells A's interest in Partnership to B for $100 in cash and reports a gain of $50 based on A's purported adjusted basis in Partnership of $50 under section 722 (reflecting solely A's purported adjusted basis in Asset immediately prior to the Contribution). The IRS opens an examination of A and determines that A's adjusted basis in Asset immediately prior to the Contribution should have been $30 instead of the $50 claimed by A. As a result, A's basis in Asset immediately prior to the Contribution is reduced from $50 to $30 and A's adjusted basis in A's interest in Partnership under section 722 is reduced from $50 to $30. Because A's adjusted basis in A's interest in Partnership is reduced to $30, the total gain from the sale of A's interest in Partnership is increased to $70 ($50 as originally reported plus $20 as adjusted by the IRS). The amount of Partnership's adjusted basis in Asset, which is the property transferred by A in the Contribution, is based on information provided by A to Partnership; the adjustment to A's pre-

Contribution adjusted basis in Asset, which is a non-partnership-related item, results in an adjustment to the adjusted basis of the property (that is, Asset) transferred to Partnership in the Contribution, which is a partnership-related item; and the Contribution underlies the adjustment to A's basis in A's interest Partnership, which is a non-partnership-related item. As a result, the IRS may determine that the rules of subchapter C of chapter 63 do not apply to the Contribution and may adjust, during an examination of A, the Contribution as it relates to the adjusted basis in Asset transferred in the Contribution.

(c) *Termination and jeopardy assessment.* For any taxable year of a partner or indirect partner for which an assessment of income tax under section 6851 or section 6861 is made, the IRS may adjust any partnership-related item with respect to such partner or indirect partner as part of making an assessment of income tax under section 6851 or section 6861 without regard to subchapter C of chapter 63.

(d) *Criminal investigations.* For any taxable year of a partner or indirect partner for which the partner or indirect partner is under criminal investigation, the IRS may adjust any partnership-related item with respect to such partner or indirect partner without regard to subchapter C of chapter 63.

(e) *Indirect methods of proof of income.* The IRS may adjust any partnership-related item as part of a determination of any deficiency (or portion thereof) of the partner or indirect partner that is based on an indirect method of proof of income without regard to subchapter C of chapter 63.

(f) *Controlled partnerships and extensions of the partner's period of limitations.* If the period of limitations under section 6235 on making partnership adjustments has expired for a taxable year, the IRS may adjust any partnership-related item that relates to any item or amount for which the partner's period of limitations on assessment of tax imposed by chapter 1 of the Code (chapter 1) has not expired for the taxable year of the partner or indirect partner, without regard to subchapter C of chapter 63 if—

(1) The direct or indirect partner is deemed to have control of a partnership if such partner is related to the partnership under sections 267(b) or 707(b); or

(2) Under section 6501(c)(4), the direct or indirect partner agrees, in writing, to extend the partner's section 6501 period of limitations on assessment for the taxable year but only if the agreement expressly provides that the partner is extending the time to adjust and assess any tax attributable to partnership-related items for the taxable year.

(g) *Penalties and taxes imposed on the partnership under chapter 1.* The IRS may adjust any tax, penalties, additions to tax, or additional amounts imposed on, and which are the liability of, the partnership under chapter 1 without regard to subchapter C of chapter 63. The IRS may also adjust any partnership-related item, without regard to subchapter C of chapter 63, as part of any determinations made to determine the amount and applicability of the tax, penalty, addition to tax, or additional amount being determined without regard to subchapter C of chapter 63. Any determinations under this paragraph (g) will be treated as a determination under a chapter of the Code other than chapter 1 for purposes of § 301.6241–6.

(h) *Determination that subchapter C of chapter 63 does not apply*—(1) *Notification.* If the IRS determines, in accordance with paragraph (b), (c), (d), (e), (f), or (g) of this section, that some or all of the rules under subchapter C of chapter 63 do not apply to any partnership-related item (or portion thereof), then the IRS will notify, in writing, the taxpayer to whom the adjustments are being made.

(2) *Effect on adjustments made under subchapter C of chapter 63.* Any final decision with respect to any partnership-related item adjusted in a proceeding not under subchapter C of chapter 63 is not binding on any person that is not a party to the proceeding.

(i) *Coordination with adjustments made at the partnership level.* This section will not apply to the extent the partner can demonstrate adjustments to partnership-related items included in the deficiency or an adjustment by the IRS were—

(1) Previously taken into account under subchapter C of chapter 63 by the person being examined; or

(2) Included in an imputed underpayment paid by a partnership (or pass-through partner) for any taxable year in which the partner was a reviewed year partner or indirect partner but only if the amount included in the deficiency or adjustment exceeds the amount reported by the partnership to the partner that was either reported by the partner or indirect partner or is otherwise included in the deficiency or adjustment determined by the IRS.

(j) *Applicability date*—(1) *In general.* Except for paragraph (b) of this section, this section applies to partnership taxable years ending after November 20, 2020, or any examination or investigation begun after November 20, 2020. Notwithstanding the preceding sentence, any provision of this section except for paragraph (b) of this section may apply to any taxable year of a partner that relates to a partnership taxable year subject to subchapter C of chapter 63 that ended before November 20, 2020, upon agreement between the partner under examination and the IRS.

(2) *Partnership-related items underlying non-partnership-related items.* Paragraph (b) of this section applies to partnership taxable years beginning after December 20, 2018, or any examination or investigation begun after November 20, 2020. Notwithstanding the preceding sentence, paragraph (b) of this section may apply to any taxable year of a partner that relates to a partnership taxable year subject to subchapter C of chapter 63 that ended before December 20, 2018, upon agreement between the partner under examination and the IRS.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–25904 Filed 11–20–20; 11:15 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20–299; FCC 20–146; FRS 17240]

Sponsorship Identification Requirements for Foreign Government-Provided Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on rules proposing to require specific disclosure requirements for broadcast programming that is paid for, or provided by a foreign government or its representative.

DATES: Comments due on or before December 24, 2020; reply comments due on or before January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Media Bureau, Industry Analysis Division, *Radhika.Karmarkar@fcc.gov,* (202) 418–1523.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), FCC 20–146, in MB Docket No. 20–299, adopted on October 16, 2020, and released on

October 26, 2020. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at *https://apps.fcc.gov/edocs_public/* (*https://apps.fcc.gov/edocs_public/*). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. The principle that the public has a right to know the identity of those that solicit their support is a fundamental and long-standing tenet of broadcast regulation. The Commission's words from nearly sixty years ago, in the context of adopting changes to the sponsorship identification rules, remain equally applicable today: Perhaps to a greater extent today than ever before, the listening and viewing public is being confronted and beseeched by a multitude of diverse, and often conflicting, ideas and ideologies. Paramount to an informed opinion and wisdom of choice in such a climate is the public's need to know the identity of those persons or groups who solicit the public's support. To that end, throughout the history of broadcasting, Congress and the Commission have sought to ensure that the public is informed when airtime has been purchased in an effort to persuade audiences, finding it essential to ensure that audiences can distinguish between paid content and material chosen by the broadcaster itself. This transparency concept is encapsulated in section 317 of the Communications Act of 1934, as amended (the Act), and dates back to the Radio Act of 1927, which precedes the very creation of the Commission. Such transparency remains critically important today. Oftentimes, however, foreign governments pay for the airing of such programming, or provide it to broadcast stations free of charge, and the programming may not contain a clear indication, or sometimes any indication at all, to the listener or viewer that a foreign government has paid for, or provided, the content.

2. While the Commission's current rules require a sponsorship identification when a station has been compensated for airing particular material, the rules require disclosure of the sponsor's name and do not, as part of its ''reasonable diligence,'' require that a station determine whether the source of the programming is in fact a foreign government or mandate that the connection to a foreign government is disclosed to the public at the time of broadcast. We believe, however, that the American people deserve to know when a foreign government has paid for programming, or furnished it for free, so that viewers and listeners can better evaluate the value and accuracy of such programming.

3. Accordingly, by today's Notice of Proposed Rulemaking (NPRM), we propose to adopt specific disclosure requirements for broadcast programming that is paid for, or provided by a foreign government or its representative, so as to eliminate any possible ambiguity about the source of the programming. In this NPRM, our use of the term ''foreign government-provided programming'' refers to all programming that is provided by an entity or individual that falls into one of the five categories discussed below. In turn, the phrase ''provided by'' when used in relation to ''foreign government programming'' covers both the broadcast of programming in exchange for consideration and furnishing the programming for free as an inducement to broadcast the programming. In particular, we propose to amend § 73.1212 of the Commission's rules to require a specific disclosure at the time of broadcast if a foreign governmental entity has paid a radio or television station, directly or indirectly, to air material, or if the programming was provided to the station free of charge by such an entity as an inducement to broadcast the material. Our proposed rules would provide standardized disclosure language for stations to use in such instances to specifically identify the foreign government involved.

Background

4. The obligation that a broadcaster inform its audience when the station's airtime has been purchased (or the station is otherwise induced to air certain material) is a bedrock principle of broadcasting regulation that pre-dates the creation of the Commission. To ensure that audiences could distinguish between paid material and programming selected independently by the broadcaster, the Radio Act of 1927 required broadcast stations to announce the name of any ''person, firm, company, or corporation'' that had paid ''valuable consideration'' either ''directly or indirectly'' to the station at the time of broadcasting the programming for which consideration had been paid. At the time, Representative Emanuel Cellar explained that Congress intended the statute to prohibit stations from disguising advertising as program content. With the creation of the Commission and the adoption of the Act, this disclosure requirement was incorporated almost verbatim into section 317 of the Act. The goal behind this disclosure requirement and the Commission's subsequent implementing regulations was to ensure that the public knew who had funded particular broadcast programming, without in any way censoring or prohibiting such programming.

5. Over the years, various amendments to the rules, decisions by the Commission, and a 1960 amendment to section 317 of the Act have all continued to underscore the need for transparency and disclosure to the public about the true identity of a program's sponsor. Beginning in the 1940s, radio news shows grew longer and obtained corporate sponsors, raising concerns about whether radio audiences could recognize who had sponsored broadcast programming. In December 1944, in the wake of increased unattributed political messaging in the run up to the presidential election between Franklin D. Roosevelt and Thomas Dewey, the Commission for the first time promulgated regulations pursuant to section 317, entitled ''Sponsored Programs, Announcements Of.'' These regulations established the core requirements for sponsorship identification, many of which remain intact today.

6. The 1944 regulations stated that, with regard to all programming, broadcast stations had a duty to fully and fairly disclose the identity of the person or persons who had either provided consideration, or on whose behalf consideration had been provided, to the station. The new regulations also stated that where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known to the station, the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent. To the extent a corporation, committee, association, or other unincorporated group provided the consideration as an inducement to broadcast the programming, the station not only had to announce the name of the corporation, committee, association, or other unincorporated group, but also had to retain in its public inspection file a list of the executive officers of the organization that provided the consideration.

7. The 1944 regulations also established a new requirement with regard to any political program or any

program involving the discussion of public controversial issues even though section 317 of the Act at that time made no such distinction among programming. With regard to political programming or programming discussing ''public controversial issues,'' the Commission's 1944 regulations stated that the provision of any records, transcriptions, talent, scripts, or other material or services of any kind furnished, either directly or indirectly to the station could qualify as ''consideration'' to trigger the sponsorship disclosure requirement. Because this was during the radio era, the types of materials that qualified as ''consideration'' essentially equated to providing the programming itself. The new regulation concerning political programming also dictated how frequently the sponsorship disclosure had to be made. According to then § 3.409(b) of the Commission's rules, an announcement had to be made both at the beginning and end of the program, but in the case of any program whose duration was five minutes or less only one such announcement had to be made at either the beginning or end of the program.

8. The Commission subsequently expounded on its regulation concerning programming involving political or controversial issues, including a 1958 case involving the transmission of filmed ''summaries'' of Senate committee hearings by a television station without any disclosure that the costly summary had been packaged and provided by an outside entity. Although the films had been provided for free to the television station by another station, the National Association of Manufacturers (NAM) had actually paid for the initial production of the films and sought their distribution. The Commission found that the furnishing of the films clearly constituted valuable consideration, and that the films constituted ''discussion of public controversial issues. The Commission determined that the television station had not been sufficiently diligent in determining the source of the programming in this situation where a known representative of the NAM had informed the television station that the films would be provided free of charge by another station and the films were subsequently delivered to the broadcasting station postpaid. The Commission emphasized that in connection with material constituting a discussion of public controversial issues or a political discussion, the highest degree of diligence is called for in ascertaining, before the presentation thereof, the actual source responsible for furnishing the material.

9. In 1960, Congress amended section 317 and added a new section to the Act to address the rapid growth of undisclosed program sponsorships. A series of heavily publicized congressional hearings highlighted the quiz show and payola scandals of the 1950s and revealed a widespread practice of undisclosed program sponsorships. The amendments to section 317 and the addition of section 507 to the Act brought about four major changes to the area of sponsorship identification. First, Congress codified almost verbatim the Commission's regulation concerning the broadcast of political material or material involving the discussion of a controversial issue. Second, Congress added section 507 to the Act, which imposed disclosure requirements on non-licensees, as well as the possibility of a fine or imprisonment for failure to adhere to these requirements. Section 507 (a)–(c) imposed an obligation on employees of the licensee and those involved with either the production or the transmission of the programming to inform their employer, the station licensee, or the next person in the chain of individuals involved with transmitting the programming to the licensee, if any consideration had been paid to induce broadcasting of the program. Third, Congress simultaneously adopted a new section 317(b), which imposed a parallel obligation on the licensee to take note of any information provided pursuant to the new section 507 and to ensure any appropriate disclosures were made during the program. With regard to these amendments, the House Report accompanying the legislation stated the section as it has existed since the Federal Radio Act appears to go only to payments to licensees as such. The fact that licensees now delegate much of their actual programming responsibilities to others makes it imperative that the coverage of section 317 be extended in some appropriate manner to those in fact responsible for the selection and inclusion of broadcast matter. With these statutory amendments, Congress indicated that it was not just the immediate interactions among the licensee and others that are critical for determining whether any consideration was involved, but also interactions further back in the chain of individuals associated with providing the programming to the licensee. As a further corollary to the requirement that non-licensees disclose their knowledge about any consideration that has been provided, Congress also adopted a new section 317(c) that simultaneously imposed on the licensee the obligation to exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any programs or program matter for broadcast, information to enable such licensee to make the announcement required by this section. The fourth significant change that Congress made to the statute was the addition of section 317(e), which directed the Commission to prescribe rules and regulations to carry out the provisions of section 317.

10. In 1962, the Commission issued a public notice specifically expressing concern about the lack of sponsorship identification in foreign documentary films and other broadcast matter containing political propaganda or controversial matter, sponsored and paid for by foreign governments and distributed by their agents. At that time, the Commission stated that section 317 of the Act and the Commission's rules require a sponsorship announcement fully and fairly disclosing the true identity of the person or persons furnishing such material, which would include identification of the foreign principal concerned. According to the public notice, the Act further places an obligation on Commission licensees to exercise reasonable diligence to obtain, from those with whom they deal directly in connection with any program, information to enable them to make the required announcement. In 1963, the Commission adopted rules implementing Congress's 1960 amendments to the Act. Ultimately contained in § 73.1212 of the Commission's rules, the sponsorship identification rules largely track the provisions of section 317 of the Act. The rules restate the statutory requirement that all paid programming aired on a station, or programming for which some form of consideration has been provided to the station, must include an identification of the sponsor with the programming. In addition, with regard to any political broadcast matter or any broadcast matter involving the discussion of a controversial issue, the rules state that the programming itself (*i.e.,* any film, record, transcription, talent, script, or other material or service of any kind) if provided as an inducement for the station to broadcast the programming will trigger the requirement to include sponsorship identification. The rules also implement the statutory requirement that licensees employ ''reasonable diligence'' to determine whether a sponsorship

identification is needed. Where an agent or other person contracts, or makes arrangements, with the station on behalf of another, and this fact is known, or could be known through the exercise of reasonable diligence, the licensee must identify in its announcement the identity of the person on whose behalf the agent acted, rather than the agent. The rules also provide an exception to the disclosure requirement for those instances where the identity of the sponsor and the fact of sponsorship of a commercial product or service is inherently obvious. Finally, the rules also contain certain requirements about the format and frequency of disclosures and about information that must be maintained in a licensee's public files regarding such disclosures.

11. The evolution of the statutory sponsorship identification requirements in section 317 of the Act and the Commission's implementing regulations demonstrate the paramount importance that both Congress and the Commission place on broadcast audiences knowing who is trying to persuade them and specifically when airtime has been purchased, or programming furnished for free by, someone other than the broadcast station airing that programming. Indeed, section 317 and its implementing regulations strive to create the transparency essential to a well-functioning marketplace of ideas, and we believe that this need for transparency is particularly acute when programming from foreign governments is involved. Thus, in this item, we focus specifically on how to strengthen our disclosure requirements to make it more apparent when programming provided by foreign governmental entities is being transmitted over the national airwaves. Our focus in this NPRM on undisclosed foreign government programming is consistent with what appears to be a broader trend in the media sector to provide greater transparency about government funded programming.

Discussion

12. As described above, the Commission last implemented a major change to its sponsorship identification rules in 1963. With the passage of nearly sixty years and the growing concerns with foreign government-provided programming, the time is ripe to update our sponsorship identification rules. The instant NPRM seeks to ensure that, consistent with our statutory mandate, foreign government program sponsorship over the airwaves is evident to the American public.

13. To this end, we propose new sponsorship identification rules specifically targeted to situations where a station broadcasts material that has been sponsored and/or provided for free by a foreign government. In many instances, foreign government programming is not provided to licensees by an entity or individual immediately identifiable as a foreign government. For example, it might be a foreign government agency, which for no nefarious reason, simply does not include the name of the foreign country in its title. In other instances, however, the linkage between the foreign government and the entity providing the programming may be more attenuated in an effort to obfuscate the true source of the programming. Although our current rules require the disclosure of the sponsor's name, the relationship of that sponsor to a foreign country is not required as part of the current disclosure. But in the interests of transparency, we believe that such linkage must be clear. For example, if a media outlet controlled by a foreign government that is competing with the United States in the race to establish 5G technology were to distribute programming asserting that 5G services are a health hazard, it is important for the American public to know the true source of such programming so as to make an informed judgement about these assertions.

14. In order to ensure that the American public can best assess the programming that is delivered over the airwaves, we seek to identify the foreign governmental entities that our new rule should be directed toward. To this end, we draw on established lists of foreign governmental actors whose activities already warrant disclosure of their identities, per the determinations of other U.S. agencies that are responsible for U.S. national security and foreign policy. Our proposed rule would be triggered if the sponsor of the content falls into one of the following categories: (1) A ''government of a foreign country'' as defined by the Foreign Agents Registration Act (FARA) (22 U.S.C. 611 *et seq.*); (2) a ''foreign political party'' as defined by FARA; (3) an entity or individual registered as an ''agent of a foreign principal'' under FARA, whose ''foreign principal'' has the meaning given such term in section 611(b)(1) of FARA and that is acting in its capacity as an agent of such ''foreign principal''; (4) an entity designated as a ''foreign mission'' under the Foreign Missions Act (22 U.S.C. 4301 *et seq.*); or (5) any entity meeting the definition of a ''U.S.-based foreign media outlet'' pursuant to section 722 of the Act that has filed a report with the Commission. As discussed in greater detail below, entities or individuals falling into these categories have already been identified by statute or by a U.S. government agency (*i.e.,* either the U.S. Department of Justice or U.S. Department of State) consistent with that agency's national security and foreign policy responsibilities, as being a ''foreign government'' or its representative whose activities warrant public disclosure of their identities and operations. By relying on these sources, the Commission can rely on existing information and thereby reduce the burdens on broadcasters as they identify which entity qualifies as a ''foreign governmental entity.'' We also discuss below what programming would trigger a standardized disclosure and what this disclosure should contain. We tentatively conclude below that any programming provided by an entity that qualifies as a ''foreign governmental entity''—whether in exchange for consideration or furnished for free (or at nominal charge) as an inducement to broadcast the material—would trigger a standardized disclosure requirement under our proposed regulations. To reduce the potential for any ambiguity about the form of the disclosure that a broadcaster must make regarding the foreign government-provided programming, we propose specific disclosure language and rules regarding the frequency of such disclosures. Our proposed standardized disclosure statement will not only simplify the disclosure process for licensees, but also make it easier for the viewing and listening public to discern when programming has been provided by a foreign government. Further, we seek comment on whether this proposed disclosure should be placed in a licensee's online public inspection file (OPIF) and, if so, how this requirement should be implemented.

15. Additionally, as described above, section 317 of the Act and the Commission's rules establish a ''reasonable diligence'' standard that a licensee must employ to ascertain the true source of any programming. We explore below what could constitute ''reasonable diligence'' on the part of a licensee in determining whether programming has been provided by a foreign government. We also consider how the ''reasonable diligence'' standard should apply with regard to disclosures about foreign government-provided programming when the licensee has entered into a time brokerage agreement, and whether the obligations contained in sections 507(b) and (c) of the Act impose any requirements on brokers.

16. Further, this NPRM addresses the applicability of our proposed requirements to those broadcasters transmitting programming pursuant to section 325(c) of the Act, as that provision concerns the broadcast of material for reception in the United States. In considering these various changes to our sponsorship identification rules, we also discuss the interplay between our proposals and the First Amendment. Finally, we seek comment on the benefits and burdens associated with adopting an express foreign government sponsorship disclosure requirement. In particular, we seek comment on how to quantify the widespread benefit of disclosing to the public the identity of foreign government-provided programming.

A. Entities or Individuals Whose Involvement in the Provision of Programming Triggers a Disclosure

17. We tentatively conclude that if certain foreign entities or individuals have provided programming to a radio or television station—*i.e.,* either paid for programming to be broadcast or furnished the programming free of charge as an inducement that it be broadcast—then a disclosure regarding foreign government sponsorship is needed. Our focus in this NPRM on foreign government programming comports with historical concerns, both in the Communications Act and in Commission pronouncements, regarding foreign government influence on the nation's broadcast sector. In addition, in recent years, Congress has twice amended the Communications Act to add provisions that specifically focus on foreign government programming. In 2017, Congress added a new section 537a to the Act, which states that multichannel video programming distributors (MVPDs) are not required, as a condition of meeting their retransmission consent obligations, to carry programming sponsored by the Government of the Russian Federation. And, in 2018, Congress passed the National Defense Authorization Act for Fiscal Year 2019, which added a provision requiring ''U.S.-based foreign media outlets'' to submit periodic reports to the Commission in an effort to provide greater transparency about foreign government programming transmitted by these media outlets.

18. In determining what type of entities or individuals will trigger such a disclosure, we propose to rely on several existing sources that identify foreign governmental actors. As described above, it may not always be apparent from the name of the entity that has provided the programming that the entity is in fact a branch of a foreign government or otherwise working on behalf of a foreign government. Yet, it is important from the perspective of transparency for the American public to know the true source of the programming so they can best evaluate its value and accuracy.

19. Rather than requiring licensees to engage in an unbounded investigation about any possible linkages between entities that provide programming and a foreign government, we propose that licensees look to already established sources of foreign governmental actors maintained by the U.S. government that identify foreign governmental actors or their agents operating in the United States. Specifically, under our proposal, if an entity or individual that fits into any of these categories provides programming to a broadcast radio or television station, then that information must be disclosed to listeners and viewers at the time the material is aired. The proposed categories are:

1. A ''government of a foreign country'' as defined by FARA;
2. A ''foreign political party'' as defined by FARA;
3. An individual or entity registered as an ''agent of a foreign principal,'' under section 611(c) of FARA, whose ''foreign principal'' has the meaning given such term in section 611(b)(1) of FARA, and that is acting in its capacity as an agent of such ''foreign principal'';
4. An entity designated as a ''foreign mission'' under the Foreign Missions Act; or
5. An entity meeting the definition of a ''U.S.-based foreign media outlet'' pursuant to section 722 of the Act that has filed a report with the Commission.

These five categories rely on existing statutes and determinations by the U.S. government as to when an entity or individual is a foreign government, or is acting on behalf of such an entity or individual. Relying on these categories of actors will draw on the substantial experience and authority in such matters that already exists within the federal government and avoid involving the Commission, or the broadcaster, in subjective determinations regarding who qualifies as a foreign governmental entity. We address each of these categories in turn below and seek comment on our proposed reliance on these existing categories, both individually and collectively. For example, are there alternative or additional sources of available information that could be used to determine when an entity or individual is acting on behalf of a foreign government?

20. *FARA.* In linking the proposed disclosure requirement to those individuals defined by FARA, we rely on a statute specifically designed to identify those individuals and their activities that Congress has determined should be known to the U.S. government and the American public. As the United States Department of Justice (DOJ) has explained, the government's concern is not the content of the speech but providing transparency about the true identity of the speaker. FARA requires ''agents of foreign principals'' engaged in certain activities in the United States on behalf of foreign interests to register with the DOJ. Our reliance on FARA narrows the scope of our proposal to only those entities and individuals whose activities have been identified by the DOJ as requiring disclosure because their activities are potentially intended to influence American public opinion, policy, and law. Reliance on FARA also ensures that the scope of our proposal is not broader than necessary as FARA exempts from its registration individuals and entities engaged in activities such as humanitarian fundraising; bona fide commercial activity; religious, scholastic, academic, fine arts, or scientific pursuits; and other activities not serving predominantly a foreign interest.

21. We tentatively conclude to include a ''government of a foreign country,'' as defined by FARA, within the group of entities and individuals that trigger our proposed disclosure requirement, given that our primary focus in this NPRM is on ensuring that foreign *government*-provided programming is properly disclosed to the public. Thus, instead of seeking to craft our own definition, we find it more appropriate to turn to a definition of ''foreign government'' contained in a pre-existing statute that was designed to promote transparency about foreign governmental activity in the United States. We also find it appropriate to include ''foreign political party'' as that term is defined by FARA within our proposed definition of ''foreign governmental entity.'' The FARA definition of ''foreign political party'' covers any entity that is in ''control'' of or engaged in the ''administration'' of a foreign government, or is seeking to acquire such ''control'' or ''administration.'' Given that a ''foreign political party'' may already be in control of or administering a foreign government, or that the DOJ may have determined that such entity is seeking to acquire such a role, we tentatively conclude that it furthers our goal of

providing the American public with greater transparency about foreign government-provided broadcast programming to include such an entity within the ambit of a ''foreign governmental entity.'' We seek comment on our tentative conclusions to include both a ''government of a foreign country'' and ''foreign political party,'' as those terms are defined by FARA, within our definition of ''foreign governmental entity.''

22. FARA generally requires an ''agent of foreign principal'' undertaking certain activities in the United States (such as, political activities, acting in the role of public relations counsel, publicity agent, or political consultant) on behalf of a foreign principal to register with the DOJ. Section 611(b)(1) of FARA states that the term ''foreign principal'' includes the ''government of a foreign country'' and a ''foreign political party.'' For purposes of our proposed disclosure requirement, we include only those agents whose foreign principal is either a ''government of a foreign country'' or a ''foreign political party'' as those terms are defined in sections 611(e) and (f) of FARA respectively. We recognize that a given entity may be registered as an agent for multiple ''foreign principals'' or for a ''foreign principal'' other than a ''government of a foreign country'' or a ''foreign political party.'' We emphasize, however, that our proposed disclosure requirement applies only when the FARA agent is acting in its capacity as a registered agent of a ''government of a foreign country'' or a ''foreign political party.'' We seek comment on this approach.

23. FARA requires that an agent of a foreign principal file copies with the DOJ of informational materials that it distributes for its foreign principal, and maintain records of its activities. In addition, to the extent that the agent of a foreign principal transmits materials in the ''United States mails or by any means or instrumentality of interstate or foreign commerce,'' it must include ''a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal'' when the materials are transmitted. We tentatively conclude that it is appropriate to include an ''agent of a foreign principal'' whose ''foreign principal'' is either a ''government of a foreign country'' or a ''foreign political party'' within the group of entities and individuals that trigger our proposed disclosure requirement, as the intent behind FARA is to reveal to the American public the names and operations of those entities and individuals working in the U.S. on behalf of foreign interests in a way that seeks to influence public opinion. To the extent that an agent of a foreign principal, whose ''foreign principal'' is either a ''government of a foreign country'' or a ''foreign political party,'' is providing programming to U.S. broadcast stations in its capacity as an agent to that principal, it is reasonable that the public should be made aware of that fact.

24. The DOJ maintains a database of FARA registrants on its website that is publicly available and easily searchable. In addition, the DOJ provides regular reports to Congress containing the names of, and information about, FARA registrants; such reports are also available on the DOJ website. Consequently, relying on the database of FARA registrants should provide an easy mechanism by which a broadcast station licensee can determine whether an entity or individual that purchases airtime on the station, or provides programming to the station for free, is in fact an ''agent of a foreign principal.'' We seek comment on this analysis and on the appropriateness of using registration as an ''agent of a foreign principal'' under FARA as one of the bases for the disclosure we propose herein. Is there any reason that reliance on FARA registration is problematic?

25. We recognize that there could be a lag between the time an individual registers pursuant to FARA and when the individual's name appears in the public FARA database. We seek comment on whether the disclosure requirement should apply only to those individuals whose names appear on the public FARA list or whether the requirement should apply once the individual has registered under FARA, irrespective of when the individual's name appears on the public list. While appearance on the public list makes it easier to determine an individual's status as an ''agent of a foreign principal,'' pursuant to section 317(c) of the Act, a broadcast licensee must engage in ''reasonable diligence'' to determine whether a disclosure is required for the programming it transmits, as discussed further below. The Commission's existing rules incorporate the general ''reasonable diligence'' requirement of section 317 of the Act, and also state that where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. In most, if not all instances, can the broadcast licensee simply ask the individuals involved with providing the programming (especially the individual that provides the programming to the station) whether they fall into one of the categories that would trigger a disclosure under our proposed rules? We emphasize here that our focus in this proceeding is only on those FARA ''foreign principals'' who fall into the categories of ''government of a foreign country'' or ''foreign political party'' and their agents even though FARA also designates other types of entities as ''foreign principals.'' After all, an individual or entity that has registered, or been directed to do so, pursuant to FARA, is aware of its status as an ''agent of a foreign principal'' and who its ''foreign principal'' is. How much added burden would broadcasters bear in adding this inquiry to their longstanding section 317 reasonable diligence inquiry?

26. *Foreign Missions*. We likewise tentatively conclude that those entities designated as ''foreign missions'' pursuant to the Foreign Missions Act should also be included in our proposed disclosure rule. The Office of Foreign Missions, located within the U.S. Department of State, has the authority to designate as a ''foreign mission,'' an entity that is substantially owned or effectively controlled by a foreign government. While most ''foreign missions'' are entities and individuals traditionally viewed as foreign embassies or consular offices, the Office of Foreign Missions has determined on occasion that certain foreign media outlets also qualify as ''foreign missions.'' For example, in 2019, the Office of Foreign Missions designated five Chinese media organizations as ''foreign missions.'' We tentatively conclude that including ''foreign missions'' among the entities subject to our proposed disclosure requirement furthers our goal of providing the American public with the greatest degree of transparency about the source of programming linked to foreign governments. We seek comment on this tentative conclusion and the appropriateness of relying on this source for identifying foreign governmental actors.

27. We note that, while the U.S. Department of State does not maintain a publicly available list of foreign missions as the DOJ does with respect to FARA registrants, determinations made pursuant to the Foreign Missions Act by the U.S. Department of State are published as public notices in the **Federal Register**. Accordingly, the

licensee's duty to exercise reasonable diligence to determine whether sponsorship disclosure is required should result in the identification of such entities, and in some instances the status of the entity or individual providing the programming may be readily apparent (for example, if a foreign embassy itself purchases airtime in its own name). We seek comment on this analysis.

28. *U.S.-Based Foreign Media Outlet.* Consistent with our goal of leveraging the U.S. government's existing identification of foreign governmental actors, we tentatively conclude that our disclosure requirement should also include any entity or individual subject to section 722 of the Act that has filed a report with the Commission. Section 722, which was added to the Act in 2018, applies to a U.S.-based foreign media outlet that: (a) Produces or distributes video programming that is transmitted, or intended for transmission, by a multichannel video programming distributor (MVPD) to consumers in the United States; and (b) would be an agent of a ''foreign principal'' for purposes of FARA. These ''U.S.-based foreign media outlets'' must periodically file reports with the Commission and, in turn, the Commission must provide a report to Congress summarizing those filings. Section 722 provides that the term ''foreign principal'' has the meaning given such term in section 611(b)(1) of FARA, which limits the scope of the definition of ''foreign principal'' to ''a government of a foreign country and a ''foreign political party.'' We incorporate this limitation from section 722 of the Act into our proposed rules and note that such a limitation is consistent with our proposal above to include both a ''government of a foreign country'' and ''foreign political party,'' as those terms are defined by FARA, within our definition of ''foreign governmental entity.'' We seek comment on this approach.

29. We recognize that the term ''U.S.-based foreign media outlet'' refers to an entity whose programming is either transmitted or intended for transmission by an MVPD, rather than a broadcaster. But we note that there is no prohibition on such video programming also being transmitted by a broadcast television station, and it seems likely that an entity that is providing video programming to cable operators or direct broadcast satellite television providers might also seek to air such programming on broadcast stations. Hence, we propose to include ''U.S.-based foreign media outlets'' within the ambit of our proposal. We also recognize that to qualify as a ''U.S.-based foreign media outlet'' for purposes of section 722 of the Act, the entity at issue must qualify as a ''foreign agent'' pursuant to FARA and, hence, may already be covered by our first proposed category. Nevertheless, out of an abundance of caution, we propose to include these entities within the coverage of our proposal and seek comment on their inclusion.

30. We recognize that the proposed categories discussed above may not cover all of the foreign governmental entities or individuals that provide programming to U.S. broadcasters. Thus, we seek comment on whether there are other identifiable categories of entities or individuals that should be included within the coverage of our proposed rules. We note that the categories listed above are based on existing sources so that broadcasters are not burdened unnecessarily in determining when our proposed disclosures are required and seek comment on whether there are other such sources. Are there indicia of foreign government involvement in the provision of programming that broadcasters could identify more easily and readily than the Commission could? That is, are there other criteria that we should include within our proposed rules to ensure that we implement our obligation under section 317 to uphold the American public's right to know the source of its programming as comprehensively as possible? Would requiring broadcasters to take more responsibility for determining whose provision of programming triggers disclosure be consistent with the statutory language requiring ''reasonable diligence'' on the part of broadcasters?

B. Scope of Foreign Programming That Would Require a Disclosure

31. We tentatively conclude that, in the interest of greater transparency for the American people, any broadcast programming that has been provided by an entity or individual that fits within one of the five categories described above would trigger the need for a disclosure under our proposed rules. Specifically, we tentatively conclude that a standardized disclosure would be required whenever a ''foreign governmental entity,'' as defined in our proposal, has paid a station to air the material or furnished the material to a station free of charge (or at nominal cost) as an inducement to broadcast such material. As discussed below, we believe that requiring a disclosure to inform the audience of the source of the programming whenever a foreign governmental entity provides programming to a station for broadcast is wholly consistent with sections 317(a)(1) and (2) of the Act.

32. Pursuant to section 317(a)(1), a licensee must include a disclosure with all programming for which a station has received any form of payment or consideration, either directly or indirectly. Under this section, there is no minimum level of ''consideration'' required to trigger the disclosure requirement. Thus, consistent with the statute and our current sponsorship identification rules, we tentatively conclude that standardized disclosure requirements would be triggered under the rules proposed in this NPRM if any money, service, or other valuable consideration is directly or indirectly paid or promised to, or charged or accepted by a broadcast station in exchange for the airing of material selected by a foreign governmental entity. In connection with the rules we propose herein, we expect that licensees will be vigilant about whether any form of consideration has been provided in exchange for the lease of airtime or in exchange for the airing of materials, and that an appropriate disclosure will be made about the involvement of a foreign governmental entity. We seek comment on this tentative conclusion.

33. In addition, section 317(a)(2) of the Act establishes that a sponsorship disclosure may be required in some circumstances, even if the only ''consideration'' being offered to the station in exchange for the airing of the material is the programming itself. Specifically, section 317(a)(2) provides that a disclosure is required at the time of broadcast in the case of any political program or any program involving the discussion of a controversial issue if the program itself was furnished free of charge, or at nominal cost, as an inducement for its broadcast. We recognize that to date the Commission's interpretation of ''political program'' in the context of section 317(a)(2) has generally involved programming seeking to persuade or dissuade the American public on a given political candidate or policy issue. For example, the Commission and the federal courts have previously treated such things as a program discussing a political candidate's past record, as well as a proposition on the California ballot, as a ''political program'' pursuant to section 317(a)(2) of the Act. We tentatively conclude, however, that it is appropriate to interpret ''political program'' more broadly to cover foreign government-provided programming. Thus, we tentatively conclude that the nature of the entities or individuals that would trigger our proposed new

disclosure requirement is such that any and all programming furnished by these entities or individuals falls within the category of a ''political program'' under section 317(a)(2).

34. As described in greater detail above, all of the entities or individuals that qualify as a ''foreign governmental entity'' for purposes of our proposed rules either explicitly or implicitly are seeking to influence U.S. public policy or opinion on behalf of a foreign government or an entity that seeks to be in control of a foreign government (*i.e.,* a ''foreign political party''). Our proposed definition of what constitutes a ''foreign governmental entity'' draws from the FARA definitions of a '' government of a foreign country,'' a ''foreign political party,'' or an ''agent'' of the same under FARA, or else is a ''foreign mission.'' Consequently, we seek comment on whether any material provided by these specific entities for dissemination on a U.S. broadcast station qualifies as a ''political program'' pursuant to section 317(a)(2). Most of the activities that trigger designation as the ''agent of a foreign principal'' under FARA explicitly involve influencing either the U.S. political process or the U.S. government. Moreover, FARA does not require individuals and entities to register as agents of foreign principals if their activities fall within certain exemptions, and, thus, our proposal minimizes the possibility of including more programming than intended as a ''political program.'' Foreign agents engaged in activities such as humanitarian fundraising, bona fide commercial activity, religious, scholastic, academic, fine arts, or scientific pursuits are exempted from having to register under FARA. To the extent the entity involved with providing the programming is a ''government of a foreign country,'' as defined by FARA, a ''foreign political party,'' as defined by FARA, or a ''foreign mission,'' all of these entities are essentially an arm of a foreign government representing that government's interests in the United States, or with regard to a ''foreign political party,'' an entity that is administering, is in control of, or seeks to be in control of such foreign government. Thus, we find it reasonable to view the activities of these entities as ''political'' in nature for purposes of section 317(a)(2), including any provision of programming for broadcast in the United States. Accordingly, we seek comment on whether any programming furnished to a U.S. broadcast station by any ''foreign governmental entity,'' as we propose to define this term, constitutes a ''political program'' for purposes of section 317(a)(2) of the Act. To the extent that all of the programming furnished by those entities or individuals is considered to be a ''political program'' under section 317(a)(2) of the Act, then broadcasters would not need to make a separate determination about whether ''consideration'' has been provided as the furnishing of the programming itself would trigger our proposed disclosure requirement. We seek comment on this analysis.

C. Contents of Required Disclosure of Foreign Sponsorship

35. We tentatively conclude that any new regulations regarding foreign government-provided programming should standardize the content, format, and frequency of disclosures. We seek comment on this tentative conclusion. In terms of content, we propose to require disclosure, at the time of broadcast, of the following information: (a) The fact that such programming is paid for, or furnished free of charge, either in whole or in part, by a foreign governmental entity as described above; (b) the name of the entity or individual that paid for or furnished the programming free of charge to the station; and (c) the name of the country that the entity or individual represents. We seek comment on this proposal and on whether the disclosure should contain any additional or alternative information at the time of broadcast. We also seek input from commenters about examples of foreign government-provided programming where the disclosures were or were not sufficient to identify the foreign government involved.

36. We note that, in other contexts, the Commission has adopted a set script for required announcements on television and radio, as well as requirements for the timing of, and the frequency with which, such announcements must be made. Also, the DOJ under FARA currently requires materials televised or broadcast by agents of foreign principals to be labeled with an introductory statement ''which is reasonably adapted to convey to the viewers or listeners thereof such information'' that the materials are televised or broadcast by an agent of a foreign principal and provides standardized language for such statements. In a similar fashion, we propose that the language for our required disclosure should be standardized to avoid confusion and to ensure that the information is conveyed clearly and concisely to the audience. Accordingly, we propose that at the time a station broadcasts material that was provided by a foreign governmental entity a disclaimer identifying that fact and the origin of the programming be included as follows:

> ''The [following/preceding] programming was paid for, or furnished, either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

37. We seek comment on this proposal, including both the specific language we have proposed, and the proposal to mandate standardized language. Is there additional language or information that we should include to ensure that the public is properly informed that the programming content that they are receiving has been provided by a foreign government? Should stations have the discretion to include additional language beyond what is required if the broadcaster thinks such information would be germane to the public's reception of the broadcast programming? Should the disclaimer be the same for both video and audio programming? Should the disclaimer be in English, in the primary language of the broadcast if other than English, or both? Should the disclaimer use language other than ''paid for'' or ''furnished by,'' what terms should be used instead, and would the use of alternative terms be consistent with the requirements of section 317(a)(1)? How, if at all, should the existence of the FARA requirements affect the rules we propose today? That is, how can we ensure that we do not impose duplicative, or potentially inconsistent, requirements on broadcast licensees.

38. We also seek comment on whether our proposed disclosure requirements might duplicate aspects of the labeling requirements imposed by FARA, and, if so, how the Commission might address any overlap or interplay between the two requirements. Notably, the rule we propose herein would apply to broadcast station licensees, whereas the FARA labeling obligation applies to the FARA registrants. Accordingly, we tentatively conclude that, given the Commission's existing sponsorship identification rules and our statutory mandate to ensure broadcast stations meet their public interest obligation, the existence of FARA labeling requirements does not preclude the Commission from proposing requirements specific to broadcast licensees, especially as the Commission and DOJ share subject matter jurisdiction in other contexts. For example, the Commission has been tasked by Congress per the NDAA, as described above, to provide semi-annual

reports on certain foreign media outlets based in the U.S. in addition to the reports to Congress made by DOJ pursuant to FARA. Moreover, the standardized disclosure contemplated by this item is focused specifically on material broadcast on radio and television stations, whereas the DOJ requirements apply more widely to information disseminated via any method.

39. With regard to the format and frequency of the disclosure, we look to our existing rules for guidance. In terms of format, the Commission's rules currently require that a televised political advertisement concerning a candidate for public office include an identification with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds. We propose to adopt that convention and require that the disclosure for foreign government-provided programming aired on television be displayed in letters equal to or greater than four percent of the vertical picture height and be visible for not less than four seconds. We seek comment on this proposal and whether there is a similar objective standard that can be put in place to ensure that the disclosure is also made orally in a way that is clear to the broadcast television audience?

40. We note that there is no parallel to the four percent/four second rule applicable to radio programming. We seek comment on whether there should be similar parameters for radio disclosures regarding foreign government-provided programming. The DOJ provides guidance that, for purposes of the FARA labeling requirements, the introductory statement for radio broadcasts shall be audibly introduced with a recitation of the required conspicuous statement. We seek comment on whether only requiring a recitation of the proposed disclaimer is sufficient for radio broadcasts or whether there are parameters regarding the radio disclosure that we should adopt to ensure it is sufficiently prominent for listeners to be cognizant of thereof. Are there criteria we could adopt to ensure listeners have an adequate opportunity to hear the disclosure?

41. As previously stated, with regard to the frequency of the disclosure, the Commission's rules currently require that the sponsorship identification of political broadcast matter, or any broadcast matter involving the discussion of a controversial issue of public importance, include an announcement at the beginning and conclusion of the program. For any broadcast of 5 minutes duration or less, only one such announcement need be made at either the beginning or conclusion of the program. Would a similar frequency requirement be appropriate for the disclosure of programming provided by a foreign government or its representative? Given our interest in ensuring that the American broadcast audience is aware of the source of its programming, particularly programming coming from a foreign government, we seek comment on whether additional disclosures during the foreign government-provided programming should be required if the programming exceeds a certain duration. We tentatively conclude that, at a minimum, the required announcement shall be made at both the beginning and conclusion of the programming broadcast on television or radio. For television and radio programming greater than sixty minutes in duration, we tentatively conclude that an announcement shall be made at regular intervals during the broadcast, but no less frequently than once every hour. We seek comment on these tentative conclusions. On the other hand, for television and radio programs that are of five minutes or less in duration, should we require that an announcement be made at both the beginning and the end of the material broadcast, or is one announcement at either time sufficient?

42. Additionally, in the event that a foreign governmental entity continually broadcasts foreign government-provided programming on a U.S.-licensed broadcast station without an easily identifiable beginning or end, how frequently should a disclosure be made to the listener or viewers? Absent a discrete beginning and end to the foreign government-provided programming, the audience may be unaware, for example, that a foreign governmental entity has leased 100% of a station's airtime and that the entire content of the station's broadcast programming has been provided by a foreign governmental entity. We propose that in such instances a disclosure announcement should be made once per hour—either at the top of the hour or half hour mark—and seek comment on this proposal.

43. Further, we propose that the standardized disclosure requirements (that is, content, format, and frequency of disclosures) would apply equally to any programming transmitted on a radio or television stations' multicast streams. For example, as a result of the digital television transition, television stations have the ability to broadcast not only on their main program stream but also, if they choose, over additional program streams—an activity commonly referred to as multicasting. Similarly, radio stations that are broadcasting in digital have the ability to distribute multiple programming streams over the air. Radio multicast streams are known as HD2, HD3, and HD4 channels. We find no reason to exclude multicast streams from the proposed standardized disclosure requirements. Accordingly, we tentatively conclude that multicast streams should not be distinguished from a station's primary stream for purposes of the proposed rules. We seek comment on this approach.

44. *Public File.* In order to enhance the availability of information to the public, we tentatively conclude that stations that air programming subject to our proposed standardized disclosure requirements should also place copies of the disclosures in their OPIFs and seek comment on what additional information should be included. Consistent with our intent to provide greater transparency about the distribution of foreign government-provided programming over the nation's airwaves, we seek comment on whether to require licensees to place in their OPIFs the same information as is currently required when programming concerns a political or controversial issue. In the case of programming concerning a political or controversial issue, when a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, stations must place a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity in the station's OPIF. Would requiring disclosure of the persons operating the foreign governmental entities that are paying for or furnishing the programming be appropriate here?

45. We also seek comment on what, if any, information in addition to that which has been previously discussed should be contained in the OPIF with respect to the foreign government-provided programming on the station. Should the OPIF disclosure contain more detailed information about the relationship between the government of a foreign country, foreign political party, agent of a government of a foreign country or foreign political party, foreign mission, or U.S.-based foreign media outlet and the foreign country that these entities or individuals represent? How, if at all, should the OPIF disclosure differ from what foreign government representatives are required to disclose in the context of FARA or

the NDAA? For example, FARA requires an extensive list of information for its disclosure requirement. But the NDAA requires only that U. S.-based foreign media outlets report the legal structure between the outlet and its foreign principal.

46. To the extent we adopt a public file requirement, we seek comment on how it should be implemented. With regard to the frequency with which licensees must update their OPIFs to include information about the airing of content covered by our proposed rule, we propose to adopt the same standard currently applicable to political advertising. Specifically, our political file rules require that information about the sale of advertising time to a qualified candidate be placed in the political file ''as soon as possible.'' Given the importance of making information about foreign government-provided programming available to the public in a timely way, we think that prompt updates to the online public file are appropriate. In addition, using the same standard as required for political advertising would harmonize our rules, while drawing on a standard and routine with which broadcast licensees are already familiar. We seek comment on our proposal to adopt the ''as soon as possible'' disclosure standard contained in § 73.1943 of our rules and interpret this the same way we do in practice for the political file rules, as meaning ''within twenty-four hours of the material being broadcast.'' To the extent parties propose a different standard, we ask that they provide specific timeframes for such disclosures that balance the public's need to know with the associated burdens on broadcasters. We also seek comment on whether and how any public file requirement we adopt should apply to broadcast stations that are not required to maintain an OPIF.

47. In addition, should information regarding foreign government-provided programming be placed in a standalone folder of the OPIF so that the material is readily identifiable by the public? We also seek comment on whether a two-year retention period, as is currently specified in § 73.1212(e) of our rules, is sufficient, or whether a shorter, or longer, retention period would be preferable for disclosures about foreign government-provided programming. Further, we note that § 73.1212(e) of our rules permits the retention of certain information about a program concerning a political matter, or discussion of a controversial issue, at the network headquarters if the programming was originated by a network. We tentatively conclude that this option should not apply with regard to foreign government-provided programming, as we believe it will be easier for a member of the public to locate information in the online public file of the licensee that aired the programming rather than trying to find the information in a physical file at the network's headquarters. We seek comment on this tentative conclusion.

D. Reasonable Diligence

48. As discussed above, pursuant to section 317(c) of the Act, a licensee must exercise reasonable diligence, including making any necessary inquiries of its employees and other persons with whom it deals directly in connection with any programming, to ensure the programming aired on its station is accompanied by an appropriate sponsorship disclosure if needed. The Commission rules also contain this ''reasonable diligence'' standard, as well as a requirement that licensees employ ''reasonable diligence'' to determine whether the individual or entity with whom they are interacting is in fact an agent acting on behalf of someone else. To the extent there is such an agency relationship that ''could be known'' through ''reasonable diligence'' the licensee must disclose the name of the individual or entity on whose behalf the agent is acting. In 1975, the Commission modified its rules to include the ''could be known'' language specifically in response to a federal court decision finding that the Commission's prior rule did not require a licensee to make reasonable efforts to go beyond a named sponsor to find and announce the real party in interest. The preceding Commission decision that had been overturned by a federal court concerned a political race between two candidates in Kentucky and a program transmitted by a local station where the named sponsor was ''The Committee for Good Government.'' The Commission found the local station knew that ''The Committee for Good Government'' was a straw entity fronting for one of the candidates and the program showed the opposing candidate in a negative light and should have identified the true sponsor. In modifying its rule after its decision was struck down, the Commission stated, broadcasters are licensed to act as trustees for a valuable public resource and, in view of the public's paramount right to be informed, some administrative burdens must be imposed on the licensee in this area. These burdens simply run with the territory.

49. Consistent with this approach, we tentatively conclude that a broadcast station licensee must exercise reasonable diligence to determine if an entity or individual that is purchasing airtime on the station, or providing programming free of charge as an inducement to broadcast such material on the station, is a foreign governmental entity, such that a disclosure is required under our proposed rules. Such diligence would include, at a minimum, inquiring of the entity whether it qualifies as: (1) The ''government of a foreign country,'' as defined by FARA: (2) A ''foreign political party,'' as defined by FARA; (3) an ''agent of a foreign principal,'' under section 611(c) of FARA, whose ''foreign principal'' has the meaning given such term in section 611(b)(1) of FARA, and that is acting in its capacity as an agent of such ''foreign principal''; (4) a ''foreign mission,'' or (5) a U.S.-based foreign media outlet; as well as independently reviewing the DOJ's FARA database, and the Commission's list of U.S.-based foreign media outlets. What other steps, if any, should be required to demonstrate due diligence? Are there any readily available sources of public government information that a broadcaster could easily search without significant burden? We seek comment on our tentative conclusion, including any additional or alternative actions that should be articulated as part of a reasonable diligence standard. For example, as discussed above, are there other indicia or criteria that licensees should review to determine whether a foreign government is the source of the programming?

E. Time Brokerage Agreements (TBAs)/ Local Marketing Agreements (LMAs)

50. We recognize that the usage of TBAs/LMAs is a common practice in the broadcast industry and that consequently there are instances when the day-to-day operations of a broadcast station, such as the sale of advertising time, are handled by a third-party other than the licensee, *i.e.,* the brokering party. A ''time brokerage agreement,'' also known as a ''local marketing agreement'' or ''LMA,'' is the sale by a licensee of discrete blocks of time to a ''broker'' that supplies the programming to fill that time and sells the commercial spot announcements in it. In such situations, the brokering party may sell advertising time or receive compensation to air foreign government-provided programming or receive programming for free from a foreign governmental entity as an inducement to air the programming. Furthermore, the brokering party itself may be a foreign governmental entity, potentially triggering the need for a disclosure. As we seek to provide licensees greater

specificity about how to identify and disclose instances of foreign government-provided programming, we also address how our proposed disclosure requirements would apply in the context of TBAs/LMAs. Most fundamentally, we tentatively conclude that our proposed disclosure requirements should apply in the context of TBAs/LMAs.

51. As the licensee of a broadcast station must ultimately remain in control of the station and maintain responsibility for the material transmitted over its airwaves, even in the event of a TBA/LMA arrangement, we tentatively conclude that final responsibility for ensuring that any necessary disclosure is made in the case of foreign government-provided programming rests with the licensee. We seek comment on this tentative conclusion. Pursuant to section 317(c) of the Act, the licensee bears the responsibility to engage in ''reasonable diligence'' to determine the true source of the programming. Section 317(c) of the Act states that the licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section. This statutory provision is categoric and does not provide any exceptions. This approach is consistent with the fact that it is the licensee who has been granted the right to use the public airwaves. We invite comment on this analysis and on how licensees can ensure that they have met their ''reasonable diligence'' requirement. At a minimum, is it reasonable to require that the licensee will inquire whether the brokering party and any entity from whom the brokering party receives programming qualifies as a ''foreign governmental entity'' pursuant to our proposed rules? What else might the licensee do to ensure that the brokering party and those from whom this entity receives programming are aware of the disclosure obligation?

52. To the extent that our prior precedent may not require a sponsorship announcement to identify the broker's involvement in programming the station pursuant to an LMA or a TBA, for example, in situations involving a barter-type arrangement, we tentatively conclude that any such precedent should not apply in the case of foreign government-provided programming. We tentatively conclude that any reasons that may apply for not requiring disclosures about the brokering party are inapposite when it comes to foreign government-provided programming, given the importance of informing the American broadcast public of the source of such programming. We seek comment on this tentative conclusion. In particular, we invite comment on the extent to which foreign governmental entities have entered into barter-type arrangements to provide programming to U.S. broadcast stations, and how such arrangements might differ from barter-type arrangements in other contexts, such as in a traditional network/affiliate relationship. Further, we seek comment generally on TBAs/LMAs involving foreign government sponsored programming, including whether there are differences between such agreements and other TBAs/LMAs, which often involve joint operations with another in-market station to achieve operating efficiencies.

53. While it is clear that the licensee cannot abdicate its responsibilities by virtue of entering into a TBA/LMA, we tentatively conclude that sections 507(b) and (c) of the Act impose a duty on the broker to inform the licensee to the extent it is aware of any payments (or other valuable consideration) associated with the programming. Section 507(b) of the Act states that any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for which such program or matter is being produced, or to the licensee of such station over which such program is broadcast. Section 507(c) of the Act states that any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

54. As noted above, in its 1960 amendments to the Act, Congress imposed on non-licensees associated with the transmission or production of programming a requirement to disclose any knowledge of consideration paid as an inducement to air particular material. Specifically, such non-licensees must disclose to their employer, the person for which such program is being produced (*e.g.,* the next individual involved in the chain of transmitting the programming to the licensee), or the licensee itself, their knowledge of any payment or ''valuable consideration'' provided or accepted. Congress added this provision in recognition that individuals other than the licensee were increasingly involved in programming decisions. Thus, consistent with the statute, we believe that it is incumbent on brokers to disclose to the licensee their knowledge of any payment provided by, or unpaid programming received as an inducement from, one of the entities or individuals that trigger the sponsorship identification requirement laid out in this NPRM. We seek comment on whether we should codify this disclosure requirement by mandating that agreements between brokers and licensees include a provision requiring brokers to disclose any foreign government-provided programming? We also seek comment on whether there are other entities or individuals that fall within the ambit of sections 507(a), (b), or (c) of the Act that we should specifically identify as part of our proposal to provide greater transparency about foreign government-provided programming. Section 508(a) states that any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

F. Section 325(c) Permits

55. In addition to U.S.-licensed broadcast stations, we tentatively conclude that the proposed disclosure requirement for foreign government-provided programming should apply expressly to any programming broadcast pursuant to a section 325(c) permit to avoid any uncertainty.

A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country and broadcasts the programming from the foreign station with a sufficient transmission power or a geographic location that enables the material to be received consistently in the United States. Section 325(c) permit applications are subject to the requirements of section 309 (applicable to applications for U.S. station licenses). Specifically, we apply the same criteria for meeting the programming standards component of the public interest, convenience, and necessity requirement to both a domestic license proceeding under section 309 and a cross-border broadcast license proceeding under section 325.

56. Applying the same disclosure requirements proposed in this proceeding to programming broadcast pursuant to a section 325(c) permit would serve the public interest because, like programming from a U.S.-licensed station, programming from a section 325(c) station is received by audiences in the United States. As a result, the same public interest objectives with respect to programming of U.S.-licensed stations also apply here. Treating U.S.-licensed broadcast station licenses and section 325(c) permits in the same manner with respect to foreign government-provided programming also would level the playing field between programming aired by non-U.S. and U.S. broadcasters in the same geographic area within the United States and would eliminate any potential loophole in our regulatory framework with respect to the identification of foreign government-provided programming that may result from this proceeding. We seek comment on this issue and our tentative conclusions.

57. In addition, we seek comment on whether any aspect of our proposed format and frequency of the foreign government-provided programming disclosure, discussed herein, should be modified for section 325(c) permit holders. For example, because section 325(c) permit holders are not participants in OPIF, should we require these permittees to place copies of such broadcasts in a publicly accessible online location? Or would the broadcast of a clear aural or visual disclosure accompanying foreign government-provided programming be sufficient to level the playing field between programming aired by non-U.S. and U.S. broadcasters in the same geographic area within the United States? Commenters suggesting a different format or additional disclosure information with respect to broadcasts pursuant to a section 325(c) permit should discuss how such a format or additional information would best serve the public interest.

G. The Proposed Disclosure Requirements Satisfy the First Amendment

58. We tentatively conclude that the disclosure requirements proposed in the instant NPRM comport with the First Amendment. Section 317(e) of the Act directs the Commission to prescribe appropriate rules and regulations to carry out the provisions of this section. As discussed in detail above, the Commission has repeatedly used its authority under section 317 to address evolving concerns about undisclosed program sponsorship as they arise. Because the instant rulemaking follows in that same vein, we find we have ample statutory authority for the proposals contained in this NPRM. We note that with respect to broadcasters, the disclosure requirements in question will be reviewed under intermediate scrutiny, the less rigorous standard applied to content-based restrictions on that medium, and thus will be upheld if narrowly tailored to achieve a substantial government interest. While a content-based regulation of speech is typically subject to strict scrutiny, the Supreme Court has described First Amendment review of broadcast regulation as ''less rigorous'' than in other contexts based on the spectrum scarcity rationale. We note, however, that some judges have questioned the validity of the scarcity doctrine as justification for less rigorous First Amendment scrutiny of content-based regulation of broadcasters.

59. Even assuming, however, that the highest level of First Amendment scrutiny applies, we tentatively conclude that our proposed rules satisfy that review. While our analysis above demonstrates that our proposed disclosure rules satisfy First Amendment speech protections even under strict scrutiny, we find it is likely that our proposed rules are content-neutral and therefore would not be subject to strict scrutiny. The disclosure requirements do not act as a complete ban on foreign government-provided programming nor prohibit participation in public discussion; rather, the proposed rules would merely require a factual statement regarding the sponsor of the programming. As set forth below, we tentatively conclude that the government's interest here is ''compelling,'' and the rules are both ''narrowly tailored'' to further that interest and the ''least restrictive means'' available to serve that goal.

60. *Compelling Government Interest.* The Commission's application of section 317 for over eighty years, as well as Congress's 1960 amendments thereto, which further strengthened the statutory provision, demonstrate a compelling governmental interest in accurate sponsorship identification. Indeed, as noted above, the obligation that a broadcaster inform its audiences when the station's airtime has been purchased (or the station is otherwise induced to air certain material) is a bedrock principle of broadcasting regulation that even pre-dates the creation of the Commission. The need for transparency and disclosure to the public about the true identity of a program's sponsor is particularly compelling when a foreign government is involved. Congress has recognized the critical importance of accuracy and transparency with regard to foreign government-provided programming in a number of contexts, including by its recent action extending the national security concerns underlying FARA to require the Commission to provide annual reports on U.S.-based foreign media outlets, defined by reference to FARA's foreign agent definitions, airing programming in the United States. Notably, the Supreme Court has previously recognized the government's interest in requiring accurate disclosures of foreign political or controversial programming and preventing groups from broadcasting political messages intended to persuade the public through hidden identities. Moreover, as discussed above, in 1962 when the Commission learned that ''broadcast matter containing political propaganda or controversial matter, sponsored and paid for by foreign governments'' had been broadcast ''without indication to the public as to the foreign sponsorship involved,'' it issued a Public Notice emphasizing to broadcasters the particular importance of full and accurate disclosure for foreign government-supplied programming. The Public Notice cited sections 317 and 508 of the Communications Act, concluding, the purpose of these provisions is to assure that in these instances the public will be informed as to the source of sponsored broadcast material. Also, as discussed above, foreign governments increasingly are making use of various media, including U.S. airwaves, not only to influence those governments' expatriate communities, but also to promote their policies and viewpoints to all Americans. This increase makes the government's interest in accuracy and transparency regarding broadcasts of foreign government-provided programming even more compelling.

61. As set forth in detail above, the proposed disclosure requirements are well within our statutory authority and

an extension of our existing sponsorship identification rules that would further the substantial and compelling government interest in transparency and accuracy for listeners and viewers as to the source of the programming being disseminated over the public airwaves. Complete and accurate disclosure regarding the source of programming is critical to allowing audiences to determine the reliability and credibility of the information they receive. We consider such transparency to be a critical part of broadcasters' public interest obligation to use the airwaves with which they are entrusted to benefit their local communities. Rather than abridging broadcasters' freedom of speech rights, disclosure would promote First Amendment and Communications Act goals by enhancing viewers' ability to assess the substance and value of foreign government-provided programming, thus promoting an informed public and improving the quality of public discourse. We seek comment on this analysis.

62. *Narrow Tailoring.* In light of these important and compelling governmental interests, we tentatively conclude that the proposed rules are narrowly tailored to avoid burdening any more speech than necessary to serve the purposes of ensuring transparency and accuracy regarding the source of the programming. In *Meese* v. *Keene,* for example, the Supreme Court of the United States reviewed a First Amendment challenge to a provision of FARA that required the labeling of certain information disseminated to the public as ''propaganda.'' The Court upheld the requirement and found that it did not prohibit or otherwise adversely affect the dissemination of the films at issue, but rather that it simply required the disseminators of the films to make additional disclosures to enable the public to better evaluate the material's impact, allowed the disseminators to add further disclosures thought to be germane, and thereby actually fostered freedom of speech. In sum, the Court stated, by compelling some disclosure of information and permitting more, the Act's approach recognizes that the best remedy for misleading or inaccurate speech contained within materials subject to the Act is fair, truthful, and accurate speech. Here, the proposed disclosure requirements are narrowly tailored to promote the government's interest by requiring a simple, factual statement identifying foreign government-provided programming without limiting the distribution or discussion of such programming, regardless of the information or viewpoint presented. We seek comment on this analysis.

63. *Least Restrictive Means.* Even assuming that the strict scrutiny test applies here, we tentatively conclude that our proposed rules also satisfy the final prong of that level of constitutional analysis. Our proposed disclosure requirements would not prevent or inhibit the airing of any type of foreign government programming, *i.e.,* the requirements do not prevent anyone from speaking. As the Court has previously concluded, disclosure is a less restrictive alternative to more comprehensive regulations of speech. In addition, the category of individuals whose programming was covered by the labeling requirement in *Meese* v. *Keene* (*i.e.,* individuals who must register under FARA) are also among the group of individuals whose programming would trigger our proposed standardized disclosure requirements. Consequently, we have strong reason to conclude that our proposed requirements satisfy heightened scrutiny under the First Amendment. We tentatively conclude that, rather than abridging licensees' freedom of speech rights, our proposed standardized disclosure requirements would promote the goals of the First Amendment and section 317 of the Act by enhancing the ability of broadcast viewers and listeners to assess the substance and value of foreign government-provided programming, thus promoting an informed public and improving the quality of public discourse. We seek comment on this tentative conclusion.

64. In addition, we tentatively conclude that the analysis provided here applies equally to those operating pursuant to section 325(c) permits, because as described in section above, there is nothing to differentiate them from other broadcast licensees when it comes to our sponsorship identification requirements. Finally, for the same reasons that we have laid out above regarding the compliance of our proposals with the First Amendment, we also tentatively conclude that our proposals do not violate the prohibition, contained in section 326 of the Act, or any Commission regulation or condition interfering with the right of free speech by means of radio communication. We seek comment on these tentative conclusions.

H. Cost-Benefit Analysis

65. Finally, we seek comment on the benefits and costs associated with adopting a foreign government sponsorship disclosure requirement. How do we assess the benefit of the proposed disclosures, if any? We seek comment on how to quantify the widespread benefit of identifying for the public that a foreign government has provided certain programming for broadcast against the cost of compliance incurred by the providers of such programming. If the benefit cannot be quantified, how should we weigh it against the more concrete costs of compliance? In addition to any benefits to the public at large, are there also benefits that might accrue to industry in the form of greater trust from viewers and listeners that should be quantified? Will the proposed disclosures provide the public and the Commission a clearer view of foreign governmental entities' activities in the U.S. broadcast market? If not, what type of disclosures would? Are there other benefits to disclosures that should also be considered?

66. We also seek comment on any potential costs that would be imposed on broadcasters or others if we adopt the proposals contained in this NPRM. Is there a possibility that these costs would outweigh the substantial public benefits we have identified regarding transparency of the source of programming heard or viewed by the American public? How much will it cost broadcasters to comply with the proposed on-air disclosures and public file record keeping requirements? Finally, if the proposals contained in this NPRM would impose significant costs, could the proposals be modified to reduce these costs, and if so, how? Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

Procedural Matters

67. *Ex Parte Rules—Permit-But-Disclose.* This proceeding 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). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

68. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- 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.
- 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.

69. *Initial Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 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 Small Business Administration (SBA).

70. With respect to this Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis (IRFA) under the RFA is contained below. Written public comments are requested on the IFRA and must be filed in accordance with the same filing deadlines as comments on this Notice of Proposed Rulemaking, with a distinct heading designating them as responses to the IRFA. In addition, a copy of this Notice of Proposed Rulemaking and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

71. *Paperwork Reduction Act.* This document seeks comment on whether the Commission should adopt new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

72. *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), 202–418–0432 (tty).

73. *Additional Information.* For additional information on this proceeding, please contact Radhika Karmarkar of the Media Bureau, Industry Analysis Division, *Radhika.Karmarkar@fcc.gov,* (202) 418–1523.

Initial Regulatory Flexibility Act Analysis

74. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this NPRM. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

75. This NPRM proposes to adopt specific disclosure requirements for broadcast radio and television in the event that they air programming that is paid for, or furnished for free, by a foreign government or its representative. Pursuant to the authority granted in section 317(e) of the Communications Act of 1934, as amended, (the Act), the NPRM proposes to amend § 73.1212 of the Commission's rules to require the addition of a standard aural or visual disclaimer (or both) if a foreign governmental entity has paid a radio or television station, directly or indirectly, to air material, or if the programming was furnished free of charge to the station by such an entity as an inducement to broadcast the material. The proposed standard disclaimer would state: ''The [following/preceding] programming was paid for or furnished, either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].'' Based on existing statutory or regulatory definitions, the NPRM specifies five categories of individuals or entities whose programming would trigger a disclosure requirement: (1) A

''government of a foreign country'' as defined by the Foreign Agents Registration Act (FARA); (2) a ''foreign political party'' as defined by FARA; (3) an individual or an entity registered as an ''agent of a foreign principal'' under FARA; whose ''foreign principal'' has the meaning given such term in section 611(b)(1) of FARA, and that is acting in its capacity as an agent of such ''foreign principal;'' (4) an entity designated as a ''foreign mission'' under the Foreign Missions Act; or (5) an entity meeting the definition of a ''U.S.-based foreign media outlet'' pursuant to section 722 of the Communications Act that has filed a report with the Commission. The NPRM also clarifies for foreign government-provided programming the ''reasonable diligence'' required of broadcasters, tentatively concluding that such diligence would include, at a minimum, inquiring of the entity providing the programming whether it qualifies as one of the entities that would trigger the proposed disclosure, as well as independently reviewing the U.S. Department of Justice's (DOJ) FARA database, the Commission's list of U.S.-based foreign media outlets, and any other readily available sources of public government information. The NPRM proposes that stations that air foreign government-provided programming place copies of the disclosures in their on-line public inspection files (OPIFs). The NPRM also proposes that these enhanced sponsorship requirements apply to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Communications Act of 1934.

76. We believe that the American people deserve to know when a foreign government has paid for programming, or furnished it for free, so that viewers and listeners can better evaluate the value and accuracy of such programming. Establishing a requirement to identify foreign government-provided programming to enable the American people to know when a foreign government has paid for programming, or furnished it for free, so that viewers and listeners can better evaluate the value and accuracy of such programming. Broadcast stations are entrusted with using the public airwaves to benefit their local communities and this obligation includes ensuring that any foreign government-provided programming is clearly identified. The proposed rules update our sponsorship identification rules to provide specific guidance on the language and frequency of the necessary disclosures and greater clarity about how to identify foreign governmental entities.

B. Legal Basis

77. The proposed action is authorized under sections 151, 152, 154(i), 154(j), 303(r), 307, 317, 325(c), 403, and 507 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 303(r), 307, 317, 325(c), 403, and 508.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

78. 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 rule revisions, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act (SBA). 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

79. *Television Broadcasting.* This U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. According to the 2012 Economic Census (when the SBA's size standard was set at $38.5 million or less in annual receipts), 751 firms in the small business size category operated in that year. Of that number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999 and 70 had annual receipts of $50 million or more. Based on this data, we estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

80. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1368. Of this total, 1,263 stations (or 92%) had revenues of $41.5 million or less in 2019, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 30, 2020, and therefore these stations qualify as small entities under the SBA definition. In addition, the Commission estimates the number of noncommercial educational television stations to be 390. The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 386 Class A stations. Given the nature of this service, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard.

81. *Radio Broadcasting.* This U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in the establishment's own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. According to Economic Census data for 2012 (when the SBA's size standard was set at $38.5 million or less in annual receipts), 2,849 firms in this category operated in that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Based on this data, we estimate that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

82. The Commission has estimated the number of licensed commercial AM radio stations to be 4,570 and the number of commercial FM radio stations to be 6,706 for a total of 11,276 commercial stations. Of this total, 11,266 stations (or 99%) had revenues of $41.5 million or less in 2019, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 30, 2020, and therefore these stations qualify as small entities under the SBA definition. In addition, there were 4,197 noncommercial, educational (NCE) FM stations. The Commission does not compile and does not have access to information on the revenue of NCE

stations that would permit it to determine how many such stations would qualify as small entities.

83. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

84. The NPRM seeks comment on a proposed requirement that broadcast television and radio stations airing programming either paid for, or provided for free, by a foreign governmental entity disclose, at the time of the broadcast, the name of the foreign governmental entity, the name of the foreign country associated with that governmental entity, and that the programming is paid for, or furnished for free, either in whole or in part, by that foreign governmental entity. Specifically, the NPRM proposes that stations use the following standard disclosure:

''The [following/preceding] programming was paid for, or furnished, either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

85. The NPRM also clarifies for foreign government-provided programming the ''reasonable diligence'' required of broadcasters, tentatively concluding that such diligence would include, at a minimum, inquiring of the entity providing the programming whether it qualifies as the ''government of a foreign country'' under FARA, a ''foreign political party'' under FARA, a registered ''agent of a foreign principal'' under FARA, whose ''foreign principal'' has the meaning given such term in section 611(b)(1) of FARA, a ''foreign mission,'' or a U.S.-based foreign media outlet, as well as independently reviewing the DOJ's FARA database, the Commission's list of U.S.-based foreign media outlets, and any other readily available sources of public government information. The NPRM proposes that stations that air foreign government-provided programming place copies of the disclosures in their OPIFs. The NPRM also proposes that these enhanced sponsorship requirements apply to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to the section 325(c) of the Communications Act of 1934.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

86. 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): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

87. In proposing disclosure requirements for programming provided by foreign governmental entities, the Commission has carefully considered the resources available to television and radio broadcast stations, many of which are small entities. The proposed requirements provide an update to the Commission's existing sponsorship identification rules, which broadcasters have followed for decades, to specifically cover foreign governmental programming. To avoid any possible confusion, the NPRM specifies the wording and timing of the required announcement. The NPRM limits the reporting requirements to placing a single electronic copy of the required announcement in a broadcaster's online public file, which it must maintain pursuant to existing Commission rules. In defining covered programming, the Commission has tied its definition of foreign governmental entities to existing definitions contained in FARA, the Foreign Missions Act and the Communications Act, as amended, so as to minimize the burden on broadcasters to identify what qualifies as a foreign governmental entity. The NPRM specifies the minimal steps that broadcasters using agents or time brokerage agreements must take to satisfy the statutory ''reasonable diligence'' standard. These efforts to narrowly tailor the proposed rule to create the least burden on broadcaster rights to free speech also reduce its burden on small businesses. The NPRM specifically seeks further comment on alternative requirements or other ways the Commission could minimize the impact of its proposed requirements on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

88. The NPRM contains requirements that may overlap with DOJ rules for labelling of broadcast programming provided by an ''agent of a foreign principal,'' as that term is defined in the Foreign Agents Registration Act and the NPRM seeks comment on the possibility.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 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. Amend § 73.1212 by adding paragraphs (j) and (k) to read as follows:

§ 73.1212 Sponsorship identification; list retention; related requirements.

* * * * *

(j) Where the material broadcast consistent with section (a) or (d) above has been provided by a foreign governmental entity, the station, at the time of the broadcast, shall include the following disclaimer:

The [following/preceding] programming was paid for, or furnished, either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].

(1) The term ''foreign governmental entity'' shall include governments of foreign countries, foreign political parties, agents of foreign principals, foreign missions, and United States-based foreign media outlets.

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(e)).

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(f)).

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), whose ''foreign principal'' has the meaning given such term in section 611(b)(1) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)(1));

(iv) The term ''foreign mission'' has the meaning given such term in the Foreign Missions Act (22 U.S.C. 4302).

(v) The term ''United States-based foreign media outlet'' has the meaning given such term in section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(2) In the case of any video programming, the foreign governmental entity and the country represented shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

(3) At a minimum, the required announcement shall be made at both the beginning and conclusion of the programming. For programming of greater than sixty minutes in duration, an announcement shall be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes.

(4) A station shall place a copy of the announcement required by this paragraph (j) in its online public inspection file within twenty-four hours of the material being broadcast. Where an aural announcement was made, its contents will be reduced to writing and placed in the online public inspection file. Where a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall comply with the requirements of paragraph (e) of this section as it relates to material that is a political matter or matter involving the discussion of a controversial issue of public importance.

(k) The requirements in paragraph (j) of this section shall apply to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to the section 325(c) of the Communications Act of 1934 (47 U.S.C. 325(c)).

[FR Doc. 2020–25458 Filed 11–23–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 85, No. 227

Tuesday, November 24, 2020

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TM–20–0090]

Notice of Request for a New Collection To Populate an Agritourism Directory

AGENCY: Agricultural Marketing Service, USDA.

ACTION: New collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval of a new collection, entitled: Agritourism Directory, from the Office of Management and Budget. Upon approval, we request that this collection be merged into OMB 0581–0169, Local Food Directories and Survey, which was approved January 29, 2020.

DATES: Comments on this notice must be received by January 25, 2021 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice. Comments should be submitted online at *www.regulations.gov* or mail to Edward Ragland, Marketing Services Division, Transportation and Marketing Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 1090 South Building, Ag Stop 0269, Washington, DC 20250–0269.

All comments should be identified with the docket number (AMS–TM–20–0090), the date, and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Edward Ragland, Marketing Services Division, Transportation and Marketing Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 1090 South Building, Ag Stop 0269, Washington, DC 20250–0269; Tel. 202–720–8317. Comments should reference Docket No. AMS–TM–20–0090.

SUPPLEMENTARY INFORMATION:

Direct Marketing

Title: Agritourism Directory.

OMB Number: 0581–New.

Expiration Date of Approval: Three years from approval.

Type of Request: New collection for new directory.

Abstract: Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), AMS is responsible for conducting research to enhance market access for small and medium sized farmers. The role of the Marketing Services Division (MSD) of AMS is to facilitate distribution of U.S. agricultural products. The division identifies marketing opportunities, provides analysis to help take advantage of those opportunities and develops and evaluates strategies including methods to diversify farming operations of direct from farm-to-customer enterprises.

Definitions are listed below for the following terms used by AMS for the purposes of the Agritourism Directory: Agritourism directory, a working farm, ranch, aquaculture and agroforestry.

An *agritourism directory* is a list of working farms, ranches, aquaculture and agroforestry operations that provide education and recreation opportunities, active-involvement experiences (*e.g.,* farming activities, processing), as well as retailing and hospitality (*e.g.,* accommodations, dining) facilities and services for the enjoyment of visitors that generate supplemental income, create and grow farm product markets *i.e.,* for local foods, and build understanding of agriculture.

A *working farm, ranch, aquaculture or agroforestry operation* is defined as an area of land and buildings, or water (ponds, lakes, rivers, oceans), including within and around cities, that is currently being utilized to raise and grow domesticated animals, plants, trees, and freshwater and marine fish and shellfish, for food and beverages, including vegetables, fruits, herbs, meats, dairy products, oils, cereals, fish and shellfish, and products for direct sales to customers, and/or immediate consumption or enjoyment of customers, that are grown or processed there (*e.g.,* Christmas trees, pinyon seeds, ginseng, wool, wine, beer, cheeses, nursery plants).

This information will be used to build an agritourism directory describing the characteristics of agritourism operations on working farms.

Topic areas in the survey:

—Characteristics of agritourism business
—contact information
—types of products sold
—location of the business
—operation schedule
—activities

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.167 hours per response.

Respondents: Operators of agritourism enterprises on working farms.

Estimated Number of Respondents: 10,000.

Estimated Total Annual Responses: 200.

Estimated Number of Responses per Respondent: .02.

Estimated Total Annual Burden on Respondents: 33.4 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the following addresses:

• *Mail:* Edward Ragland, Marketing Services Division, Transportation and Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 1090 South Building, Ag Stop 0269, Washington, DC 20250–0269.

• *Internet: www.regulations.gov.*

All written comments should be identified with the docket number

AMS–TM–20–0090. It is our intention to have all comments, whether submitted by mail or internet, available for viewing on the *Regulations.gov* (*www.regulations.gov*) internet site.

The information collected is to be used only by authorized employees of the USDA, AMS.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–25774 Filed 11–23–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 19, 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 24, 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.

Foreign Agricultural Service

Title: Quality Samples Program.

OMB Control Number: 0551–0047.

Summary of Collection: The Quality Samples Program is authorized by Section 5 of the Commodity Credit Corporation Charter Act, 15 U.S.C. 714c (f), which became effective on November 15, 1999. Section 5 provides that in the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to Chapter 91 of Title 31, the Corporation is authorized to use its general powers only to export or cause to be exported, or aid in the development of foreign markets for, agricultural commodities (other than tobacco), including fish and fish products, without regard to whether such fish are harvested in aquacultural operations. By this authority the program pays for U.S. commodity samples and shipping to foreign ports in order to demonstrate the quality of the U.S. product to industrial users who are unfamiliar with the product.

Need and Use of the Information: Under the USDA Quality Samples Program, information will be gathered from applicants desiring to receive grants under the program to determine the viability of request for resources to implement activities in foreign countries. The collected information will be used to develop effective grant agreements and assure that statutory requirements and program objectives are met.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Federal Government.

Number of Respondents: 10.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 1,200.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–25924 Filed 11–23–20; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for a Renewal of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request a revision for a currently approved information collection in support of the CCC Export Credit Guarantee (GSM–102) Program based on current program levels and participants.

DATES: Comments on this notice must be received by January 25, 2021 to be assured consideration.

ADDRESSES: We invite you to submit comments, identified by the OMB Control number 0551–004, as requested in this document. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail, hand delivery, or courier:* Juan McCoy, Director, Credit Programs Division, Global Programs, Foreign Agricultural Service, 1400 Independence Avenue SW, Washington, DC 20250–1025, STOP 1025; or by email at *Juan.McCoy@usda.gov;* or by telephone at (202) 720–0370.

Comments will be available for inspection online and posted without change, including any personal information, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Juan McCoy, Director, Credit Programs Division, Global Programs, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1025, Washington, DC 20250–1025, telephone (202) 720–0370.

SUPPLEMENTARY INFORMATION:

Title: CCC Export Credit Guarantee (GSM–102) Program.

OMB Number: 0551–0004.

Expiration Date of Approval: January 31, 2021.

Type of Request: Revision of a currently approved information collection.

Abstract: The primary objective of the GSM–102 program is to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. The CCC currently has programs operating in at least 144 countries and regions with 167 exporters eligible to participate. Under 7 CFR part 1493, exporters, foreign banks, and U.S. banks are required to submit the following: (1) Information about the exporter, foreign banks, and U.S. banks for program participation; (2) applications for payment guarantees; (3) notices of assignment; (4) repurchase agreements; (5) information regarding the actual export of the commodity (evidence of export report); (6) notice of default and claims for loss; and (7) appeals. In addition, each exporter and exporter's assignee (U.S. financial institution) must maintain records on all information submitted to CCC and in connection with sales made under the GSM–102 program. The information collected is used by CCC to manage, plan, evaluate, and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 0.2776 hours per response.

Respondents: U.S. exporters, U.S. financial institutions, and foreign financial institutions.

Estimated Number of Respondents: 47 per annum.

Estimated Number of Responses per Respondent: 86.52 per annum.

Estimated Total Annual Burden of Respondents: 1,129.52 hours.

Request for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of this information collection can be obtained from Ron Croushorn, the Agency Information Collection Coordinator, at (202) 720–3038 or email at *Ron.Croushorn@usda.gov.*

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Comments will be available for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact Colette Ross (Human Resources, 202–720–8805) or Jeffrey Galloway (Office of Civil Rights, 202–690–1399).

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Daniel Whitley,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2020–25980 Filed 11–23–20; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Revision of Currently Approved Information Collections

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request a revision for currently approved information collections in support of the foreign donation of agricultural commodities under the section 416(b) program, the Food for Progress Program, and the McGovern-Dole International Food for Education and Child Nutrition Program.

DATES: Comments on this notice must be received by January 25, 2021.

ADDRESSES: We invite you to submit comments, identified by the OMB Control number 0051–0035, as requested in this document. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* Shane Danielson, Senior Director, International Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, Washington, DC 20250–1034.
- *Email: Shane.Danielson@USDA.gov.* Include OMB Control Number 0051–0035 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Shane Danielson, Senior Director, International Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, Washington, DC 20250–1034; or by email at *Shane.Danielson@USDA.gov;* or by telephone at (202) 720–1230.

SUPPLEMENTARY INFORMATION:

Title: Foreign Donation of Agricultural Commodities (section 416(b) and Food for Progress programs) and McGovern-Dole International Food for Education and Child Nutrition Program.

OMB Number: 0551–0035.

Expiration Date of Approval: January 31, 2021.

Type of Request: Revision of currently approved information collections.

Abstract: Under the section 416(b) and Food for Progress programs (the ''Foreign Donation Programs'') and the McGovern-Dole International Food for Education and Child Nutrition (''McGovern-Dole'') Program, information will be gathered from applicants desiring to receive federal awards under the programs to determine the viability of requests for resources to implement activities in foreign countries. Recipients of awards under the programs must submit compliance reports and other information until activities carried out with donated commodities or funds, or local currencies generated from the sale of donated commodities, are completed. Recipients that use the services of freight forwarders must submit certifications from the freight forwarders regarding their activities and affiliations. Documents are used to develop effective grant and cooperative agreements for awards under the programs and assure that statutory requirements and objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collections under the Foreign Donation Programs or the McGovern-Dole Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for the Foreign Donation Programs is 45.24 hours per response and for the McGovern-Dole Program is 45.24 hours per response.

Respondents: Private voluntary organizations, cooperatives, colleges and universities, foreign governments, intergovernmental organizations, freight forwarders, ship owners and brokers, and survey companies.

Estimated Number of Respondents: 61 per annum.

Estimated Number of Responses per Respondent: 32 per annum.

Estimated Total Annual Burden of Respondents: 88,308.5 hours.

Request for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of this information collection can be obtained from Ron Croushorn, the Agency Information Collection Coordinator, at (202) 720–3038 or email at *Ron.Croushorn@usda.gov.*

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact Colette Ross (Human Resources, 202–720–8805) or Jeffrey Galloway (Office of Civil Rights, 202–690–1399).

Comments will be posted without change, including any personal information, and available for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Daniel Whitley,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2020–25982 Filed 11–23–20; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice To Request an Extension for a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Foreign Agricultural Service to revise the currently approved information collection for the USDA's Pima Agricultural Cotton Trust Fund.

DATES: Comments on this notice must be received by January 25, 2021 to be assured of consideration.

ADDRESSES: You may send comments, identified by the OMB Control number 0551–0044, by any of the following methods:

☐ *Federal eRulemaking Portal: http://www/regulations.gov.* This portal enables respondents to enter short comments or attach a file containing lengthier comments.

☐ *Email: PODadmin@usda.gov.* Include OMB Control Number 0551–0044 in the subject line of the message.

☐ *Mail, Courier, or Hand Delivery:* Benjamin Chan, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW, Room 6509, Washington, DC 20250.

Instructions: All items submitted by mail or electronic mail must include the agency name. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Benjamin Chan, Grant Programs Branch, Program Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6509, Washington, DC 20250–1034, telephone: (202) 720–9516, email: *pimawool@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pima Agricultural Cotton Trust Fund.

OMB Control Number: 0551–0044.

Expiration Date of Approval: Three years from approval date.

Type of Request: Extension of a currently approved information collection.

Abstract: This information collection is required for affidavits submitted to FAS for claims against the Pima Agricultural Cotton Trust Fund. Claimants of the Pima Agricultural Cotton Trust Fund will be required to submit electronically a notarized affidavit to request a distribution from the Trust Fund to FAS and will be available on the FAS website under the Pima Agriculture Cotton Trust Fund program section.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response for affidavits related to the Pima Agricultural Cotton Trust Fund.

Respondents: Under the Pima Agricultural Cotton Trust Fund there are three groups of potential respondents, all of whom must meet the requirements of Section 12314 of the Agricultural Act of 2014 (Pub. L. 113–79), as amended by the Agriculture Improvement Act of 2018 (Pub. L. 115–334) in order to be eligible to receive a payment: (1) One or more nationally recognized associations established for the promotion of pima cotton for use in textile and apparel goods; (2) Certain yarn spinners of pima cotton that produced ring spun cotton yarns in the United States from pima cotton during the prior calendar year; (3) Manufacturers who cut and sew cotton shirts in the United States who certify that they used imported cotton fabric during the prior calendar year.

Estimated Number of Respondents: 9.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 9.

Estimated Total Annual Burden on Respondents: 9 hours.

Copies of this information collection can be obtained from Ronald Croushorn, the Agency Information Collection Coordinator, at (202) 720–3038 or email at *Ron.Croushorn@usda.gov.*

Request for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Comments will be available for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact Colette Ross (Human Resources, 202–720–8805) or Jeffrey Galloway (Office of Civil Rights, 202–690–1399).

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. Persons with disabilities who require an alternative means for communication of information (*e.g.,* Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Daniel Whitley,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2020–25987 Filed 11–23–20; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills Resource Advisory Committee (RAC) will conduct a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/detail/blackhills/workingtogether/advisorycommittees/?cid=STELPRD3807565.*

DATES: The meeting will be held on Thursday, December 10, 2020, at 5:30 p.m.

All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held via Adobe Connect along with two conference call lines: One line will be for participants, and one line will be for the public for listen only. Detailed instructions on how to attend the meeting virtually will be sent out via email along with a news release approximately one week prior to the meeting.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Mystic Ranger District Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kelly Warnke, RAC Coordinator, by phone at 605–716–1978 or by email at *kelly.warnke@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects for funding under the Secure Rural School allocations to Custer, Lawrence, and Pennington Counties for 2017, 2018 and 2019.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to provide comments with regards to this meeting's agenda and for comments to be included with the meeting minutes/records, comments must be submitted in writing by Friday December 4, 2020. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments must be sent to Kelly Warnke, Mystic Ranger District, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702; by email to *kelly.warnke@usda.gov,* or via facsimile to 605–343–7134.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Dated: November 19, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–25969 Filed 11–23–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Arizona Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Arizona Resource Advisory Committee (RAC) will meet in Tucson, Arizona. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the introductory meeting is to provide the committee with introductions to the Act, FACA, the RAC roles and responsibilities, elect a chair, and discuss the proposal process. Furthermore, to improve collaborative relationships across disciplines and counties and discuss how RAC can provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Secure Rural Schools and Community Self-Determination Act information can be found at the following website: *https://www.fs.usda.gov/working-with-us/states/secure-rural-schools.*

DATES: The meeting will be held on Wednesday, December 9, 2020 from 9:00 a.m. to 11:00 a.m. All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held with vitual attendance only. For virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Supervisor's Office of Coronado National Forest. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Dana Backer, RAC Coordinator, by phone at 520–419–9567 or via email at *dana.backer@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Introductions of new committee;
2. Review SRS Charter October 2019, the SRS Act, FACA and other relevant documents;
3. Discuss the Project Proposal process; and
4. Elect a RAC chair person.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Monday, November 30, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee coordinator before or after the meeting. Written comments and requests for time for oral comments must be sent to Dana Backer, RAC Coordinator, 300 West Congress Street, 6th Floor, Tucson, Arizona 85705; by email to *dana.backer@usda.gov,* or via facsimile to 520–388–8305.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled. **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–25966 Filed 11–23–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Idaho Panhandle Resource Advisory Committee (RAC) will hold a meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information and meeting information can be found at the following website: *https://www.fs.usda.gov/main/ipnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held virtually on Wednesday, December 9, beginning at 9:00 a.m., Pacific Standard Time. Go to the above website for further information on how to attend this virtual meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under *For Further Information Contact.*

ADDRESSES: The meeting will be held virtually. For virtual meeting informaiton, please contact the person listed under *For Further Information Contact.*

Written comments may be submitted as described under *Supplementary Information.* All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Silver Valley Office, Coeur d'Alene River Ranger District, 173 Commerce Dr., Smelterville, Idaho 83868. Please call ahead to facilitate that inspection.

FOR FURTHER INFORMATION CONTACT: Phillip Blundell, RAC Coordinator, by phone at 208–783–2101 or by email at *phillip.blundell@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review and discuss new Title II projects; and
2. Recommend new Title II projects for funding.

This meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, December 4, 2020 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments, requests for time for oral comments or requests for instructions to participate virtually must be sent to Phillip Blundell, RAC Coordinator, Silver Valley Office, Coeur d'Alene River Ranger District, P.O. Box 159, Smelterville, Idaho 83868; by email to *phillip.blundell@usda.gov* or by phone at 208–783–2101.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled *For Further Information Contact.* All reasonable accommodation requests are managed on a case-by-case basis.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–25920 Filed 11–23–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that the Kansas Advisory Committee will hold a public meeting on Friday, December 11, 2020, at 12:00 p.m. Central Time, to discuss civil rights in the state.

ADDRESSES: *Public Call Information:* Dial: 800–353–6461; Conference ID: 4857108.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer (DFO), at *dbarreras@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 4857108. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individual who is deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, John C. Kluczynski Federal Building, 230 S. Dearborn St., Suite 2120, Chicago, IL 60604. They may be faxed to the Commission at (312) 353–8324, or emailed to *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzm9AAA.* Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Opening Remarks
II. Discussion of Project Topics
III. Public Comments
IV. Adjournment

Dated: November 18, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–25887 Filed 11–23–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Nebraska Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) will hold a series of meetings via Webex on Monday, December 14th, Wednesday, December 16th, Thursday, January 7th at 9:00 a.m. Central Time for the purpose of gathering testimony on the Impact of Native American Mascot names in Nebraska.

DATES: The meetings will be held on:

Monday, December 14, 2020, at 9:00 a.m. Central Time (PANEL I)

Register online: https://civilrights.webex.com/civilrights/j.php?MTID=m3a18f1722b0bcf37badc03b39a086a2f.

Join by phone: 800–360–9505, USA Toll Free; Access code: 199 788 6470.

Wednesday, December 16, 2020 at 9:00 a.m. Central Time (PANEL II)

Register online: https://civilrights.webex.com/civilrights/j.php?MTID=med40de2d2a3fbd743337477a20689093.

Join by phone: 800–360–9505 USA Toll Free; Access code: 199 786 9990.

Thursday, January 7, 2021, at 9:00 a.m. Central Time (PANEL III)

Register online: https://civilrights.webex.com/civilrights/j.php?MTID=m88d8fe0769689adfe1b2d43f94de6eb9.

Join by phone: 800–360–9505 USA Toll Free; Access code: 199 680 1018.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Panelists Comments: The Impact of Native American Mascot Names in Nebraska
III. Committee Q & A
IV. Public Comment
V. Adjournment

Dated: November 19, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–25990 Filed 11–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Rated Orders Under the Defense Priories and Allocations System (DPAS)

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 16, 2020 (85 FR 57820) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security, Commerce.

Title: Import, Rated Orders Under the Defense Priorities and Allocations System (DPAS).

OMB Control Number: 0694–0092.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 14,434,650.

Average Hours per Response: 2 to 16 minutes.

Burden Hours: 45,290.

Needs and Uses: This information collection is necessary to support the execution of the President's priorities and allocations authority under the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4501, *et seq.*), and the priorities authorities under the Selective Service Act of 1948 (50 U.S.C. 3801, *et seq.*), as implemented by the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700). The purpose of this authority is to ensure preferential acceptance and performance of contracts and orders supporting national defense and emergency preparedness program requirements.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Defense Production Act of 1950 (DPA).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0694–0092.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–25975 Filed 11–23–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–814]

Certain Carbon Butt-Weld Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to find that Solidbend Fittings & Flanges Sdn. Bhd. (Solidbend) had no shipments of subject merchandise during the period of review (POR) July 1, 2018 through June 30, 2019.

DATES: Applicable November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3251.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2020, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty order on carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from the People's Republic of China (China).[1] We invited parties to submit comments on the *Preliminary Results.* No party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results.*

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these final results until September 21, 2020.[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[3] The deadline for the final results of this review is now November 18, 2020.[4]

Scope of the Order

The merchandise covered by the order consists of certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.,* threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the HTSUS. The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.

Final Determination of No Shipments

As noted in the *Preliminary Results,* we received a statement from Solidbend reporting that it had no shipments of subject merchandise to the United States during the POR and this statement was consistent with the information we received from U.S. Customs and Border Protection.[5] No party commented on our preliminary no shipment finding with respect to Solidbend, and no party submitted record evidence that calls this finding into question. Therefore, for these final results, we continue to find that Solidbend did not have any shipments of subject merchandise to the United States during the POR.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of review within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). However, because the company under review had no reviewable shipments, there are no calculations to disclose.

Assessment Rates

We have not calculated any assessment rates in this administrative review. Based on the record evidence we have determined that Solidbend had no shipments of subject merchandise, and, therefore, pursuant to Commerce's assessment practice, any suspended entries during the POR from Solidbend will be liquidated at the China-wide entity rate (*i.e.,* 182.90 percent).[6]

[1] *See Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Preliminary Determination of No Shipments; 2018–2019,* 85 FR 18556 (April 2, 2020) (*Preliminary Results*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *Id.*

[5] *See Preliminary Results,* 85 FR at 18556.

[6] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Commerce intends to issue assessment instructions 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently-completed segment of this proceeding; (2) for all Chinese manufacturers or exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will continue to be 182.90 percent, the China-wide rate determined in the less-than-fair-value investigation;[7] (3) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the term of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h).

Dated: November 18, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–25950 Filed 11–23–20; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 29702 (July 6, 1992).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–873]

Cold-Rolled Steel Flat Products From Japan: 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 order on cold-rolled steel flat products from Japan for the period July 1, 2019, through June 30, 2020, based on the timely withdrawal of the request for review.

DATES: Applicable November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas E. Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on cold-rolled steel flat products from Japan for the period July 1, 2019, through June 30, 2020.[1] On July 29, 2020, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, "Domestic Interested Parties"), filed a timely request for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2] Pursuant to this request and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the 20 companies named by the Domestic Interested Parties in their request for review.[3] No other requests for review were received. On October 21, 2020, the Domestic Interested Parties timely withdrew their request for an administrative review with respect to all 20 companies.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, Domestic Interested Parties, the only parties to file a request for review, withdrew this request by the 90-day deadline. Accordingly, we are rescinding, in its entirety, the administrative review of the antidumping duty order on cold-rolled steel flat products from Japan covering the period July 1, 2019, through June 30, 2020.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of cold-rolled steel flat products from Japan. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 39531 (July 1, 2020).

[2] *See* Letter from Domestic Interested Parties, "Cold-Rolled Steel Flat Products from Japan: Request for Administrative Review of Antidumping Duty Order," dated July 29, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020).

[4] *See* Letter from Domestic Interested Parties, "Cold-Rolled Steel Flat Products from Japan: Withdrawal of Request for Administrative Review of Antidumping Duty Order," dated October 21, 2020.

this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 19, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–25951 Filed 11–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Renewal of Information Collection; Comment Request; EU–U.S. Privacy Shield; Invitation for Applications for Inclusion on the List of Arbitrators

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 25, 2021.

ADDRESSES: Interested persons are invited to submit written comments by email to Towanda Carey, ITA Paperwork Clearance Officer, Department of Commerce, International Trade Administration at *PRAcomments@doc.gov.* Please reference OMB Control Number 0625–0277 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to David Ritchie, Senior Policy Advisor, Department of Commerce, International Trade Administration via email at *privacyshield@trade.gov,* or tel. 202–482–1512. More information on the arbitration mechanism may be found at *https://www.privacyshield.gov/article?id=ANNEX-I-introduction.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The EU–U.S. Privacy Shield Framework was designed by the U.S. Department of Commerce (the Department) and the European Commission (Commission) to provide companies on both sides of the Atlantic with a mechanism to comply with data protection requirements when transferring personal data from the European Union to the United States in support of transatlantic commerce. On July 12, 2016, the Commission deemed the EU–U.S. Privacy Shield Framework adequate to enable data transfers under EU law, and on August 1, 2016, the Department began accepting self-certifications from U.S. companies to join the program (81 FR 47752; July 22, 2016).

On July 16, 2020, the Court of Justice of the European Union (CJEU) issued a judgment declaring as ''invalid'' the Commission's decision on the adequacy of the protection provided by the EU–U.S. Privacy Shield and as a result the EU–U.S. Privacy Shield Framework is no longer a valid mechanism to comply with EU data protection requirements when transferring personal data from the European Union to the United States. That judgment does not relieve participants in the EU–U.S. Privacy Shield of their obligations under the EU–U.S. Privacy Shield Framework. The Department and the Commission are discussing the potential for an enhanced EU–U.S. Privacy Shield Framework to comply with the July 16, 2020 judgment by the CJEU. The Department continues to administer the Privacy Shield program while those discussions proceed. For more information on the Privacy Shield, visit *https://www.privacyshield.gov/welcome.*

As described in Annex I of the EU–U.S. Privacy Shield Framework, the Department and the Commission committed to implement an arbitration mechanism to provide European individuals with the ability to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Privacy Shield. Organizations voluntarily self-certify to the EU–U.S. Privacy Shield Framework and, upon certification, the commitments the organization has made to comply with the EU–U.S. Privacy Shield Framework become legally enforceable under U.S. law. Organizations that self-certify to the EU–U.S. Privacy Shield Framework commit to binding arbitration of residual claims if a European individual chooses to exercise that option. Under the arbitration option, a Privacy Shield Panel (consisting of one or three arbitrators, as agreed by the parties) has the authority to impose individual-specific, non-monetary equitable relief (such as access, correction, deletion, or return of the European individual's data in question) necessary to remedy the violation of the EU–U.S. Privacy Shield Framework only with respect to the individual. The parties will select the arbitrators from the list of arbitrators described below.

The Department and the Commission seek to maintain a list of at least 20 arbitrators. To be eligible for inclusion on the list, applicants must be admitted to practice law in the United States and have expertise in both U.S. privacy law and EU data protection law. Applicants shall not be subject to any instructions from, or be affiliated with, any Privacy Shield organization, or the U.S., EU, or any EU Member State or any other governmental authority, public authority or enforcement authority.

The Department previously requested and obtained approval of this information collection (OMB Control No. 0625–0277), which expires on 1/31/2021, and now seeks renewal of this information collection. Although the Department is not currently seeking additional applications, it may do so in the future as appropriate.

To be considered for inclusion on the EU–U.S. Privacy Shield List of Arbitrators, eligible individuals will be evaluated on the basis of independence, integrity, and expertise:

Independence

—Freedom from bias and prejudice.

Integrity

—Held in the highest regard by peers for integrity, fairness and good judgment.
—Demonstrates high ethical standards and commitment necessary to be an arbitrator.

Expertise

Required

—Admission to practice law in the United States.
—Level of demonstrated expertise in U.S. privacy law and EU data protection law.

Other Expertise That may Be Considered Includes Any of the Following

—Relevant educational degrees and professional licenses.
—Relevant professional or academic experience or legal practice.
—Relevant training or experience in arbitration or other forms of dispute resolution.

Evaluation of applications for inclusion on the list of arbitrators will be undertaken by the Department and the Commission. Selected applicants will remain on the list for a period of three years, absent exceptional circumstances; change in eligibility, or for cause, renewable for one additional period of three years.

The Department selected the International Centre for Dispute Resolution-American Arbitration Association (ICDR–AAA) as administrator for Privacy Shield arbitrations brought under either the EU–U.S. Privacy Shield Framework or the Swiss–U.S. Privacy Shield Framework. Among other things, the ICDR–AAA facilitates arbitrator fee arrangements, including the collection and timely payment of arbitrator fees and other expenses.

Arbitrators are expected to commit their time and effort when included on the EU–U.S. Privacy Shield List of Arbitrators and to take reasonable steps to minimize the costs or fees of the arbitration.

Arbitrators are subject to a code of conduct consistent with Annex I of the EU–U.S. Privacy Shield Framework and generally accepted ethical standards for arbitrators. The Department and the Commission agreed to adopt an existing, well-established set of U.S. arbitral procedures to govern the arbitral proceedings, subject to considerations identified in Annex I of the EU–U.S. Privacy Shield Framework, including that materials submitted to arbitrators will be treated confidentially and will only be used in connection with the arbitration. For more information, please visit *https://www.privacyshield.gov/article?id=G-Arbitration-Procedures* where you can find information on the arbitration procedures. (Please note that the Arbitration procedures apply to both the EU–U.S. Privacy Shield Framework and the Swiss–U.S. Privacy Shield Framework)

Applications

Applications must be typewritten and should be headed ''Application for Inclusion on the EU–U.S. Privacy Shield List of Arbitrators.'' Applications should include the following information, and each section of the application should be numbered as indicated:

—Name of applicant.
—Address, telephone number, and email address.

1. Independence

—Description of the applicant's affiliations with any Privacy Shield organization, or the U.S., EU, any EU Member State or any other governmental authority, public authority, or enforcement authority.

2. Integrity

—On a separate page, the names, addresses, telephone, and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, and judgment.
—Description of the applicant's willingness and ability to make time commitments necessary to be an arbitrator.

3. Expertise

—Demonstration of admittance to practice law in the United States.
—Relevant academic degrees and professional training and licensing.
—Current employment, including title, description of responsibility, name and address of employer, and name and telephone number of supervisor or other reference.
—Employment history, including the dates and addresses of each prior position and a summary of responsibilities.
—Description of expertise in U.S. privacy law and EU data protection law.
—Description of training or experience in arbitration or other forms of dispute resolution, if applicable.
—A list of publications, testimony, and speeches, if any, concerning U.S. privacy law and EU data protection law, with copies appended.

II. Method of Collection

As stated above, the Department is not currently seeking additional applications, but may do so in the future as appropriate. The Department previously requested and obtained approval of this information collection (OMB Control No. 0625–0277), which expires on 1/31/2021, and now seeks renewal of this information collection. Future applications would be submitted to the Department by email. More information on the arbitration mechanism may be found at *https://www.privacyshield.gov/article?id=ANNEX-I-introduction.*

III. Data

OMB Control Number: 0625–0277.
Form Number(s): None.
Type of Review: Regular submission, revision of a current information collection.
Affected Public: Private individuals.
Estimated Number of Respondents: 40.
Estimated Time per Response: 240 minutes.
Estimated Total Annual Burden Hours: 160.
Estimated Total Annual Cost to Public: $0.
Respondent's Obligation: Required to obtain or retain benefits.
Legal Authority: The Department's statutory authority to foster, promote, and develop international commerce (15 U.S.C. 1512).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–25974 Filed 11–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–829]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No-Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers or exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) subject to this review made sales of subject merchandise at less than normal value during the period of review (POR) July 1, 2018 through June 30, 2019. Additionally, we preliminarily find that one company made no shipments during the POR. We invite all interested parties to comment on these preliminary results.

DATES: Applicable November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Thomas Dunne, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642 or (202) 482–2328, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2017, Commerce published the antidumping duty order on rebar from Turkey.[1] On September 9, 2019, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order,* covering eight companies.[2] On February 20, 2020, Commerce selected Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) and Kaptan Demir Celik Endüstrisi ve Ticaret A.S. (Kaptan Demir) as the mandatory respondents for this review.[3] On March 26, 2020, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), Commerce extended the time limit for issuing the preliminary results of this administrative review to May 29, 2020.[4] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for issuing the preliminary results of this administrative review to July 20, 2020.[5] On July 19, 2020, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce again extended the time limit for issuing the preliminary results of this administrative review to September 18, 2020.[6] On July 21, 2020, Commerce again tolled all deadlines for preliminary and final results in administrative reviews by an additional 60 days.[7] Therefore, the deadline for the preliminary results of this administrative review is now November 17, 2020.

Scope of the Order

The product covered by the *Order* is steel concrete reinforcing bar from Turkey. For a full description of the scope, *see* the Preliminary Decision Memorandum.[8]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

On September 11, 2019, Habas Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.S (Habas) submitted a letter certifying that it had no exports or sales of subject merchandise into the United States during the POR.[9] U.S. Customs and Border Protection (CBP) did not have any information to contradict these claims of no shipments during the POR.[10] Therefore, we preliminarily determine that Habas did not have any shipments of subject merchandise during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Habas but rather will complete the review and issue instructions to CBP based on the final results.[11]

Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to

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[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders,* 82 FR 32532 (July 14, 2017) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47251 (September 9, 2019) (*Initiation Notice*).

[3] *See* Memorandum, ''Respondent Selection for the Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey, 2018–2019,'' dated February 20, 2019. Subsequently, Icdas filed a letter on the record stating that two of the company names listed in the *Initiation Notice*—Icdas Celik Enerji Tersane ve Ulasim and Icdas—are the same company. *See* Icdas' Letter, ''Steel Concrete Reinforcing Bar from the Republic of Turkey; Icdas' Clarification Letter,'' dated February 21, 2020.

[4] *See* Memorandum, ''Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 26, 2020.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[6] *See* Memorandum, ''Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated June 19, 2020.

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[8] *See* Memorandum, ''Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from the Republic of Turkey; 2018–2019'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] *See* Preliminary Decision Memorandum at 5.

[10] *Id.*

[11] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available {time}.''

We calculated a preliminary weighted-average dumping margin of 19.10 percent for Icdas and 11.80 percent for Kaptan Demir the POR. Commerce calculated the rate for the companies not selected for individual examination using a weighted-average of the estimated weighted-average dumping margins calculated for Icdas and Kaptan Demir and each company's publicly-ranged values for the merchandise under consideration.[12]

Preliminary Results of This Review

As a result of this review, we preliminarily determine the following estimated weighted-average dumping margins for the period July 1, 2018 through June 30, 2019:

Producers/exporters	Estimated weighted-average dumping margin (percent)
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S[13]	19.10
Kaptan Demir Celik Endüstrisi ve Ticaret A.S	11.80
Review-Specific Average Rate Applicable to the Following Companies[14]	
Colakoglu Dis Ticaret A.S	17.30
Colakoglu Metalurji A.S	17.30
Diler Dis Ticaret A.S	17.30
Kaptan Metal Dis Ticaret ve Nakliyat A.S	17.30

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Disclosure and Public Comment

Commerce intends to disclose its calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties will have the opportunity to comment on the preliminary results and may submit case briefs no later than 30 days after the publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) A statement of the issue; a brief summary of the argument; and (3) a table of authorities. Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS[16] and must be served on interested parties.[17] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[18]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[19] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[20] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. CBP shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[21] For entries of subject

[12] For a complete analysis of the data, *See* Memorandum, ''Preliminary Results of the Antidumping Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey: Calculation of the Cash Deposit Rate for Non-Reviewed Companies,'' dated November 17, 2020 (Non-Reviewed Companies Memo).

[13] *See supra* n.3. We have determined that the two company names (Icdas Celik Enerji Tersane ve Ulasim and Icdas) refer to the same company, and the rate calculated for Icdas applies to both company names. *See* Preliminary Decision Memorandum at 2.

[14] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See s*ection 735(c)(5)(A) of the Act; *see also* Non-Reviewed Companies Memo.

[15] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[16] *See* 19 CFR 351.303 (for general filing requirements).

[17] *See* 19 CFR 351.303(f).

[18] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[19] *See* 19 CFR 351.310(c).

[20] *See* 19 CFR 351.310(c).

[21] In these preliminary results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[22] Where either the individually-selected respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we intend to assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the *ad valorem* rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.26 percent, the all-others rate established in the investigation.[23]

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

The preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Ac, and 19 CFR 351.221(b)(4).

Dated: November 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Preliminary Determination of No Shipments
VI. Discussion of the Methodology
VII. Recommendation

[FR Doc. 2020–25952 Filed 11–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain producers/exporters subject to this review made sales of stainless steel bar (SS Bar) from India at less than fair value (LTFV) during the period of review (POR) February 1, 2018 through January 31, 2019. Commerce determines that mandatory respondent Venus Wire Industries Pvt. Ltd., and its affiliates Hindustan Inox, Precision Metals and Sieves Manufacturers (India) Pvt. Ltd. (collectively, the Venus Group), made sales at LTFV, while mandatory respondent Ambica Steels Limited (Ambica) did not make sales at LTFV.

DATES: Applicable November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–3477 or (202) 482–2805, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2020, Commerce published the preliminary results of this administrative review.[1] This review covers two producers/exporters of the subject merchandise: Venus Group[2] and Ambica. We invited parties to comment on the *Preliminary Results.*

On April 2, 2020, the petitioners submitted a request for a hearing.[3] On June 16, 2020, we received case briefs from the Venus Group,[4] and Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively, the

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[22] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[23] *See Order,* 82 FR at 32533.

[1] *See Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review; and Rescission of Review in Part; 2018–2019,* 85 FR 12520 (March 3, 2020) (*Preliminary Results*).

[2] Commerce has previously determined that Venus Wire Industries Pvt. Ltd., and its affiliates Hindustan Inox, Precision Metals and Sieves Manufacturers (India) Pvt. Ltd. constitute a single entity. *See Stainless Steel Bar from* India: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Certain Companies in the Antidumping Duty Order, 82 FR 48483 (October 18, 2017), and accompanying Preliminary Decision Memorandum at 3–5, unchanged in *Final Results of Changed Circumstances Review and Reinstatement of Certain Companies in* the Antidumping Duty Order, 83 FR 17529 (April 20, 2018). We have received no information on the record of this review to dispute that finding.

[3] *See* the petitioners' Letter ''Stainless Steel Bar from India—Petitioners' Request for a Hearing,'' dated April 2, 2020.

[4] Commerce rejected the Venus Group's June 16, 2020, case brief because it contained untimely filed new factual information. *See* Commerce's Letter, ''Rejection of Untimely New Factual Information,'' dated June 24, 2020. On June 26, 2020, the Venus Group refiled its case brief. *See* Venus Group's Letter, ''Antidumping Duty Investigation of Stainless Steel Bar from India: Re-Submission of Venus Group Case Brief,'' dated June 26, 2020.

petitioners).[5] On June 30, 2020, we received rebuttal briefs from the petitioners, and from the Venus Group.[6] On August 13, 2020, the petitioners withdrew their request for a hearing.[7] On September 21, 2020, we extended the deadline for the final results.[8]

Commerce conducted this administrative review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is SS bar. SS bar means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. For a complete description of the scope of the Order, *see* the Issues and Decision Memorandum.[9]

Analysis of Comments Received

The issues raised by interested parties in their case and rebuttal briefs have been addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance website at *http://enforcement.trade.gov/frn/.* A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the margin calculation with regard to the Venus Group. For a discussion of these changes, *see* the Issues and Decision Memorandum.[10]

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period February 1, 2018, through January 31, 2019:

Producer/exporter	Weighted-average dumping margin (percent)
Venus Wire Industries Pvt. Ltd., and its affiliates Hindustan Inox, Precision Metals and Sieves Manufacturers (India) Pvt. Ltd	17.24
Ambica Steels Limited	0.00

Disclosure

With respect to the Venus Group, we intend to disclose the calculations performed for these final results to the parties within five days after public announcement of the final results in accordance with 19 CFR 351.224(b).

Assessment Rates

Upon publication of the final results in this administrative review, Commerce shall determine and CBP shall assess antidumping duties on all appropriate entries covered by this POR. We will instruct CBP to apply the *ad valorem* assessment rates listed above to all entries of subject merchandise during the POR which were exported by the companies named above.

For entries of subject merchandise during the POR produced by the Venus Group and Ambica for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of these final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these final results of this review for all shipments of SS Bar from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be the rates established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.45 percent, the all-others rate established in the less-than-fair-value investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

[5] *See* Petitioners' Letter, ''Petitioners' Case Brief Regarding the Venus Group,'' dated June 16, 2020 (Petitioners' Case Brief).

[6] *See* Petitioner's Letter, ''Petitioners' Rebuttal Brief Regarding Venus,'' dated June 30, 2020 (Petitioners' Venus Rebuttal Brief)

[7] *See* Petitioners' Letter, ''Stainless Steel Bar from India—Withdrawal of Hearing Request,'' dated August 13, 2020.

[8] *See* Memorandum, ''Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review; 2018–2019,'' dated September 21, 2020.

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Stainless Steel Bar from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[10] *See also* the Venus Group final calculation memorandum dated concurrently with this notice.

[11] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915, 66921 (December 28, 1994).

disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: November 18, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Application of Facts Available and Adverse Inferences
VI. Discussion of the Issues
1. Whether the Venus Group is the Producer of Subject Merchandise
2. Whether Partial Adverse Facts Available (AFA) is Warranted for the Venus Group
3. Whether Commerce Erroneously Calculated the AFA Adjustment it Intended to Make in Calculating the Venus Group's Dumping Margin
4. Whether Commerce Should Apply Total AFA to the Venus Group
5. Whether Commerce Should Match Sales by Manufacturer
VII. Recommendation

[FR Doc. 2020–25942 Filed 11–23–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) were sold in the United States at less than normal value during the period of review of July 1, 2018 through June 30, 2019.

DATES: Applicable November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Leo Ayala, Elfi Blum, or Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945, (202) 482–0197, or (202) 482–2316, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published the antidumping duty order on CORE from Korea.[1] Commerce initiated this administrative review on September 9, 2019.[2] This review covers eleven companies,[3] of which we collapsed Dongbu Steel Co., Ltd and Dongbu Incheon Steel Co., Ltd. as single entity (*i.e.,* Dongbu) for antidumping purposes, and selected Dongbu, Dongkuk, and Hyundai as mandatory respondents.[4]

On July 31, 2019, Metal One America, Inc., Mitsui & Co. (U.S.A.) Inc., and Stemcor USA Inc. each requested a review of Vietnamese producers and/or exporters: Nippon Steel and Sumikin Sales Vietnam Co. (NSSVC), Hoa Sen Group (HSG), and Ton Dong A Corporation (TDA).[5] On the same day, HSG and TDA requested a review of themselves.[6]

On October 30, 2020, we issued a questionnaire to NSSVC, HSG, and TDA.[7] The current due date for NSSVC, HSG, and TDA to response the questionnaire is November 23, 2020. We will analyze their responses and make a determination after the preliminary results.

On March 23, 2020, we extended the deadline for the preliminary results of this review until July 30, 2020.[8] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[9] Subsequently, on July 21, 2020, Commerce tolled all preliminary and final results in administrative reviews by an additional 60 days.[10] The deadline for the preliminary results of this review is now November 17, 2020. For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[11]

Partial Rescission

On December 6, 2019, the petitioners timely withdrew their review request for 19 companies.[12] As no other party requested a review of those companies, we are rescinding this administrative review with respect to those companies, pursuant to 19 CFR 351.213(d)(1).

Scope of the Order

The merchandise covered by the order is CORE from Korea. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.[13]

Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Constructed export price and export price were calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically

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[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019).

[3] The eleven companies are: Dongbu Steel Co., Ltd, Dongbu Incheon Steel Co., Ltd., Dongkuk Steel Mill Co., Ltd. (Dongkuk), Hyundai Steel Company (Hyundai), POSCO Ltd., POSCO Daewoo Corporation, POSCO International Corporation, POSCO Coated & Color Steel Co., Hoa Sen Group (HSG), Ton Dong A Corporation (TDA), and Nippon Steel and Sumikin Sales Vietnam Co. (NSSVC).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results and Partial Rescission of Antidumping duty Administrative Review: Certain Corrosion-Resistant Steel Products from the Republic of Korea, 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] Preliminary Decision Memorandum.

[6] *Id.*

[7] *Id.*

[8] *See* Memorandum, ''Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 23, 2020.

[9] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[10] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[11] *See* Preliminary Decision Memorandum.

[12] *Id.* These companies are: Ajin H and S Co., Ltd., Anjeon Tech Co., Ltd., Benion Corp., Daeho P C Co., Ltd., GS Global Corp., Hanwa (Korea) Co., Ltd., Hyosung Corporation, Korea CNC Co., Ltd., Kima Steel Corporation Ltd., Kyoungdo Steel Co., Ltd., Mitsubishi Corp. (Korea) Ltd., Roser Co., Ltd., Samsung Corp., Samsung C&T Corp., SeAH Steel, SeAH Coated Metal Corp., Seun Steel, SK Networks Co., Ltd., Young Steel Co., Ltd.

[13] *Id.*

via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, the preliminarily estimated weighted-average dumping margins for Dongbu and Dongkuk are not zero, *de minimis,* or based entirely on facts otherwise available, and for Hyundai is zero. Commerce calculated the rate for non-examined companies using a weighted average of the estimated weighted-average dumping margins calculated for Dongbu and Dongkuk using each company's publicly ranged values for the subject merchandise.[14]

Preliminary Results

We preliminarily determine the following weighted-average dumping margins for the period July 1, 2018 through June 30, 2019:

Exporter/producer	Weighted-average dumping margin (percent)
Dongbu Steel Co., Ltd	0.75
Dongkuk Steel Mill Co., Ltd	0.56
Hyundai Steel Corporation	0.00
Exporter/Producer Not Selected for Individual Review	
POSCO, POSCO Daewoo Corporation and POSCO International Corporation	0.64
POSCO Coated & Color Steel Co., Ltd	0.64

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review and the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported reliable entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.''[15]

For entries of subject merchandise during the POR produced by Dongbu, Dongkuk, Hyundai, POSCO, and POSCO C&C for which the producer did not know its merchandise was destined for the United States, or for any respondent for which we have a final determination of no shipments, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[16]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company

[14] For a complete analysis of the data, please *see* Preliminary Decision Memorandum. Commerce normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly ranged U.S. sale values of the subject merchandise. Commerce then selects from (B) and (C) the rate closest to (A) as the most appropriate rate for non-examined companies. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 8.32 percent, the all-others rate established in the less-than-fair-value investigation.[17] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results, and rebuttal comments (rebuttal briefs), limited to issues raised in case briefs, within seven days after the time limit for filing case briefs.[18] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[19] Case and rebuttal briefs should be filed using ACCESS [20] and must be served on interested parties.[21] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[22] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined.[23] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[24]

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of Administrative Review
V. No Shipments Claims
VI. Companies Not Selected for Individual Examination
VII. Affiliation and Collapsing
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Attachment: Scope of Order

[FR Doc. 2020–25941 Filed 11–23–20; 8:45 am]

BILLING CODE 3510–DS–P

[17] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016), as amended by *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results,* 83 FR 39054 (August 8, 2018).

[18] *See* 19 CFR 351.309(d).

[19] *See* 19 CFR 351.309(c)(2) and (d)(2).

[20] *See generally* 19 CFR 351.303.

[21] *See* 19 CFR 351.303(f).

[22] *See* 19 CFR 351.310(c).

[23] *See* 19 CFR 351.310(d).

[24] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA639]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Service Pier Extension Project on Naval Base Kitsap Bangor, Washington

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

ACTION: Notice; proposed modification of an incidental harassment authorization; request for comments.

SUMMARY: NMFS received a request from the United States Navy (Navy) on October 14, 2020, for a modification to the incidental harassment authorization (IHA) that was issued on July 3, 2019 due to an elevated harbor seal take rate that was unanticipated. A small group of harbor seals (*Phoca vitulina*) repeatedly entered into and remained within the Level A harassment zone, resulting in a take rate that was projected to exceed the authorized limit for this species. The Navy felt that without an increase in authorized take of harbor seal they would be forced to repeatedly shut down whenever animals entered into specified Level A harassment zones, which would impede their ability to get the work done in the time needed. Therefore, NMFS is proposing to modify the IHA to increase authorized take by Level A harassment of harbor seal. NMFS is also proposing to revise the shutdown mitigation provisions for harbor seals in the modified IHA. The monitoring and reporting measures remain the same as prescribed in the initial IHA and no additional take was requested for other species. NMFS will consider public comments on the requested modification prior to making any final decision and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 9, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

History of Request

On June 28, 2018, NMFS published a notice of our issuance of an IHA authorizing take of five species of marine mammals by Level A and Level B harassment incidental to the Service Pier Extension project (83 FR 30406). Species authorized for take included killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), and harbor seal (*Phoca vitulina*). The effective dates of that IHA were July 16, 2019, through July 15, 2020. On February 4, 2019, the Navy informed NMFS that the project was being delayed by one full year. None of the work identified in the initial IHA had occurred and no marine mammals had been taken before the effective date of the initial IHA (July 16, 2019 through July 15, 2020). Therefore, the Navy submitted a formal request for reissuance of the initial IHA with new effective dates of July 16, 2020, through July 15, 2021, and NMFS re-issued the IHA (84 FR 31844; July 3, 2019). The IHA covered construction and demolition work identical to what was analyzed and authorized through the initial IHA.

On October 14, 2020, NMFS received a request from the Navy for a modification to the current IHA due to an elevated harbor seal take rate. The Navy felt that without an increase in authorized take of harbor seal they would be forced to repeatedly shut down whenever animals entered into specified Level A harassment zones. This would likely prolong the duration of in-water construction activities and add increased costs to the project. Therefore, the Navy is requesting and NMFS is proposing to modify the IHA to increase authorized take of harbor seal by Level A harassment. Furthermore, NMFS is proposing revise the shutdown mitigation provisions as part of the modified IHA which would still expire on July 15, 2021. The monitoring and reporting measures remain the same as prescribed in the initial IHA and no additional take is requested or proposed for species other than harbor seal.

Description of the Proposed Activity and Anticipated Impacts

The modified IHA would include the same construction activities (*i.e.,* impact pile driving, vibratory pile driving, vibratory pile removal) in the same locations that were described in the initial IHA. The monitoring and reporting measures remain the same as prescribed in the initial IHA, while revisions to the required mitigation measures have been proposed. NMFS refers the reader to the documents related to the initial IHA issued on June 28, 2018 (83 FR 30406), for more detailed description of the project activities. Other relevant documents include the notice of proposed IHA and request for comments (83 FR 10689; March 12, 2018) and notice of reissued IHA (84 FR 31844, July 3, 2019).

Detailed Description of the Action

A detailed description of the survey activities is found in these previous documents. The location, timing, and nature of the activities, including the types of piles and methods of installation and removal are identical to those described in the previous notices.

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this modified IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHA.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the initial IHA, which remains applicable to the issuance of this modified IHA. With the exception of harbor seal exposures, there is no new information on potential effects.

For harbor seals, observations indicate that a group of eight individuals is regularly present in relatively close proximity to the pile driving operations.

Given this, there is a higher likelihood than initially considered that these animals may incur permanent threshold shift (PTS) at a low-moderate level due to the repeated, longer-duration exposure to higher levels of sound.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of issuance of the IHA for the initial authorization (83 FR 30406; June 28, 2018). The types and sizes of piles, installation methods, and marine mammal stocks taken remain unchanged from the previously initial IHA. The number of authorized takes is also identical with the exception of harbor seal.

The in-water work window (when Endangered Species Act (ESA)-listed salmonids are least likely to be present) runs from July 16, 2020 through January 15, 2021. Pile installation started September 4, 2020 with both vibratory and impact pile drivers being employed. After in-water work commenced, protected species observers (PSOs) began recording a specific group of harbor seals that consistently entered and remained in the Level A harassment zone. (Note that the term PSO has replaced marine mammal observer (MMO) in this notice as well as the draft modified IHA, although the functions and duties of each are identical.) This has resulted in excessive shutdowns. Due to these frequent shutdowns pile installation is behind schedule. PSOs have identified at least eight harbor seals that frequent the project area and have become habituated to the in-water construction work. These seals include four pups and four adults which have all been individually identified. Three of the pups are seen in the project area on almost a daily basis. The pups approach the work site repeatedly during the day and stay in the work area for up to 90 minutes. Two of the pups and all of the adults have had occasional behavioral reactions to pile driving activity. For example, PSOs have recorded seals occasionally exhibiting behaviors such as startled response and fast swimming away from the activity.

NMFS had authorized 125 takes by Level A harassment of harbor seal under the current IHA. As of October 27, 2020, 54 days of in-water work had been completed with the PSOs reporting 87 takes of harbor seal by Level A harassment. With 80 in-water working days remaining between October 28, 2020 and January 15, 2021, the Navy expected, and NMFS concurred, that they would likely exceed authorized take. Note that the number of in-water work days was originally scheduled to be 125 days in the initial IHA. However, due to delays and shutdowns the total estimated number of work days has been updated to 134.

The Navy used NMFS User Spreadsheet to calculate the Level A harassment isopleths associated with project activities. Inputs to the model for the initial IHA are shown in Table 1. This model calculated a 217-m Level A harassment isopleth for phocids (*i.e.* harbor seals) during impact driving of 36-in steel piles. The size of this PTS harassment zone for 36-steel pile impact driving is relatively large compared to PTS zones for both impact and vibratory driving of other pile types and sizes. The large zone size and habituation of a limited number of seals has contributed to a greater phocid take rate than was initially calculated.

TABLE 1—INPUTS FOR DETERMINING DISTANCES TO CUMULATIVE PTS THRESHOLDS

36″ steel impact		
Spreadsheet tab used	E.1) Impact pile driving	
	Initial IHA inputs	Modified IHA
Source Level (Single Strike/shot SEL)	173 dB (assumes 8 dB attenuation) [1].	177 dB (assumes 8 dB attenuation) [2]
Weighting Factor Adjustment (kHz) [3]	Weighting override (Grebner *et al.* 2016).	Weighting override (Grebner *et al.* 2016)
Number of strikes per day	1,600	1,600.
Number of piles per day within 24-h period	2	2.
Propagation (xLogR)	15	25.
Distance of source level measurement (meters)	10	10.

[1] Navy 2015.
[2] Wood *et al.* 2020.
[3] For impact driving, the Transmission Loss model described above incorporated frequency weighting adjustments by applying the auditory weighting function over the entire 1-second SEL spectral data sets. Additional information may be found in the **Federal Register** notice of issuance of a final IHA (83 FR 30420; June 28, 2018).

The Navy conducted sound source verification (SSV) testing in September 2020 and compared the results to values generated by the NMFS User Spreadsheet in the initial IHA. Due to some of assumptions built into the model, the User Spreadsheet generates PTS isopleths that are potentially overestimates. Testing was conducted during impact driving of four 36-in steel piles both with and without bubble curtains and recorded values were inserted into the use spreadsheet. The acoustic data for each pile strike were frequency weighted for phocidae following NMFS guidance (2016) and then averaged. This resulted in an average phocid weighted single strike SEL of 177 dB re 1μPa2s at 10 m. Using the measured transmission loss of 25 (far field) and an assumption of 1,600 strikes per day, the resulting isopleth for phocids was 92 meters (Wood *et al.* 2020)

With NMFS' approval, the Navy retroactively utilized the revised Level A harassment isopleth of 92 m and recalculated the harbor seal take. Distances to each taken animal were recorded as part of the marine mammal monitoring plan. This reduced the total take count by 29, bringing the revised total from 87 to 58 takes. Approximately 33 percent of total takes occurred during impact driving outside the 92 m zone. A reduction in shutdown zone size based on SSV data in combination with a retroactive recalculation of take would allow continuation of in-water construction during the public comment period and while the modified IHA is being finalized if we were to issue it.

While vibratory is the preferred method of installation, impact driving has been needed daily due at the project site, largely due to sediment conditions. Additionally, there is a 30-m shut down zone (26 m-injury zone) during vibratory driving. The PSOs report that three habituated individuals frequently approach in close proximity to the piles within the 30-m shutdown zone during vibratory driving. Given these factors, additional takes would still be needed, even if the Level A harassment isopleth during impact driving is reduced from 217 m to 92 m.

PSOs report that up to eight animals frequent the project site and are believed to be habituated by varying degrees to in-water construction activities. Some of them regularly enter and remain within Level A harassment and shutdown zones. Three of these individuals already noted above appear daily in the Level A harassment zone, while the remainder of the group of eight are observed less frequently (every other or every third day). All eight seals have been observed in the previous Level A harassment zone on some occasions, with an average of five to six seen on each day. However, we also note that the area ensonified above the Level A harassment threshold has been reduced by approximately 33 percent. The Navy requested that NMFS authorize an additional four takes by Level A harassment per day. This would allow for one take per day by Level A harassment for each of the three daily visitors (three takes per day), as well as one additional Level A harassment take per day that could be incurred by any of the other five individuals if one of them entered the shutdown zone each day prior to detection, or if a few of them entered every few days. Based on the information provided, NMFS estimates an average of four harbor seal takes per day by Level A harassment would occur.

Based upon pile installation rates achieved to date, all of the days remaining within the in-water work window (80) will be needed to complete this segment of the project before the current work window closes. NMFS is proposing to increase authorized takes of harbor seal by Level A harassment by 320 (4 takes/day * 80 days) between now and January 15 in addition to the initial 125 takes, for a total of 445, most of which will occur to a smaller number of habituated individuals.

The total numbers of incidental takes by Level A and Level B harassment, including proposed updated harbor seal Level A harassment and as a percentage of population, is shown in Table 2 below. The total number of takes (Level A and Level B harassment combined) has not changed because the new Level A takes are assumed to occur to animals that would have previously been counted as taken by Level B harassment. Therefore, NMFS is proposing to reduce authorized Level B harassment take of harbor seal from 5,600 to 5,280.

TABLE 2—TOTAL NUMBERS OF AUTHORIZED TAKES BY LEVEL A AND LEVEL B HARASSMENT AND AS A PERCENTAGE OF POPULATION

Species	Authorized take		Percent population
	Level A	Level B	
Killer whale	0	48	19.7
Harbor porpoise	0	2,728	24.3
Steller sea lion	0	503	1.2
California sea lion	0	7,816	2.6
Harbor seal	445	5,280	n/a

Since the total number of combined takes by Level A and Level B harassment remains unchanged (5,725) from the number authorized in the existing IHA, the rationale supporting our small numbers determination for the Hood Canal stock of harbor seal is applicable here and remains valid.

Description of Mitigation, Monitoring and Reporting Measures

With the exception of the revised shutdown provisions for harbor seals discussed below, the monitoring, and reporting measures described here are identical to those included in the **Federal Register** notice announcing the initial IHA (83 FR 30406; June 28, 2018).

Use of Vibratory Installation—The Navy will employ vibratory installation to the greatest extent possible when driving steel piles to minimize high sound pressure levels associated with impact pile driving. Impact driving of steel piles will only occur when required by geotechnical conditions or to proof load-bearing piles driven by vibratory methods.

Timing Restrictions—To minimize the number of fish exposed to underwater noise and other construction disturbance, in-water work will occur during the in-water work window previously described when ESA-listed salmonids are least likely to be present (USACE, 2015), July 16–January 15.

All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to September 15, when impact pile driving will only occur starting 2 hours after sunrise and ending 2 hours before sunset, to protect foraging marbled murrelets during the nesting season (April 15–September 23).

Use of Bubble Curtain—A bubble curtain will be employed during impact installation or proofing of steel piles where water depths are greater than 0.67 m (2 ft). A noise attenuation device is not required during vibratory pile driving. If a bubble curtain or similar measure is used, it will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure must provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.

A performance test of the bubble curtain shall be conducted prior to initial use for impact pile driving. The performance test shall confirm the calculated pressures and flow rates at each manifold ring. The contractor shall also train personnel in the proper balancing of air flow to the bubblers. The contractor shall submit an inspection/performance report to the Navy for approval within 72 hours following the performance test. Corrections to the noise attenuation device to meet the performance stands shall occur prior to use for impact driving.

Soft-Start—During impact driving the Navy is required to initiate sound from the hammer at reduced energy followed by a 30 second waiting period, then two subsequent reduced energy strike sets.

A soft-start procedure will be used for impact pile driving at the beginning of each day's in-water pile driving or any time impact pile driving has ceased for more than 30 minutes.

Establishment of Shutdown Zones and Disturbance Zones—For all impact and vibratory pile driving of piles, shutdown and disturbance zones will be established and monitored. All shutdown and disturbance zones remain the same as those included in the initial IHA, except for the shutdown zone for harbor seals during impact driving of steel piles for which the modifications are described below. The Navy will focus observations within 1,000 m for all species during these activities but will record all observations. During impact driving of concrete piles the Navy will focus on monitoring within 100 m but will record all observations. The Navy will monitor and record marine mammal observations within zones and extrapolate these values across the entirety of the Level B zone as part of the final monitoring report. To the extent possible, the Navy will record and report on any marine mammal occurrences, including behavioral disturbances, beyond 1,000 m for steel pile installation and 100 m for concrete pile installation.

The shutdown zones are based on the distances from the source predicted for each threshold level. Although different functional hearing groups of cetaceans and pinnipeds were evaluated, the threshold levels used to develop the disturbance zones were selected to be conservative for cetaceans (and therefore at the lowest levels); as such, the disturbance zones for cetaceans were based on the high frequency threshold (harbor porpoise). The shutdown zones are based on the maximum calculated Level A harassment radius for pinnipeds and cetaceans during installation of 36-inch steel and concrete piles with impact techniques, as well as during vibratory pile installation and removal. These actions serve to protect marine mammals, allow for practical implementation of the Navy's marine mammal monitoring plan and reduce the risk of a take. The shutdown zone during any non-pile driving activity will always be a minimum of 10 m (33 ft) to prevent injury from physical interaction of marine mammals with construction equipment.

During impact pile driving of steel piles, the shutdown, Level A, and Level B zones as shown in Table 3 will be monitored out to the greatest extent possible with a focus on monitoring within 1,000 m for steel pile and 100 m for concrete pile installation.

The Navy's IHA allows for the modification of shutdown zones if hydroacoustic monitoring is conducted. The Navy conducted a SSV test since the initial IHA was issued and it indicates that the Level A harassment isopleth for harbor seals occurs at 92 m instead of 217 m. Therefore, at the Navy's request and with concurrence from NMFS, the shutdown zone has been reduced from 220 m to 95 m during impact driving of all steel piles (*i.e.,* both 36-in and 24-in steel piles). This is the only change to Level A or Level B harassment zone size proposed as part of this modified IHA.

TABLE 3—SHUTDOWN, LEVEL A, AND LEVEL B HARASSMENT ISOPLETHS DURING IMPACT DRIVING OF STEEL PILES

Marine mammal group	Level B isopleth	Level A isopleth	Shutdown zone
Cetaceans	541 meters	740 meters	750 meters.
Harbor Seal	541 meters	92 meters	95 meters.
Sea Lions	541 meters	12 meters	15 meters.

The shutdown, Level A, and Level B isopleths for all other impact driving remains unchanged from the notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018).

The reduced size of the shutdown zone for harbor seals along with the increase in authorized take by Level A harassment should preclude the Navy from exceeding its authorized take limit for this species. However, even with a 95-m shutdown zone during impact driving and a 30-m shutdown zone during vibratory driving, it is highly likely that the Navy will continue to experience frequent work stoppages due to frequent visits by habituated harbor seals. This will result in continued schedule delays and cost overruns and may potentially require an extra year of in-water construction activities. Given this information, it is not practicable for the Navy to shut down or delay pile driving activities every time a harbor seal is observed in a shutdown zone.

Therefore, shutdowns will be initiated for harbor seals when observed approaching or entering the Level A harassment zones as described above, except when one or more of the three habituated harbor seals identified as daily visitors approaches or enters an established shutdown zone. In such cases, a single take by Level A harassment shall be recorded for each individual seal for the entire day and operations will be allowed to continue without interruption. The behavior of these three daily visitors will be monitored and recorded as well as the duration of time spent within the harassment zones. This information will be recorded individually for each of the three seals. If any other seals, including the five habituated seals identified as frequent visitors, approaches or enters into a Level A harassment zone, shutdown must occur.

The minimum shutdown zone during any pile driving activity will always be a minimum of 10 m (33 ft). Shutdown is mandatory whenever an animal is within 10 m of pile driving location regardless of the exception noted above. In such instances, in-water pile driving operations may only continue after 15 minutes have passed or the animal is seen heading away from the 10-m shutdown zone.

The revisions in the mitigation, including the shutdown exception for habituated harbor seals, are necessary to allow for the practicable completion of the Navy's specified activities. Although the predicted Level A harassment take numbers are higher than initially projected because of the behavior of the eight habituated animals, the likelihood of Level A take of other individuals is lower than initially expected because the Level A harassment zone is smaller than initially predicted based on the new SSV. NMFS has considered the revised mitigation measures for harbor seals and determined that they will effect the least practicable adverse impact on harbor seals and their habitat. Nothing has changed since the initial IHA for other species or stocks and our analysis and conclusions remain the same.

Visual Monitoring—Monitoring must be conducted by qualified protected PSOs with minimum qualifications described in the **Federal Register** notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018). During pile driving, there will be three-five PSOs working depending on the location, site accessibility and line of sight for adequate coverage.

Reporting—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018). Within 90 days after completion of pile driving and removal activities, the Navy must provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that: (1) The specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality; (2) an injured or dead animal is discovered and cause of death is known; or (3) an injured or dead animal is discovered and cause of death is not related to the authorized activities, the Navy will follow the protocols described in the Section 3 of Marine Mammal Monitoring Report (Appendix D of the application).

Based on our evaluation of the applicant's measures in consideration of the increased estimated take for harbor seals, as well as the modified shutdown provisions for harbor seals, NMFS has re-affirmed the determination that the required mitigation measures provide the means effecting the least practicable impact on harbor seals and their habitat.

Preliminary Determinations

With the exception of the revised harbor seal shutdown provisions, the Navy's in-water construction activities as well as monitoring and reporting requirements are unchanged from those in the initial IHA. The effects of the activity on the affected species and stocks, taking into consideration the modified mitigation and related monitoring measures, remain unchanged, notwithstanding the increase to the authorized amount of harbor seal take by Level A harassment. The nature of the pile driving project precludes the likelihood of serious injury or mortality. While injury could occur in a small group of habituated animals (eight or fewer), it would likely be limited to PTS at lower frequencies where pile driving energy is concentrated, and unlikely to result in significant impacts to individual fitness, reproduction, or survival of these individuals whose best hearing is in a higher frequency range.

With approximately 80 in-water construction days remaining, NMFS is proposing to increase authorized harbor seal take by Level A harassment to 445. Even in consideration of the increased numbers of take by Level A harassment, the impacts of these exposures, as noted above, may result in moderate injury to a limited number of harbor seals but are not expected to accrue to the degree that the fitness of any individuals is markedly impacted. Further, given the small number of individuals potentially impacted in this manner, no impacts on annual rates of recruitment or survival are likely to result.

Separately, as described previously, the increase in Level A harassment take corresponds to a commensurate decrease in the predicted number of Level B harassment and the total number of takes remains unchanged. Therefore, we re-affirm that small numbers of harbor seals will be taken relative to the population size of the Hood Canal stock of harbor seal.

In conclusion, there is no new information suggesting that our negligible impact analysis or finding for harbor seals should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily reaffirmed the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) small numbers of marine mammals will be taken relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes, as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the modification of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the modified IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Proposed Authorization

NMFS proposes to modify the IHA to the Navy for in-water construction associated with the SPE project on Naval Base Kitsap Bangor, Washington effective until July 15, 2021. The only change is an increase in the authorized take of harbor seal take by Level A harassment from 125 to 445. A draft of the proposed modified IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our proposed modification of the IHA for the Navy's in-water construction activities associated with the SPE project. We also request comment on the potential for renewal of this modified IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization or subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: November 19, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–25953 Filed 11–23–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0082, Whistleblower Provision

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the extension of a proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''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. This notice solicits comments on the reporting requirements related to the Whistleblower Provision.

DATES: Comments must be submitted on or before January 25, 2021.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0082 by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov.* Follow the instructions for submitting comments through the website.
- *Mail:* 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 *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Ehrman, Director, Whistleblower Office, Commodity Futures Trading Commission, (202) 418–7650; email: *cehrman@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 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, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Title: The Whistleblower Provision of Section 23 of the Commodity Exchange Act, OMB Control Number 3038–0082. This is a request for extension of a currently approved information collection.

Abstract: 17 CFR 165.3(a) requires the submission of information to the Commission on a Form TCR. The Form TCR, ''Tip, Complaint, or Referral,'' and the instructions thereto, are designed to capture basic identifying information about a complainant and elicit sufficient information to determine whether the conduct alleged suggests a violation of the Commodity Exchange Act. 17 CFR 165.7(b)(1) requires the submission of information to the Commission on a Form WB–APP. The Form WB–APP, ''Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act,'' and the instructions thereto, are designed to elicit sufficient information to determine whether and to what extent a claimant qualifies for a whistleblower award.

You should submit only information that you wish to make available publicly. If you wish the Commission 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 § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://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 Information Collection Request 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.

[1] 17 CFR 145.9.

Burden Statement: The respondent burden for this collection is estimated to be 0.5 hours per response.

- *Respondents/Affected Entities:* Individuals.
- *Estimated number of respondents:* 900 per year.
- *Estimated total annual burden on respondents:* 450 hours.
- *Frequency of collection:* Once.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: November 18, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–25911 Filed 11–23–20; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0056]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Safety Standard for Bicycle Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) announces that the CPSC has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the CPSC's Safety Standard for Bicycle Helmets (OMB No. 3041–0127). OMB's most recent extension of approval will expire on December 31, 2020. On September 14, 2020, the CPSC published a notice in the **Federal Register** to announce the agency's intent to seek an extension of approval of this collection of information. CPSC received no substantive comments in response to that notice. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information, without change.

DATES: Submit written or electronic comments on the collection of information by December 24, 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. In addition, written comments that are sent to OMB also should be submitted electronically at: *http://www.regulations.gov,* under Docket No. CPSC–2010–0056.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7791, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On September 14, 2020, CPSC published a notice in the **Federal Register** to announce the agency's intention to seek extension of approval of the collection of information. (85 FR 56590). The Commission received no substantive comments. Accordingly, CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Bicycle Helmets.

OMB Number: 3041–0127.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of bicycle helmets.

Estimated Number of Respondents: 38 manufacturers and importers will maintain test records of an estimated 200 models total, annually, including older models and new models. Bicycle helmets must be tested for each new production lot, and the test records must be maintained for 3 years.

Estimated Time per Response: 200 hours/model to test 40 new models (including new prototypes) and an estimated 100 hours/model to test new production lots of 160 older models. Additionally, manufacturers and importers may require 4 hours annually per model for recordkeeping for approximately 200 models.

Total Estimated Annual Burden: 24,800 hours (24,000 hours for testing and 800 hours for recordkeeping).

General Description of Collection: In 1998, the Commission issued a safety standard for bicycle helmets (16 CFR part 1203). The standard includes requirements for labeling and instructions. The standard also requires that manufacturers and importers of bicycle helmets subject to the standard issue certificates of compliance. Every person issuing certificates of compliance must maintain certain records. Respondents must comply with the requirements in 16 CFR part 1203 for labeling and instructions, testing, certification, and recordkeeping.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–25949 Filed 11–23–20; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Performance Measurement in AmeriCorps: Surveys of Members, Former Members, and Organizations

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, CNCS is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 25, 2021.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Attention Dr. Andrea Robles, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Robles, 202–510–6292, or by email at *arobles@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Performance Measurement in AmeriCorps: Surveys of Members, Former Members, and Organizations.

OMB Control Number: 3045–0094.

Type of Review: Renewal.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 80,000.

Total Estimated Number of Annual Burden Hours: 20,000 hours.

Abstract: All members in the three AmeriCorps programs—AmeriCorps State & National, VISTA, and the National Civilian Community Corps (NCCC)—are invited to complete a questionnaire upon completing their service term. The questionnaire asks members about their motivations for joining AmeriCorps, experiences while serving, and future plans and aspirations. Completion of the questionnaire is not required to successfully exit AmeriCorps, or to receive any stipends, educational awards, or other benefits of service. The purpose of the information collection is to learn more about the member experience and member perceptions of their AmeriCorps experience in order to improve the program. Members complete the questionnaire electronically through the AmeriCorps Member Portal. Members are invited to respond as their exit date nears and are allowed to respond for an indefinite period following the original invitation. CNCS seeks to renew the current information collection. The questionnaire submitted for clearance is unchanged from the previously cleared questionnaire. CNCS also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on 3/31/2021.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Dated: November 18, 2020.

Mary Hyde,

Director, Office of Research and Evaluation.

[FR Doc. 2020–25919 Filed 11–23–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force, U.S. Air Force Scientific Advisory Board, DOD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the U.S. Air Force Scientific Advisory Board will take place.

DATES: Closed to the public. 11 January 2021 from 10:00 a.m. to 11:10 a.m. Eastern Standard Time.

ADDRESSES: The meeting will be held by virtual means from multiple secure locations across the United States, connected through secure virtual communications systems to include at the Pentagon, Los Angeles AFB, RAND Corporation, Kirtland AFB, Hill AFB, and MIT/LL.

FOR FURTHER INFORMATION CONTACT: Lt Col Elizabeth Sorrells, (240) 470–4566 (Voice), *elizabeth.sorrells@us.af.mil* (Email). Mailing address is 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762. Website: *https://www.scientificadvisoryboard.af.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of this Air Force Scientific Advisory Board meeting is for the Parent Board to receive the FY21 Air Force Research Laboratory Science and Technology Portfolio Review Integrated Outbrief.

Agenda: [All times are Eastern Standard Time] 10 a.m.–10:05 a.m. Welcome Remarks 10:05 a.m.–11:05 a.m. FY21 Air Force Research Laboratory Science and Technology Portfolio Review Integrated Outbrief and Deliberations 11:05 a.m.–11:10 a.m. Vote and Closing Remarks. In accordance with section 10(d) of the Federal Advisory Committee Act, as amended, 5 U.S.C. Appendix and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires the United States Air Force Scientific Advisory Board meeting be closed to the public because it will involve discussions involving classified matters covered by 5 U.S.C. 552b(c)(1).

Written Statements: Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed above at any time. The Designated Federal Officer will review all submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board. Written statements received after the meeting that are the subject of this notice may not be considered by the Scientific Advisory Board until the next scheduled meeting.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–25914 Filed 11–23–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Air Force Scientific Advisory Board, Department of the Air Force, DoD.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Air Force Scientific Advisory Board will take place.

DATES: Closed to the public. 17 December 2020 from 2:30 p.m. to 3:40 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held by virtual means from multiple secure locations across the United States, connected through secure virtual communications systems to include at the Pentagon, Los Angeles AFB, Hill AFB, and MIT/LL.

FOR FURTHER INFORMATION CONTACT: Lt Col Elizabeth Sorrells, (240) 470–4566 (Voice), *elizabeth.sorrells@us.af.mil* (Email). Mailing address is 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762. Website: *https://www.scientificadvisoryboard.af.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of this Air Force Scientific Advisory Board meeting is for the Parent Board to receive the FY20 SecAF-directed study outbrief for the Innovative Space Applications study.

Agenda: [All times are Eastern Standard Time] 2:30 p.m.–2:35 p.m. Welcome Remarks 2:35 p.m.–3:35 p.m. Innovative Space Applications Outbrief and Deliberations 3:35p.m.–3:40p.m. Vote and Closing Remarks. In accordance with section 10(d) of the Federal Advisory Committee Act, as amended, 5 U.S.C. Appendix and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires the United States Air Force Scientific Advisory Board meeting be closed to the public because it will involve discussions involving classified matters covered by 5 U.S.C. 552b(c)(1).

Written Statements: Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed above at any time. The Designated Federal Officer will review all submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board. Written statements received after the meeting that are the subject of this notice may not be considered by the Scientific Advisory Board until the next scheduled meeting.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–25913 Filed 11–23–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Notice of board membership.

SUMMARY: This notice announces the appointment of the DoD, Fourth Estate, Performance Review Board (PRB) members, to include the Office of the Secretary of Defense, Joint Staff, Defense Field Activities, U.S. Court of Appeals for the Armed Forces, and the following Defense Agencies: Defense Advanced Research Projects Agency, Defense Commissary Agency, Defense Contract Audit Agency, Defense Contract Management Agency, Defense Finance and Accounting Service, Defense Health Agency, Defense Information Systems Agency, Defense Legal Services Agency, Defense Logistics Agency, Defense Prisoners of War/Missing in Action Accounting Agency, Defense Security Cooperation Agency, Defense Threat Reduction Agency, Missile Defense Agency, and Pentagon Force Protection Agency. The PRB shall provide fair and impartial review of Senior Executive Service and Senior Professional performance appraisals and make recommendations regarding performance ratings and performance awards to the Deputy Secretary of Defense.

DATES: The board membership is applicable beginning on October 9, 2020.

FOR FURTHER INFORMATION CONTACT: Laura E. Devlin Dominguez, Assistant Director for Office of the Secretary of Defense Senior Executive Management Office, Office of the Deputy Chief Management Officer, Department of Defense, (703) 693–8373.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB with specific PRB panel assignments being made from this group. Executives listed will serve a one-year renewable term, beginning October 9, 2020.

Office of the Secretary of Defense

Appointing Authority—David L. Norquist, Deputy Secretary of Defense
Principal Executive Representative—Thomas M. Muir
Chairperson—Jeffrey R. Register

PRB Panel Members

ASHWORTH, GARY A
ATKINSON, MICHELLE CRESSWELL
BAGNATI, DAVID P
BAKER, JAMES H
BENNETT, DAVID B
BLANKS, JULIE A
BOOTH, SR, WILLIAM H
BOUTELLE, JR, OWEN C
CONDON, CHRISTINE M
DAVIS, JR, RICHARD D
GLENN, DOUGLAS A
GUMAHAD, II, ARSENIO T
HENRY, THOMAS M
HIGGINS, MAUREEN B
HINTON, VERONICA E
HIZON, MICHELE H
HOBSON, SANDRA
KLESS, DAVID R
KOFFSKY, PAUL S
KOMAROFF, MITCHELL
LAYCHAK, MICHAEL R
LUDOVICI, JOSEPH D
MARTIN, JASON G
MAYS, WILLIAM D

METZ, DANIELLE A
MILLER, BRUCE B
MULVIHILL, KEVIN M
O'DONNELL, CHRISTOPHER C
PAMULAPATI, JAGADEESH
ROBERTS, ADARRYL M
SALESSES, ROBERT G
SCHLEIEN, STEVEN L
SWAN, LISA K
TINSLEY, ROSALIE WOODDELL
WALSH, DANIEL P
WARK, LAWRENCE J

Dated: November 19, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–25994 Filed 11–23–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Reserve Forces Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

DATES: The RFPB will hold an open to the public meeting on Wednesday, December 9, 2020 from 8:30 a.m. to 12:55 p.m.

ADDRESSES: The RFPB meeting will be online using Microsoft Teams CVR and Teleconference line. To participate in the meeting, see the Meeting Accessibility paragraph in the **SUPPLEMENTARY INFORMATION** section for instructions.

FOR FURTHER INFORMATION CONTACT: Alexander Sabol, (703) 681–0577 (Voice), 703–681–0002 (Facsimile), *Alexander.J.Sabol.Civ@Mail.Mil* (Email). Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Website: *http://rfpb.defense.gov/*. The most up-to-date changes to the meeting agenda can be found on the website and the **Federal Register**.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to obtain, review, and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components (RC).

Agenda: The RFPB will hold an open online meeting to the public on Wednesday, December 9, 2020 from 8:30 a.m. to 12:55 p.m. The meeting will consist of remarks to the RFPB from the following invited speakers: the Under Secretary of Defense for Personnel and Readiness will discuss the Under Secretary of Defense for Personnel and Readiness' updates on RC's personnel system reforms; the Chief of the Air Force Reserve will discuss the priorities and views regarding the Air Force Reserve readiness goals and challenges for the ''Operational Reserve'' as part of the Total Force; the Commander; the Marine Forces Reserve and Marine Forces North will discuss the priorities and pending changes within the Marine Corps Reserve and their readiness goals and challenges for the ''Operational Reserve'' as part of the Total Force; the Deputy Assistant of Defense for Military Personnel Policy will brief the status of the Fully Burdened Life Cycle Cost of Manpower Report progress; the RFPB Senior Enlisted Advisor will brief major issues impacting the Total Force as seen by the Reserve Component Senior Enlisted Advisors; and the Subcommittee on Supporting and Sustaining Reserve Component Personnel and the Subcommittee on Ensuring a Ready, Capable, Available, and Sustainable Operational Reserve will provide an update to the RFPB on the subcommittees' review and proposed recommendation to the Secretary of Defense concerning the Department's Reserve Personnel's system and Total Force requirements.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open online and teleconference to the public from 8:30 a.m. to 12:55 p.m. Persons desiring to participate in the meeting online or by phone are required to submit their contact information: name, organization, email and telephone to COL Robert D'Alto at *robert.r.dalto.mil@mail.mil* not later than Friday, December 4, 2020. Specific instructions, both for online or teleconference participation in the meeting, will be provided by reply email. The meeting agenda will be available prior to the meeting on the Board's website at: *http://rfpb.defense.gov/.*

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit written statements to the RFPB at any time about its approved agenda or the RFPB's mission. Written statements should be submitted to the RFPB's Designated Federal Officer (DFO) at the address, email, or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The DFO will review all timely submitted written statements and provide copies to all the RFPB members before the meeting that is the subject of this notice. Please note that since the RFPB operates in accordance with the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's website.

Dated: November 18, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–25869 Filed 11–23–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel will take place.

DATES: Open to the public Thursday, December 17, 2020, from 1:00 p.m. to 3:00 p.m. (Eastern Daylight Time).

ADDRESSES: The address of the open meeting will be online. The phone number for the remote access is: CONUS: 888–469–2037; OCONUS: 1–517–308–9287; PARTICIPANT CODE: 8227323. These numbers and the dial-in instructions will also be posted on the Uniform Formulary Beneficiary Advisory Panel website at: *https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/Operations/*

Pharmacy-Division/Beneficiary-Advisory-Panel.

FOR FURTHER INFORMATION CONTACT: Colonel Paul J. Hoerner, USAF, 703–681–2890 (Voice), *dha.ncr.j-6.mbx.baprequests@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Website: *https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/Operations/Pharmacy-Division/Beneficiary-Advisory-Panel.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

The Panel will review and comment on recommendations made to the Director, Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Purpose of the Meeting: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel will take place.

Agenda:

1. Sign-In
2. Welcome and Opening Remarks
3. Scheduled Therapeutic Drug Class Reviews
   a. ADHD Agents—Stimulants
   b. Respiratory Interleukins—NA
4. Newly Approved Drugs Review
5. Pertinent Utilization Management Issues
6. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165, and the subject to availability of phone lines, this meeting open to the public. Seating is limited and will be provided only to the first 220 people dialing in. There will be 220 line total: 200 domestic and 20 international, including leader lines.

Written Statements: Pursuant to 41 CFR 102–3.10, and section 10(a)(3) of FACA, interested persons or organizations may submit written statements to the Uniform Formulary Beneficiary Advisory Panel about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the Uniform Formulary Beneficiary Advisory Panel's Designated Federal Officer (DFO). The DFO's contact information can be found in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written comments or statements must be received by the Uniform Formulary Beneficiary Advisory Panel's DFO at least four (4) calendar days prior to the meeting so they may be made available to the Uniform Formulary Beneficiary Advisory Panel for its consideration prior to the meeting. The DFO will review all submitted written statements and provide copies to all Uniform Formulary Beneficiary Advisory Panel members.

Dated: November 18, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–25878 Filed 11–23–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0115]

Measures and Methods for the National Reporting System for Adult Education; Correction

AGENCY: Office of Career, Technical and Adult Education (OCTAE), Department of Education (ED).

ACTION: Correction Notice.

SUMMARY: The PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: On November 19, 2020, the U.S. Department of Education published a 30-day comment period notice in the **Federal Register** with FR DOC# 2020–25550 (Page 73696, Column 1, Column 2) seeking public comment for an information collection entitled, ''Measures and Methods for the National Reporting System for Adult Education''. The docket number is incorrect. The correct docket number is ED–2020–SCC–0117.

Dated: November 19, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–25934 Filed 11–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0178]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Progress in International Reading Literacy Study (PIRLS 2021) Main Study Data Collection

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 change to a currently existing information collection.

DATES: Interested persons are invited to submit comments on or before December 24, 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 Carrie Clarady, 202–245–6347.

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: Progress in International Reading Literacy Study (PIRLS 2021) Main Study Data Collection.

OMB Control Number: 1850–0645.

Type of Review: A change to a currently existing information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 31,490.

Total Estimated Number of Annual Burden Hours: 10,947.

Abstract: The Progress in International Reading Literacy Study (PIRLS) is an international assessment of fourth-grade students' achievement in reading. PIRLS reports on four benchmarks in reading achievement at grade 4 and on a variety of issues related to the education context for the students in the sample, including instructional practices, school resources, curriculum implementation, and learning supports outside of school. Since its inception in 2001, PIRLS has continued to assess students every 5 years (2001, 2006, 2011, and 2016), with the next PIRLS assessment, PIRLS 2021, being the fifth iteration of the study. Participation in this study by the United States at regular intervals provides data on student achievement and on current and past education policies and a comparison of U.S. education policies and student performance with those of the U.S. international counterparts. In PIRLS 2016, 58 education systems participated. The United States will participate in PIRLS 2021 to continue to monitor the progress of its students compared to that of other nations and to provide data on factors that may influence student achievement. PIRLS is coordinated by the International Association for the Evaluation of Educational Achievement (IEA), an international collective of research organizations and government agencies that create the assessment framework, the assessment instrument, and background questionnaires. The IEA decides and agrees upon a common set of standards and procedures for collecting and reporting PIRLS data, and defines the studies' timeline, all of which must be followed by all participating countries. As a result, PIRLS is able to provide a reliable and comparable measure of student skills in participating countries. In the U.S., the National Center for Education Statistics (NCES) conducts this study. In preparation for the PIRLS 2021 main study, all countries are asked to implement a field test in 2020. The purpose of the PIRLS field test is to evaluate new assessment items and background questions, to ensure practices that promote low exclusion rates, and to ensure that classroom and student sampling procedures proposed for the main study are successful. Data collection for the field test in the U.S. will occur from March through April 2020 and for the main study from March through June 2021. The submission describing the overarching plan for all phases of the data collection, including the 2021 main study, and requesting approval for all activities, materials, and response burden related to the field test recruitment was approved in April 2019 with a change request in September 2019 (OMB# 1850–0645 v.11–12), while the submission describing all aspects of the field test and recruitment for the main study was approved in October 2019 (OMB# 1850–0645 v.13). The submission for all aspects of the PIRLS 2021 main study, including data collection activities, with an accompanying 30-day public comment period was approved in May 2020. With the COVID–19 pandemic and under the guidance from IEA, this submission request is to update changes in the sampling population and data collection materials related to the changes. The supporting statements Parts A and B describe all aspects of the study; Appendices A1 and A2 provide the main study communication materials and additional materials related to the data collection activities, respectively; Appendix B provides the non-response bias analysis plan for the main study; and Appendix C provides the questionnaires for the Main Study. In the case that the final approved U.S. adapted versions of the PIRLS 2021 main study questionnaires differ from those in this submission, the final versions including any updates for the Main Study will be submitted to OMB for approval as a change request in May 2021.

Dated: November 19, 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. 2020–25989 Filed 11–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Petroleum Council Meeting

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**. Due to the COVID–19 pandemic, this meeting will be entirely virtual on-line.

DATES: Thursday, December 15, 2020; 2:00 p.m. to 4:00 p.m. (EST).

ADDRESSES: Virtual meeting. Information to access a live stream of the on-line meeting proceedings will be available at *https://www.energy.gov/fe/national-petroleum-council-npc.*

FOR FURTHER INFORMATION CONTACT: Nancy Johnson, U.S. Department of Energy, Office of Oil and Natural Gas (FE–30), 1000 Independence Avenue SW, Washington, DC 20585; telephone: (202) 586–6458 or email: *nancy.johnson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and the oil and natural gas industries.

Tentative Agenda:

- Call to Order, Introductory Remarks, and Welcome to Participants
- Remarks by the Honorable Dan R. Brouillette, Secretary of Energy
- Remarks by the Honorable Mark W. Menezes, Deputy Secretary of Energy
- Report of the NPC Cochair's Coordinating Committee
- Update on Post-Approval Activities for the 2019 NPC *Dynamic Delivery* and *Dual Challenge* Reports
- Administrative Matters
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council
- Adjournment

Public Participation: The meeting is open to the public. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Nancy Johnson at the address or telephone number listed above. Approximately 15 minutes will be reserved for public comments. The time allocated per speaker will depend on the number of requests received, but will not exceed five minutes. Requests for oral statements must be received at least seven days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council are invited to send a written statement to *nancy.johnson@hq.doe.gov.* Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting.

Minutes: The minutes of the meeting will be available at *https://www.energy.gov/fe/national-petroleum-council-npc* or by contacting Ms. Johnson. She may be reached at the above postal address or email address.

Signed in Washington, DC, on November 13, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–25932 Filed 11–23–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3253–015]

Mad River Power Associates LP; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 3253–015.

c. *Date filed:* November 3, 2020.

d. *Applicant:* Mad River Power Associates (MRPA).

e. *Name of Project:* Campton Hydroelectric Project.

f. *Location:* On the Mad River in Grafton County, New Hampshire. The project occupies approximately 0.05 acre of federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ian Clark, Mad River Power Associates, 1 Pepsi Way, Suite 6n75, Katonah, NY 10536; Phone at (914) 297–7645, or email at *info@dichotomycapital.com.*

i. *FERC Contact:* Amanda Gill at (202) 502–6773, or *amanda.gill@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 2, 2021. The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. The application is not ready for environmental analysis at this time.

n. MRPA electronically filed the license application with the Commission after the close of business on November 2, 2020 at 7:58 p.m. Pursuant to 18 CFR 385.2001(a)(2), any document received after 5:00 p.m. eastern time is considered filed on the next regular business day. On November 3, 2020, Mad River Power filed a motion requesting that the Commission accept its November 3, 2020 license application out of time or other appropriate remedies. By this notice, the requirement under 18 CFR 16.20(c) to file the subsequent license application at least 24 months before the expiration of the existing license (*i.e.,* no later than November 2, 2020) is waived.

o. *Project Description:* The existing Campton Hydroelectric Project utilizes water from the impoundment (Campton Pond) created by the U.S. Forest Service's Campton Dam and consists of: (1) An intake structure located approximately 60 feet upstream of the Campton Dam that includes a 25-foot-long trashrack; (2) a 600-foot-long, 78-inch-diameter underground steel penstock; (3) a 40-foot-long, 28-foot-wide powerhouse located on the east side of the Mad River that contains a 167-kilowatt (kW) Francis turbine-generator unit; (4) two 236-kW submersible Flygt turbine-generator units located outside of the powerhouse; (5) an approximately 50-foot-long, 56-foot-wide tailrace; (6) a 200-foot-long transmission line and a 33.5-kilovolt transformer that connects the generators to the electric grid; and (7) appurtenant facilities. The project creates an approximately 600-foot-long bypassed reach of the Mad River.

Downstream passage for Atlantic Salmon is provided by a smolt bypass facility located on the left riverbank of the Mad River.

The current license requires: (1) Inflow to be discharged over the spillway to the bypassed reach during periods of non-generation or when inflow is less than 25 cfs; (2) a minimum flow of 4.5 cfs through the Atlantic salmon smolt bypass facility during periods of generation or when inflow is greater than 25 cfs; and (3) operation of the smolt bypass facility from mid-April to mid-June. The average annual generation of the project is approximately 1,170 megawatt-hours (MWh).

MRPA proposes to: (1) Operate the project in a run-of-river mode; (2) replace one of the Flygt turbine-generator units with a new 340-kW Flygt turbine-generator unit, (3) release a minimum flow of 29 cfs or inflow, whichever is less, to the bypassed reach; and (4) close the existing smolt bypass facility. MRPA estimates the project enhancements will result in an average annual generation of approximately 1,900 MWh.

p. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–3253). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19) issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary) January 2021
Request Additional Information January 2021
Issue Acceptance Letter April 2021
Issue Scoping Document 1 for comments May 2021
Request Additional Information (if necessary) August 2021
Issue Scoping Document 2 August 2021
Issue Notice of Ready for Environmental Analysis August 2021

r. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: November 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–25984 Filed 11–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–425–000]

Copper Mountain Solar 5, 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 Copper Mountain Solar 5, 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 December 8, 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: November 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–25927 Filed 11–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2972–000]

City of Woonsocket (City); Notice of Authorization for Continued Project Operation

On November 1, 2018, City of Woonsocket, licensee for the Woonsocket Falls Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Woonsocket Falls Hydroelectric Project is on the Blackstone river in Woonsocket city and Providence county, Rhode Island.

The license for Project No.2972 was issued for a period ending October 31, 2020. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No.2972 is issued to the City of Woonsocket for a period effective Nov 1, 2020 through October 31, 2021, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 31, 2021, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City of Woonsocket, is authorized to continue operation of the Woonsocket Falls Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: November 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–25983 Filed 11–23–20; 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 electric corporate filings:

Docket Numbers: EC21–22–000.
Applicants: Basin Electric Power Cooperative, Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Basin Electric Power Cooperative.
Filed Date: 11/17/20.
Accession Number: 20201117–5179.
Comments Due: 5 p.m. ET 12/8/20.

Docket Numbers: EC21–23–000.
Applicants: NV Energy, Inc., DesertLink, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of NV Energy, Inc., et al.
Filed Date: 11/17/20.
Accession Number: 20201117–5205.
Comments Due: 5 p.m. ET 12/8/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2895–021; ER10–2460–017; ER10–2461–018; ER10–2463–017; ER10–2466–018; ER10–2917–021; ER10–2918–022; ER10–2920–021; ER10–2921–021; ER10–2922–021; ER10–2966–021; ER10–3167–013; ER11–2201–021; ER11–2383–016; ER11–3941–019; ER11–3942–023; ER11–4029–017; ER12–1311–017; ER12–161–021; ER12–2068–017; ER12–682–018; ER13–1613–014; ER13–17–015; ER13–203–013; ER13–2143–014; ER14–1964–012; ER16–287–007; ER17–482–006; ER19–1074–005; ER19–1075–005; ER19–529–005; ER20–1447–002.
Applicants: Bear Swamp Power Company LLC, BIF II Safe Harbor Holdings, LLC, BIF III Holtwood LLC, Black Bear SO, LLC, Black Bear Development Holdings, LLC, Black Bear Hydro Partners, LLC, BREG Aggregator LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US LLC, Brookfield Renewable Trading and Marketing LP, Brookfield White Pine Hydro LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Rumford Falls Hydro LLC, Safe Harbor Water Power Corporation, Bishop Hill Energy, LLC, Blue Sky East, LLC, Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC, Erie Wind, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, Niagara Wind Power, LLC, Stetson Holdings, LLC, Stetson Wind II, LLC, Vermont Wind, LLC.
Description: Supplement to June 30, 2020 Updated Market Power Analysis for the Northeast Region of the Brookfield Companies and Terra Form Companies.
Filed Date: 11/17/20.
Accession Number: 20201117–5187.
Comments Due: 5 p.m. ET 12/8/20.

Docket Numbers: ER14–2080–002; ER15–1136–003; ER15–502–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Louisiana Generating, Bayou Cove and Big Cajun I to be effective N/A.
Filed Date: 11/17/20.
Accession Number: 20201117–5180.
Comments Due: 5 p.m. ET 12/8/20.

Docket Numbers: ER19–1507–007.
Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: Compliance filing: Joint OATT Compliance Filing—Order 845 (Technological) to be effective 5/22/2019.
Filed Date: 11/17/20.
Accession Number: 20201117–5060.
Comments Due: 5 p.m. ET 12/8/20.

Docket Numbers: ER20–2750–000.
Applicants: PacifiCorp.
Description: Report Filing: UAMPS TSOA Rev 5 Refund Report to be effective N/A.
Filed Date: 11/18/20.
Accession Number: 20201118–5043.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER20–2802–000.
Applicants: PacifiCorp.
Description: Report Filing: Deseret TSOA Rev 7 Refund Report to be effective N/A.
Filed Date: 11/18/20.
Accession Number: 20201118–5041.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–427–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Cancel ISA SA #4792; Q# AB2–038/AB2–041; ICSA SA #4793; Q# U3–073/Z2–013/AB2–041 to be effective 12/21/2020.
Filed Date: 11/17/20.
Accession Number: 20201117–5052.
Comments Due: 5 p.m. ET 12/8/20.

Docket Numbers: ER21–428–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the OA, section 18.17 re DIMA to be effective 2/1/2021.
Filed Date: 11/17/20.
Accession Number: 20201117–5069.
Comments Due: 5 p.m. ET 12/8/20.
Docket Numbers: ER21–429–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Third Revised ISA, Service Agreement No. 4109; Queue No. AD1–067 to be effective 10/19/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5006.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–430–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5833; Queue No. AC1–110/AD1–131 to be effective 10/20/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5026.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–431–000.
Applicants: American Electric Power Service Corporation, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: Compliance filing: AEP submits Compliance filing in ER20–2794 to be effective 11/2/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5032.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–432–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of a Distribution-Transmission Interconnection Agreement to be effective 1/18/2021.
Filed Date: 11/18/20.
Accession Number: 20201118–5044.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–433–000.

Applicants: Northern Indiana Public Service Company.
Description: MISO Schedule 50 Cost Recovery Filing of Northern Indiana Public Service Company LLC.
Filed Date: 11/17/20.
Accession Number: 20201117–5202.
Comments Due: 5 p.m. ET 12/8/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–2–000.
Applicants: DesertLink, LLC.
Description: Errata to October 9, 2020 Application [Exhibit C, D and E] Under Section 204 of the Federal Power Act for Authorization to Issue Securities of DesertLink, LLC.
Filed Date: 11/12/20.
Accession Number: 20201112–5340.
Comments Due: 5 p.m. ET 12/3/20.

Docket Numbers: ES21–4–000.
Applicants: Silver Run Electric, LLC.
Description: Errata to October 9, 2020 Application [Exhibit C, D and E] Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Silver Run Electric, LLC.
Filed Date: 11/12/20.
Accession Number: 20201112–5342.
Comments Due: 5 p.m. ET 12/3/20.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH21–4–000.
Applicants: LS Power Development, LLC.
Description: LS Power Development, LLC submits FERC–65–B Notice of Change in Fact to Waiver Notification.
Filed Date: 11/17/20.
Accession Number: 20201117–5178.
Comments Due: 5 p.m. ET 12/8/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 18, 2020
Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2020–25922 Filed 11–23–20; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15043–000]

Craig-Hayden PS, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 20, 2020, Craig-Hayden PS LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Craig-Hayden Pumped Storage Project (Craig-Hayden Project or project), a closed-loop pumped storage project to be located in Moffat County, Colorado. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 10 to 60-foot-high dam with a total crest length of 8,000 feet, creating a 4,800 acre-foot upper reservoir with a maximum surface elevation of 7,920 feet above mean sea level; (2) one of the two alternatives for a new tunnel and conduit system of steel and/or concrete lined tunnels to connect the upper and lower reservoirs to the powerhouse; (3) three pump-turbine units in an underground powerhouse with generation capacity of 200 megawatts each (total capacity of 600 megawatt) located at an underground cavern; (4) two new dams to create the lower reservoir, with a storage capacity of 4,800 acre-feet, at an elevation of 6,470 feet above mean sea level; (5) an electrical switchyard above the powerhouse and interconnecting transmission lines from the powerhouse to the nearest major transmission interconnection; and (6) appurtenant facilities. The estimated average annual generation of the Craig-Hayden Project would be 1,051,200 megawatt-hours.

Applicant Contact: Matthew Shapiro, Craig-Hayden PS, 800 West Main Street, Suite 1220, Boise, Idaho 83702; phone: (208) 246–9925.

FERC Contact: Khatoon Melick, (202) 502–8433, *khatoon.melick@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.* aspx. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15043–000.

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of Commission's website at *https://www.ferc.gov/ferc-online/elibrary/overview.* Enter the docket number (P–15043) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 17, 2020.
Kimberly D. Bose,
Secretary.
[FR Doc. 2020–25979 Filed 11–23–20; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–18–000]

Kansas Electric Power Cooperative, Inc. v. Evergy Kansas Central, Inc.; Notice of Complaint

Take notice that on November 17, 2020, pursuant to sections 206, 210, and 306 of the Federal Power Act, 16 U.S.C. 824e, 824i, 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Kansas Electric Power Cooperative, Inc. (Complainant) filed a formal complaint against Evergy Kansas Central, Inc. (Respondent) alleging that the Respondent has not implemented its generation formula rate for the 2020 Annual Update in accordance with the terms of the Formula Rate Agreement and with Commission orders, regulations, and generally applicable ratemaking policies, and has violated, and continues to violate, the Formula Rate Agreement, *i.e.,* the filed rate, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

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. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainants.

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.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 7, 2020.

Dated: November 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–25926 Filed 11–23–20; 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: RP21–216–000.
Applicants: Driftwood Holdings LLC, Driftwood LNG LLC.
Description: Joint Petition For Limited Waiver, et al. of Driftwood Holdings LLC., et al. under RP21–216.
Filed Date: 11/13/20.
Accession Number: 20201113–5244.
Comments Due: 5 p.m. ET 11/25/20.

Docket Numbers: RP21–220–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 111720 Negotiated Rates—Mercuria Energy America, LLC R–7540–02 to be effective 12/1/2020.
Filed Date: 11/17/20.
Accession Number: 20201117–5009.
Comments Due: 5 p.m. ET 11/30/20.

Docket Numbers: RP21–221–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: NWP 2021 Leap Year Rate Removal to be effective 1/1/2021.
Filed Date: 11/17/20.
Accession Number: 20201117–5030.
Comments Due: 5 p.m. ET 11/30/20.

Docket Numbers: RP21–222–000.
Applicants: LLOG Exploration & Production Company, L, Talos Exploration, LLC.
Description: Joint Petition For Limited Waiver, et al. of LLOG Exploration & Production Company, L.L.C., et al. under RP21–222.
Filed Date: 11/17/20.
Accession Number: 20201117–5153.
Comments Due: 5 p.m. ET 11/24/20.

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: November 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–25928 Filed 11–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3472–024]

Aspinook Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.
b. *Project No.:* 3472–024.
c. *Date filed:* April 30, 2020.
d. *Applicant:* Aspinook Hydro, LLC.
e. *Name of Project:* Wyre Wynd Hydroelectric Project.
f. *Location:* On the Quinebaug River in New London and Windham Counties, Connecticut. No federal lands are occupied by the project works or located within the project boundary.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mark Boumansour, Chief Operating Officer, Gravity Renewables, Inc., 1401 Walnut Street, Boulder, CO 80302; Phone at (303) 440–3378, or email at *mark@gravityrenewables.com.*

i. *FERC Contact:* Kristine Sillett at (202) 502–6575, or *kristine.sillett@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–3472–024.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Wyre Wynd Project consists of: (1) A concrete-encased masonry dam that includes: (a) A 473-foot-long, 18-foot-high spillway with 2-foot-high wooden flashboards, and one, 5-foot-wide by 3-foot-high sluice gate; (b) a 100-foot-long left abutment that includes a 65-foot-wide headgate structure with five, 10-foot-wide by 12-foot-high headgates; and (c) a 4-foot-long right abutment; (2) a 333-acre impoundment with a usable storage capacity of 167-acre-feet at a normal elevation of 97.3 feet National Geodetic Vertical Datum of 1929; (3) a 170-foot-long, 50-foot-wide forebay that includes: (a) A 60-foot-long, 10-foot-high auxiliary spillway; and (b) two, 10-foot-wide by 12-foot-high arched-top low-level outlet gates; (4) a powerhouse intake structure located at the downstream end of the forebay that includes: (a) A 37-foot-high steel trash rack structure varying in width from 19.5 feet to 21.3 feet, with a clear bar spacing of 2.6 inches; and (b) a 16-foot-long, 12-foot-diameter steel penstock that supplies flow to the main 2.7-megawatt (MW) S-type Kaplan turbine-generator unit housed within the 30-foot-wide, 100-foot-long concrete powerhouse; (5) a 450-foot-long, 50-foot-wide tailrace that receives discharges from the main turbine-generator unit; (6) a second intake structure branching off of the right side of the forebay, approximately 35 feet downstream of the headgate structure, that includes: (a) A 4-foot-wide by 4-foot-high head gate; (b) a 9-foot-wide by 20-foot-high trash rack structure with 1.5-inch clear bar spacing that extends from the floor of the headgate structure to approximately 12 feet below the forebay water surface; and (c) a 40-foot-long, 4-foot-diameter steel penstock that provides flow to a mini, in-line 0.08-MW fixed-blade propeller turbine-generator unit; (7) a 10-foot-long, 30-foot-wide tailrace that receives discharges from the mini turbine-generator unit; (8) an 80-foot-long, 600-volt transmission line that connects the generators to the local utility distribution system; and (9) appurtenant facilities. The project creates an approximately 400-foot-long bypassed reach of the Quinebaug River.

The current license requires an instantaneous minimum flow of 120 cubic feet per second (cfs), or inflow, whichever is less, downstream from the dam to protect fish and wildlife resources in the Quinebaug River.

The project generates an average of 11,000 megawatt-hours annually (estimate based on generation from 2003 through 2015).

Aspinook Hydro proposes to: (1) Operate the project in a run-of-river mode; (2) provide an 84-cfs minimum flow to the bypassed reach; and (3) provide upstream and downstream fish passage.

m. A copy of the application is available for review via the internet through the Commission's Home Page (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST, or MOTION TO INTERVENE; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments November 2020

Comments on Scoping Document 1 January 2021

Request Additional Information (if necessary) February 2021

Issue Scoping Document 2 February 2021

Issue Notice of Ready for Environmental Analysis March 2021

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: November 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–25923 Filed 11–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–5–000]

Lone Tree Wind, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On November 17, 2020, the Commission issued an order in Docket No. EL21–5–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2018), instituting an investigation into whether Lone Tree Wind, LLC's proposed Rate Schedule may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Lone Tree Wind, LLC,* 173 FERC 61,144 (2020).

The refund effective date in Docket No. EL21–5–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL21–5–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFile link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: November 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–25929 Filed 11–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5891–013]

Deschutes Valley Water District; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License—Article 47.

b. *Project No:* 5891–013.

c. *Date Filed:* November 12, 2020.

d. *Applicant:* Deschutes Valley Water District (licensee).

e. *Name of Project:* Opal Springs Hydroelectric Project.

f. *Location:* The project is located on the Crooked River in Jefferson County, Oregon and occupies lands of the United States administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Edson Pugh, Deschutes Valley Water District, 881 SW Culver Highway, Madras, OR 97741, (541) 475–3849.

i. *FERC Contact:* Michael Calloway, (202) 502–8041, *Michael.calloway@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 17, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–5891–013. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee is requesting to amend Article 47 which was incorporated into the project license by ordering paragraph (K) of the Order Amending License, Approving Fish Passage Facilities, and Amending Annual Charges issued May 9, 2018. Specifically, the applicant is seeking to amend the maximum controlled hydraulic capacity of the project to be 2,070 cubic feet per second (cfs), and amend the spring water and ground water accreting into the bypass reach to be 420 cfs. The licensee is also seeking to remove the language in the article requiring the license to verify estimates of these values since the applicant has already completed that work.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–25977 Filed 11–23–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10016–36–OMS]

Agency Programs Subject to Intergovernmental Review Under Executive Order 12372, Section 204 of the Demonstration Cities and Metropolitan Development Act, and Section 401(a) of the Intergovernmental Cooperation Act of 1968

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is publishing an updated list of EPA financial assistance programs which states may choose to review under their Single Point of Contact (SPOC) intergovernmental review processes. These programs are also eligible for intergovernmental review by directly affected state, areawide, regional, and local entities if a state does not have a SPOC or chooses not to review an application for EPA financial assistance. EPA is also streamlining the intergovernmental review process and is offering the public an opportunity to comment on the revisions.

DATES: This list is effective as of November 24, 2020.

FOR FURTHER INFORMATION CONTACT: EPA's National Policy Training and Compliance Division (Attention: Elizabeth January) at *EPA_Grants_Info@epa.gov* or (202) 564–5310.

SUPPLEMENTARY INFORMATION: As provided in 40 CFR 29.3, EPA published a notice in the **Federal Register** on April 29, 2004 (69 FR 23502), which listed EPA financial assistance programs subject to review under Executive Order 12372 and Section 204 of the Demonstration Cities and Metropolitan Development Act (Section 204) and Section 401(a) of the Intergovernmental Cooperation Act of 1968 (Section 401). This notice advises the public of the availability of a more current list of EPA programs and activities which states may choose to review under their official Executive Order 12372 SPOC process or are subject to the alternative review process described at 40 CFR 29.7(b) if a state does not have a SPOC or elects not to include an EPA program in the SPOC process.

As part of a streamlining initiative, EPA is limiting intergovernmental review to programs subject to Section 204 and Section 401 or situations in which there are compelling policy reasons to conduct intergovernmental review. Executive Order 12372 exempts tribal programs from intergovernmental review. The list of programs can be found at: *https://www.epa.gov/grants/epa-financial-assistance-programs-subject-executive-order-12372-and-section-204-demonstration.* These are the only EPA programs under which Intergovernmental Review comments may be submitted to EPA although state or local laws may establish requirements for coordination of requests for Federal funding that cover a broader range of programs and activities.

In the future, as necessary, EPA will update the list of programs subject to intergovernmental review at: *https://www.epa.gov/grants/epa-financial-assistance-programs-subject-executive-order-12372-and-section-204-demonstration* rather than in **Federal Register** publications. In Fiscal Year 2021, EPA intends to revise the Assistance Listings for EPA programs in the: *beta.SAM.gov* Assistance Listings to indicate whether intergovernmental review is required based on this list. These revisions will take place during the annual cycle for updating the Assistance Listings for EPA programs in the *beta.SAM.gov* Assistance Listings.

Comments may be submitted on EPA's streamlining of the intergovernmental review process and must be received on or before December 24, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OMS–2020–0348 by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Email: Docket_OMS@epa.gov.*

• *Mail:* OMS Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. 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.* Such deliveries are only accepted during the Docket's normal hours of operation: 8:30 a.m. to 4:30 p.m., and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OMS–2020–0348.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://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 *www.regulations.gov* or email. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public 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 and with any disk or CD–ROM 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: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Docket ID No. EPA–HQ–OMS–2020–0348, OMS Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open by appointment only due to restrictions arising from the COVID–19 public health emergency. Additional information on how to obtain an appointment is available at *https://www.epa.gov/dockets/epa-docket-center-and-reading-room-closed-public-limited-exceptions.* The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752.

Donna Vizian,

Principal Deputy Assistant Administrator, Office of Mission Support.

[FR Doc. 2020–25968 Filed 11–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0500; FRL–10016–91]

Trichloroethylene (TCE); Final Toxic Substances Control Act (TSCA) Risk Evaluation; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of the final Toxic Substances Control Act (TSCA) risk evaluation of Trichloroethylene (TCE). The purpose of conducting risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation, without consideration of costs or other nonrisk factors. EPA has determined that specific conditions of use of TCE present an unreasonable risk of injury to health or the environment. For those conditions of use for which EPA has found an unreasonable risk, EPA must take regulatory action to address that unreasonable risk through risk management measures enumerated in TSCA. EPA has also determined that specific conditions of use do not present unreasonable risk of injury to health or the environment. For those conditions of use for which EPA has found no unreasonable risk to health or the environment, the Agency's determination is a final Agency action and is issued via order in the risk evaluation.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0500, is available online at *http://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Public Reading Room are closed to visitors with limited exceptions. The EPA/DC staff continue 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 technical information contact:* Yvette Selby-Mohamadu, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–5245; email address: *selby-mohamadu.yvette@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be interested in risk evaluations of chemical substances under TSCA, 15 U.S.C. 2601 *et seq.* Since other entities may also be interested in this final risk evaluation, the EPA has not attempted to describe all the specific entities that may be affected by this action.

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

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to ''determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that provide instruction on chemical substances that must undergo evaluation, the minimum components of a TSCA risk evaluation, and the timelines for public comment and completion of the risk evaluation. TSCA also requires that EPA operate in a manner that is consistent with the best available science, make decisions based on the weight of the scientific evidence and consider reasonably available information. 15 U.S.C. 2625(h), (i), and (k). TSCA section 6(i) directs that a determination of ''no unreasonable risk'' shall be issued by order and considered to be a final Agency action, while a determination of ''unreasonable risk'' is not considered to be a final Agency action. 15 U.S.C. 2605(i).

The statute identifies the minimum components for all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) Integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposures. 15 U.S.C. 2605(b)(4)(F)(i) through (ii) and (iv) through (v). Each risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

The statute requires that the risk evaluation process be completed within a specified timeframe and provide an opportunity for public comment on a draft risk evaluation prior to publishing a final risk evaluation. 15 U.S.C. 2605(b)(4).

Subsection 5.3.1 of the final risk evaluation for TCE constitutes the order required under TSCA section 6(i)(1), and the ''no unreasonable risk'' determinations in that subsection are considered to be a final Agency action effective on the date of issuance of the order. In conducting risk evaluations, ''EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under each condition of use within the scope of the risk evaluation. . . .'' 40 CFR 702.47. Under EPA's implementing regulations, ''[a] determination by EPA that the chemical substance, under one or more of the conditions of use within the scope of the risk evaluation, does not present an unreasonable risk of injury to health or the environment will be issued by order and considered to be a final Agency action, effective on the date of issuance of the order.'' 40 CFR 702.49(d). For purposes of TSCA section 19(a)(1)(A), the date of issuance of the TSCA section 6(i)(1) order for TCE shall be at 1:00 p.m. Eastern time (standard or daylight, as appropriate) on the date that is two weeks after the date when this notice is published in the **Federal Register**, which is in accordance with 40 CFR 23.5.

C. What action is EPA taking?

EPA is announcing the availability of the risk evaluation of the chemical substance identified in Unit II. In this risk evaluation EPA has made unreasonable risk determinations on some of the conditions of use within the scope of the risk evaluation for this chemical. For those conditions of use for which EPA has found an unreasonable risk of injury to health or the environment, EPA must initiate regulatory action to address those risks through risk management measures enumerated in 15 U.S.C. 2605(a).

EPA also is announcing the availability of the information required to be provided publicly with each risk evaluation, which is available online at *http://www.regulations.gov* in the dockets identified. 40 CFR 702.51. Specifically, EPA has provided:

- The scope document and problem formulation (in Docket ID No. EPA–HQ–OPPT–2016–0737);
- Draft risk evaluation, and final risk evaluation (in Docket ID No. EPA–HQ–OPPT–2019–0500);
- All notices, determinations, findings, consent agreements, and orders (in Docket ID No. EPA–HQ–OPPT–2019–0500);
- Any information required to be provided to the Agency under 15 U.S.C. 2603 (in Docket ID No. EPA–HQ–OPPT–2016–0737 and Docket ID No. EPA–HQ–OPPT–2019–0500);
- A nontechnical summary of the risk evaluation (in Docket ID No. EPA–HQ–OPPT–2019–0500);
- A list of the studies, with the results of the studies, considered in carrying out each risk evaluation (Risk Evaluation for Trichloroethylene (TCE)) in Docket ID No. EPA–HQ–OPPT–2019–0500);
- The final peer review report, including the response to peer review and public comments received during peer review (in Docket ID No. EPA–HQ–OPPT–2019–0500); and
- Response to public comments received on the draft scope and the draft risk evaluation (in Docket ID No. EPA–HQ–OPPT–2019–0500).

II. TSCA Risk Evaluation

A. What is EPA's risk evaluation process for existing chemicals under TSCA?

The risk evaluation process is the second step in EPA's existing chemical review process under TSCA, following prioritization and before risk management. As this chemical is one of the first ten chemical substances undergoing risk evaluation, the chemical substance was not required to go through prioritization (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of conducting risk evaluations is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. As part of this process, EPA must evaluate both hazard and exposure, not consider costs or other nonrisk factors, use reasonably available information and approaches in a manner that is consistent with the requirements in TSCA for the use of the best available science, and ensure decisions are based on the weight of the scientific evidence.

The specific risk evaluation process that EPA has established by rule to implement the statutory process is set out in 40 CFR part 702 and summarized on EPA's website at *http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.* As explained in the preamble to EPA's final rule on procedures for risk evaluation (82 FR 33726, July 20, 2017) (FRL–9964–38), the specific regulatory process set out in 40 CFR part 702, subpart B is being followed for the first ten chemical substances undergoing risk evaluation to the maximum extent practicable.

Prior to the publication of this final risk evaluation, a draft risk evaluation was subject to peer review and public comment. EPA reviewed the report from the peer review committee and public comments and has amended the risk evaluation in response to these comments as appropriate. The public comments, peer review report, and EPA's response to comments is in Docket ID No. EPA–HQ–OPPT–2019–0500. Prior to the publication of the draft risk evaluation, EPA made available the scope and problem formulation, and solicited public input on uses and exposure. EPA's documents and the public comments are in Docket ID No. EPA–HQ–OPPT–2016–0737. Additionally, information about the scope, problem formulation, and draft risk evaluation phases of the TSCA risk evaluation for this chemical is available at EPA's website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-trichloroethylene-tce-0.*

B. What is Trichloroethylene (TCE)?

TCE is a volatile organic compound used in consumer and commercial products and in industry. An estimated 83.6% of TCE's annual production volume is used as an intermediate in the manufacture of the hydrofluorocarbon HFC–134a. Another 14.7% of TCE production volume is used as a degreasing solvent, leaving approximately 1.7% for other uses. The total aggregate production volume decreased from 220.5 to 171.9 million pounds between 2012 and 2015.

Authority: 15 U.S.C. 2601 *et seq.*

Andrew Wheeler,

Administrator.

[FR Doc. 2020–25884 Filed 11–23–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings; Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND DATE: Thursday, December 10, 2020 at 10:00 a.m.

PLACE: The meeting will be held via teleconference.

STATUS: The meeting will be open to public observation by teleconference only.

MATTERS TO BE CONSIDERED:

1. Review of EXIM's Medium- and Long-Term (MLT) Reachback Policy
2. Local Cost Support for Short Term (ST) Insurance and Working Capital Transactions

CONTACT PERSON FOR MORE INFORMATION: Joyce B. Stone (202–257–4086). Members of the public who wish to attend the meeting via audio only teleconference should register via *https://attendee.gotowebinar.com/register/7605082646858648589* by noon Wednesday, December 9, 2020. Individuals will be directed to a Webinar registration page and provided call-in information.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–26136 Filed 11–20–20; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 17256]

Open Commission Meeting, Wednesday, November 18, 2020

November 10, 2020.

The Federal Communications Commission held an Open Meeting on the subjects listed below on Wednesday, November 18, 2020, at 10:30 a.m. Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting was in a wholly electronic format and was open to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Modernizing the 5.9 GHz Band (ET Docket No. 19–138).
		SUMMARY: The Commission considered a First Report and Order, Further Notice of Proposed Rulemaking, and Order of Proposed Modification that would adopt rules to repurpose 45 megahertz of spectrum in the 5.850–5.895 GHz band for unlicensed operations, retain 30 megahertz of spectrum in the 5.895–5.925 GHz band for the Intelligent Transportation Systems (ITS) service, and require the transition of the ITS radio service standard from Dedicated Short-Range Communications technology to Cellular Vehicle-to-Everything technology.
2	INTERNATIONAL	TITLE: Further Streamlining of Satellite Regulations (IB Docket No. 18–314).
		SUMMARY: The Commission considered a Report and Order that would streamline its satellite licensing rules by creating an optional framework for authorizing space stations and blanket-licensed earth stations through a unified license.
3	INTERNATIONAL	TITLE: Facilitating Next Generation Fixed-Satellite Services in the 17 GHz Band (IB Docket No. 20–330).
		SUMMARY: The Commission considered a Notice of Proposed Rulemaking that would propose to add a new allocation in the 17.3–17.8 GHz band for Fixed-Satellite Service space-to-Earth downlinks and to adopt associated technical rules.
4	CONSUMER & GOVERNMENTAL AFFAIRS.	TITLE: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123); Structure and Practices of the Video Relay Service Program (CG Docket No. 10–51); and Misuse of Internet Protocol Relay Service (CG Docket No. 12–38).
		SUMMARY: The Commission considered a Notice of Proposed Rulemaking that would propose expansion of the Telecommunications Relay Services (TRS) Fund contribution base for supporting Video Relay Service (VRS) and Internet Protocol Relay Service (IP Relay) to include intrastate telecommunications revenue, as a way of strengthening the funding base for these forms of TRS and making it more equitable without increasing the size of the Fund itself.
5	MEDIA	TITLE: Revision of the Commission's Part 76 Review Procedures (MB Docket No. 20–70); Modernization of Media Regulation Initiative (MB Docket No. 17–105); and Revision of the Commission's Program Carriage Rules (MB Docket No. 11–131).
		SUMMARY: The Commission considered a Report and Order that would modify the Commission's rules governing the resolution of program carriage disputes between video programming vendors and multichannel video programming distributors.
6	WIRELESS TELE-COMMUNICATIONS AND OFFICE OF GENERAL COUNSEL.	TITLE: Licensing Matter.
		SUMMARY: The Commission considered a licensing matter.
7	ENFORCEMENT	TITLE: Enforcement Bureau Action.
		SUMMARY: The Commission considered an enforcement action.

The meeting was webcast with open captioning at: *www.fcc.gov/live.* Open captioning was provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities were available upon request.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting was broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–25876 Filed 11–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1034; FRS 17250]

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 25, 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: 3060–1034.

Title: Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service; Digital Notification, FCC Form 335.

Form Number: FCC Form 335.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 270 respondents; 270 responses.

Estimated Hours per Response: 1 hour–8 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 490 hours.

Total Annual Cost: $197,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303, 310, and 553 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On October 27, 2020, the Commission released the *All-Digital AM Broadcasting Report and Order,* FCC 20–154, MB Dkts. 19–311, 13–249, where it adopts rules to allow AM radio stations, on a voluntary basis, to broadcast an all-digital signal using the HD radio in-band on-channel (IBOC) mode name MA3. This action benefits AM stations and their listeners by improving reception quality and listenable signal coverage in stations' service areas and by advancing the Commission's goal of improving the AM service, thereby helping to ensure the future of the service. AM broadcast station licensees are required to notify the Commission of a change to all-digital operations using Digital Notification Form, FCC Form 335–AM.

Specifically pertaining to this Information Collection, in the *All-Digital AM Broadcasting Report and Order,* the Commission requires AM broadcast stations to electronically file a digital notification using the existing FCC Form 335–AM Digital Notification (or any successor notification form) to notify the Commission of the following changes: (1) The commencement of new all-digital operation; (2) an increase in nominal power of an all-digital AM station; or (3) a transition from core-only to enhanced operating mode. Although we direct broadcasters to use the current Form 335–AM for all-digital notifications, additional information is required for notification of AM all-digital operations specifically. Therefore, until the Form 335–AM is updated to display the new all-digital operation requirements, we direct filers to select ''N/A'' as appropriate within the form and submit an attachment containing the following information. These new all-digital AM notification requirements have been added to new section 73.406 of the Commission's rules.

(a) The type of notification (all-digital notification, increase in nominal power, reduction in nominal power, transition from core-only to enhanced, transition from enhanced to core-only, reversion from all-digital to hybrid or analog operation);

(b) the date that new or modified all-digital operation will commence or has ceased;

(c) a certification that the all-digital operations will conform to the relevant nominal power and spectral emissions limits;

(d) the nominal power of the all-digital station;

(e) a certification that the all-digital station complies with all EAS requirements; and

(f) if a notification of commencement of new all-digital service or a nominal power change, whether the station is operating in core-only or enhanced mode.

The *All-Digital AM Broadcasting Report and Order* also revises and reorganizes the digital notification requirements formally contained in section 73.404(e) of the rules by removing paragraph 73.404(e) and adding new section 73.406 Notification.

The Notification Requirements Contained Under 47 CFR 73.406 Are as Follows

Hybrid AM and FM licensees must electronically file a digital notification to the Commission in Washington, DC, within 10 days of commencing IBOC digital operation. All-digital licensees must file a digital notification within 10 days of the following changes: (1) Any reduction in nominal power of an all-digital AM station; (2) a transition from enhanced to core-only operating mode; or (3) a reversion from all-digital to hybrid or analog operation. All-digital licensees will not be permitted to commence operation sooner than 30 calendar days from public notice of digital notification of the following changes: (1) The commencement of new all-digital operation; (2) an increase in nominal power of an all-digital AM station; or (2) a transition from core-only to enhanced operating mode.

(a) Every digital notification must include the following information:

(1) The call sign and facility identification number of the station;

(2) If applicable, the date on which the new or modified IBOC operation commenced or ceased;

(3) The name and telephone number of a technical representative the Commission can call in the event of interference;

(4) A certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of this chapter and is therefore categorically excluded from environmental processing pursuant to § 1.1306(b) of this chapter. Any station that cannot certify compliance must submit an environmental assessment (''EA'') pursuant to § 1.1311 of this chapter and may not commence IBOC operation until such EA is ruled upon by the Commission.

(b) Each AM digital notification must also include the following information:

(1) A certification that the IBOC DAB facilities conform to applicable nominal power limits and emissions mask limits;

(2) The nominal power of the station; if separate analog and digital transmitters are used, the nominal power for each transmitter;

(3) If applicable, the amount of any reduction in an AM station's digital carriers;

(4) For all-digital stations, the type of notification (all-digital notification, increase in nominal power, reduction in nominal power, transition from core-only to enhanced, transition from enhanced to core-only, reversion from all-digital to hybrid or analog operation);

(5) For all-digital stations, if a notification of commencement of new all-digital service or a nominal power change, whether the station is operating in core-only or enhanced mode; and

(6) For all-digital stations, a certification that the all-digital station complies with all EAS requirements.

(c) Each FM digital notification must also include the following information:

(1) A certification that the IBOC DAB facilities conform to the HD Radio emissions mask limits;

(2) FM digital effective radiated power used and certification that the FM analog effective radiated power remains as authorized;

(3) If applicable, the geographic coordinates, elevation data, and license file number of the auxiliary antenna employed by an FM station as a separate digital antenna; and

(4) If applicable, for FM systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in § 73.317.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–25882 Filed 11–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 17257]

Deletion of Item From November 18, 2020 Open Meeting

November 18, 2020.

The following item was adopted by the Commission and deleted from the list of items scheduled for consideration at the Wednesday, November 18, 2020, Open Meeting. The item was previously listed in the Commission's Notice of Tuesday, November 10, 2020.

Item No.	Bureau	Subject
6	WIRELESS TELE-COMMUNICATIONS AND OFFICE OF GENERAL COUNSEL.	TITLE: Licensing Matter. SUMMARY: The Commission considered a licensing matter

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–25877 Filed 11–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1139, FRS 17245]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before December 24, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1139.

Title: FCC Consumer Broadband Services Testing and Measurement.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit and individuals or households.

Number of Respondents and Responses: 501,020 respondents and 501,020 responses.

Estimated Time per Response: 1 hour–200 hours.

Frequency of Response: Biennial reporting requirement and third-party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in the Broadband Data Improvement Act of 2008, Public Law 110–385, Stat 4096, 103(c)(1).

Total Annual Burden: 46,667 hours.

Total Annual Costs: No Cost.

Nature and Extent of Confidentiality: All participation in the Measuring Broadband America Program is voluntary and any participant can decline to participate at any time. No volunteers' personally identifying information (PII) such as name, phone number, or street addresses will be transmitted to the Commission from the contractor as a matter of vendor policy and agency privacy policy. SamKnows maintains a series of administrative, technical, and physical safeguards to protect against the transmission of PII. At point of registration, individuals will be given full disclosure in a ''privacy statement'' highlighting what information will be collected. Fixed Broadband ISP Partners receive PII about volunteers to confirm the validity of the information against their subscription records, but will be bound by a non-disclosure agreement that will maintain various administrative, technical and physical safeguards to protect the information and limit its use. Mobile Broadband ISP Partners have access to five kinds of information, including location and time of data collection, device type and operating system version, cellular performance and characteristics, and download, upload speed and other broadband performance, also restricted by a non-disclosure agreement that will maintain various administrative, technical and physical safeguards to protect the information and limit its use. ISP Partners providing support to the testing program will likewise be bound to the same series of administrative, technical and physical safeguards developed by SamKnows. In addition, all third parties supporting the program directly will be bound by a ''Code of Conduct'' to ensure all participate and act in good faith and with other legally enforceable documents such as non-disclosure agreements.

Privacy Act Impact Assessment: This information collection effects individuals or households. However, personally identifiable information (PII) such as name, phone number, or street addresses is not being collected by, made available to or made accessible by the Commission but instead by third parties including SamKnows, a third party contractor, and internet Service Provider (ISP) Partners.

Needs and Uses: The Commission will submit this expiring collection after this 60-day comment period to the Office of Management and Budget (OMB) to obtain the full three-year clearance.

This study's collection of information on actual speeds and performance of fixed and mobile broadband connections delivered to consumers by ISPs has been reported to be of great value to academic researchers, manufacturers and technology providers, broadband providers, public interest groups and other diverse stakeholders. Validation of fixed broadband subscribed speeds as opposed to actual speeds by participating ISPs remains unique to this program and provides a context for measured speeds. Mobile broadband performance information is measured using the FCC Speed Test app for Android and iOS devices to test the upload and download speeds, latency and packet loss, as well as the wireless performance characteristics of the broadband connection and the kind of handsets and versions of operating systems tested. Information the FCC Speed Test App (''Application'') collects is limited to information used to measure volunteers' mobile broadband service and no personally identifiable information, such as subscribers' name, phone number or unique identifiers associated with a device is collected. Software-based tools and online tools exist that can test consumer's broadband connections, including a set of consumer tools launched by the FCC in conjunction with the National Broadband Plan. However, these tools track speeds experienced by consumers, rather than speeds delivered directly to a consumer by an ISP. The distinction is important for supporting Agency broadband policy analysis, as ISPs advertise speeds and performance delivered rather than speeds experienced, which suffers from degradation outside of an ISP's control.

No other dedicated panel of direct fixed and mobile broadband performance measurement using publicly documented methodologies using free and add-free technologies exists today in the country. The program will continue to support existing software-based tools and online tools but the focus of the program will remain the direct measurement of broadband performance delivered to the consumer. The collection effort also has specific elements focused on further network performance statistics, time of day parameters, and other elements affecting consumers' broadband experience that are not tracked elsewhere. The information to be confirmed by ISP Partners about their subscribers or technical and market data regarding the broadband services they provide is unavailable from other sources.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–25881 Filed 11–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 9, 2020.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Lori Heather Holton Barber, Dallas, Texas; Jessica Ann Holton Farmer, Snyder, Texas; and John E. Holton III, Wellington, Texas;* to join the Holton Family Group, a group acting in concert, to retain voting shares of WSB Bancshares, Inc. and thereby indirectly retain voting shares of Wellington State Bank, both of Wellington, Texas.

Board of Governors of the Federal Reserve System, November 19, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–25986 Filed 11–23–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 24, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *OakStar Bancshares, Inc., Springfield, Missouri;* to merge with First Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire Community First Bank, Kansas City, Kansas.

Board of Governors of the Federal Reserve System, November 19, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–25985 Filed 11–23–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Application for Employment with the Board of Governors of the Federal Reserve System (FR 28; OMB No. 7100–0181).

DATES: Comments must be submitted on or before January 25, 2021.

ADDRESSES: You may submit comments, identified by FR 28, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at *https://www.reginfo.gov/public/do/PRAMain,* if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Application for Employment with the Board of Governors of the Federal Reserve System.

Agency form number: FR 28.

OMB control number: 7100–0181.

Frequency: As needed.

Respondents: Individuals who are seeking employment with the Board.

Estimated number of respondents: FR 28 (initial application only in Taleo): 15,000; FR 28 (initial application plus pre-interview section in Taleo): 2,000; FR 28 (PDF): 150; FR 28s: 7,500; FR 28i: 300; FR 28c: 2,300.

Estimated average hours per response: FR 28 (initial application only in Taleo): 0.25; FR 28 (initial application plus pre-interview section in Taleo): 1; FR 28 (PDF): 0.75; FR 28s: 0.0166; FR 28i: 0.25; FR 28c: 0.5.

Estimated annual burden hours: FR 28 (initial application only in Taleo): 3,750; FR 28 (initial application plus pre-interview section in Taleo): 2,000; FR 28 (PDF): 112.5; FR 28s: 124.5; FR 28i: 75; FR 28c: 1,150; total: 7,212.

General description of report: The Board receives approximately 17,000 FR 28 applications per year, both solicited and unsolicited, from members of the public who would like to be considered for employment at the Board. The FR 28 application form comprises seven sections: (I) Background, (II) Job Preferences, (III) Education and Training, (IV) Certifications and Professional Licenses, (V) Employment Record, (VI) References, and (VII) General Questions, including clarifying comments if applicable. The Background section collects name, address, telephone and citizenship information, as well as the position for which the applicant is applying and the applicant's willingness to travel. The Job Preferences section asks about the type of employment desired (*e.g.,* permanent or temporary; full or part-time; and desired compensation). The Education and Training section collects detailed information on the applicant's educational history and skills set. The Certifications and Professional Licenses section collects information on when an applicant's current certification(s) and license(s) were issued and expired. The Employment Record section collects a chronological summary of work experience. The References section collects information on three references. The General Questions section collects information such as criminal records; discharges or terminations from employment; retirement annuity status from the DC or federal governments or the military; relationships to or acquaintances with Board staff or with officers and directors of financial institutions; and ownership interest that the applicant, their spouse, or their child[ren] holds in certain financial institutions.

The FR 28 application form may be completed online through the Taleo submission website, or in hardcopy by PDF. If the applicant completes the online version of the application through Taleo, they will initially be asked to upload a resume and to complete the first four sections of the application; it is not until the applicant is asked to interview that they will be instructed to complete the remaining sections of the application. If completing the PDF version of the FR 28 application form, the applicant will fill out all seven sections in their entirety but may not be asked to supply a resume.

The FR 28s is a voluntary form that comprises four sections seeking the following information: Name and gender, for which applicants are asked to check either the box that corresponds to their gender or the box for ''I do not wish to disclose''; the position for which the applicant is applying; ethnicity self-identification, for which applicants are asked to choose from among Hispanic or Latino, Not Hispanic or Latino, or ''I do not wish to disclose''; and race self-identification, for which applicants are asked to choose one or more from among American Indian or Alaskan Native; Asian; Black or African-American; Native Hawaiian or Other Pacific Islander; and White or to select ''I do not wish to disclose.'' The Board uses this information to comply with federal equal employment opportunity (EEO) recordkeeping and reporting requirements and other legal requirements, as well as an input to its self-analysis of hiring practices. Information collected on the FR 28s has no bearing on the determination of an applicant's job-related qualifications and completion of the self-identification form is voluntary.

The FR 28i survey comprises three sections in which research assistant (RA) candidates are (i) asked to rate their level of interest in categories of economics and related research areas; (ii) provided the option to expand upon certain qualifying characteristics indicated as important to the Board; and (iii) asked to rate their experience with various software packages and statistical programming languages. The FR 28i helps to streamline the RA recruitment process.

The FR 28c conflicts of interest form comprises four sections and collects information from external applicants after they have been selected for an interview at the Board regarding certain financial interests held by the applicant, their spouse, and their minor child(ren); immediate family members who are involved in related businesses (*e.g.,* whether a spouse, parent, child, or sibling is an employee, officer, director or trustee of any bank); compensated outside employment and uncompensated positions that the applicant participates in (aside from positions with religious, social, fraternal, or political entities); and other situations, arrangements, or investments the applicant believes could pose a conflict of interest based on the duties of the position for which they are applying. The purpose of the FR 28c form is to determine whether a conflict of interest exists that would impact the applicant's ability to fulfill the responsibilities associated with the position for which they have applied.

Proposed revisions: There are no proposed revisions to the questions asked or the information collected on the FR 28i survey. However, as part of this OMB authorization, the Board is proposing to add the FR 28c conflicts of interest form to this information collection, as it was previously collected pursuant to a separate OMB authorization, because the FR 28c form is associated with the application process. In addition, the Board proposes to revise the FR 28 application form to remove the three conflicts of interest questions. Given that detailed information on potential conflicts would no longer be collected on the FR 28 application form, the Board proposes amending the FR 28c form to delete the instruction that applicants provide additional information on conflicts of interest ''not previously described on your employment application (FR 28).'' The Board is also proposing to revise the hardcopy PDF version of the FR 28s voluntary form so that, regardless of the ethnicity identified by the applicant, the applicant would also be asked to voluntarily identify their race. This revision comports with the standards set out by OMB and aligns with both the similar form approved by OMB (the Standard Form 181) and the electronic version of the FR 28s form in the Taleo application submission portal. In addition, the legal authorization cited on the face of the FR 28s form (both the hardcopy PDF version and the electronic version in the Taleo portal) would be updated to reflect that the collection of information is authorized pursuant to sections 10 and 11(l) of the Federal Reserve Act, 12 U.S.C. 244 and 238(l).

Legal authorization and confidentiality: The FR 28 form, the FR 28i survey, and the FR 28s form are authorized by Sections 10 and 11(l) of the Federal Reserve Act, 12 U.S.C. 244 and 248 (1), which provide the Board broad authority over employment of staff. The FR 28c form is also authorized by Section 10 of the Federal Reserve Act, 12 U.S.C. 244, which provides that the Board's determination with respect to the ''employment, compensation, leave, and expenses [of its members and employees] shall be governed solely by the provisions of this chapter and rules and regulations of the Board not inconsistent therewith.'' In addition, under regulations promulgated by the Office of Government Ethics (''OGE'') pursuant to 5 U.S.C. 7301, each executive agency's designated ethics officer is required to provide ''advice and counseling to prospective . . . employees regarding government ethics laws and regulations'' and to ''maintain records of agency ethics program activities'' (5 CFR 2638.104(c)(2) and (4)).

The obligation to respond to the FR 28 form, the FR 28c form, and to the questions in Sections I and III of the FR 28i survey is required to obtain the benefit of Board employment. The obligation to respond to the questions in Section II of the FR 28i survey and the obligation to disclose gender, race, and ethnicity on the FR 28s form is voluntary.

Certain information provided on the FR 28 and the FR 28i forms may be kept confidential under exemption (b)(6) of the Freedom of Information Act (FOIA), which protects information in ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)). For example, the release of information such as an applicant's home address and phone number, as well as personal information regarding the applicant's references, would likely constitute a clearly unwarranted invasion of personal privacy and, accordingly, would be kept confidential. However, the release of information such as the educational and professional qualifications of successful applicants would not likely constitute a clearly unwarranted invasion of personal privacy and, therefore, would not be treated as confidential under the FOIA.

Generally, information provided on the FR 28c form may be kept confidential pursuant to exemption 6 of the FOIA. In addition, financial information collected on the form (such as confidential details about the shares an applicant, their spouse, or their minor child owns in a bank) may be withheld under exemption 4 of the FOIA, which protects ''financial information obtained from a person [that is] privileged and confidential'' (5 U.S.C. 552(b)(4)).

The information collected on the FR 28, the FR 28c, the FR 28i, and the FR 28s forms will be maintained in a ''system of records'' within the meaning of the Privacy Act, 5 U.S.C. 552a(a)(5), and a Privacy Act statement will accompany each of the four forms that respectively comprise this information collection. The Board may disclose the information collected on these forms, including confidential information withheld from the public under a FOIA exemption, to third parties in accordance with the Privacy Act's ''routine use'' disclosure provisions, 5 U.S.C. 552a(a)(7) and (b)(3), which permit the disclosure of a record for a purpose that is compatible with the purpose for which the record was collected. The routine uses that would permit the disclosure of the information collected on each form are listed in the specific system of records notices (SORNs) that apply to each form. For the FR 28, the FR 28c, the FR 28i, and the FR 28s, the information collected will be stored in the SORN entitled ''BGFRS–1, FRB-Recruiting and Placement Records,'' located here: *https://www.federalreserve.gov/files/BGFRS-1-recruiting-and-placement-records.pdf.* The information collected on the FR 28c will also be stored in the SORN titled ''BGFRS–41, FRB-Ethics Program Records,'' located here: *https://www.federalreserve.gov/files/BGFRS-41-FRB-Ethics-Program-Records.pdf.* If the applicant is hired, the information provided on the FR 28s may also be stored in the SORN titled ''BGFRS–24: FRB—EEO General Files,'' located here: *https://www.federalreserve.gov/files/BGFRS-24-eeo-general-files.pdf.*

Specifically, the BGFRS–1 and the BGFRS–41 SORNs provide that the information may be disclosed outside the Board in accordance with general routine uses A, B, C, D, E, F, G, H, I, and

J (see ''General Routine Uses of Board Systems of Records available at *https://www.federalreserve.gov/files/SORN-page-general-routine-uses-of-board-systems-of-records.pdf*). The BGFRS–24 SORN provides that the information may be disclosed outside the Board in accordance with general routine uses A, B, C, D, E, F, G, I, and J (see id.). The BGFRS–1 SORN also provides that all or part of the record may be disclosed outside of the Board in order to disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested), when necessary to obtain information relevant to a Board decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant or other benefit.

Board of Governors of the Federal Reserve System, November 18, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–25885 Filed 11–23–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DD21–001, Study To Explore Early Development (SEED) Follow Up Studies; Correction

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The CDC published a document in the **Federal Register** of September 30, 2020, concerning a closed meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DD21–001, Study to Explore Early Development (SEED) Follow up Studies. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop S107–8, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *JRaman@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 30, 2020, in FR Doc 2020–21604, on page 61752, in the first column, correct the ''Date'' and ''Time'' captions to read:

Date: January 12, 2021.

Time: 10:00 a.m.–6:00 p.m., EST.

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. 2020–25959 Filed 11–23–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–PAR 18–812, NIOSH Member Conflict Review.

Date: February 22, 2021.

Time: 1:00 p.m.–5:00 p.m., EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Michael Goldcamp, Ph.D., Scientific Reviewer Officer, Office of Extramural Programs, CDC/NIOSH, 1095 Willowdale Road, Morgantown, WV 26506, 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. 2020–25961 Filed 11–23–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–DD21–002, Characterizing the Natural History of Fragile X Syndrome to Inform the Development of Intervention Outcome Measures.

Date: March 23, 2021.

Time: 10:00 a.m.–6:00 p.m., EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop S107–8, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *JRaman@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. 2020–25960 Filed 11–23–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB #0970–0401)

AGENCY: Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families (ACF) proposes to extend data collection under the existing overarching Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB #0970–0401). There are no changes to the proposed types of information collection or uses of data, but ACF is requesting an increase to the estimated number of respondents.

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: Executive Order 12862 directs federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. As outlined in Memorandum M–11–26, the Office of Management and Budget (OMB) worked with agencies to create a Fast Track Process to allow agencies to obtain timely feedback on service delivery while ensuring that the information collected is useful and minimally burdensome for the public, as required by the Paperwork Reduction Act of 1995. ACF created this generic clearance in response to this effort by OMB.

In order to work continuously to ensure that the ACF programs are effective and meet our customers' needs, we use this Fast Track generic clearance process to collect qualitative feedback on our service delivery. This collection of information is necessary to enable ACF to garner customer and stakeholder feedback in an efficient, timely manner in accord with our commitment to improving service delivery. The information collected from our customers and stakeholders helps ensure that users have an effective, efficient, and satisfying experience with the programs. This feedback provides insights into customer or stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections allow for ongoing, collaborative, and actionable communications between ACF and its customers and stakeholders. They also allow feedback to contribute directly to the improvement of program management.

Per Memorandum M–11–26, information collection requests submitted under this Fast Track generic will be considered approved unless OMB notifies ACF otherwise within 5 days.

Respondents: ACF program participants, potential program participants, stakeholders, and other customers.

Annual Burden Estimates

Based on the use of this generic clearance over the past 3 years, ACF is requesting an increase to the estimated number of respondents from 10,000 to 12,500.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
Example instruments include: Customer Comment Card/Complaint Form Customer Satisfaction Survey Usability Testing (*e.g.,* Website or Software) Small Discussion Group Focus Group	12,500	1	.5	6,250

Estimated Total Annual Burden Hours: 12,500.

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: Social Security Act, Sec. 1110. [42 U.S.C. 1310].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–25978 Filed 11–23–20; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number(s): 93.645]

Notice of Allotment Percentages to States for Child Welfare Services State Grants

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of biennial publication of allotment percentages for states under the Social Security Act IV–B subpart 1, Stephanie Tubbs Jones Child Welfare Services Grant Program.

SUMMARY: As required by the Social Security Act, the Department is publishing the allotment percentage for each state under the Title IV–B Subpart 1, Stephanie Tubbs Jones Child Welfare Services Grant Program. The allotment percentages are one of the factors used in the computation of the Federal grants awarded under the Program.

DATES: The allotment percentages will be effective for Federal Fiscal Years 2022 and 2023.

FOR FURTHER INFORMATION CONTACT: Janice Realeza, Grants Management Officer, Family Protection & Resilience Portfolio, Office of Grants Management, Office of Administration, Administration for Children and Families, 330 C Street SW, Washington, DC 20201; telephone (215) 861–4007; email: *janice.realeza@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The allotment percentage for each state is determined on the basis of paragraphs (b) and (c) of section 423 of the Social Security Act. These figures are available on the ACF internet homepage at *http://www.acf.dhhs.gov/programs/cb/.* The allotment percentage for each state is as follows:

ALLOTMENT **

State	Percentage
Alabama	60.82
Alaska *	44.69
Arizona	59.18
Arkansas	60.29
California	41.52
Colorado	46.19
Connecticut	31.41
Delaware	51.53
District of Columbia	[1] 30.00
Florida	53.47
Georgia	57.08
Hawaii *	49.25
Idaho	59.32
Illinois	47.87
Indiana	56.73
Iowa	54.14
Kansas	52.95
Kentucky	61.09
Louisiana	57.85
Maine	55.28
Maryland	42.37
Massachusetts	34.31
Michigan	56.21
Minnesota	47.56
Mississippi	65.29
Missouri	56.77
Montana	55.84
Nebraska	51.58
Nevada	54.41
New Hampshire	43.71
New Jersey	37.72
New Mexico	61.79
New York	36.84
North Carolina	57.60
North Dakota	49.22
Ohio	55.34
Oklahoma	58.04
Oregon	52.99
Pennsylvania	48.73
Rhode Island	49.93
South Carolina	59.69
South Dakota	52.09
Tennessee	56.77
Texas	53.33
Utah	57.07
Vermont	50.82
Virginia	46.92
Washington	43.20
West Virginia	62.49
Wisconsin	52.79
Wyoming	45.04
America Samoa	70.00
Guam	70.00
Puerto Rico	70.00
N. Mariana Islands	70.00
Virgin Islands	70.00

* State Percentage = 50 percent of year average divided by the National United States 3-year average.

** State Percentage minus 100 percent yields the IV–BI allotment percentage.

[1] Allotment Percentage has been adjusted in accordance with section 423(b)(1).

Statutory Authority: Section 423(c) of the Social Security Act (42 U.S.C. 623(c)).

Elizabeth Leo,

Senior Grants Policy Specialist, Office of Grants Policy.

[FR Doc. 2020–25917 Filed 11–23–20; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Effective and Innovative Approaches/Best Practices in Health Care in Response to the COVID–19 Pandemic; Request for Information (RFI)

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Health and Human Services (HHS) seeks to gain a comprehensive understanding of the impact of changes adopted by health care systems and health care providers in response to the COVID–19 pandemic. Many healthcare systems and clinicians have rapidly reengineered their policies and programs to improve access, safety, quality, outcomes including mortality and morbidity, cost, and value for both COVID–19 and non-COVID–19 related medical conditions. HHS plans to identify and learn from effective innovative approaches and best practices implemented by non-HHS organizations in order to inform HHS priorities and programs.

DATES: We recommend that you submit your comments through the Innovation RFI Response Portal (*https://rfi.grants.nih.gov/?s=5f89e1e8400f00001a0036f2*) to ensure consideration. Comments must be received through this portal no later than midnight Eastern Time (ET) on December 24, 2020. Submissions received after the deadline will not be reviewed. Comments may also be submitted in *regulations.gov.*

ADDRESSES: Comments, including mass comment submissions, must be submitted electronically using the Innovation RFI Response Portal (*https://rfi.grants.nih.gov/?s=5f89e1e8400f00001a0036f2*). Please respond concisely, in plain language, and in a narrative format in the field provided for each question, to ensure accurate interpretation and analysis. You may respond to some or all of the topic areas covered in the RFI, and/or you can also provide relevant information that may not have been referenced. You can also include links to online material or interactive presentations. Please do not include any personally identifiable patient information or confidential business information in your comment.

FOR FURTHER INFORMATION CONTACT: CAPT Meena Vythilingam, Director, Center for Health Innovation, Office of the Assistant Secretary for Health, *Meena.Vythilingam@HHS.gov* or 202 260 7382.

SUPPLEMENTARY INFORMATION:

I. Background

In response to the 2019 novel coronavirus or COVID–19 pandemic, the Secretary of Health and Human Services (HHS) declared a public health emergency effective January 27, 2020, under section 319 of the Public Health

Service Act (42 U.S.C. 247d [1]) and renewed it continually since its issuance. The impact of the COVID–19 pandemic on the nation's healthcare system has been complex, widespread, and potentially enduring. This unprecedented pandemic has impacted the safety, quality, continuity, outcomes, value, and access to timely health care in numerous healthcare settings. Anecdotal reports as well as data from varied public sources confirmed that in addition to COVID–19-related increases in mortality and morbidity, the mortality and morbidity for numerous non-COVID–19-related medical conditions has also increased.[2] The COVID–19 public health emergency is disproportionately affecting vulnerable populations, particularly the elderly, and racial and ethnic minorities.[3] Local health systems with a significant burden of COVID–19 cases have faced multiple challenges including surge capacity, staffing, and supply chain issues, that directly impact access, quality, and experience of care for all medical conditions.[4] Decreases in help-seeking behaviors in the context of the COVID–19 pandemic may have also contributed to delays in accessing timely care, resulting in poor outcomes.[5] In addition to the disruption in healthcare, the delivery of long-term services and supports (LTSS) to many seniors and people with disabilities has also been disrupted during the pandemic.

In response to the COVID–19 pandemic, medical providers, medical facilities, academic centers, and health systems rapidly reengineered healthcare policies and programs to ensure preservation of health care access, safety, quality, continuity, value, and outcomes. As a result, there has been a proliferation of innovative programs, policies, and best practices to prevent and mitigate the consequences of COVID–19, while simultaneously preserving access to routine and emergency healthcare services for non-COVID–19 medical conditions.[6] An example of the paradigmatic shift in the delivery of health care is the rapid adoption and scaling of telehealth services.[7] Although the pandemic disrupted the entire health care ecosystem in the U.S., it also provided an opportunity and impetus to innovate across the continuum of individual and population health, including screening, surveillance, prevention, treatment, supply chain management, and public health interventions. These changes may persist for the duration of the public health emergency, and potentially beyond it.

HHS strongly supports innovation to preserve a resilient healthcare system in the face of the COVID–19 pandemic and recognizes the importance of learning from effective and innovative approaches and best practices implemented by non-HHS healthcare systems, academic centers, and healthcare providers. HHS will determine if these innovative approaches and best practices can help inform and/or improve HHS priorities and programs.

II. Scope and Assumptions

- The main purpose of this Request for Information (RFI) is for HHS to gather information on *effective* innovative approaches and best practices in health care in response to the COVID–19 pandemic by non-HHS health care systems and providers. The information provided will help inform and guide the HHS response to build a healthy and resilient nation.
- This RFI includes innovations and best practices in health care for both COVID–19 and non-COVID–19 health conditions.
- The definition of ''health'' system or services and/or ''healthcare'' system or services, for the purposes of this RFI, is broad. We seek an understanding of effective best practices and innovations in the provision of services across the health and public health continuum by a variety of organizations. Responses can focus on select aspects or on the entire continuum of care, to include surveillance, screening, prevention, treatment, and/or public health interventions.
- We are specifically interested in novel approaches and best practices that are associated with data confirming efficacy and/or effectiveness with demonstrated improvements in one or more of the following measures: Patient outcomes, access to health care, safety, quality, and/or value.
- Responses should include the following:
  - *A description of the innovation/best practice.*
  - *The rationale for the implementation of the innovation/best practice.*
  - *Data and/or results confirming efficacy and/or effectiveness of the innovation/best practice, including demographic data; control conditions; outcomes measures (e.g., mortality, morbidity, health care access, safety, quality, cost, value, etc.); analytic strategy; and results. If the evaluation is currently underway, please describe the study design and expected timeline for completion of the study.*
  - *Costs associated with implementing the the innovation/best practice.*
  - *Have these innovations/best practices been incorporated as permanent organizational changes? If not, why not?*
  - *Can the innovation/best practice be scaled to larger, diverse groups and/or locations for a longer period? If yes, please describe the potential impacts on outcomes.*
  - *Did or could specific HHS policies or programs facilitate the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice positively).*
  - *By contrast, did or could specific HHS policies or programs hinder the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice negatively).*

III. Information Requested/Key Questions

Please respond to specific topics in which you have the most amount of evidence and expertise. Respondents are requested to share the objective results of an evaluation for each topic when possible. Response to every item is not required.

A. Health Promotion and Prevention of COVID–19 and Non-COVID–19 Medical Conditions

Please provide the following information:

- *A description of the innovation/best practice.*
- *The rationale for the implementation of the innovation/best practice.*

[1] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-2Oct2020.aspx.*

[2] Weinstein E, Ragazzoni L, Burkle F, Allen M, Hogan D, Della Corte F. Delayed Primary and Specialty Care: The Coronavirus Disease—2019 Pandemic Second Wave [published online ahead of print, 2020 May 7]. Disaster Med Public Health Prep. 2020; 1–3. doi:10.1017/dmp.2020.148.

[3] *https://www.cms.gov/newsroom/press-releases/cms-updates-data-covid-19-impacts-medicare-beneficiaries.*

[4] Francis JR. COVID–19: Implications for Supply Chain Management. *Front Health Serv Manage.* Fall 2020, 37(1):33–38. doi: 10.1097/HAP.0000000000000092.

[5] *https://www.cdc.gov/mmwr/volumes/69/wr/mm6925e2.htm?s_cid=mm6925e2_e&deliveryName=USCDC_921-DM31231#F1_down.*

[6] Short JB, Mammen. A Pandemic Application of Creative Destruction in Healthcare. Fall 2020, Front Health Serv Manage.; 37(1):4–9. doi: 10.1097/HAP.0000000000000093.

[7] Wosik J, Fudim M, Cameron B, et al. Telehealth transformation: COVID–19 and the rise of virtual care. J Am Med Inform Assoc. 2020; 27(6):957–962. doi:10.1093/jamia/ocaa067.

○ *Data and/or results confirming efficacy and/or effectiveness of the innovation/best practice, including demographic data; control conditions; outcomes measures (e.g., mortality, morbidity, health care access, safety, quality, cost, value, etc.); analytic strategy; and results. If the evaluation is currently underway, please describe the study design and expected timeline for completion of the study.*

○ *Costs associated with implementing the the innovation/best practice.*

○ *Have these innovations/best practices been incorporated as permanent organizational changes? If not, why not?*

○ *Can the innovation/best practice be scaled to larger, diverse groups and/or locations for a longer period? If yes, please describe the potential impacts on outcomes.*

○ *Did or could specific HHS policies or programs facilitate the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice positively).*

○ *By contrast, did or could specific HHS policies or programs hinder the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice negatively).*

1. Describe effective innovations/best practices that prevented the transmission of SARS–CoV–2 infections in staff, patients and/or beneficiaries.

2. Describe effective innovations/best practices to prevent SARS–CoV–2 outbreaks among residents and staff in long-term care facilities including assisted living facilities, nursing homes, rehabilitation facilities, intermediate care facilities for individuals with intellectual disabilities (ICF/ID), and palliative care settings.

3. Describe innovative programs/policies and best practices to ensure timely access to health care and continuity of care for patients with chronic illnesses that increase vulnerability to COVID–19.

4. Provide details on innovations or best practices that prevented increases in morbidity and mortality due to deferred care for acute medical conditions (*e.g.,* cardiac arrests, strokes, etc.).

5. Describe effective programs or practices that helped ensure timely administration of immunizations to pediatric patients and other vulnerable populations including the elderly and individuals with disabilities.

6. Elaborate on effective educational and messaging campaigns targeting prevention.

7. Describe effective health promotion and prevention policies and programs implemented in response to COVID–19, that will continue beyond this pandemic.

B. Screening/Surveillance/Case Identification of COVID–19 and Non-COVID–19 Medical Conditions

Please provide the following information:

○ *A description of the innovation/best practice.*

○ *The rationale for the implementation of the innovation/best practice.*

○ *Data and/or results confirming efficacy and/or effectiveness of the innovation/best practice, including demographic data; control conditions; outcomes measures (e.g., mortality, morbidity, health care access, safety, quality, cost, value, etc.); analytic strategy, and results. If the evaluation is currently underway, please describe the study design and expected timeline for completion of the study.*

○ *Costs associated with implementing the the innovation/best practice.*

○ *Have these innovations/best practices been incorporated as permanent organizational changes? If not, why not?*

○ *Can the innovation/best practice be scaled to larger, diverse groups and/or locations for a longer period? If yes, please describe the potential impacts on outcomes.*

○ *Did or could specific HHS policies or programs facilitate the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice positively).*

○ *By contrast, did or could specific HHS policies or programs hinder the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice negatively).*

1. Describe effective approaches to screening, surveillance and case identification of COVID–19.

2. Describe efforts to ensure that patients continue to receive United States Preventive Services Task Force-recommended screening procedures on time during the COVID–19 pandemic. Please include data on the program's ability to prevent negative outcomes due to timely screening and early detection, if available.

3. Outline innovative programs to continue screening for HIV, hepatitis and sexually transmitted diseases during the pandemic, (*e.g.,* in syringe services programs (SSPs)).

C. Treatment for COVID–19 and Non-COVID–19 Medical Conditions

Please provide the following information:

○ *A description of the innovation/best practice.*

○ *The rationale for the implementation of the innovation/best practice.*

○ *Data and/or results confirming efficacy and/or effectiveness of the innovation/best practice, including demographic data; control conditions; outcomes measures (e.g., mortality, morbidity, health care access, safety, quality, cost, value, etc.); analytic strategy, and results. If the evaluation is currently underway, please describe the study design and expected timeline for completion of the study.*

○ *Costs associated with implementing the the innovation/best practice.*

○ *Have these innovations/best practices been incorporated as permanent organizational changes? If not, why not?*

○ *Can the innovation/best practice be scaled to larger, diverse groups and/or locations for a longer period? If yes, please describe the potential impacts on outcomes.*

○ *Did or could specific HHS policies or programs facilitate the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice positively).*

○ *By contrast, did or could specific HHS policies or programs hinder the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice negatively).*

1. Describe innovations/best practices in COVID–19 treatment that resulted in decreased mortality and morbidity.

2. Describe if and how a health care system was effectively reengineered to ensure timely access and quality of care in the Emergency Department, Outpatient or Inpatient settings.

3. Describe how appropriate utilization of emergency medical services was facilitated during the pandemic.

4. Detail effective changes in intensive care unit (ICU) care and post-hospital care/follow-up.

5. Detail best practices to ensure continuity of treatment for HIV, hepatitis and sexually transmitted diseases during the pandemic.

6. Describe effective programs/ policies to prevent/manage dental emergencies during the pandemic.
7. Outline novel and effective approaches to ensure compliance with medications, including refills, during the pandemic.
8. Please list effective treatment-related policies or programs that will continue beyond the COVID–19 pandemic.

D. Telehealth

Please provide the following information:

○ *A description of the innovation/ best practice.*
○ *The rationale for the implementation of the innovation/best practice.*
○ *Data and/or results confirming efficacy and/or effectiveness of the innovation/best practice, including demographic data; control conditions; outcomes measures (e.g., mortality, morbidity, health care access, safety, quality, cost, value, etc.); analytic strategy, and results. If the evaluation is currently underway, please describe the study design and expected timeline for completion of the study.*
○ *Costs associated with implementing the the innovation/best practice.*
○ *Have these innovations/best practices been incorporated as permanent organizational changes? If not, why not?*
○ *Can the innovation/best practice be scaled to larger, diverse groups and/or locations for a longer period? If yes, please describe the potential impacts on outcomes.*
○ *Did or could specific HHS policies or programs facilitate the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice positively).*
○ *By contrast, did or could specific HHS policies or programs hinder the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice negatively).*

1. Describe effective best practices to deliver clinical and nonclinical services using telehealth (*e.g.,* surveillance, prevention and treatment services, etc).
2. Describe best practices and innovations to improve access to care for rural/remote populations using telehealth, during the pandemic.
3. Detail effective use of remote monitoring/telemonitoring of chronic medical conditions including diabetes and hypertension and for delivering home health services.
4. List criticial barriers to implement telehealth in healthcare systems.
5. What are some of the key facilitators of telehealth?
6. Outline innovative approaches to integrate telehealth into the clinical work flow.
7. List effective telehealth programs that will continue beyond this pandemic.
8. Describe technological systems that facilitate telehealth, including use of audio or video telehealth, telehealth programs or apps, or other approaches.
9. Describe technological systems that might or might not facilitate telehealth, including uses of audio or video telehealth, telehealth programs or apps, or other approaches.

E. Mental Health/Behavioral Health and Substance Use Disorder Innovations/ Best Practices

Please provide the following information:

○ *A description of the innovation/ best practice.*
○ *The rationale for the implementation of the innovation/best practice.*
○ *Data and/or results confirming efficacy and/or effectiveness of the innovation/best practice, including demographic data; control conditions; outcomes measures (e.g., mortality, morbidity, health care access, safety, quality, cost, value, etc.); analytic strategy, and results. If the evaluation is currently underway, please describe the study design and expected timeline for completion of the study.*
○ *Costs associated with implementing the the innovation/best practice.*
○ *Have these innovations/best practices been incorporated as permanent organizational changes? If not, why not?*
○ *Can the innovation/best practice be scaled to larger, diverse groups and/or locations for a longer period? If yes, please describe the potential impacts on outcomes.*
○ *Did or could specific HHS policies or programs facilitate the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice positively).*
○ *By contrast, did or could specific HHS policies or programs hinder the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice negatively).*

1. Describe effective, novel mental health prevention and/or treatment programs in response to the COVID–19 pandemic.
2. Describe effective and innovative substance use disorder programs during the COVID–19 pandemic.
3. Describe innovative efforts to provide medication-assisted treatment, including access to counseling and support groups, during the pandemic.
4. Provide information on effective suicide prevention programs implemented during the pandemic.
5. Provide information on effective programs designed to identify childhood abuse, elder abuse and/or domestic violence during the pandemic.
6. Detail effective approaches to prevent COVID transmission in psychiatric and substance use disorder residential and group treatment facilities.

F. Population-Level Interventions

Please provide the following information:

○ *A description of the innovation/ best practice.*
○ *The rationale for the implementation of the innovation/best practice.*
○ *Data and/or results confirming efficacy and/or effectiveness of the innovation/best practice, including demographic data; control conditions; outcomes measures (e.g., mortality, morbidity, health care access, safety, quality, cost, value, etc.); analytic strategy, and results. If the evaluation is currently underway, please describe the study design and expected timeline for completion of the study.*
○ *Costs associated with implementing the the innovation/best practice.*
○ *Have these innovations/best practices been incorporated as permanent organizational changes? If not, why not?*
○ *Can the innovation/best practice be scaled to larger, diverse groups and/or locations for a longer period? If yes, please describe the potential impacts on outcomes.*
○ *Did or could specific HHS policies or programs facilitate the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice positively).*
○ *By contrast, did or could specific HHS policies or programs hinder the design and implementation of an innovation/best practice? (If yes, please provide details of how the policy or program affects or could affect the innovation/best practice negatively).*

1. Describe innovations/best practices in preventing and/or treating COVID–19 in high risk and vulnerable populations including but not limited to, African-Americans, Asian Americans,

Hispanics/Latinos, American Indians/Alaska Natives, persons with disabilities, persons with limited English proficiency and others who might have been disproportionately impacted by COVID–19, directly or because treatment for other medical conditions has been disrupted.

2. Provide details on effective, community-based, innovative programs to improve population health during the COVID–19 pandemic (*e.g.,* programs to address social determinants of health).

3. Outline effective and innovative approaches to address health disparities across the continuum of care during the COVID–19 pandemic.

4. Detail effective approaches to address social isolation in vulnerable populations including older-adults and people with disabilities in both institutional and community settings.

G. Other Topics

1. Please describe effective strategies to address other critical barriers, including work force concerns, provider well-being, supply chain, etc., to ensure continuity of operations in a healthcare system.

2. Outline best practices to ensure seamless delivery of long-term services and supports (LTSS) to residents of group homes for individuals with disabilities, and other recipients of home-and-community-based services during the pandemic.

3. Detail new programs/policies and efforts that were implemented during the pandemic, but found to be ineffective in improving healthcare access, safety, quality, continuity, value and outcomes.

4. Please describe other input not already covered by the previous topics.

HHS encourages all potentially interested parties including individuals, healthcare providers, networks and/or associations, academic researchers and institutions, non-HHS federal healthcare systems, non-governmental organizations, and private sector entities to respond.

IV. How To Submit Your Response

Please upload your responses to each question in this Innovation RFI response tool which has clearly marked sections for individual questions. Please respond concisely, in plain language, and in narrative format. You may respond to some or all of the questions listed in the RFI. Please ensure it is clear which question you are responding to. You may also include links to online material or interactive presentations.

Please note that this is a request for information (RFI) only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h) (4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. We note that not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request.

HHS may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in written responses. Contractor support personnel may be used to review responses to this RFI. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the Government for program planning on a non-attribution basis. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property; and will not be returned.

Dated: November 5, 2020.

Eric D. Hargan,

Deputy Secretary, Department of Health and Human Services (HHS).

[FR Doc. 2020–25795 Filed 11–23–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: December 3, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Share sleep and circadian research activities across NIH, other Federal agencies, and relevant research activities of professional societies and public stakeholders.

Place: National Institutes of Health, Rockledge II, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Telephone Access: 1–646–828–7666 (Meeting ID: 161 192 8682 Passcode: 824764).

Virtual Access: https://nih.zoomgov.com (Meeting ID: 161 192 8682 Passcode: 824764).

Contact Person: Michael J Twery, Ph.D. Director, National Center on Sleep Disorders Research, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 10038, Bethesda, MD 20892–7952, 301–435–0199, *twerym@nhlbi.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 18, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–25915 Filed 11–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2020–0017]

Notice of the President's National Infrastructure Advisory Council Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: CISA announces a public meeting of the President's National Infrastructure Advisory Council (NIAC). To facilitate public participation, CISA invites public comments on the agenda items and any associated briefing materials to be considered by the council at the meeting.

DATES:

Meeting Registration: Individual registration to attend the meeting by phone is required and must be received no later than 5:00 p.m. EST on Monday, December 7, 2020.

Speaker Registration: Individuals may register to speak during the meeting's public comment period. The registration must be received no later than 5:00 p.m. EST on Monday, December 7, 2020.

Written Comments: Written comments must be received no later than 5:00 p.m. EST on Monday, November 30, 2020.

NIAC Meeting: The meeting will be held on Thursday, December 10, 2020 from 1:45 p.m.–4:00 p.m. EST. The meeting may close early if the council has completed its business.

ADDRESSES: The meeting will be held remotely via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to participate, please email *NIAC@cisa.dhs.gov* by 5:00 p.m. EST on Monday, December 7, 2020.

Comments: Written comments may be submitted on the issues to be considered by the NIAC as described in the **SUPPLEMENTARY INFORMATION** section below and any briefing materials for the meeting. Any briefing materials that will be presented at the meeting will be made publicly available before the meeting at the following website: *https://www.cisa.gov/niac.*

Comments identified by docket number ''*CISA–2020–0017*'' may be submitted by any of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting written comments.

• *Email: NIAC@cisa.dhs.gov.* Include docket number *CISA–2020–0017* in the subject line of the message.

• *Mail:* Rachel Liang, Designated Federal Officer, National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency Stop 0380, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0380.

Instructions: All submissions received must include the agency name and docket number for this notice. All written comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on participating in the upcoming NIAC meeting, see the ''PUBLIC PARTICIPATION'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket and comments received by the NIAC, go to *www.regulations.gov.*

A public comment period is scheduled to be held during the meeting from 3:30 p.m.–3:35 p.m. EST. Speakers who wish to participate in the public comment period must register by emailing *NIAC@cisa.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Rachel Liang, *Rachel.Liang@cisa.dhs.gov;* 202–936–8300.

SUPPLEMENTARY INFORMATION: The NIAC is established under Section 10 of E.O. 13231 issued on October 16, 2001. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (Pub. L. 92–463). The NIAC shall provide the President, through the Secretary of Homeland Security, with advice on the security and resilience of the Nation's critical infrastructure sectors.

The NIAC will meet in an open meeting on Thursday, December 10, 2020, to discuss the following agenda items.

Agenda

I. Call to Order

II. Opening Remarks

III. Approval of September 2020 Minutes

IV. Critical Infrastructure Command Center Follow-On Analysis

V. Workforce and Talent Management Study

VI. Public Comment

VII. Closing Remarks

VIII. Adjournment

Public Participation

Meeting Registration Information

Requests to attend via conference call will be accepted and processed in the order in which they are received. Individuals may register to attend the NIAC meeting by phone by sending an email to *NIAC@cisa.dhs.gov.*

Public Comment

While this meeting is open to the public, participation in FACA deliberations are limited to council members. A public comment period will be held during the meeting from approximately 3:30 p.m.–3:35 p.m. EST. Speakers who wish to comment must register in advance and can do so by emailing *NIAC@cisa.dhs.gov* no later than Monday, December 7, 2020, at 5:00 p.m. EST. Speakers are requested to limit their comments to three minutes. Please note that the public comment period may end before the time indicated, following the last call for comments.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact *NIAC@cisa.dhs.gov* by 5:00 p.m. EST on Monday, December 7, 2020.

Rachel Liang,

Designated Federal Officer, National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2020–25940 Filed 11–23–20; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2020–N040; FXES11130200000–201–FF02ENEH00]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Sharpnose Shiner and Smalleye Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of our draft recovery plan for sharpnose shiner and smalleye shiner, two fish species listed as endangered under the Endangered Species Act. The two species are broadcast-spawning minnows currently restricted to the upper Brazos River Basin in north-central Texas. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: To ensure consideration, we must receive written comments on or before January 25, 2021. However, we will accept information about any species at any time.

ADDRESSES:

Reviewing document: You may obtain a copy of the draft recovery plan by any one of the following methods:

- *Internet:* Download a copy at *https://www.fws.gov/southwest/es/arlingtontexas/.*
- *U.S. mail:* Send a request to U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Suite 140, Arlington, TX 76006–6247.
- *Telephone:* 817–277–1100.
- *U.S. mail:* Project Leader, at the above U.S. mail address;

Submitting comments: Submit your comments on the draft document in writing by any one of the following methods:

- *U.S. mail:* Project Leader, at the above U.S. mail address; or
- *Email: ARLES@fws.gov.*

For additional information about submitting comments, see Request for Public Comments and Public Availability of Comments under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Debra Bills, Field Supervisor, at the above address, via phone at 817–277–1100, or by email at *ARLES@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, announce the availability of our draft recovery plan for sharpnose shiner (*Notropis oxyrhynchus*) and smalleye shiner (*Notropis buccula*), two fish species listed as endangered under the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). We request review and comment on this plan from local, State, and Federal agencies; Tribes; and the public. We will also accept any new information on the status of sharpnose shiner and smalleye shiner throughout their range to assist in finalizing the recovery plan.

Sharpnose shiner and smalleye shiner are broadcast-spawning minnows currently restricted to the upper Brazos River Basin in north-central Texas and its major tributaries that occur within following counties in north-central Texas: Archer, Baylor, Crosby, Dickens, Fisher, Garza, Haskell, Jones, Kent, King, Knox, Lubbock, Lynn, Palo Pinto, Scurry, Stephens, Stonewall, Throckmorton, and Young. The draft recovery plan includes specific recovery objectives and criteria that, when achieved, will enable us to consider removing the sharpnose shiner and smalleye shiner from the Federal List of Endangered and Threatened Wildlife (List).

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the ESA. Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. The ESA requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

We utilized a streamlined approach to recovery planning and implementation by first conducting a species status assessment (SSA) of sharpnose shiner and smalleye shiner (Service 2018). An SSA is a comprehensive analysis of the species' needs, current condition, threats, and future viability. The information in the SSA provides the biological background, a threats assessment, and a basis for a strategy for recovery of sharpnose shiner and smalleye shiner. We then used this information to prepare an abbreviated draft recovery plan for sharpnose shiner and smalleye shiner that includes prioritized recovery actions, criteria for reclassifying the species from endangered to threatened, criteria for removing the species from the List, and the estimated time and cost to recovery.

Summary of Species Information

We published final rules to list the sharpnose shiner and smalleye shiner as endangered (79 FR 45273) with critical habitat under the ESA (79 FR 45241) on August 4, 2014. The sharpnose shiner historically occurred in the Brazos River, Red River, and Colorado River Basins within Texas, where headwaters for these basins lie within the semi-arid High Plains ecoregion. The smalleye shiner historically occurred only in the Brazos River Basin. These species are currently restricted to the upper Brazos River and its major tributaries, which represents a greater than 70 percent reduction in range for the sharpnose shiner and a greater than 50 percent range reduction for the smalleye shiner (Service 2018).

Sharpnose and smalleye shiners spawn asynchronously from April through September during periods of no and low streamflow. Large, synchronized spawning events occur during high streamflow events (Durham 2007, p. 24; Durham and Wilde 2008, entire; Durham and Wilde 2009, p. 26). Field observations of sharpnose shiner and smalleye shiner in the upper Brazos River Basin indicate that successful survival to the juvenile fish stage does not occur during periods completely lacking streamflow (Durham and Wilde 2009, p. 24). The best available science suggests that the primary needs of sharpnose and smalleye populations include a minimum, unobstructed, wide, flowing river segment length of greater than 275 kilometers (171 miles) to support development of their early life history stages. However, this information comes from a study (Perkin and Gido 2011) that focused on similar species, rather than specifically on the sharpnose and smalleye shiners. We do not have information about specific stream length requirements for sharpnose and smalleye shiners. As we implement the recovery plan actions, we expect to gain valuable new information from the monitoring of reintroduced populations and continued research. This new information will be specific to these species and will modify estimates of the minimum stream length necessary to sustain resilient populations of these two species. Based on current life history information, population dynamics modeling estimates that a mean summer water discharge of approximately 92 cubic feet per second (cfs) is necessary to sustain sharpnose shiner populations (Durham 2007, p. 110), while a higher mean discharge of approximately 227 cfs is necessary for smalleye shiners (Durham and Wilde 2009, p. 670). The maximum life span of both species is less than 3 years (Marks 1999, p. 69). Given both species' short lifespans and restricted range, stressors that persist for two or more reproductive seasons (such as a severe drought), severely limit these species' viability, placing them at a high risk of extinction (Service 2018).

The decline of sharpnose and smalleye shiner throughout much of their historical range is attributed primarily to habitat loss and modification due to fragmentation and decreased river flow resulting from major water impoundments, drought, and groundwater withdrawals. Water quality degradation, invasive salt cedar, and other factors may have also contributed to their decline. As a result, sharpnose and smalleye shiners' redundancy, or the ability to withstand catastrophic events, is limited to a single population within the historical range. With a single population of the sharpnose shiner and smalleye shiner reduced to a fragment of their former range, these species lack redundancy as well as the genetic and ecological representation to adapt to new or ongoing threats.

Recovery Plan Goals

The objective of a recovery plan is to provide a framework for the recovery of a species so that protection under the ESA is no longer necessary. A recovery plan includes scientific information about the species and provides criteria and actions necessary for us to be able to reclassify the species to threatened status or remove it from the List. Recovery plans help guide our recovery efforts by describing actions we consider necessary for the species' conservation and by estimating time and costs for implementing needed recovery measures.

The recovery strategy for the sharpnose and smalleye shiners involves stemming any further range contraction in the upper Brazos River Basin, improving resiliency of these species in the upper Brazos River Basin, and increasing redundancy and representation of both shiners. Much of the strategy focuses on habitat restoration and preservation, predicated on an increased understanding of the relationship of the sharpnose and smalleye shiners' life history requirements within the physical, chemical, and ecological conditions of their environments. Information on these species and their habitats (for example, population dynamics, predation, river fragmentation, alterations in stream flow, and responses to identified threats) is needed to provide for better future science-based management decisions and conservation actions. Implementation of the recovery plan will necessitate adaptive management strategies to use the most up-to-date information as it becomes available.

The recovery of the sharpnose and smalleye shiner will involve continued cooperation among Federal, State, and local agencies; private entities; and other stakeholders. Therefore, the success of the recovery strategy will rely heavily on the implementation of recovery actions conducted by and through coordination with our conservation partners.

Recovery objectives for reclassifying the species from endangered to threatened consist of:

- A viable, self-sustaining population of sharpnose and smalleye shiner dispersed throughout the upper Brazos River Basin,
- A captive population sufficient to protect against a catastrophic loss and facilitate population augmentation,
- Adequate stream flows to accommodate all life stages,
- Water quality sufficient to accommodate all life stages, and
- Restoration and preservation of natural river morphology.

Recovery objectives for removing the species from the List include the objectives for reclassifying the species to threatened status, in addition to:

- A second viable population of both the sharpnose and smalleye shiner within their historical ranges, as defined by criteria related to population size, distribution, and extinction risk, and
- The availability of habitat sufficient to support two populations of both the sharpnose and smalleye shiner, as defined by criteria related to adequate stream flows for all life stages, adequate water quality for all life stages, and adequate river morphology.

It is anticipated that implementation of these objectives would allow populations to become self-sustaining with minimal human intervention.

The criteria for removing the species from the List and the criteria for reclassification to threatened status provided in the recovery plan are based on the following:

- Improving habitat conditions and maintaining a viable population of both species in the upper Brazos River Basin, and
- The reintroduction of a second viable population of both species within their historical range with habitat sufficient to accommodate all of the species' life stages.

The above must be sustainable with minimal human intervention.

Recovery of these species through implementation of recovery actions is estimated to occur in 2050; total costs for all partners are estimated at approximately $71 million over the next 30 years.

Request for Public Comments

Section 4(f) of the ESA requires us to provide public notice and an opportunity for public review and comment during recovery plan development. It is also our policy to request peer review of recovery plans (July 1, 1994; 59 FR 34270). In an appendix to the final recovery plan, we will summarize and respond to the issues raised by the public and peer reviewers. Comments may or may not result in changes to the recovery plan; comments regarding recovery plan implementation will be forwarded as appropriate to Federal or other entities so that they can be taken into account during the course of implementing recovery actions. Responses to individual commenters will not be provided, but we will provide a summary of how we addressed substantive comments in an appendix to the approved recovery plan.

We invite written comments on this draft recovery plan. In particular, we are interested in additional information regarding the current threats to the species, ongoing beneficial management efforts, and the costs associated with implementing the recommended recovery actions.

Public Availability of Comments

All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Comments and materials we receive will be available, by appointment, for public inspection during normal business hours at our office (see **ADDRESSES**).

Authority

We developed our draft recovery plan and publish this notice under the authority of section 4(f) of the

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Amy Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2020–25918 Filed 11–23–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0131]

Agency Information Collection Activities; Indian Child Welfare Quarterly and Annual Report

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 25, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Ms. Evangeline Campbell, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS–3641–MIB, Washington, DC 20240; fax: (202) 208–5113; email: *Evangeline.Campbell@bia.gov.* Please reference OMB Control Number 1076–0131 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Evangeline Campbell by email at *Evangeline.Campbell@bia.gov,* or by telephone at (202) 513–7621.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIA is seeking to renew the information collection conducted under 25 CFR 23, related to the Indian Child Welfare Act (ICWA). The BIA collects information using a consolidated caseload form, which Tribal ICWA program directors complete. The BIA uses the information to determine the extent of service needs in local Indian communities, assess ICWA program effectiveness, and provide date for the annual program budget justification. The aggregated report is not considered confidential.

This form must be completed by federally recognized Tribes that operate child protection programs. Submission of this information by federally recognized Tribes allows the BIA to consolidate and review selected data on Indian child welfare cases. The data is useful on a local level, to the Tribes and Tribal entities that collect it, for case management purposes. The data are useful on a nationwide basis for planning and budget purposes.

Title of Collection: Indian Child Welfare Quarterly and Annual Report.

OMB Control Number: 1076–0131.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Tribes or Tribal entities that are operating programs for Tribes.

Total Estimated Number of Annual Respondents: 940 per year, on average.

Total Estimated Number of Annual Responses: 3,760 per year, on average.

Estimated Completion Time per Response: Approximately 15 minutes for Part A—ICWA Data; approximately 15 minutes for Part B—Tribal Child Abuse and Neglect Data.

Total Estimated Number of Annual Burden Hours: 940, per year on average.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: Four times per year for the Part A—ICWA Data; if applicable, four times per year for Part B—Tribal Child Abuse Neglect Data.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2020–25976 Filed 11–23–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

[DOI–2020–0004; 212D0102DM, DS64600000, DLSN00000.000000, DX.64601]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Department of the Interior (DOI) is issuing a public notice of its intent to rescind the Privacy Act system of records, INTERIOR/DOI–79, Interior Personnel Records, from its inventory because it is duplicative with existing system of records notice requirements. During a review of DOI system of records notices, it was determined that personnel records of current and recently separated DOI employees maintained by DOI are covered under the government-wide system of records notice, OPM/GOVT–1, General Personnel Records, and the DOI system of records notice, INTERIOR/DOI–85, Payroll, Attendance, Retirement, and Leave Records. This rescindment will eliminate an unnecessary duplicate notice and promote the overall streamlining and management of DOI Privacy Act systems of records.

DATES: These changes take effect on November 24, 2020.

ADDRESSES: You may submit comments identified by docket number [DOI–2020–0004] by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2020–0004] in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2020–0004]. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

You should be aware that your entire comment including your personal identifying information, such as your address, phone number, email address, or any other personal identifying information in your comment, may be made publicly available at any time. While you may request to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or (202) 208–1605.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, DOI is rescinding the INTERIOR/DOI–79, Interior Personnel Records, system of records notice from its inventory because it is no longer needed as the personnel records of current and recently separated DOI employees are covered under the Office of Personnel Management (OPM) government-wide system of records notice, OPM/GOVT–1, General Personnel Records, 77 FR 73694 (December 11, 2012), modification published at 80 FR 74815 (November 30, 2015); and the DOI system of records notice, INTERIOR/DOI–85, Payroll, Attendance, Retirement, and Leave Records, 83 FR 34156 (July 19, 2018). During a routine review, DOI determined that the INTERIOR/DOI–79, Interior Personnel Records, system of records notice does not identify any additional individuals, records, or routine uses beyond those specified in the OPM/GOVT–1 and INTERIOR/DOI–85 system of records notices. Therefore, DOI is rescinding the INTERIOR/DOI–79, Interior Personnel Records, system of records notice to avoid duplication of existing system of records notices in accordance with the Office of Management and Budget Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.*

Rescinding the INTERIOR/DOI–79, Interior Personnel Records, system of records notice will have no adverse impacts on individuals as the records are covered by the published OPM/GOVT–1 and INTERIOR/DOI–85 system of records notices. The rescindment of the INTERIOR/DOI–79 notice will also promote the overall streamlining and management of DOI Privacy Act systems of records.

SYSTEM NAME AND NUMBER:

INTERIOR/DOI–79, Interior Personnel Records.

HISTORY:

64 FR 20010 (April 23, 1999); modification published 73 FR 8342 (February 13, 2008).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2020–25910 Filed 11–23–20; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L16100000.LXSSL0290000.PN0000.20X]

Notice of Intent To Amend the 2007 East Alaska Resource Management Plan and Prepare the Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended; the Federal Land Policy and Management Act of 1976 (FLPMA), as amended; the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), as amended; and the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Dingell Act), the Bureau of Land Management (BLM) Glennallen Field Office, Glennallen, Alaska, intends to prepare an Environmental Assessment (EA) for a proposed Amendment to the 2007 East Alaska Resource Management Plan (RMP) to analyze which lands could be made available for one or more land exchanges, as directed in the Dingell Act.

DATES: This notice initiates the public scoping process for the EA and proposed RMP amendment. Comments on relevant issues may be submitted in writing by December 24, 2020. The BLM will conduct virtual public scoping meetings, and the date(s) and location(s) of scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Alaska website at: *www.blm.gov/alaska* and through BLM Alaska social media channels.

If required, ANILCA subsistence hearings will be held concurrently with the Draft RMP Amendment/EA public involvement meetings.

ADDRESSES: You may submit comments on issues related to the proposed project by any of the following methods:

- *ePlanning Website:* [TBD]
- *Mail:* East Alaska RMP Amendment/EA, 222 W 7th Ave., Stop 13, Anchorage, Alaska 99513

Documents pertinent to this proposal may be examined at the BLM Alaska Public Room, Glennallen Field Office, Mile Post 186.5 Glenn Highway, Glennallen, Alaska 99588; and at the BLM Alaska Public Information Center, Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Tina McMaster-Goering, Project Lead; 907–271–1310, *tmcmastergoering@blm.gov.* Please contact the project lead to be added to the mailing list and receive further information about this project. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS 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 State and Federal governments acquired surface estate and/or conservation easements to nearly 250,000 acres of lands for which Chugach Alaska Corporation owns the subsurface or mineral estate. These acquisitions occurred under the Exxon Valdez Oil Spill Trustee Council (EVOSTC) Habitat Protection and Land Acquisition Program. Pursuant to Sec. 1113 of the Dingell Act, the BLM is to identify ‘‘accessible and economically viable Federal land’’ within the Chugach Region that can be offered in exchange for those lands acquired through the

EVOSTC Habitat Acquisition Program. Lands being considered are near Thompson Pass in the vicinity of Valdez, Alaska, and are not identified as available for exchange under the current East Alaska RMP. The proposed amendment to the RMP would analyze making additional lands near Thompson Pass available for potential exchanges in accordance with the Dingell Act. At present, the BLM has identified the following preliminary issues for evaluation in the RMP Amendment/EA: Recreational activities, social and economic impacts, rural and traditional lifestyles, subsistence use and access, public access, wildlife and biological resources, special status species, fish and aquatic species, water, wilderness characteristics, cultural resources and reasonably foreseeable future activities.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (NHPA), as amended, and as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will offer consultation to potentially affected Federally recognized tribes on a government-to-government basis, and with affected Alaska Native corporations, in accordance with Executive Order 13175 and other policies. Native concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given appropriate consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed RMP Amendment/EA, are invited to participate in the scoping process and, if eligible, may request or be asked by the BLM to participate in the development of the RMP Amendment/EA as cooperating agencies.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Chad B. Padgett,

State Director.

[FR Doc. 2020–25958 Filed 11–23–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–31186; ;PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before November 14, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by December 9, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 14, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

California

Contra Costa County

Chinese Shrimp Camp (Asian Americans and Pacific Islanders in California, 1850–1970 MPS), Address Restricted, Richmond vicinity, MP100005934

Los Angeles County

Pioneer Oil Refinery, 0.35 mi. southwest of jct. of Pine St. and Newhall Ave., Santa Clarita, SG100005942

Orange County

North Beach Historic District, Roughly bounded by North El Camino Real, Avenida Estacion, and Boca De La Playa, San Clemente, SG100005943

Georgia

Troup County

Miller, Henry and Lura, House, 1603 US 29, West Point, SG100005926

Kansas

Douglas County

Cohn/Gardner-Hill & Company Store, 714 Main St., Eudora, SG100005945

Reuter Organ Company Buildings (Lawrence, Kansas MPS), 612–616 New Hampshire St., Lawrence, MP100005946

Winter School No. 70 (Public Schools of Kansas MPS), 744 North 1800 Rd., Lecompton vicinity, MP100005947

Elk County

Howard National Bank, 147–149 North Wabash St. (County appraiser states 143 North Wabash St.), Howard, SG100005948

Geary County

Lyon Creek Rainbow Arch (Rainbow Arch Marsh Arch Bridges of Kansas TR), 100 ft. southwest from the jct. of Lyon Creek Rd. & Hwy. K–157 Spur, Wreford, MP100005949

Kingman County

Werner, Louis, Barn (Agriculture-Related Resources of Kansas MPS), 4550 NE 80th Ave., Pretty Prairie, MP100005952

Lyon County

Rocky Ford Bridge (Metal Truss Bridges in Kansas 1861–1939 MPS), 3.5m east of Commercial St. & East 6th Ave., Emporia, MP100005953

Osage County

Star Block, 520 and 522 Market St., Osage City, SG100005954

Shawnee County

Fire Station No. 1, 934 NE Quincy St., Topeka, SG100005955

Louisiana

Lafayette Parish

Oil Center Historic District (Architecture of A. Hays Town in Louisiana MPS), Roughly bounded by East St. Mary Blvd., West Pinhook Rd., Travis St., Heyman and Audubon Blvds., Harding and Coolidge Sts., Lafayette, MP100005941

Maine

Knox County

Herald Building, 10 Bay View St., Camden, SG100005940

New Mexico

Rio Arriba County

O'Keeffe, Georgia, Ghost Ranch House, US–84, 280 Private Dr. 1708, House 115 northwest of the Ghost Ranch Education and Retreat Center, Abiquiu vicinity, SG100005933

New York

Ontario County

Wheeler, George and Addison, House (Boundary Increase), 6353 and 6342 Grimble Rd., East Bloomfield vicinity, BC100005957

North Carolina

Mecklenburg County

Ingleside, 7225 Bud Henderson Rd., Huntersville, SG100005958

Pennsylvania

Allegheny County

Hazelwood Brewing Company, 5007, 5009, and 5011 Lytle St., Pittsburgh, SG100005931

Texas

Taylor County

Abilene Commercial Historic District (Boundary Increase) (Abilene MPS), 302 Pine St., Abilene, BC100005936

Virginia

Albemarle County

River View Farm, 1780 Earlysville Rd., Charlottesville vicinity, SG100005925

West Virginia

Greenbrier County

Mountain Home (Boundary Increase), 38221 Midland Trail East, White Sulphur Springs vicinity, BC100005944

A request for removal has been made for the following resources:

Indiana

Clay County

Indiana State Highway Bridge 46–11–1316, IN 46 over Eel R., Bowling Green vicinity, OT00000211

Kansas

Harper County

Thompson-Wohlschlegel Round Barn, 855 NE 40th Ave., Harper vicinity, OT85000315

Additional documentation has been received for the following resources:

Arkansas

Pulaski County

Capitol View Neighborhood Historic District (Additional Documentation), Roughly bounded by Riverview Dr., S. Schiller St., W. Seventh St. and Woodrow St., Little Rock, AD00000813

Kansas

Harvey County

McKinley Residential Historic District (Additional Documentation), Roughly East 5th St., SE 3rd St., Allison St., Walnut St., Newton, AD08000670

Maine

Cumberland County

Spring Street Historic District (Additional Documentation), Roughly bounded by Forest, Oak, Danforth, Brackett, and Pine Sts., Portland, AD70000043

Franklin County

Greenwood, Chester and Isabel, House (Additional Documentation), 112 Hill St., Farmington, AD78000160

New York

Ontario County

Wheeler, George and Addison, House (Additional Documentation), 6353 Grimble Rd., East Bloomfield vicinity, AD05000168

Authority: Section 60.13 of 36 CFR part 60.

Dated: November 18, 2020.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2020–25967 Filed 11–23–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Submission for OMB Review; Comment Request Agency Proposal for the Collection of Information Submitted to the Office of Management and Budget for Review; Renewal of Generic Clearances; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995, the U.S. International Trade Commission (Commission) has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for approval. The proposed information collection is a three-year extension of the current generic clearance (approved by OMB under Control No. 3117–0222) under which the Commission can issue information collections for the collection of qualitative feedback on agency service delivery. Any comments submitted to OMB on the proposed information collection should be specific, indicating which part of the information collection plan is objectionable, describing the issue in detail, and including specific revisions or language changes. The Commission did not receive any comments in response to the 60-day notice that it published in the **Federal Register** on September 22, 2020.

DATES: To be assured of consideration, comments should be submitted to OMB within 30 days of the date this notice appears in the **Federal Register**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of supporting documents from Zachary Coughlin (*zachary.coughlin@usitc.gov* or 202–205–3435). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. You may also obtain general information concerning the Commission by accessing its website (*https://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

(1) Need for the Proposed Information Collections

The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner. This qualitative feedback provides useful insights on perceptions and opinions of customers and stakeholders. The feedback helps the Commission gain understanding into customer or stakeholder experiences and expectations and provides an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections allow for ongoing, collaborative and actionable communications between the Commission and its customers and stakeholders and contribute directly to the improvement of program management.

(2) Description of the Information To Be Collected

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public.

If this information is not collected, vital feedback from customers and stakeholders on the Commission's services will be unavailable. Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

(3) Estimated Burden of the Proposed Information Collection

The Commission estimates that information collections issued under the requested generic clearance will impose an average annual burden of 300 hours on 600 respondents.

No record-keeping burden is known to result from the proposed collection of information.

By order of the Commission,

Issued: November 18, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–25908 Filed 11–23–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1214]

Certain Height-Adjustable Desk Platforms and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (Order No. 7) terminating the investigation based on withdrawal of the complaint. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On August 24, 2020, the Commission instituted this investigation based on a complaint filed by Versa Products Inc. of Los Angeles, California (''complainant''). 84 FR 52150 (Aug. 24, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain height-adjustable desk platforms and components thereof by reason of infringement of U.S. Patent No. 10,485,336. The complaint also alleges the existence of a domestic industry.

The notice of investigation names seven (7) respondents, including Varidesk LLC of Coppell, Texas, CKNAPP Sales, Inc. of Goodfield, Illinois, Loctek, Inc. of Livermore, California, Locktek Ergonomic Technology Corporation and Zhejiang Loctek Smart Drive Technology Co., Ltd. both of Zhejiang, China, Amazon Import Inc. (''Amazon'') of El Monte, California, and Stand Steady Company, LLC of Birmingham, Alabama. *Id.* The Office of Unfair Import Investigations (''OUII'') is also a party in this investigation. *Id.*

On October 22, 2020, Complainant filed a motion to terminate the investigation in its entirety based on withdrawal of the complaint. OUII and the respondents, with the exception of Amazon, filed responses indicating that they do not oppose the motion.

On November 3, 2020, the ALJ issued Order No. 7 granting the motion. The ID found that the complainant represented that ''there are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this Investigation.'' The ID also found that there are no extraordinary circumstances that warrant denying the motion. No party petitioned for review of the ID.

The Commission has determined not to review Order No. 7. The investigation is terminated.

The Commission vote for this determination took place on November 18, 2020.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 18, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–25907 Filed 11–23–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1103]

Certain Digital Video Receivers and Related Hardware and Software Components; Commission Decision To Institute a Rescission Proceeding; Rescission of a Limited Exclusion Order and Cease and Desist Orders; Termination of Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to institute a rescission proceeding in the above-captioned investigation and to grant a joint motion for rescission of a limited exclusion order (''LEO'') and cease and desist orders (''CDOs'') previously issued in the investigation. The LEO and CDOs are rescinded, and the rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On March 16, 2018, the Commission instituted this investigation based on a supplemented complaint filed on behalf of, *inter alia,* Rovi Corporation of San Jose, California; Rovi Guides, Inc. of San Jose, California; and Veveo, Inc. of Andover, Massachusetts (collectively, ''Rovi''). The supplemented complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital video receivers and related hardware and software components by reason of infringement of certain claims of, *inter alia,* U.S. Patent No. 7,779,011 (''the '011 patent''). 83 FR 11792 (Mar. 16, 2018). The Commission's notice of investigation named as respondents Comcast Corporation of Philadelphia, Pennsylvania; Comcast Cable Communications, LLC of Philadelphia, Pennsylvania; Comcast Cable Communications Management, LLC of Philadelphia, Pennsylvania; Comcast Business Communications, LLC of Philadelphia, Pennsylvania; Comcast Holdings Corporation of Philadelphia, Pennsylvania; and Comcast Shared Services, LLC of Chicago, Illinois (collectively, ''Comcast''). *Id.* The Office of Unfair Import Investigations was also named as a party in this investigation. *Id.*

On April 23, 2020, the Commission terminated the investigation with a finding of violation of section 337 based on the infringement of claim 9 of the '011 patent. The Commission issued an LEO and six CDOs (one for each respondent).

On November 13, 2020, Rovi and Comcast jointly filed confidential and public versions of a petition to rescind the remedial orders based on a settlement agreement.

Having reviewed the petition and determined that it complies with Commission rules, *see* 19 CFR 210.76(a)(3), the Commission has determined to institute a rescission proceeding and to grant the petition. The LEO and the CDOs are hereby rescinded.

The rescission proceeding is terminated.

The Commission vote for this determination took place on November 19, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 19, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–25992 Filed 11–23–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Third Review)]

Certain Frozen Fish Fillets From Vietnam

Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on October 1, 2019 (84 FR 52122) and determined on January 6, 2020 that it would conduct a full review (85 FR 3417, January 21, 2020). Notice of the scheduling of the Commission's review 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** on May 14, 2020 (85 FR 28981). Subsequently, the Commission cancelled its previously scheduled hearing following a request on behalf of the domestic interested parties (85 FR 57882, September 16, 2020).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on November 19, 2020. The views of the Commission are contained in USITC Publication 5135 (November 2020), entitled *Certain Frozen Fish Fillets from Vietnam:* Investigation No. 731–TA–1012 (Third Review).

By order of the Commission.

Issued: November 19, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–25939 Filed 11–23–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Institute of Electrical and Electronics Engineers, Inc.

Notice is hereby given that, on October 22, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Institute of Electrical and Electronics Engineers, Inc. (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 59 new standards have been initiated and 20 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/september2020.htm1.*

The following pre-standards activities associated with IEEE Industry Connections Activities were launched or renewed:

Launched

IC20–010–01 Labeling Cybersecurity Data for AI Automation Single- and Multi-Modal) ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVZSAAAAACKnAdk*
IC20–011–01 IoT Ecosystem Security ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVZXAAAAAC-ouDc*
IC20–012–01 Roadmap for the Development and Implementation of Standard Oriented Knowledge Graphs ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVZbAAAAAEanz6I*
IC20–013–01 Rural Communication ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVZcAAAAAH5fO_g*
IC20–014–01 Sustainable Infrastructures and Community Development Program ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVZfAAAAAGuxvmM*
IC20–015–01 The IEEE Earth Lab ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVZiAAAAAEfiDjE*
IC20–016–01 The IEEE Global Initiative on Ethics of Extended Reality ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVRDAAAAAEnRO9I*
IC20–017–01 Association for Digital Transformation ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVRcAAAAADDdXhs*
IC20–018–01 Transforming the Telehealth Paradigm Sustainable Connectivity, Accessibility, Privacy, and Security for All ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVYBAAAAABwrciI*
IC20–019–01 Digital Resilience—Tools and Methods to Support Response and Recovery from Major Crises ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVoFAAAAAD_xutg*

Renewed

IC15–005–04 New Ethernet Applications ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVYIAAAAAAKyqtk*
IC18–004–02 Ethics Certification Program for Autonomous and Intelligent Systems (ECPAIS) ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVYKAAAAAClIf4g*
IC19–004–02 Technology and Data Harmonization for Enabling Decentralized Clinical Trials ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVYLAAAAAGDt7lY*
C20–003–02 AI-driven Innovation for Cities and People ICAID: *https://ieee-sa.imeetcentral.com/p/eAAAAAAARVWVAAAAACu9FB8*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on August 4, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 28, 2020 (85 FR 53400).

Suzanne Morris,
Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–25903 Filed 11–23–20; 8:45 am]
BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0011]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office on Violence Against Women (OVW), Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants to Support Tribal Domestic Violence and Sexual Assault Coalitions Program (Tribal Coalitions Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0011. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 14 grantees from the Tribal

Coalitions Program. The Tribal Coalitions Program grantees include Indian tribal governments that will support the development and operation of new or existing nonprofit tribal domestic violence and sexual assault coalitions in Indian country. These grants provide funds to develop and operate nonprofit tribal domestic violence and sexual assault coalitions in Indian country to address the unique issues that confront Indian victims. The Tribal Coalitions Program provides resources for organizing and supporting efforts to end violence against Indian women.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 14 respondents (grantees from the Tribal Coalitions Program) approximately one hour to complete a Semi-Annual Progress Report. The Semi-Annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 28 hours, that is 14 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: November 19, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–25945 Filed 11–23–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0018]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for the Grants to Indian Tribal Governments Program (Tribal Governments Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0018. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 85 grantees of the Grants to Indian Tribal Governments Program (Tribal Governments Program), a grant program authorized by the Violence Against Women Act of 2005, as amended. This discretionary grant program is designed to enhance the ability of tribes to respond to violent crimes against Indian women, enhance victim safety, and develop education and prevention strategies. Eligible applicants are recognized Indian tribal governments or their authorized designees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 85 respondents (Tribal Governments Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal Governments Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 170 hours, that is 85 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: November 19, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–25948 Filed 11–23–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the

Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0013. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: November 19, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–25944 Filed 11–23–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grants to Reduce Violent Crimes Against Women on Campus Program (Campus Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0005. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 100 grantees (institutions of higher education) of the Campus Program whose eligibility is

determined by statute. Campus Program grants may be used to enhance victim services and develop programs to prevent violent crimes against women on campuses. The Campus Program also enables institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including domestic violence, dating violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 100 respondents (Campus Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Campus Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 200 hours, that is 100 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: November 19, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–25946 Filed 11–23–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0010]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program (State Coalitions Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0010. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 88 grantees from the State Coalitions Program. The State Coalitions Program provides federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with federal, state, and local entities engaged in violence against women activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 88 respondents (State Coalitions Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A State Coalitions Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 176 hours, that is 88 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: November 19, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–25947 Filed 11–23–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0046]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Friction Ridge Cards: Arrest and Institution FD–249; Applicant FD–258; Identity History Summary Request FD–1164; FBI Standard Palm Print FD–884; Supplemental Finger and Palm Print FD–884a

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-day notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division is submitting the

following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until December 24, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Friction Ridge Cards: Arrest and Institution; Applicant; Identity History Summary Request; FBI Standard Palm Print; Supplemental Finger and Palm Print.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: Agency form number: Forms FD–249 (Arrest and Institution), FD–258 (Applicant), and FD–1164 (Identity History Summary Request); FD–884 (FBI Standard Palm Print); FD–884a (Supplemental Finger and Palm Print) encompassed under OMB 1110–0046; CJIS Division, FBI, DOJ.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: City, county, state, federal and tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Next Generation Identification System (NGI) of the FBI.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 399, 813 respondents will complete each form within approximately 10 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 11.5 million total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: November 19, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–25943 Filed 11–23–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Agency Information Collection Activities; Comment Request; Center for Advancing Policy on Employment for Youth (CAPE-Youth) Data Collection

AGENCY: Office of Disability Employment Policy (ODEP), United States Department of Labor (DOL).

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the DOL is soliciting public comments regarding this ODEP-sponsored information collection to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments pertaining to this information collection are due on or before January 25, 2021.

ADDRESSES:

Electronic submission: You may submit comments and attachments electronically at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail submission: 200 Constitution Ave. NW, Room S–5315, Washington, DC 2020.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the DOL, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the DOL's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Robert Trombley, Senior Policy Advisor, ODEP, by telephone at 202–693–7845 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: In FY 2019 DOL's ODEP funded a four-year cooperative agreement for CAPE-Youth. CAPE-Youth is focused on supporting state efforts to align state workforce systems to establish pathways toward careers and financial self-sufficiency for youth and young adults with disabilities (Y&YAD). The ultimate goal of CAPE-Youth is to improve transition and employment related outcomes for Y&YAD through the identification and dissemination of evidence-based practices. To achieve this goal, CAPE-Youth is implementing a rapid cycle research strategy with three primary steps: (a) Identify the needs of workforce systems; (b) conduct research and policy analysis that will help address those problems; and (c) based on the findings of research and analysis, develop and disseminate resources to policymakers and key stakeholders.

CAPE-Youth is supporting Y&YAD in three main focus areas:

1. Youth and adult workforce systems collaboration;

2. Professional development for youth workforce practitioners; and

3. Career pathways and work-based learning such as apprenticeships programs for Y&YAD.

In order to support the needs of state policy makers as they work to implement the Workforce Innovation and Opportunity Act (WIOA) and improve employment outcomes for Y&YAD, CAPE-Youth will be conducting several studies, which will require data collection through surveys, focus groups, and interviews. They are as follows:

A. State Collaboration Research—This study uses a mixed method approach to understand collaboration across WIOA partners serving transitioning youth in 50 states, Puerto Rico, and the District of Columbia. In Phase 1, state and local agencies serving youth and young adults will provide data through an on-line survey tool. In Phase 2, up to 10 purposively selected states with a focus on WIOA partners including state systems that support developmental disabilities (DD), mental health, juvenile justice, Foster Care, education, and other impacted systems will participate in 48 focus groups to provide detailed qualitative information on collaboration practices.

B. Pre-Employment Transition Services (Pre-ETS) Implementation Study—This study also uses a mixed method approach. During Phase 1 of this study, Directors of State Vocational Rehabilitation (VR) agencies under WIOA in 50 states, Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, the Northern Marianas and the District of Columbia will provide data on the implementation of Pre-ETS for youth using an on-line survey. In Phase 2 of this study, 25 total State VR staff in up to 5 purposively selected States will participate in .5 hour qualitative interviews to provide detailed qualitative information on the implementation of Pre-ETS for youth with mental health conditions.

C. Study of Professional Development for Youth Workforce Practitioners—This study also will utilize a mixed-methods approach including a survey and focus groups. ODEP will survey a purposeful sample of 300 youth workforce practitioners throughout the country that serve youth and young adults with disabilities. This data from this survey will help identify key topics for discussion in 10 focus groups with 10 youth workforce practitioners. These focus groups will help gather the perceptions of core competencies required to effectively support youth and young adults with disabilities to obtain employment and how to implement meaningful professional development for practitioners.

ODEP will use the data collected through these research efforts to identify how states are implementing aforementioned provisions of WIOA, challenges associated with implementation, and promising practices. CAPE-Youth will disseminate this research through briefs, reports, tools, and technical assistance to state policy makers focused on improving employment outcomes for youth and young adults with disabilities.

This information collection is subject to the Paperwork Reduction Act (PRA). A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

The DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an Information Collection Review cannot be for more than three (3) years without renewal. The DOL notes that currently approved information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Agency: DOL–ODEP.

Title of Collection: Center for Advancing Policy on Employment for Youth (CAPE Youth) Data Collection.

OMB Control Number: 1230–0NEW.

Affected Public: State and Local Governments.

Total Estimated Number of Respondents: 1,623.

Total Estimated Number of Responses: 1,623.

Total Estimated Annual Time Burden: 486.3 hours.

Total Estimated Annual Other Costs Burden: $0.

ESTIMATED HOURS OF BURDEN TO PARTICIPANT DATA COLLECTION—YEARS 1–3

Study	Number of respondents	Hours/ response
State Collaboration Research	1120	0.76
Pre-Employment Transition Services (Pre-ETS) Implementation Study	103	0.35
Professional Development for Youth Workforce Practitioners	400	1.44
	Respondents	Burden hours
Year 1 Total	1623	1463.25
Year 2–3 Totals	0	0
Three-year Total	1623	1463.25
Three-year Average	541	487.75

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: November 18, 2020.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2020–25937 Filed 11–23–20; 8:45 am]

BILLING CODE 4510–FK–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Program for Indiana, Maine, and Montana

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for Indiana, Maine, and Montana.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–

2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

SUPPLEMENTARY INFORMATION: The following changes have occurred since the publication of the last notice regarding the State's EB status:

• Indiana's 13-week insured unemployment rate (IUR) for the week ending October 24, 2020, was 4.85 percent, falling below the 5.00 percent threshold necessary to remain ''on'' EB. Therefore, the EB period for Indiana ends on November 14, 2020. The state will remain in an ''off'' period for a minimum of 13 weeks.

• Maine's 13-week insured unemployment rate (IUR) for the week ending October 24, 2020, was 4.88 percent, falling below the 5.00 percent threshold necessary to remain ''on'' EB. Therefore, the EB period for Maine ends on November 14, 2020. The state will remain in an ''off'' period for a minimum of 13 weeks.

• Montana's 13-week insured unemployment rate (IUR) for the week ending October 24, 2020, was 4.69 percent, falling below the 5.00 percent threshold necessary to remain ''on'' EB. Therefore, the EB period for Montana ends on November 14, 2020. The state will remain in an ''off'' period for a minimum of 13 weeks.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the state by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing claims for EB of the forthcoming termination of the EB period and its effect on the individual's right to EB (20 CFR 615.13(c)).

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–25963 Filed 11–23–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Program for Virginia

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Virginia.

The following changes have occurred since the publication of the last notice regarding the State's EB status:

• Virginia's 13-week insured unemployment rate (IUR) for the week ending October 31, 2020, was 4.66 percent, falling below the 5.00 percent threshold necessary to remain ''on'' EB. Therefore, the EB period for Virginia ends on November 21, 2020. The state will remain in an ''off'' period for a minimum of 13 weeks.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the state by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing claims for EB of the forthcoming termination of the EB period and its effect on the individual's right to EB (20 CFR 615.13(c)).

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202)–693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–25965 Filed 11–23–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Washington, DC

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a retroactive change in benefit period eligibility under the EB program for Washington, DC.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202)–693–3009 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

SUPPLEMENTARY INFORMATION:

The following changes have occurred since the publication of the last notice regarding the District's EB status:

Based on Washington, DC's Unemployment Compensation law, which provides for the temporary adoption of the optional TUR trigger during periods of 100 percent Federal financing, and data released by the Bureau of Labor Statistics on June 19, 2020, the seasonally-adjusted total unemployment rate for Washington, DC rose above the 8.0 percent threshold to trigger ''on'' to a high unemployment period in EB. The payable period for Washington, DC under the high unemployment period is retroactive to July 5, 2020, and eligibility for claimants has been extended from up to 13 weeks of potential duration to up to 20 weeks of potential duration in the EB program.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–25962 Filed 11–23–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Michigan

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Michigan. The following change has occurred since the publication of the last notice regarding the States' EB status:

Michigan has enacted new legislation which provides for the temporary adoption of the total unemployment rate (TUR) trigger during the current period of 100% Federal financing. Based on data released by the Bureau of Labor Statistics on October 20, 2020, the seasonally-adjusted total unemployment rates for Michigan exceeded 8.0 percent was greater than 110 percent in both the prior or second prior year, triggering Michigan ''on'' to a high unemployment periods (HUP) in EB. Based on the enacted State legislation, the HUP trigger became effective the week ending October 24, 2020 and the maximum potential entitlement for claimants in the EB program increase from 13 weeks to 20 weeks on November 8, 2020. The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–25964 Filed 11–23–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0053]

Nationally Recognized Testing Laboratories; Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA issues a final policy for transitioning to the termination of the Satellite Notification and Acceptance Program.

DATES: The policy OSHA finalizes in this notice is issued on November 24, 2020.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

A. Nationally Recognized Testing Laboratories (NRTL) Program

Many of OSHA's safety standards require employers to use products tested and certified as safe (*e.g.,* 29 CFR 1910, subpart S). In general, testing laboratories, and not employers, perform the required testing and certification. To ensure that the testing and certification performed on products is appropriate, OSHA implemented the NRTL Program. This program establishes the criteria that a testing laboratory must meet to achieve, and retain, NRTL recognition.

OSHA recognition of a NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7, the regulatory provision containing the requirements an organization must meet to become a NRTL and retain NRTL status. Recognition is an acknowledgment by OSHA that the organization can perform independent safety testing and certification of the specific products covered within the organization's scope of recognition, and is not a delegation or grant of government authority. Recognition under the NRTL Program, therefore, enables employers to use products approved by NRTLs to meet OSHA standards that require product testing and certification.

Each NRTL is approved for a scope of recognition, which identifies: (a) The type of products the NRTL may approve; and (b) the NRTL's ''recognized sites.'' The requirements for NRTL recognition are outlined in the NRTL Program Regulation at 29 CFR 1910.7 and Appendix A to that regulation.

B. NRTL Program Directive

The NRTL Program Directive sets forth OSHA policies, procedures, and interpretations that supplement and clarify the NRTL Program regulation, 29 CFR 1910.7 and Appendix A (NRTL Program Policies, Procedures and Guidelines, CPL 01–00–004, available at *https://www.osha.gov/sites/default/files/enforcement/directives/CPL_01-00-004.pdf*). OSHA recently revised the NRTL Program Directive, on October 1, 2019.

The revised NRTL Program Directive contains a revised definition of ''recognized site.'' To be recognized, ''a site must be administratively and operationally controlled by the NRTL and must perform at least one of the following functions: testing and inspection (and/or accepting test data or inspections), performing reviews, or making certification decisions with the NRTL management system'' (NRTL Program Directive, Annex C). In revising the definition, OSHA eliminated ownership requirements contained in the prior definition of recognized site (NRTL Program Directive Ch. 1.IX.D). Thus, to be a recognized site, the site no longer has to be owned by the NRTL.

Prior to issuing the revised NRTL Program Directive (CPL–01–004), OSHA permitted NRTLs to use a number of different supplemental programs in order to use the services of other facilities to test and certify products used in the workplace (60 FR 12980, 74 FR 923). One of these supplemental programs was Supplemental Program

10, Satellite Notification Acceptance Program (SNAP). SNAP was implemented on May 11, 2009 (74 FR 923), and permitted NRTLs to perform certain functions to support testing and certification operations at ''SNAP sites.'' Under SNAP, a NRTL had to have administrative and operational control over the NRTL's SNAP sites but ownership by the NRTL was not necessary. Thus, the majority of SNAP sites could not be ''recognized sites'' because of the ownership requirements that were then contained in the definition of recognized sites in the old NRTL Directive (*i.e.,* a majority of the sites could not be ''recognized sites'' because they were not owned by the NTRLs).

OSHA terminated all the supplemental programs, including SNAP, in the revised NRTL Program Directive (Ch. 1.IX.B, D). SNAP is no longer necessary because the revised definition of ''recognized site'' permits OSHA to recognize sites that are administratively and operationally controlled by the NRTL but not necessarily owned by the NRTL. As OSHA noted in the revised Directive, NRTLs will now be able to apply to OSHA to make existing SNAP sites recognized sites (Id.).

OSHA Policies on Transition to the Revised NRTL Program Directive

After issuing the revised NRTL Program Directive, on October 19, 2019, OSHA issued a policy memorandum, *Revision to Policy Impacting the Revised Nationally Recognized Testing Laboratory (NRTL) Program, Policies, Procedures and Guidelines Directive* (the October 19, 2019 memorandum), which, among other things, provided that existing NRTLs could comply with the prior NRTL Program Directive, rather than the revised NRTL Program Directive, until September 30, 2020 (available at *https://www.osha.gov/dts/otpca/nrtl/NRTLDirectiveTransitionMemo.html*). Then, on July 2, 2020, OSHA issued another policy memorandum, *Extension of Some Deadlines to Comply with Revised Nationally Recognized Testing Laboratory (NRTL) Program Policies, Procedures and Guidelines Directive* (the July 2, 2020 memorandum), which, among other things, rescinded and replaced the October 19, 2019 memorandum, and extended by a year some of the dates by which existing NRTLs would need to comply with the revised NRTL Program Directive (available at *https://www.osha.gov/memos/2020-07-02/nationally-recognized-testing-laboratory-program/directive-compliance-extension*). The July 2, 2020 memorandum, provides in relevant part that:

• Existing NRTLs (each organization OSHA recognize[d] as a NRTL on October 1, 2019) must comply with the requirements of the revised NRTL Program Directive no later than October 1, 2021. Existing NRTLs may comply with the requirements of the prior NRTL Directive (CPL–01–00–003) until September 30, 2021.

• OSHA will evaluate pending expansion applications for existing NRTLs under the prior NRTL Program Directive to the extent final decisions on those applications are published in the **Federal Register** prior to October 1, 2021. Assuming OSHA grants the expansion application, the NRTL will need to be in full compliance with the revised NRTL Program Directive, with respect to the NRTL's entire scope of recognition, no later than October 1, 2021. For example, if OSHA publishes a final decision on an expansion application in the **Federal Register** on September 30, 2021, then the NRTL will have to be in full compliance with the revised NRTL Program Directive, with respect to the NRTL's entire scope of recognition, no later than October 1, 2021.

• OSHA will evaluate pending expansion applications for existing NRTLs under the revised NRTL Program Directive to the extent final decisions on those applications are published in the **Federal Register** on or after October 1, 2021. Depending on the status of the application, OSHA may, in the discretion of the agency, waive certain fees associated with the application to the extent accrual of those fees are due solely to OSHA's transition to the revised NRTL Program Directive. Assuming OSHA grants the expansion application, the NRTL will need to be in compliance with the revised NRTL Program Directive with respect to the NRTL's expanded scope immediately (*i.e.,* on the date the final decision on the expansion application is published in the **Federal Register**).

• Audits and assessments of existing NRTLs conducted on or after October 1, 2019, will be conducted under the revised NRTL Program Directive. However, until October 1, 2021, items that OSHA would normally note as nonconformances with the revised NRTL Program Directive requiring timely response and correction will be noted as observations or long term corrective actions. While such observations and long term corrective actions will not require a response and correction in connection with the relevant audit or assessment, existing NRTLs will need to comply with the revised NRTL Program Directive no later than October 1, 2021.

As OSHA stated in the July 2, 2020 memorandum, other than extending some of the dates by which existing NRTLs would need to comply with the revised NRTL Program Directive, ''the policies in [the July 2, 2020] memorandum are otherwise the same as those contained in the rescinded [October 19, 2019] memorandum.'' As OSHA also stated, ''any **Federal Register** Notice establishing OSHA policies for transition to the termination of the Satellite Notification and Acceptance Program (SNAP) will supersede the policies contained in [the July 2, 2020] memorandum, to the extent that there is a conflict.''

C. OSHA's Proposed Policy for Transitioning to the Termination of SNAP

In a February 10, 2020 **Federal Register** Notice, OSHA proposed a policy for transitioning to SNAP termination (85 FR 7606 (available at *https://www.osha.gov/sites/default/files/laws-regs/federalregister/2020-02-10_0.pdf*)). OSHA proposed this policy based on the recognition that immediate termination of SNAP might cause an undue burden on some NRTLs with existing SNAP sites, as well as on its goal of permitting a smooth transition to SNAP termination for NRTLs with existing SNAP sites (85 FR at 7608).

As stated in the February 10, 2020 **Federal Register** Notice, while OSHA was not required by the Administrative Procedures Act, 5 U.S.C. 551, *et seq.,* to engage in notice and comment rulemaking procedures prior to the adoption and implementation of the proposed policy, OSHA requested public comment regarding the proposed policy in order to gain input and insight from interested parties. Comments were due to be submitted by March 11, 2020.

Under the proposed policy, SNAP would be entirely terminated one year after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy. Prior to that time, if a NRTL with existing SNAP sites followed the proposed procedures described in the Notice, that NRTL could continue to perform SNAP activities at the NRTL's existing SNAP sites (for a period, or periods, that would be established by the proposed policy, and ending no later than one year after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy).

Finally, OSHA stated in the February 10, 2020 **Federal Register** Notice, that the policies proposed in the Notice would supersede the policies contained in the October 19, 2019 memorandum (discussed above), to the extent there was a conflict. OSHA also stated that, as of October 1, 2019 (the date OSHA issued the revised NRTL Program Directive), in accordance with current OSHA policy, OSHA would reject any application submitted by a NRTL or NRTL applicant-organization to be recognized for any of the previous supplemental programs, including SNAP.

II. Final Decision Issuing Policy for Transitioning to the Termination of SNAP

In this notice, OSHA issues a final policy for transitioning to the termination of SNAP. The final policy is nearly identical to the policy proposed in the February 10, 2020 **Federal Register** Notice, with certain exceptions discussed below.

In proposing its policy, OSHA recognized that NRTLs might need more time to transition their existing SNAP sites to recognized sites than the year-long transition period (from October 1, 2019 to October 1, 2020) permitted by the October 19, 2019 memorandum, for complying with the revised Directive. Therefore, under the proposed policy, NRTLs that timely applied for scope expansion (*i.e.,* to convert their existing SNAP sites to recognized sites) and met other conditions stipulated in the policy, would be permitted to continue performing SNAP activities at existing SNAP sites listed in their applications up to a full year after the date of publication of the **Federal Register** notice finalizing the policy (see sections 3.b and 10 of the proposed policy).

OSHA has decided to retain this time limit in the final policy. Therefore, under the final policy, NRTLs that timely apply for scope expansion and meet other conditions stipulated in the final policy will be permitted to continue performing SNAP activities at existing SNAP sites listed in their applications up to November 24, 2021 (see paragraphs 3.b and 11 of the final policy). This time limit slightly extends the extra time OSHA originally anticipated (up until October 1, 2021) when it published the proposed policy that existing NRTLs would need for a smooth transition of their SNAP sites to recognized sites. However, OSHA concludes the extra transition time permitted by the final policy is negligible.

Some of the other time limits in the proposed policy, if finalized, would have raised questions of fairness and consistency because OSHA rescinded the October 19, 2019 memorandum, and replaced it with the July 2, 2020 memorandum. When OSHA issued the proposed policy in February 2020, it envisioned all time limits in the proposed policy occurring after October 1, 2020, the date by which existing NRTLs needed to comply with the revised NRTL Program Directive pursuant to the October 19, 2019 memorandum. Therefore, when OSHA issued the proposed policy, it believed all time limits in the proposed policy would give NRTLs with existing SNAP sites extra transition time on top of the transition year already permitted by the October 19, 2019 policy. However, because OSHA extended the October 1, 2020 deadline by a year in the July 2, 2020 memorandum, certain time limits in the proposed policy, if finalized, would require existing NRTLs to cease performing SNAP activities at existing SNAP sites well before the new October 1, 2021 deadline. This would occur for some NRTLs even though they timely submitted all documents to OSHA (see sections 1.a, 1.c, and 2 of the proposed policy) and were actively seeking to convert their SNAP sites to recognized sites. Thus, for example, under the proposed policy, if a NRTL that timely submitted documents to OSHA did not meet one or more of the other preconditions of eligibility for the SNAP sites listed in its application for scope expansion, the NRTL would be required to immediately cease performing SNAP activities at the SNAP sites listed in the application (see sections 2 and 5.b of the proposed policy).

OSHA concludes that it would be unfair to require a NRTL that timely submitted its documents to OSHA and is actively seeking to convert its SNAP sites to recognized sites to cease performing SNAP activities at the SNAP sites listed in its expansion application prior to September 30, 2021 (the last date existing NRTLs may comply with the requirements of the prior NRTL Directive pursuant to the July 2, 2020 memorandum). Therefore, the final policy permits such NRTLs to continue performing SNAP activities at existing SNAP sites listed in their applications until September 30, 2021.

There are different factors at play for NRTLs that do not timely submit their documents to OSHA and/or are not actively seeking to convert their SNAP sites to recognized sites, for example, because they withdrew an application for scope expansion or because OSHA denies an application for scope expansion (see sections 2, 5.c, 6, 7, 8, and 9 of the proposed policy). OSHA adopted the transition periods for existing NRTLs in the October 19, 2019 and July 2, 2020 memoranda, to permit NRTLs adequate time to transition from the prior NRTL Directive to the revised NRTL Directive. A NRTL that does not submit timely documents to OSHA or makes an affirmative decision to withdraw an application for scope expansion has signaled that it does not want to transition its SNAP sites to recognized sites. Furthermore, if OSHA denies an application for scope expansion, it will have concluded that the SNAP sites listed in the application do not have the capability to operate as NRTL-recognized sites, and there will be no further need for the NRTL to transition those sites to recognized sites. Permitting such NRTLs to continue performing SNAP activities at existing SNAP sites until September 30, 2021, would be contrary to the purpose of the October 19, 2019 and July 2, 2020 memoranda, and the final policy therefore retains proposed time limits for NRTLs that do not timely submit their documents to OSHA and/or are not actively seeking to convert their SNAP sites to recognized sites.

OSHA received three timely-filed comments in response to the February 10, 2020 **Federal Register** Notice. SGS North America (SGS) asserts that the proposed policy is contrary to the procedures in Appendix A to the NRTL Program Regulation because the Appendix requires OSHA to conduct an on-site assessment in connection with each application for conversion from a SNAP site to a recognized site. This is so, according to SGS, because ''SNAP sites are largely monitored by the NRTL with limited oversight from OSHA,'' and OSHA would therefore ''award recognized site status based solely on administrative information submitted by the NRTL, without evaluating whether the SNAP site effectively and safely implements the operations, procedures, testing, and control programs included within these administrative materials'' (OSHA–2007–0053–0012).[1]

OSHA disagrees with SGS's comment for several reasons. First, SGS ignores a key aspect of the proposed policy that clarifies that the policy is a simple restatement, and not a revision, of what is already required by Appendix A.[2]

[1] Comments are available on *www.regulations.gov* under docket number OSHA–2007–0053. OSHA cites comments according to the document number they are given on *www.regulations.gov.*

[2] Because the proposed policy is merely a restatement of the procedures in Appendix A, SGS is wrong that the proposed policy, if finalized, would represent a substantive revision to Appendix A and that OSHA must therefore ''engage in formal notice and comment rulemaking'' under the Administrative Procedures Act, 5 U.S.C. 553, in connection with the proposed policy. For the same reason, SGS is also wrong that the proposed policy is inequitable and provides an unfair competitive

According to paragraph 3.a of the proposed policy, if a NRTL met all the preconditions of eligibility for a SNAP site, it would be entitled to ''*Potential Streamlined Conversion.*'' As OSHA stated in the policy, this means simply that ''[c]onsistent with Appendix A, OSHA would make determinations as to whether on-site reviews are necessary on a case-by-case basis.'' Thus, SGS is wrong that on-site reviews would not be ''an expected part of the process'' under the proposed policy. In individual cases, on-site reviews might very much be incorporated into OSHA's decision on an application.[3]

Second, SGS's claims are not ripe because, again, OSHA will be making determinations on whether it will conduct on-site reviews on a case-by-case basis. SGS will have a full and fair opportunity to submit comments in response to OSHA's preliminary determinations on other NRTLs' applications to convert SNAP sites to recognized sites according to the procedures in Appendix A to the NRTL Program regulation. If SGS believes that there is insufficient evidence to support another NRTL's application to convert a SNAP site to a recognized site, or that an on-site review is required for a particular application, it can raise those concerns at the appropriate time provided for by Appendix A.[4] However, at the current time, SGS's claims are entirely speculative.

Third, SGS misunderstands Appendix A to the NRTL Program Regulation. Appendix A provides that OSHA ''will act upon and process [an] application for expansion in accordance with subsection I.B. of th[e] appendix'' (29 CFR 1910.7 App. A.II.B.2.a). Subsection I.B provides in relevant part that, in processing applications, ''OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, as well as the applicant's administrative and technical practices'' (29 CFR 1910.7 App. A.I.B.1.b). Thus, according to the Appendix, OSHA must, first and foremost, determine whether an on-site review is necessary in connection with a particular expansion application.

Contrary to SGS's assertion, OSHA will take into consideration the results of the prior audits it conducted of a SNAP site in determining whether an on-site review is necessary for that SNAP site. When OSHA implemented SNAP in 2009, it determined that OSHA audits of SNAP sites were necessary to maintain the integrity of the NRTL program (74 FR 923, 926 (Jan. 9, 2009)). While OSHA might not audit SNAP sites as often as recognized sites, OSHA's concludes that its history of directly auditing SNAP sites might render on-site review unnecessary in individual cases. And, again, as OSHA stated in the proposed policy (and states in the final policy), it will make such determinations on a case-by-case basis, and OSHA will simply not be ''relying on the goodwill associated with a prior NRTL site to transfer those credentials to a new facility,'' as SGS maintains.[5]

It should also be noted that, when it implemented SNAP, OSHA took steps to ensure the independence of the NRTL's SNAP auditors from the SNAP sites themselves. As OSHA stated:

> OSHA proposed that an NRTL's SNAP auditors must be in an organizational unit that is separate from the NRTL's operations, and that the unit must report directly to a senior executive of the NRTL. OSHA proposed this condition to ensure that SNAP auditors were independent of an NRTL's operational units, and that auditing units had authority to compel operational units to conform with the prescribed SNAP conditions. Two commenters opposed this condition. (Exs. OSHA–2007–0053–0007 and –0008.). The first commenter believed this condition was inappropriate because auditing units may report to a team of executives instead of one executive, while the second commenter noted that the executive structure envisioned in the proposal may not exist in many NRTL organizations. OSHA agrees with these comments, and revised the condition to specify that SNAP auditors cannot be under the control or direction of any SNAP site, and that auditors must report audit results from a SNAP site to the SNAP headquarters of the NRTL.

74 FR at 925. OSHA concluded at the time it implemented SNAP, and it reaffirms here, that such controls ensured the independence and integrity of internal SNAP audits. It is therefore entirely appropriate for OSHA to rely on prior audits of a SNAP site conducted by a NRTL (in addition to those conducted by OSHA) in determining whether on-site review is necessary in a given case. OSHA will, of course, review whether a NRTL implemented required controls for internal audits of SNAP sites as part of its determination whether on-site review is necessary in a particular case.

In addition, the proposed policy makes clear that OSHA will incorporate its own prior audits, a NRTL's prior audits, and other relevant evidence into its determinations of whether on-site review is necessary. As OSHA stated in paragraphs 1.g.ii and 1.g.iii of the proposed policy, to meet the preconditions of eligibility (and therefore be entitled to a special review by OSHA as to whether on-site review is necessary), a NRTL would need to submit to OSHA:

> ii. Copies of any audit or other reports of, or about, the SNAP site generated (either internally (*e.g.,* by the NRTL) or externally (*e.g.,* by OSHA or other accreditor)) in connection with any audits, assessments, or other investigations conducted (a) by OSHA, the NRTL, any other entity, and (b) within the 30 months preceding the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy; [and]
>
> iii. Supporting Documentation that shows (a) what was reviewed during any audits, assessments, or other investigations of the SNAP site conducted by OSHA, the NRTL, any other entity within the NRTL's organizational structure, or any other investigative body, and within the 30 months preceding the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy, (b) any nonconformances identified during these audits, assessments, or investigations, and (c) a root cause analysis of these nonconformances.

OSHA adopts these paragraphs as proposed and notes, moreover, that it maintains records of its prior audits of SNAP sites (including those that were conducted beyond the 30 months preceding the date of publication of this final policy) and will also take these records into account in making its determinations. As such, OSHA will base its case-by-case determinations of whether on-site reviews are necessary on relevant evidence that will enable it to make informed decisions.

Finally, SGS is wrong when it states that the proposed policy runs afoul of Appendix A because the Appendix provides that ''OSHA may decide not to conduct an on-site review'' in connection with an expansion application ''where the substantive scope of the request to expand recognition is closely related to the current area of recognition'' (29 CFR 1910.7 App. A.II.B.2.b). Contrary to SGS's assertion, the cited provision

advantage because it permits NRTLs to avoid the Appendix A requirements through ''truncated'' procedures. OSHA notes, moreover, that OSHA provided the public with notice in the **Federal Register** of, and an opportunity to comment on, the proposed policy. Therefore, even if the proposed policy were a substantive rule, as SGS asserts, OSHA would have met applicable requirements for notice and comment in 5 U.S.C. 553.

[3] OSHA has replaced the term ''*Potential Streamlined Conversion*'' with the term ''*Conduct of Onsite Assessments*'' in paragraph 3.a of the final policy to clarify the purpose of the paragraph.

[4] When NRTLs apply to convert SNAP sites to recognized sites, the public will be made aware of which SNAP sites will potentially become recognized sites. SGS's concern about disclosure of this information is therefore misplaced.

[5] Therefore, SGS is wrong when it asserts that the proposed policy is contrary to an April 21, 1993 OSHA letter of interpretation (available at *https://www.osha.gov/laws-regs/standardinterpretations/1993-04-21*).

should not be read in isolation. Again, the Appendix also provides that OSHA need only conduct on-site reviews ''as necessary'' to permit OSHA to make an informed decision on an application. In the context of an expansion application to convert SNAP sites to recognized sites, on-site reviews may not be necessary because, under the prior Directive, OSHA recognized NRTLs for SNAP. That such an application is closely related to the NRTL's current area of recognition is evident from OSHA's own audits, and the controls OSHA implemented to ensure the integrity of internal audits, of the NRTL's SNAP sites. If the application were not ''closely related to the current area of recognition,'' there would have been no need for OSHA to conduct these audits or implement these controls.[6]

Underwriters Laboratories LLC (UL) asserts that ''there is no justification for a disruptively abrupt cessation of SNAP activities for any of the reasons in the **Federal Register** notice,'' and that OSHA should instead require cessation of SNAP activities for all SNAP sites on a date certain and delete proposed time limits to the extent they would require immediate cessation of SNAP activities (OSHA–2007–0053–0014).

OSHA concludes UL's concerns about the proposed policy's time limits are, for the most part, addressed by the revisions to the proposed time limits in the final policy, as discussed above. Again, under the final policy, a NRTL that timely submits their SNAP conversion documents to OSHA, and is actively seeking to convert their SNAP sites to recognized sites, but does not meet one or more of the other preconditions of eligibility for the SNAP sites listed in the application for scope expansion, may continue performing SNAP activities at the SNAP sites listed in its expansion application until September 30, 2021.[7]

As also discussed above, there are different factors at play for NRTLs that do not timely submit their documents to OSHA and/or are not actively seeking to convert their SNAP sites to recognized sites. OSHA therefore disagrees with UL's comment to the extent UL asserts that the final policy should allow these NRTLs to continue performing SNAP activities at SNAP sites beyond the time limits described in the proposed policy.

UL also objects to paragraph 9 of the proposed policy, which addressed the effect of a final decision by OSHA on an application meeting the preconditions of eligibility. UL suggests that the paragraph be revised to require that a NRTL immediately cease performing SNAP activities at the SNAP sites listed in the application that were not approved to become recognized sites, and not merely those SNAP sites that met the preconditions of eligibility.

As discussed above, OSHA revised the proposed time limits in the final policy. It is therefore modifying the final policy accordingly (including the provision about which UL had concern).

UL objects to the precondition of eligibility that a NRTL include with its list of existing SNAP sites the date each SNAP site was approved by the NRTL. According to UL, the exact date is difficult to determine for older SNAP sites and this difficulty renders the 30 day timeframe to submit the list of existing SNAP sites unrealistic. Moreover, according to UL, there is ''no need or value to know the specific date of approval.'' Therefore, UL asserts the precondition should instead provide that NRTLs indicate ''what SNAP sites have been approved for 5 or more years and the date of approval only for sites approved for less than 5 years.''

OSHA agrees with UL that NRTLs may have difficulty determining the exact dates they approved older SNAP sites. Therefore, the final policy provides that for each SNAP site listed, a NRTL must list the date the SNAP site was approved by the NRTL EXCEPT that, where a SNAP site has been approved for 30 months or more preceding November 24, 2020, the NRTL may state that that the SNAP site has been approved for 30 or more months, without listing the exact date of approval. The NRTL may meet this precondition of eligibility in its application for scope expansion (see paragraph 1.c) to the extent the precondition is not met in the NRTL's list of existing SNAP sites.

UL asserts that OSHA should revise paragraphs 1.g.ii and 1.g.iii of the proposed policy, quoted above, to indicate that the ''audits and information referenced in [these paragraphs] should only be audits and information pertinent to the activities required to be performed by staff assigned to Recognized sites.''

OSHA disagrees with this comment. The purpose of these paragraphs is to ensure that NRTLs provide OSHA with historical information about SNAP sites so that OSHA can make informed determinations on whether on-site reviews are necessary in individual cases and, ultimately, whether to grant NRTLs' applications for expansion of recognition. OSHA concludes that the information proposed to be required by these paragraphs is necessary for OSHA to make such informed determinations and these paragraphs are included, as proposed, in the final policy.

UL objects to paragraph 10 of the proposed policy, which provided that ''[a] NRTL would be required to cease performing SNAP activities at existing SNAP sites that were listed in the application and met the preconditions of eligibility one year after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy.'' According to UL, ''[t]he time period should be 24 months for OSHA to realistically process this one-time additional workload.''

OSHA disagrees with this comment and believes that the one-year time period will be sufficient to process the additional workload. However, OSHA notes that paragraph 12 of the final policy (like the proposed policy) provides for a potential extension of the SNAP Termination Date in appropriate circumstances.

Finally, UL makes several ''general'' assertions that go well beyond the scope of the proposed policy. First, UL asserts that OSHA should ''abandon the location element of NRTL scopes'' because ''[e]xcept for laboratory testing, the idea that certification activities are performed at discrete physical locations is now an anachronism.'' Second, UL asserts that, ''[i]f OSHA continues to utilize a location element to the scope of Recognition of NRTLs, a self-qualification option for locations for NRTLs continues to be needed'' because a ''NRTL that completes all certification work (except laboratory testing) via internet can quickly rent space, arrange for fast internet access at that space, and direct qualified staff to that space as a possible work location in a matter of weeks.'' Third, UL asserts that ''[i]f OSHA continues to utilize a location element in the scope of Recognition of NRTLs,'' it should ''document explicitly what NRTL activities are required to be performed by staff assigned to a Recognized site,'' and not simply ''what activities are allowed to be performed,'' so that ''NRTLs can know ''whether existing SNAP sites need to be converted to Recognized sites or can, with needed changes to the activities performed by staff assigned to the site, simply become Unrecognized sites.''

[6] Therefore, SGS is also wrong that ''the substantive scope'' of an application to convert a SNAP site to a recognized site cannot be ''closely related to the current area of recognition'' because SNAP sites are not recognized sites.

[7] UL suggests that, under current OSHA policy, ''after the SNAP is fully terminated, . . . activities that are required to be performed by staff assigned to a Recognized site [ ] can be performed'' at a site that is the subject of a site expansion application before OSHA rules on the application. OSHA emphasizes that UL is incorrect and this is not current OSHA policy.

The purpose of the proposed (and final) policy is to ensure a smooth transition from SNAP, which OSHA eliminated when it revised the NRTL Program Directive. UL's ''general'' assertions appear to object to the revised Directive itself and not to the proposed policy. Therefore, the substance of UL's ''general'' assertions are beyond the scope of this Notice.

Reynaldo Figueredo (OSHA–2007–0053–0013) comments that:

> The proposed revision to the NRTL program Directive definition of a recognized site would removes the requirement that the site no longer has to be owned by the NRTL. This simplifies the process and eliminates the SNAP program. However, this change does not address the fundamental competency or technical testing and inspection capability at the site. With this change, the NRTL may select and ''qualify'' the site to perform testing and inspection functions. A key question is whether or not the NRTL is capable of assessing the site's personnel and equipment which is a different function from its NRTL responsibilities. We recommend that all testing and/or inspection sites be accredited by an accreditation body that is US based and is a signatory to the ILAC MRA. This is a normal activity that accreditation bodies perform on a daily basis.

Mr. Figueredo's comment, like UL's ''general'' assertions, appears to object to the revised Directive itself and not to the proposed policy. Therefore, the substance of this comment is beyond the scope of this Notice.

III. OSHA's SNAP Transition Policy

With this **Federal Register** notice, OSHA issues this final policy for transitioning to the termination of SNAP. Pursuant to this final policy:

- This policy supersedes the policies contained in the July 2, 2020 memorandum (discussed above), to the extent there is a conflict.
- As of October 1, 2019 (the date OSHA issued the revised NRTL Program Directive), in accordance with current OSHA policy, OSHA will reject any application submitted by a NRTL or NRTL applicant-organization to be recognized for any of the previous supplemental programs, including SNAP.
- OSHA implements the following policies for the conversion of existing SNAP Sites to Recognized Sites and the interim performance of SNAP activities at SNAP Sites:

1. *Preconditions of Eligibility.* To meet the preconditions of eligibility, a NRTL must do all of the following:

a. Submit to OSHA a list of the NRTL's existing SNAP sites no later than December 24, 2020. For each SNAP site listed, a NRTL must list the date the SNAP site was approved by the NRTL EXCEPT that, where a SNAP site has been approved for 30 months or more preceding November 24, 2020, the NRTL may state that the SNAP site has been approved for 30 or more months, without listing the exact date of approval. The NRTL may meet this precondition of eligibility in its application for scope expansion (see paragraph 1.c) to the extent the precondition is not met in the NRTL's list of existing SNAP sites.

b. Not designate any new SNAP sites after submitting to OSHA the list of existing SNAP sites.

c. Submit to OSHA an application for scope expansion (*i.e.,* to convert existing SNAP sites to recognized sites) no later than January 25, 2021.

d. Include in the scope expansion application a list of the SNAP sites the NRTL wants converted to recognized sites. The NRTL is permitted to include in the scope expansion application list only those SNAP sites the NRTL also included in the list of SNAP sites it submitted to OSHA by December 24, 2020.

e. Specify that it wants the scope expansion application processed under the procedures described here.

f. Submit to OSHA all required application fees as outlined in the Revised NRTL Schedule of Fees. See *https://www.osha.gov/dts/otpca/nrtl/nrtlfees.html.* The following fees must accompany the scope expansion application: $2,490 for the Expansion application—Limited review; and $2,490 for each site for which the NRTL seeks recognition. (Other fees would be invoiced as necessary (for example the $3,180 fee for a **Federal Register** notice application, and fees for onsite assessments, if conducted)).

g. At a minimum, submit to OSHA, for each SNAP site listed in the application, the following historical assessment records and supporting documentation:

i. The NRTL functions performed at the SNAP site (*e.g.,* testing, certification, audits of testing laboratories);

ii. The date the SNAP site was approved by the NRTL EXCEPT that, where a SNAP site has been approved for 30 months or more preceding November 24, 2020, the NRTL may state that the SNAP site has been approved for 30 or more months, without listing the exact date of approval.

iii. Copies of any audit or other reports of, or about, the SNAP site generated (either internally (*e.g.,* by the NRTL) or externally (*e.g.,* by OSHA or other accreditor)) in connection with any audits, assessments, or other investigations conducted (a) by OSHA, the NRTL, or any other entity, and (b) within the 30 months preceding November 24, 2020;

iv. Supporting Documentation that shows (a) what was reviewed during any audits, assessments, or other investigations of the SNAP site conducted by OSHA, the NRTL, any other entity within the NRTL's organizational structure, or any other investigative body, and within the 30 months preceding November 24, 2020, (b) any nonconformances identified during these audits, assessments, or investigations, and (c) a root cause analysis of these nonconformances; and

v. An organizational chart for the SNAP site identifying leadership and employees involved with NRTL-related work activities.

2. *Continued Performance of SNAP Activities at Existing SNAP Sites Contingent on Timely Submission of Documents.*

a. If a NRTL fails to timely submit to OSHA a list of the NRTL's existing SNAP sites by December 24, 2020, the NRTL must cease performing SNAP activities at all of the NRTL's existing SNAP sites on December 28, 2020.

b. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by December 24, 2020, but that list does not contain all of the NRTL's existing SNAP sites, the NRTL must cease performing SNAP activities at existing SNAP sites not contained in the list on December 28, 2020.

c. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by December 24, 2020, but does not submit to OSHA a timely application to convert the existing SNAP sites in the list to recognized sites by January 25, 2021, then the NRTL must cease performing SNAP activities at all of the NRTL's existing SNAP sites no later than January 25, 2021.

d. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by December 24, 2020, and then submits to OSHA a timely application to convert only some of the existing SNAP sites in the list to recognized sites by January 25, 2021, then the NRTL must cease performing SNAP activities at SNAP sites that the NRTL did not list in the application no later than January 25, 2021.

e. OSHA might allow for short extensions of these time limits, at the discretion of the agency, and if good cause is shown by the NRTL.

3. *Effect of Meeting the Preconditions of Eligibility.* If a NRTL meets all the preconditions of eligibility for a SNAP site, it is entitled to the following:

a. *Conduct of On-site Assessments.* OSHA typically performs on-site assessments in connection with site expansion requests. However, OSHA might, at the discretion of the agency, opt not to do so with respect to SNAP sites that meet the preconditions of eligibility. Appendix A to the NRTL Program Regulation, 29 CFR 1910.7, provides that, in reviewing expansion applications, OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, and may decide not to conduct an on-site review, where the substantive scope of the request to expand recognition is closely related to the current area of recognition. Consistent with Appendix A, OSHA will make determinations as to whether on-site reviews are necessary on a case-by-case basis.

b. *Interim Performance of SNAP Activities at SNAP Sites.* NRTLs may continue performing SNAP functions at the SNAP sites that are listed in the NRTL's application and that meet the preconditions of eligibility, but only for the time period(s) permitted by these procedures.

4. *Effect of Not Meeting the Preconditions of Eligibility.* If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by December 24, 2020), and then submits to OSHA a timely application to convert all or some of the NRTL's existing SNAP sites in the list to recognized sites by January 25, 2021, this NRTL may continue performing SNAP functions at the SNAP sites that are listed in the NRTL's application that do not meet all or some of the other preconditions of eligibility, but only for the time period(s) permitted by these procedures. This NRTL must cease performing SNAP functions at these SNAP sites no later than September 30, 2021, to the extent these procedures do not otherwise address when SNAP functions must cease for the NRTL. This will be the case even if OSHA does not issue a final decision on the NRTL's application by September 30, 2021.

5. *Review of Applications.*

a. To the extent SNAP sites in an application meet the preconditions of eligibility, OSHA will review that application, or portion of application, in accordance with the NRTL Program regulation, 29 CFR 1910.7, Appendix A to that regulation, the July 2, 2020 memorandum, discussed above, and these SNAP conversion procedures, to determine the capability of the SNAP site to operate as a NRTL-recognized site. OSHA will base this determination on the documentation submitted with the application, historical on-site assessments of the NRTL's SNAP Sites and SNAP Headquarters, and any other factors it deems relevant, including, for example, the conduct of an on-site assessment(s), if deemed necessary.

b. In reviewing applications, or portions of applications, concerning SNAP sites that do not meet the preconditions of eligibility, OSHA will follow normal site expansion procedures, including the conduct of on-site assessments. NRTLs should consult the NRTL Program regulation, 29 CFR 1910.7, Appendix A to that regulation, and the July 2, 2020 memorandum, discussed above, for the procedures that OSHA would follow with respect to these SNAP sites. It should be noted that these NRTLs may be able to continue performing SNAP functions at these SNAP sites, but only in accordance with these procedures (see paragraphs 2 and 4 of these procedures).

6. *Opportunity to Respond (Discretionary) for NRTLs That Specify in Their Scope Expansion Applications That They Want Their Applications Processed Under the Procedures Described.* Although a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by December 24, 2020, and then submits to OSHA a timely application to convert all or some of the NRTL's existing SNAP sites in the list to recognized sites by January 25, 2021, the NRTL might not meet one or more of the other preconditions of eligibility for some or all of the SNAP sites listed in the application. For example, a NRTL might fail to submit to OSHA the required historical assessments or supporting documentation for one or more of the SNAP sites listed in an application. In addition, to make a determination on an application, OSHA might require further information or clarification, in addition to the information that would be required by the preconditions of eligibility. Therefore, after conducting a review of a scope expansion application in which a NRTL specifies that it wants the application processed under the procedures described (Precondition of Eligibility (e)), OSHA might, at the discretion of the agency, give the NRTL 15 days to provide clarification or missing information.

a. If OSHA receives a timely response from the applicant (within 15 days), or a timely written request for an extension (within 15 days) and subsequent response within the time permitted for extension (if the request for extension is granted), OSHA will recommend a positive or negative finding on the application.

b. Alternatively, OSHA will treat the application as a normal site expansion application, outside of these procedures, if the NRTL requests in a timely-filed response that the application be treated as such. However, the NRTL may continue performing SNAP functions for those SNAP sites in accordance with these procedures (see paragraph 4 of these procedures).

c. If OSHA does not receive a timely response, or a timely request for an extension and subsequent response within the time permitted for extension (if granted), it will consider the application withdrawn and the NRTL will be required to immediately cease performing SNAP activities at the SNAP sites listed in the application.

7. *Effect of a Negative Finding on an Application.* If a negative finding is issued, the NRTL will have an opportunity (a) to withdraw the application, (b) revise the application (for example, to remove from the application those sites OSHA staff consider non-compliant, or to indicate that OSHA should process the application as a traditional application for site expansion rather than under these procedures), or (c) request that the original application be forwarded to the Assistant Secretary for Occupational Safety and Health, as outlined in Appendix A to the NRTL Program regulation, 29 CFR 1910.7.

8. *Effect of Withdrawal of an Application.* If the application is withdrawn by the applicant or considered withdrawn by OSHA, the NRTL must immediately cease performing SNAP activities at the SNAP sites that were listed in the withdrawn application. While the NRTL could still apply to have these sites included in the NRTL's scope of recognition, OSHA will follow normal site expansion procedures, including the conduct of on-site assessments, for any such applications. The NRTL may not resume the conduct of SNAP activities at these sites if it files a new application for scope expansion.

9. *Effect of the Revision of an Application.* If the applicant revises the application to remove from the application individual SNAP sites listed in the application, the NRTL will be permitted to continue to perform SNAP activities only at those SNAP sites that remain in the application. The applicant must immediately cease performing SNAP activities at SNAP sites no longer in the application. While the NRTL could still apply for recognition of any sites removed from the application, OSHA will follow normal site expansion procedures, including the conduct of on-site assessments, for any such applications. The NRTL may not resume the conduct of SNAP activities at these sites if it files a new application for scope expansion.

10. *Effect of Final Decision on Application.* Once a final decision is made regarding the capability of a SNAP site to operate as a NRTL-recognized site, this decision will be published in the **Federal Register**, upon which time the NRTL must immediately cease performing SNAP activities at the SNAP sites listed in the application that were not approved to become recognized sites.

11. *Termination of the SNAP Entirely.* A NRTL must cease performing SNAP activities at existing SNAP sites that are listed in the application and meet the preconditions of eligibility no later than November 24, 2021. This will be the case even if OSHA does not issue a final decision on the NRTL's application by that date. The SNAP will be entirely terminated on November 24, 2021.

12. *Potential Extension of SNAP Termination Date.* OSHA might, at the discretion of the agency, extend the SNAP termination date. OSHA notes, however, that it will not extend the termination date because final decisions on some applications cannot be issued on a streamlined basis. OSHA is not able to issue a final decision on a streamlined basis, for example, if it determines that it needs to conduct an on-site assessment or a negative finding is issued in connection with an application. An extension of the SNAP termination date based on these time-intensive issues is not justified.

Disclaimer: This policy is not a standard, regulation, or any other type of substantive rule. No statement in this policy should be construed to require the regulated community to adopt any practices, means, methods, operations, or processes beyond those which are already required by the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668) or standards and regulations promulgated under the OSH Act. This document does not have the force and effect of law and is not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

IV. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on November 17, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–25770 Filed 11–23–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection requests (ICRs) titled, ''Report of Changes that May Affect Your Black Lung Benefits'' (Forms CM–929 and CM–929P). This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by January 25, 2021.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Program, Division of Coal Mine Workers' Compensation, Room S–3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This ICR seeks approval under the PRA for an extension of an existing collection titled Report of Changes That May Affect Your Black Lung Benefits (Forms CM–929 and CM–929P). These forms help determine continuing eligibility of primary beneficiaries receiving black lung benefits. The primary beneficiary or their representative payee is required to verify and update certain information that may affect entitlement to benefits, including changes to income, marital status, receipt of state workers' compensation benefits, and their dependents' status. While the information collected remains the same as in the currently approved collection, the updated forms add an electronic filing option. The Black Lung Benefits Act, 30 U.S.C. 901 *et seq.,* and its implementing regulations, 20 CFR 725.513(a), 725.533(e), authorizes this information collection. See 30 U.S.C. 936(a)

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. To help ensure appropriate consideration, comments should mention 1240–0028.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP–DCMWC.

Type of Review: Extension.

Title of Collection: Report of Changes that May Affect Your Black Lung Benefits.

Form: Report of Changes that May Affect Your Black Lung Benefits, CM–929, CM–929P.

OMB Control Number: 1240–0028.

Affected Public: Individuals and Not-for-profit institutions.

Estimated Number of Respondents: 12,000.

Frequency: Annually.

Total Estimated Annual Responses: 12,000.

Estimated Average Time per Response: 5–80 minutes.

Estimated Total Annual Burden Hours: 2,810 hours.

Total Estimated Annual Other Cost Burden: $0.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2020–25874 Filed 11–23–20; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2021–008]

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC); Meeting

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: We are announcing an upcoming meeting of the State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC) in accordance with the Federal Advisory Committee Act and implementing regulations.

DATES: The meeting will be on January 27, 2021, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be a virtual meeting. See supplementary procedures below.

FOR FURTHER INFORMATION CONTACT: Robert J. Skwirot, ISOO Senior Program Analyst by telephone at 202.357.5398 or by email at *robert.skwirot@nara.gov.* Please use the email contact method during the current COVID remote work situation. Contact ISOO at *ISOO@nara.gov.*

SUPPLEMENTARY INFORMATION: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulations at 41 CFR 101–6. The Committee will discuss matters relating to the classified national security information program for state, local, tribal, and private sector entities.

Procedures: Please submit the name, email address, and telephone number of people planning to attend to Robert Skwirot at ISOO (contact information above) no later than Wednesday, January 20, 2021. We will provide meeting access information to those who register.

Maureen MacDonald,

Designated Committee Management Officer.

[FR Doc. 2020–25873 Filed 11–23–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 24, 2020. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2021–006

1. *Applicant:* Ari S. Friedlaender, Institute for Marine Sciences, UC Santa Cruz, 115 McAllister Way, Santa Cruz, CA 95003

Activity for Which Permit is Requested: Waste Management. The applicant would conduct research around the Antarctic Peninsula to determine the ecological role of baleen whales. Sensor tags would be used to collect data on the underwater movement and behavior of the whales. Over time, the applicant would be able to determine how changes in the whales' behavior correspond to changes in sea ice, krill, and other critical aspects of the Antarctic marine ecosystem that are at risk from rapidly changing climates. The applicant would collect skin and blubber biopsy samples to gain a better understanding of the identity, population structure, and health of the whales. The applicant would operate unoccupied/remotely piloted aircraft systems (UAS, RPAS) to collect photographs of individual whales for health assessment purposes. The applicant would collaborate with Antarctic tour operators that would provide platforms to the applicant's research team in order to gather data during time periods that are undersampled. The applicant is seeking a waste permit to cover any accidental releases that may occur if the biopsy darts, tags, and/or remotely piloted aircraft are lost. The research teams would be comprised of experienced researchers and UAS/RPAS pilots. By employing personnel such as this, the applicant would minimize the risk of generating waste and losing any equipment due to human error. The applicant would also conduct activities under conditions (weather, sea state, etc.) allowing the applicant and team to maintain visual contact with instrumentation and equipment as well as aid in retrieval as needed.

Multi-sensor, suction cup tags would be attached to whales. When they are shed, they float and are retrieved using radio telemetry tracking tools. While tag failure is rare, a lost tag would constitute waste in the form of 300 grams of syntactic foam, 100 grams of electronics and 20 grams of silicon suction cups. Biopsy sampling is done with a crossbow firing a floating dart, made of aluminum and carbon fiber, that bounces off the whale's body after extracting a tiny plug of tissue. The biopsy bolt tips are a 40 mm stainless steel barrel and the bolts also contain a 5x2cm foam float that is used to aid in dart retrieval. The bolts are highly visible and remain at the surface for retrieval. An observer would maintain visual contact with the bolt until retrieval. The successful retrieval rate is very high (only 3 bolts lost in over 500 sampling events). The UAS/RPAS would be operated by experienced pilots according to protocols designed to ensure safe operations and to minimize the risk of loss. The commercial, off-the-shelf aircraft are powered by lithium polymer batteries and do not require any fuels. Loss of aircraft would result in a minor amount of plastic and metal waste from the frame and camera as well as non-toxic (no lead or cadmium) lithium polymer batteries.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: December 25, 2020–November 30, 2024.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2020–25936 Filed 11–23–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 05000170; NRC–2020–0258]

In the Matter of Armed Forces Radiobiology Research Institute

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order confirming commitments agreed upon during an Alternate Dispute Resolution mediation session with the Armed Forces Radiobiology Research Institute (AFRRI). The NRC determined that an apparent violation of NRC regulations, occurred as identified during an investigation completed on February 27, 2020, by the NRC's Office of Investigations. The Order is effective on the date of issuance.

DATES: The Confirmatory Order became effective on November 19, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0258 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0258. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Order EA–20–056, issued to AFRRI on November 19, 2020, is available in ADAMS under Accession No. ML20303A211.

• *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.

FOR FURTHER INFORMATION CONTACT: Nicole Coleman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9007, email: *Nicole.Coleman@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: November 19, 2020.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

Attached—Confirmatory Order

United States of America

Nuclear Regulatory Commission

In the Matter of Armed Forces Radiobiology Research Institute, Bethesda, Maryland

Docket No.: 05000170; License No.: R–84; EA–20–056

Confirmatory Order Modifying License Effective Upon Issuance

I

Armed Forces Radiobiology Research Institute (AFRRI or Licensee) is the holder of License No. R–84, issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of *Title 10 of the Code of Federal Regulations* (10 CFR). The license authorizes the operation of AFRRI Research Reactor (facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Bethesda, Maryland.

This Confirmatory Order (CO) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 18, 2020, to address an apparent violation.

II

On February 27, 2020, the NRC's Office of Investigations (OI), issued a report (1–2019–003) related to AFRRI. Based on the evidence developed during its investigation, the NRC identified an apparent violation of 10 CFR 50.7, ''Employee protection.'' The NRC determined that AFRRI placed an AFRRI employee on a 2-day suspension without pay on May 14, 2018, in part, for engaging in protected activity. By letter dated June 8, 2020, the NRC notified AFRRI of the results of the investigation with an opportunity to (1) attend a pre-decisional enforcement conference or (2) to participate in an ADR mediation session in an effort to resolve this concern.

In response to the NRC's offer, AFRRI requested the use of the NRC's ADR process to attempt to resolve this issue with the NRC. On September 18, 2020, the NRC and AFRRI conducted an ADR session mediated by a professional mediator, arranged through Cornell University's Scheinman Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement to resolve any differences regarding the dispute. This CO is issued pursuant to the agreement reached during the September 18, 2020, ADR session.

III

During the ADR session, AFRRI and the NRC reached a preliminary settlement agreement. The elements of the agreement included (1) corrective actions that AFRRI has already completed to improve the nuclear safety culture and safety conscious work environment (SCWE) at the facility (provided to the NRC during the September 18, 2020, ADR session), (2) agreed upon future actions, and (3) general provisions.

Previously Completed Corrective Actions

1. Conducted industry-led AFRRI leadership SCWE training.

2. Conducted three industry-led AFRRI employee SCWE training sessions.

3. Established a SCWE Working Group to ensure employee involvement and capture employee insights during the development of the AFRRI SCWE program.

4. Appointed a Safety Culture Program Officer.

5. Issued an email communication from the AFRRI Director to all AFRRI staff encouraging participation in the SCWE training and the command climate survey by the Uniformed Services University (USU) Brigade leadership.

6. Issued a message from the newly appointed Safety Culture Program Officer to all AFRRI staff emphasizing leadership's focus on safety and mechanisms for reporting concerns.

7. Participated in monthly National Organization of Test, Research, and Training Reactors (TRTR) calls, and registered several AFRRI staff for the upcoming annual conference.

8. Solicited feedback from AFRRI staff regarding the ongoing command climate survey to serve as a baseline for future safety improvement metrics.

Agreed Upon Future Actions

A. Communication

1. Within 60 calendar days of issuance of the CO, the Uniformed Services University (USU) President shall issue a written statement, communicating the specific strategy to improve AFRRI's nuclear safety culture.

a. The communication is to include (1) a brief summary regarding the employee protection regulations, (2) the NRC's concerns expressed in its March 2020 chilling effect letter, (3) specific lessons learned from previously applied corrective actions, and (4) corrective actions both taken and planned.

b. USU shall provide a copy of this communication to the NRC for prior review.

c. NRC shall provide comments within 1 week of receipt of the draft communication.

2. Within 90 calendar days of the USU President's statement, AFRRI shall hold an all-hands meeting for management to discuss the importance of the above communication with AFRRI employees.

a. AFRRI shall conduct the all-hands meeting on multiple levels of management (*i.e.,* Director level, Department head) with current employees. AFRRI employees must attend at least one of the all-hands meetings.

b. AFRRI shall require participants to sign in, confirming their attendance. Employees unable to attend an in-person/virtual meeting shall complete a ''Read and Sign'' training.

c. Future employees shall complete a ''Read and Sign'' training.

B. Safety Culture and Safety Conscious Work Environment

1. Within 150 calendar days of issuance of the CO, AFRRI shall ensure its nuclear safety culture policy, guidance and related materials are in place and updated.

a. Ensure a distinct and comprehensive safety culture policy is updated, maintained and consistent with the NRC's March 2011 Safety Culture Policy Statement and associated traits.

b. The safety culture policy shall include specific definitions for key safety culture terms, including examples of what constitutes a protected activity and safety/security concern(s).

c. The policy shall incorporate guidance from NUREG 2165, ''Safety Culture Common Language,'' and the industry's common language initiative (*i.e.,* INPO 12–012, Revision 1, April 2013).

d. Copies of policy statement revisions, guidance and related materials shall be provided to the NRC for review at least 60 calendar days prior to issuance.

e. NRC will provide comments to AFRRI within 2 weeks.

f. Within 45 days of receiving communication that the NRC review is complete, AFRRI will either incorporate NRC comments or provide acknowledgement of NRC comments and why comments were not incorporated.

g. AFRRI will distribute copies of these documents and materials to employees and inform employees where all related materials can be located. These materials shall be maintained and provided to all new employees during initial orientation.

h. AFRRI shall require employees to confirm their receipt of the materials by completing a ''Read and Sign''.

2. Within 180 calendar days of issuance of the CO, AFRRI shall establish a nuclear SCWE program.

a. AFRRI shall ensure that the SCWE program is consistent with the NRC Safety Conscious Work Environment Policy Statements and associated guidance (*i.e.,* the NRC's May 1996 Safety Conscious Work Environment Policy Statement, and the NRC's Regulatory Issue Summary 2005–18, ''Guidance for Establishing and Maintaining a Safety Conscious Work Environment'').

b. Initial SCWE Program documents (guidance and related materials) shall be provided to the NRC review at least 60 calendar days prior to issuance.

c. Within 2 weeks of receiving the documents, NRC will provide comments to AFRRI.

d. Within 45 days of receiving communication that the NRC review is complete, AFRRI will either incorporate NRC comments or provide acknowledgement of NRC comments and why comments were not incorporated.

e. AFRRI shall make NRC aware of any revisions to SCWE program documents and make the revisions available for NRC review, upon request. This requirement is limited to the initial 2 years of program establishment.

f. AFRRI will distribute copies of these documents and materials to employees and inform employees where all related materials can be located. These materials shall be maintained and provided to all new employees during initial orientation.

g. AFRRI shall require employees to confirm their receipt of the materials by completing a ''Read and Sign.''

h. Within this program, AFRRI shall document the requirements related to the Nuclear Safety Culture Program Officer to include the following:

i. The Safety Culture Program Officer (Program Officer) function will report directly to the AFRRI Director.

ii. The Program Officer shall complete specific training, addressing topics such as intake of allegations/safety concerns and trending of concerns (*e.g.,* Employee Concerns Program (ECP) basics course NAECP's ECP basics course, or similar training). This training shall be completed within 180 days of designation as the Program Officer.

iii. The Program Officer shall assist the AFRRI Director in the management and execution of the SCWE program to include the intake and processing of reported safety concerns.

iv. The Program Officer shall review AFRRI communications related to safety culture messaging and provide feedback to the AFRRI Director.

v. The Program Officer shall encourage better communication between nuclear materials safety and security committees associated with AFRRI.

C. Training

1. By no later than 180 calendar days after the issuance of the CO, AFRRI shall develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for all AFRRI employees.

a. Training shall include the following areas:

i. Case studies of discriminatory practices;

ii. Definitions of key industry terms/common language;

iii. Behavioral expectations with regard to each nuclear safety culture traits;

iv. Expectations for demonstrating support for raising nuclear safety concerns and all available avenues without fear of retaliation; and

v. A statement that all employees have the right to raise nuclear safety concerns to USU/AFRRI, the NRC and Congress, or engage in any other type of protected activity without fear of being subject to disciplinary action or retaliation, as well as, provide a list of available reporting avenues.

2. *Supervisory Training:* In addition to the content areas described within paragraph C.1 above, supervisory training shall also include expectations specific to the role of management and include specific discussion on how to (1) effectively manage safety concerns and (2) ensure employees feel comfortable raising concerns.

a. If AFRRI conducts the initial training, the training will be performed by AFFRI employees trained by the team who developed the training at AFRRI or the organization who developed the program.

b. The supervisory training shall be completed within 180 calendar days after the issuance of the CO.

c. *Refresher training:*

i. Shall be primarily instructor led and be provided at least every 2 years for a period of 4 years. This training may be provided by AFRRI staff.

ii. Thereafter, refresher training may be computer-based and shall be provided annually.

d. AFRRI shall conduct instructor-led training for any new supervisors hired after the initial training conducted as described in paragraphs 1 and 2 above, as part of the supervisor's initial training.

e. Training records shall be retained for 4 years after the completion of applicable training and made available to the NRC upon request.

f. All training material shall be available to the NRC upon request.

3. *Employee (Non-Supervisory) Training:* Initial training, developed in paragraph C.1 above, shall be conducted by AFRRI employees trained by the team who developed the training at AFRRI.

a. All employee training shall commence within 180 calendar days after the issuance of the CO.

b. All training must be completed within 330 calendar days of the issuance of the CO.

c. Refresher training may be computer-based and shall be provided annually.

d. Training will primarily be instructor-led for new employees as part of their orientation program/process.

e. Training records shall be retained for 4 years after the completion of applicable training and made available to the NRC upon request.

f. All training material shall be available to the NRC upon request.

4. This training is applicable to all AFRRI employees and management who are engaged in work associated with NRC-regulated activities.

5. AFRRI shall provide all training materials to the NRC for review at least 60 calendar days prior to conducting training.

a. NRC will provide comments to AFRRI within 2 weeks of receipt.

b. Within 45 days of receiving communication that the NRC review is complete, AFRRI will either incorporate NRC comments or provide acknowledgement of NRC comments and why comments were not incorporated.

D. Assess and Monitor Nuclear Safety Culture and Safety Conscious Work Environment

1. By no later than 18 months after the issuance of the CO, AFRRI shall hire a third-party independent organization and complete a tailored comprehensive nuclear safety culture assessment to ensure the effectiveness of the nuclear safety culture and SCWE programs.

a. The assessment will evaluate all program components, including insights from employee surveys, anonymous reports, interviews and the conduct of focus groups to assess effectiveness of the programs.

b. AFRRI shall conduct the initial assessment within 1 year of the establishment of the SCWE program.

c. AFRRI must address and implement corrective actions as a result of the assessment report.

2. A follow-up assessment shall be conducted within 2 years after the initial assessment. The follow-up assessment shall be comparable to the initial assessment to allow for effective evaluation of trends. This assessment does not require the use of a third-party organization.

3. AFRRI shall make available to the NRC, upon request, the results of the assessments, surveys, AFRRI's analysis of the trends, results and proposed corrective actions (if any) AFRRI will take to address the results in order to verify that a healthy nuclear safety culture and SCWE exists at AFRRI.

E. Independent Third-Party Organization

1. Within 120 calendar days of the issuance of the CO, AFRRI will hire a third-party, independent organization to assist AFRRI with updates to its nuclear safety culture policy and the establishment of its safety conscious work environment program and associated tasks, as described within the CO. AFRRI may utilize the same organization as described in paragraph D above.

a. The third-party organization shall be unrelated to the proceedings at issue and experienced within NRC employee protection regulations, Section 211 of the Energy Reorganization Act, as amended, and nuclear safety culture and SCWE policies/programs.

b. AFRRI shall ensure they receive assistance from the third-party organization for the following tasks:

i. Initial revisions/updates to AFRRI's nuclear safety culture policy, as AFRRI ensures consistency with NRC and industry guidance;

ii. Establishment of AFRRI's SCWE program; and

iii. Development and conduct of AFRRI's initial Nuclear Safety Culture and SCWE program assessment.

c. AFRRI will ensure the organization is provided with all materials to comprehensively assist AFRRI, including NRC inspection reports associated with AFRRI's SCWE and the March 2020 CEL.

F. Work Process

1. Within 270 calendar days of the issuance of the CO, AFRRI will develop a program for AFRRI employees to raise concerns.

a. The program shall include the following:

i. An electronic, telephonic, or physical reporting mechanism for AFRRI employees to submit safety concerns. This mechanism shall allow for both standard and anonymous submission capability.

ii. A means to evaluate information collected through the reporting mechanisms available, in order to analyze the data over time, related to AFRRI's nuclear safety culture.

iii. A means to ensure AFRRI's nuclear safety culture and SCWE policies, and associated guidance/materials, are readily accessible for employee viewing.

iv. The opportunity for departing AFRRI employees to participate in an exit interview/survey to facilitate identification of nuclear safety issues, resulting trends and conclusions.

General Provisions

1. As part of its deliberations and consistent with the philosophy of the Enforcement Policy, Section 3.3, ''Violations Identified Because of Previous Enforcement Action,'' the NRC will consider enforcement discretion for violations of the NRC Employee Protection Rules that occurred prior to or during implementation of the corrective actions aimed at correcting that specific condition as specified in the CO.

2. The NRC will not cite a violation or issue a civil penalty in connection with the NRC's June 8, 2020, letter to AFRRI.

3. This CO will not count as escalated enforcement in the civil penalty assessment process for future cases, as long as the future action is not related to the NRC Employee Protection Rule.

4. The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by AFRRI of good cause.

5. The NRC agrees not to pursue any further enforcement action in connection with the NRC's June 8, 2020, letter to AFRRI.

6. In the event of the transfer of the operating license of AFRRI to another entity, the terms and conditions set forth hereunder shall continue to apply to AFRRI and accordingly survive any transfer of ownership or license.

On November 10, 2020, AFRRI consented to issuing this CO with the commitments, as described in Section V below. AFRRI further agreed that this CO is to be effective upon issuance, that the agreement memorialized in this CO settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that AFRRI's completed actions, as described in Section III above, combined with the commitments as set forth in Section V, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that AFRRI's commitments be confirmed by this CO. Based on the above and AFRRI's consent, this CO is effective upon issuance.

V

Accordingly, pursuant to Sections 104c, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered, effective upon issuance, that* License No. R–84 *is modified as follows:*

A. Communication

1. Within 60 calendar days of issuance of the Confirmatory Order (CO), the Uniformed Services University (USU) President shall issue a written statement communicating the specific strategy to improve AFRRI's nuclear safety culture.

a. The communication is to include (1) a brief summary regarding the employee protection regulations, (2) the NRC's concerns expressed in its March 18, 2020, chilling effect letter, (3) specific lessons learned from previously applied corrective actions, and (4) corrective actions both taken and planned.

b. USU shall provide a copy of this communication to the NRC for prior review.

c. NRC shall provide comments within 1 week of receipt of the draft communication.

2. Within 90 calendar days of the USU President's statement, AFRRI shall hold all-hands meetings for management to discuss the importance of the communication, described within Section A.1 above, with AFRRI employees.

a. AFRRI shall conduct the all-hands meetings on multiple levels of management (*i.e.,* AFRRI Director, Department Heads), with current employees. AFRRI employees must attend at least one of the all-hands meetings.

b. AFRRI shall require participants to sign-in, confirming their attendance. Employees unable to attend an in-person/virtual meeting, shall confirm their receipt of the communication by completing a ''Read and Sign.''

c. Future AFRRI employees shall complete this requirement via a ''Read and Sign.''

B. Safety Culture and Safety Conscious Work Environment

1. Within 150 calendar days of issuance of the CO, AFRRI shall ensure its nuclear safety culture policy (NSC Policy), guidance, and related materials are in place and updated.

a. Ensure a distinct and comprehensive NSC Policy is updated, maintained, and consistent with the NRC's June 14, 2011, Safety Culture Policy Statement and associated traits.

b. The NSC Policy shall include specific definitions for key safety culture terms, including examples of what constitutes a protected activity and safety/security concern(s).

c. The NSC Policy shall incorporate guidance from NUREG–2165, ''Safety Culture Common Language'' and the industry's common language initiative (*i.e.,* INPO 12–012, Revision 1, April 2013).

d. Copies of NSC Policy, guidance, and related materials shall be provided to the NRC for review at least 60 calendar days prior to issuance.

e. NRC will provide comments to AFRRI within 2 weeks of receipt of the document(s)/material(s).

f. Within 45 days of receiving communication that NRC's review is complete, AFRRI will either incorporate NRC's comments or provide acknowledgement of NRC's comments and state why NRC's comments were not incorporated.

g. AFRRI will distribute copies of the NSC Policy, guidance, and related materials to AFRRI employees and inform AFRRI employees how to access the documents and materials. These materials shall be maintained and provided to all new AFRRI employees during initial employee orientation.

h. AFRRI shall require both current and new AFRRI employees to confirm their receipt of the NSC Policy, guidance, and related materials by completing a ''Read and Sign.''

2. Within 180 calendar days of issuance of the CO, AFRRI shall establish a nuclear safety conscious work environment (SCWE) program.

a. AFRRI shall ensure that the SCWE program is consistent with the NRC Safety Conscious Work Environment Policy Statement and associated guidance (*i.e.,* NRC's May 14, 1996, policy statement ''Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation,'' and the NRC's Regulatory Issue Summary 2005–18, ''Guidance for

Establishing and Maintaining a Safety Conscious Work Environment'').

b. Initial SCWE program documents (guidance and related materials) shall be provided to the NRC review at 60 calendar days prior to issuance.

c. NRC will provide comments to AFRRI, within 2 weeks of receipt of the documents.

d. Within 45 days of receiving communication that NRC's review is complete, AFRRI will either incorporate NRC's comments or provide acknowledgement of NRC's comments and state why NRC's comments were not incorporated.

e. For a period of 2 years following the establishment of the SCWE program, AFRRI shall inform NRC of any pending major revisions to AFRRI's SCWE program documents and make the revisions available for NRC review upon request. Major revisions, for the purpose of this CO condition, are considered to be, but not limited to, removal/addition of any program element (*i.e.,* avenues to report safety concerns, program trending and analysis standards, etc.).

f. AFRRI will distribute copies of the SCWE program documents and materials to AFRRI employees and inform AFRRI employees how to access the documents and materials. These materials shall be maintained and provided to all new AFRRI employees during initial employee orientation.

g. AFRRI shall require both current and future AFRRI employees to confirm their receipt of the materials by completing a ''Read and Sign.''

h. Within the SCWE program, AFRRI shall document the requirements related to the Safety Culture Program Officer (Program Officer) to include the following:

i. The Program Officer function will report directly to the AFRRI Director.

ii. The Program Officer shall complete specific training addressing topics such as intake of allegations/safety concerns and trending of concerns (*e.g.,* National Association of Employee Concerns Professionals' (NAECP's) Employee Concerns Program basics course, or similar training). This training shall be completed within 180 days of designation as the Program Officer.

iii. The Program Officer shall assist the AFRRI Director in management and execution of the SCWE program to include the intake and processing of reported safety concerns.

iv. The Program Officer shall review AFRRI communications related to safety culture messaging and provide feedback.

v. The Program Officer shall encourage better communication between nuclear materials safety and security committees associated with AFRRI.

C. Training

1. Within 210 calendar days of issuance of the CO, AFRRI shall develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for all AFRRI employees and supervisors.

a. Training shall include the following:

i. Case studies of discriminatory practices;

ii. Definitions of key industry terms/common language;

iii. Behavioral expectations with regard to each nuclear safety culture trait as defined in NRC's June 14, 2011, Safety Culture Policy Statement;

iv. Expectations for demonstrating support for raising nuclear safety concerns without fear of retaliation; and

v. A statement that all employees have the right to raise nuclear safety concerns to USU/AFRRI, the NRC and Congress, or engage in any other type of protected activity without being subject to disciplinary action or retaliation, as well as, providing a list of available reporting avenues.

2. *Supervisory Training:* In addition to the content areas described within paragraph C.1.a above, supervisory training shall also include expectations specific to the role of management and include discussion on (1) effectively managing safety concerns and (2) ensuring employees feel comfortable raising concerns.

a. The supervisory training shall be conducted by either the independent third-party organization hired to assist AFRRI, as described in paragraph E below, or AFFRI employees trained by the independent third-party organization.

b. The initial supervisory training shall be completed within 210 calendar days after the issuance of the CO.

c. *Refresher supervisory training:*

i. Initial refresher training sessions shall be primarily instructor-led and shall be provided to all supervisors at least every 2 years for a period of 4 years from the issuance of the CO. This training may be provided by AFRRI staff.

ii. Thereafter, refresher training may be computer-based and shall be provided to all supervisors annually.

d. AFRRI shall conduct instructor-led training for any new supervisors hired after the initial training, described in paragraphs C.1 and C.2.b, as part of the supervisor's initial training.

e. Training records shall be retained for 4 years after the completion of applicable training and made available to the NRC upon request.

f. All training material shall be made available to the NRC upon request.

3. *Employee (Non-Supervisory) Training:* The initial AFRRI employee training described in paragraph C.1 above shall be conducted by AFRRI employees trained by the team who developed the training.

a. The initial AFRRI employee training shall be primarily instructor-led and all AFRRI employee training shall commence within 180 calendar days after the issuance of the CO.

b. All initial AFRRI employee training must be completed within 330 calendar days of the issuance of the CO.

c. Refresher employee training may be computer-based and shall be provided to all AFRRI employees annually.

d. AFRRI shall conduct instructor-led training for any new AFRRI employee hired after the initial training, described in paragraphs C.1 and C.3.a, as part of the employee's orientation program/process.

e. Training records shall be retained for 4 years after the completion of applicable training and made available to the NRC upon request.

f. All training material shall be made available to the NRC upon request.

4. The training described in paragraphs C.1, C.2 and C.3 is applicable to all AFRRI employees and management who are engaged in work associated with NRC-regulated activities.

5. AFRRI shall provide all initial training materials to the NRC for review at least 60 calendar days prior to conducting training.

6. NRC will provide comments to AFRRI within 2 weeks of receipt of the documents.

7. Within 45 days of receiving communication that NRC's review is complete, AFRRI will either incorporate NRC's comments or provide acknowledgement of NRC's comments and state why NRC's comments were not incorporated.

D. Assess and Monitor Nuclear Safety Culture and Safety Conscious Work Environment

1. By no later than 18 months after the issuance of the CO, AFRRI shall hire an independent third-party organization and complete a tailored, comprehensive nuclear safety culture assessment.

a. The assessment will evaluate all program components, including insights from employee surveys, anonymous reports, interviews and the conduct of focus groups to assess effectiveness of the program.

b. AFRRI shall conduct the initial assessment within 1 year of the establishment of the SCWE program and the assessment must result in a comprehensive report.

c. AFRRI must address and implement corrective actions as a result of the assessment report.

2. A follow-up assessment shall be conducted within 2 years after the initial assessment. The follow-up assessment shall be comparable to the initial assessment, described in paragraph D.1, to allow for effective evaluation of trends. This follow-up assessment does not require the use of an independent third-party organization.

3. AFRRI shall make available to the NRC, upon request, the results of the initial and follow-up assessments (including surveys and AFRRI's analysis of trends) and the proposed corrective actions (if any) AFRRI will take to address the results, in order for the NRC to verify that a healthy nuclear safety culture and SCWE exist at AFRRI.

E. Independent Third-Party Organization

1. Within 120 calendar days of the issuance of the CO, AFRRI will hire an independent third-party organization to assist AFRRI with updates to its NSC Policy and the establishment of its SCWE program and associated tasks, as described within the CO. AFRRI may utilize the same organization as described in paragraph D above.

a. The independent third-party organization shall be unrelated to the proceedings at issue and experienced within NRC employee protection regulations, Section 211 of the Energy Reorganization Act, as amended, and nuclear safety culture and SCWE policies/programs.

b. AFRRI shall receive assistance from the independent third-party organization for the following tasks:

i. Initial revisions/updates to AFRRI's NSC Policy, as AFRRI ensures consistency with NRC and industry guidance, as described in paragraph B.1;

ii. Establishment of AFRRI's SCWE program, as described in paragraph B.2; and

iii. Development and implementation of AFRRI's initial Nuclear Safety Culture and SCWE program assessment, as described in paragraph D.1.

c. AFRRI will ensure that the independent third-party organization is provided all materials to comprehensively assist AFRRI, including NRC inspection reports associated with AFRRI's SCWE and the March 18, 2020, Chilling Effect Letter.

F. Work Process

1. Within 270 calendar days of the issuance of the CO, AFRRI will develop a program for AFRRI employees to raise nuclear safety and security concerns.

a. The program shall include the following:

i. An electronic, telephonic or physical reporting mechanism for AFRRI employees to submit nuclear safety or security concerns. This mechanism shall allow for both standard and anonymous submission capability.

ii. A means to evaluate information collected through the available reporting mechanisms in order to analyze the data related to AFRRI's nuclear safety culture over time.

iii. A means to ensure AFRRI's NSC Policy, SCWE program, and associated guidance/materials are readily accessible for employee viewing.

iv. The opportunity for departing AFRRI employees to participate in an exit interview/survey to facilitate identification of nuclear safety issues, resulting trends and conclusions.

In consideration for the actions and/or initiatives that AFRRI agrees to undertake, as outlined above, the NRC agrees to the following:

1. As part of its deliberations and consistent with the philosophy of the Enforcement Policy, Section 3.3, ''Violations Identified Because of Previous Enforcement Action,'' the NRC will consider enforcement discretion for violations with similar root causes (*i.e.,* associated with the NRC Employee Protection Rules) that occur prior to or during implementation of the corrective actions aimed at correcting that specific condition as specified in the CO.

2. The NRC will not cite a violation or issue a civil penalty in connection with the NRC's June 8, 2020, letter to AFRRI.

3. This CO will not count as escalated enforcement in the civil penalty assessment process for future cases as long as the future action is not related to the NRC Employee Protection Rules.

4. The NRC agrees not to pursue any further enforcement action in connection with the NRC's June 8, 2020, letter to AFRRI.

In the event of the transfer of the operating license of AFRRI to another entity, the terms and conditions set forth hereunder shall continue to apply to AFRRI and accordingly survive any transfer of ownership or license.

The Director, Office of Enforcement may, in writing, relax or rescind any of the above conditions upon demonstration by AFRRI of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than AFRRI, may request a hearing within 30 calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person (other than AFRRI) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated this 19th day of November 2020.

George A. Wilson,

Director, Office of Enforcement.

[FR Doc. 2020–25981 Filed 11–23–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0144]

Information Collection: NRC Online Form for Requesting Alternatives to Regulatory Codes and Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on our request for review and Office of Management and Budget (OMB) approval of the information collection that is summarized below. The information collection is regarding a NRC Online Form for requesting alternatives to regulatory Codes and Standards requirements.

DATES: Submit comments by December 24, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0144 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–2020–0144. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0144 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML20302A440. The supporting statement is available in ADAMS under Accession No. ML20225A233.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled, NRC Online Form, ''Request for Alternative Under 10 CFR 50.55a(z)(1) and 10 CFR 50.55a(z)(2).'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 23, 2020 (85 FR 44549).

1. *The title of the information collection:* NRC Online Form, ''Request for Alternative Under 10 CFR 50.55a(z)(1) and 10 CFR 50.55a(z)(2).''

2. *OMB approval number:* 3150–0244.

3. *Type of submission:* Revision.

4. *The form number if applicable:* There is no form number for the online submission form.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities'' who use alternatives to the requirements of 10 CFR 50.55a paragraphs (b) through (h) when authorized by the NRC have the option of using the online form.

7. *The estimated number of annual responses:* 218.

8. *The estimated number of annual respondents:* 218.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 872.

10. *Abstract:* The NRC requested emergency review of an online form to allow licensees to submit requests for alternatives under 10 CFR 50.55a(z)(1) and (2) for a period of 6 months. The collection was initiated to facilitate the submission of alternatives related to the COVID–19 public health emergency. The collection is currently being revised and resubmitted to OMB for renewal. The revisions to the form will allow respondents to use the NRC Online Form, ''Request for Alternative Under 10 CFR 50.55a(z)(1) and (2),'' for all alternative requests (COVID and Non-COVID alike) and provides a more sophisticated form layout that provides new features that allow licensees to build requests within the portal (vice attaching files) and allows for peer reviews. The form which simplifies and reduces the burden of filing of requests for alternatives is described in the following paragraphs. Under the existing collection under OMB Control No. 3150–0011, licensees are already able to request alternatives. This information collection only addresses the incremental burden change to this existing clearance due to the form and not the total burden for the clearance.

Section 50.55a of 10 CFR incorporates by reference Division 1 rules of Section III, ''Rules for Construction of Nuclear Power Plant Components,'' and Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (B&PV Code); and the rules of the ASME ''Code for Operation and Maintenance of Nuclear Power Plants'' (OM Code). These rules of the ASME B&PV and OM Codes set forth the requirements to which nuclear power plant components are designed, constructed, tested, repaired, and inspected. Section 50.55a(z) of 10 CFR allows applicants to use alternatives to the requirements of 10 CFR 50.55a paragraphs (b) through (h) when authorized by the NRC. To facilitate licensees' requests for alternatives to the requirements in the above regulations, the NRC is providing an optional online form to submit the required information for a specific alternative request under 10 CFR 50.55a(z).

Dated: November 18, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–25905 Filed 11–23–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0201, Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Website

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season website, Open Season Online.

DATES: Comments are encouraged and will be accepted until December 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0201) was previously published in the **Federal Register** on April 14, 2020, at 85 FR 20727, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. 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;

2. 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;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System, and the Open Season website, Open Season Online, are used by retirees and survivors. They collect information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management when the FEHB payment is greater than the monthly annuity amount, or for requesting FEHB plan accreditation and Customer Satisfaction Survey information.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management

Title: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Online.

OMB Number: 3206–0201.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 350,100.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 58,350 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–25921 Filed 11–23–20; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: Supplemental Information on Accident and Insurance; OMB 3220–0036.

Under Section 12(o) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C 362 (o)), the Railroad Retirement Board (RRB) is entitled to reimbursement of the sickness benefits paid to a railroad employee if the employee receives a sum or damages for the same infirmity for which the benefits are paid. Section 2(f) of the RUIA requires employers to reimburse the RRB for days in which salary, wages, pay for time lost or other remuneration is later determined to be payable. Reimbursements under section 2(f) generally result from the award of pay for time lost or the payment of guaranteed wages. The RUIA prescribes that the amount of benefits paid be deducted and held by the employer in a special fund for reimbursement to the RRB.

The RRB currently utilizes Forms SI–1c, Supplemental Information on Accident and Insurance; SI–5, Report of Payments to Employee Claiming Sickness Benefits Under the RUIA; ID–3s and ID–3s (internet), Request for Lien Information—Report of Settlement; ID–3s-1, Lien Information Under Section 12(o) of the RUIA; ID–3u and ID–3u (internet), Request for Section 2(f) Information; ID–30k, Notice to Request Supplemental Information on Injury or Illness; and ID–30k-1, Notice to Request Supplemental Information on Injury or Illness; to obtain the necessary information from claimants and railroad employers. Completion is required to obtain benefits. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 57257 on September 15, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Supplemental Information on Accident and Insurance.

OMB Control Number: 3220–0036.

Form(s) submitted: SI–1c, SI–5, ID–3s, ID–3s (internet), ID–3s.1, ID3u, ID–3u (internet), ID–30k, and ID–30k.1.

Type of request: Revision of a currently approved collection of information.

Affected public: Individuals or Households.

Abstract: The Railroad Unemployment Insurance Act provides for the recovery of sickness benefits paid if an employee receives a settlement for the same injury for which benefits were paid. The collection obtains information that is needed to determine the amount of the RRB's reimbursement from the person or company responsible for such payments.

Changes proposed: The RRB proposes no changes to SI–1c, SI–5, ID–3s, ID–3s (internet), ID–3u, ID–3u (internet), and ID–30k. The RRB proposes to remove Form ID–30K–1 from the Information Collection due to less than 10 responses per year.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
SI–1c	1,700	5	142
SI–5	100	5	8
ID–3s (paper & telephone)	2,000	3	100
ID–3s (Internet)	2,000	3	100
ID–3s–1 (paper & telephone)	1,200	3	60
ID–3u (paper & telephone)	1,000	3	50
ID–3u (Internet)	800	3	40
ID–30k	100	5	8
Total	8,900	....	508

2. *Title and Purpose of information collection:* Pension Plan Reports; OMB 3220–0089. Under Section 2(b) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least 1 month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained). Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employee receives monthly pension payments, or a lump-sum pension payment from a private pension from a railroad employer, to the extent the payments are based on contributions from that employer. The employee's own contribution to their pension account does not cause a reduction. A private railroad employer pension is defined in 20 CFR 216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) The current status of railroad employer pension plans and whether such plans cause reductions to the supplemental annuity; (b) whether the employee receives monthly payments from a private railroad employer pension, elected to receive a lump sum in lieu of monthly pension payments from such a plan, or was required to receive a lump sum from such a plan due to the plan's small benefit provision; and (c) the amount of the payments attributable to the railroad employer's contributions. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Form G–88p and G–88p (internet), *Employer's Supplemental Pension Report,* and Form G–88r, *Request for Information About New or Revised Employer Pension Plan,* to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 57257 on September 15, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Pension Plan Reports.

OMB Control Number: 3220–0089.

Forms submitted: G–88p and G–88r.

Type of request: Revision of a currently approved collection of information.

Affected public: Businesses or other for-profits.

Abstract: The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of railroad employer pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Changes proposed: The RRB proposes no changes to G–88P and G–88P (internet). The RRB proposes the following minor non-burden impacting changes to Form G–88R: change work unit contact from ''RAC'' to ''SESC'' and update the fax number to the current number.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–88p	100	8	13
G–88p (Internet)	200	6	20
G–88r	10	8	1
Total	310	....	34

3. Title and Purpose of information collection: Statement Regarding Contributions and Support; OMB 3220–0099.

Under Section 2 of the Railroad Retirement Act (45 U.S.C. 231a), dependency on an employee for one-half support at the time of the employee's death can affect (1) entitlement to a survivor annuity when the survivor is a parent of the deceased employee; (2) the amount of spouse and survivor annuities; and (3) the Tier II restored amount payable to a widow(er) whose annuity was reduced for receipt of an employee annuity, and who was dependent on the railroad employee in the year prior to the employee's death. One-half support may also negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G–134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One response is completed by each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 57258 on September 15, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement Regarding Contributions and Support.

OMB Control Number: 3220–0099.

Form(s) submitted: G–134.

Type of request: Revision of a currently approved collection of information.

Affected public: Individuals or Households.

Abstract: Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act. One-half support is also a condition which may negate the public service pension offset in Tier I for a spouse or widow(er).

Changes proposed: The RRB proposes a minor editorial change to Form G–134 to change the date under Section 1 ''General Instructions''..

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–134			
With assistance	75	147	184
Without assistance	25	180	75
Total	100	....	259

4. Title and purpose of information collection: Financial Disclosure Statement; OMB 3220–0127.

Under Section 10 of the Railroad Retirement Act and Section 2(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 231i), the RRB may recover overpayments of annuities, pensions, death benefits, unemployment benefits, and sickness benefits that were made erroneously. An overpayment may be waived if the beneficiary was not at fault in causing the overpayment and recovery would cause financial hardship. The regulations for the recovery and waiver of erroneous payments are contained in 20 CFR 255 and CFR 340.

The RRB utilizes Form DR–423, Financial Disclosure Statement, to obtain information about the overpaid beneficiary's income, debts, and expenses if that person indicates that (s)he cannot make restitution for the overpayment. The information is used to determine if the overpayment should be waived as wholly or partially uncollectible. If waiver is denied, the information is used to determine the size and frequency of installment payments. The beneficiary is made aware of the overpayment by letter and is offered a variety of methods for recovery. One response is requested of each respondent. Completion is voluntary. However, failure to provide the requested information may result in a denial of the waiver request.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 57258 on September 15, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Financial Disclosure Statement.

OMB Control Number: 3220–0127.

Form(s) submitted: DR–423.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under the Railroad Retirement and the Railroad Unemployment Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

Changes proposed: The RRB proposes no changes to Form DR–423.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
DR–423	1,200	85	1,700

5. *Title and purpose of information collection:* Representative Payee Monitoring; OMB 3220–0151.

Under Section 12 of the Railroad Retirement Act (RRA) (45 U.S.C. 231k), the RRB may pay annuity benefits to a representative payee when an employee, spouse, or survivor annuitant is incompetent or a minor. The RRB is responsible for determining if direct payment to an annuitant or a representative payee would best serve the annuitant's best interest. The accountability requirements authorizing the RRB to conduct periodic monitoring of representative payees, including a written accounting of benefit payments received, are prescribed in 20 CFR 266.7. The RRB utilizes the following forms to conduct its representative payee monitoring program.

Form G–99a, *Representative Payee Report,* is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. RRB Form G–99c, *Representative Payee Evaluation Report,* is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity.

Form G–106, *Statement of Care and Responsibility to Annuitant,* is used to solicit information about the representative payee's performance and the annuitant's well-being from the custodian of the annuitant. The form contains specific questions concerning the representative payee's performance, and is used by the RRB to determine whether or not the representative payee should continue in that capacity. Completion of the forms in this collection is required to retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 57258 on September 15, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Representative Payee Monitoring.

OMB Control Number: 3220–0151.

Forms submitted: G–99a, G–99c and G–106.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as representative payee. If the representative payee does not have custody of the beneficiary, the RRB will obtain the information from the custodian for evaluation. The collection obtains information needed to determine if a representative payee is handling benefit payments in the best interest of the annuitant.

Changes proposed: The RRB proposes the following changes to Form G–99a: add drop-down box ''Second Request'' at the top of the form to when the RRB needs to follow-up with a Representative Payee who did not respond to the initial request, add computer-generated address fields to mail the form to a Representative Payee, and slight change to question's 1, 3, and 9 wording to clarify and improve the reliability of responses. The RRB proposes the following change to Form G–99c: slight change question 9 wording to clarify and improve the reliability of responses. The RRB proposes no changes for Form G–106.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–99a (legal and all other, excepting parent for child)	5,400	18	1,620
G–99c (Parts I and II)	300	24	120
G–99c (Parts I, II, and III)	120	31	62
G–106	500	10	83
Total	6,320		1,885

6. Title and purpose of information collection: Representative Payee Parental Custody Monitoring; OMB 3220–0176.

Under Section 12(a) of the Railroad Retirement Act (RRA) (45 U.S.C. 231k), the Railroad Retirement Board (RRB) is authorized to select, make payments to, and to conduct transactions with, a beneficiary's relative or some other person willing to act on behalf of the beneficiary as a representative payee. The RRB is responsible for determining if direct payment to the beneficiary or payment to a representative payee would best serve the beneficiary's interest. Inherent in the RRB's authorization to select a representative payee is the responsibility to monitor the payee to assure that the beneficiary's interests are protected. The RRB utilizes Form G–99D, Parental Custody Report, to obtain information needed to verify that a parent-for-child representative payee still has custody of the child. One response is required from each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 58077 on September 17, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Representative Payee Parental Custody Monitoring.

OMB Control Number: 3220–0176.

Form(s) submitted: G–99D.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to verify the parent-for-child payee still retains custody of the child.

Changes proposed: The RRB proposes the following changes to Form G–99d:

- Minor change item 4 layout.
- Add new item 6 to solicit the total amount of railroad retirement benefits received for the child during the reporting period.
- Add new item 7 to solicit the dollar amount of railroad retirement benefits

used for the child during the reporting period.

- Add new item 8 to solicit a description of how the railroad retirement benefits were used for the child during the reporting period.
- Add new item 9 to solicit how the surplus railroad retirement benefits, if any, were held for the child, for example, in cash, a checking account, a savings account, or other means and the tittle of any checking or savings accounts holding surplus benefits.
- Renumbered item 6 Certification to item 10.
- Update to the Paperwork Reduction Act and Privacy Act Notices to change the burden time from 5 to 15 minutes.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–99D	2,100	15	525

7. Title and Purpose of information collection: Earnings Information Request; OMB 3220–0184.

Under Section 2 of the Railroad Retirement Act (45 U.S.C. 231a), an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The provisions relating to the reduction or non-payment of annuities by reason of work are prescribed in 20 CFR 230.

The RRB utilizes Form G–19–F, *Earnings Information Request,* to obtain earnings information that either had not been previously reported or erroneously reported by a beneficiary.

Currently the claimant is asked to enter the date they stopped working, if applicable. If a respondent fails to complete the form, the RRB may be unable to pay them benefits. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 57259 on September 15, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Earnings Information Request.

OMB Control Number: 3220–0184.

Form(s) submitted: G–19–F.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 2 of the Railroad Retirement Act, an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The collection obtains earnings information not previously or erroneously reported by a beneficiary.

Changes proposed: The RRB proposes no changes to the Form G–19–F.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–19–F	900	8	120

8. Title and Purpose of information collection: Job Information Report, OMB 3220–0193. The Railroad Retirement Board (RRB) occupational disability standards allow the RRB to request job information from railroad employers to determine an applicant's eligibility for an occupational disability.

To determine an occupational disability, the RRB must obtain the employee's work history and establish if the employee is precluded from performing his or her regular railroad occupation. This is accomplished by comparing the restrictions caused by the impairment(s) against the employee's ability to perform his or her job duties.

To collect the information needed to determine the effect of a disability on an employee applicant's ability to work, the RRB utilizes Form G–251, *Vocational Report* (OMB 3220–0141) which is completed by the applicant.

Form G–251A, Railroad Job Information, requests railroad employers to provide information regarding whether the employee has been medically disqualified from their railroad occupation; a summary of the employee's duties; the machinery, tools and equipment used by the employee; the environmental conditions under which the employee performs their duties; all sensory requirements (vision, hearing, speech) needed to perform the employee's duties; the physical actions and amount of time (frequency) allotted for those actions that may be required by the employee to perform their duties during a typical work day; any permanent working accommodations an employer may have made due to the employee's disability; as well as any other relevant information they may choose to include. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 57259 on September 15, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Title: Job Information Report.

OMB Control Number: 3220–0193.

Form(s) submitted: G–251A.

Type of request: Extension without change of a currently approved collection.

Affected public: Businesses or other for profits.

Abstract: The collection obtains information used by the Railroad Retirement Board (RRB) to assist in determining whether a railroad employee is disabled from his or her regular occupation. It provides railroad employers with the opportunity to provide information to the RRB regarding the employee applicant's job duties.

Changes proposed: The RRB proposes no changes to Form G–251A.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–251A	500	60	500

9. Title and purpose of information collection: Statement Regarding Contributions and Support of Children; OMB 3220–0195.

Section 2(d)(4) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), provides, in part, that a child is deemed dependent if the conditions set forth in Section 202(d)(3), (4) and (9) of the Social Security Act are met. Section 202(d)(4) of the Social Security Act, as amended by Public Law 104–121, requires as a condition of dependency, that a child receives one-half of his or her support from the stepparent. This dependency impacts upon the entitlement of a spouse or survivor of an employee whose entitlement is based upon having a stepchild of the employee in care, or on an individual seeking a child's annuity as a stepchild of an employee. Therefore, depending on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren, step-grandchildren and equitably adopted children. The regulations outlining child support and dependency requirements are prescribed in 20 CFR 222.50–57.

In order to correctly determine if an applicant is entitled to a child's annuity based on actual dependency, the RRB uses Form G–139, Statement Regarding Contributions and Support of Children, to obtain financial information needed to make a comparison between the amount of support received from the railroad employee and the amount received from other sources. Completion is required to obtain a benefit. One response is required of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 57260 on September 15, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement Regarding Contributions and Support of Children.

OMB Control Number: 3220–0195.

Form(s) submitted: G–139.

Type of request: Revision of a currently approved collection of information.

Affected public: Individuals or Households.

Abstract: Dependency on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren and step-grandchildren. The information collected solicits financial information needed to determine entitlement to a child's annuity based on actual dependency.

Changes proposed: The RRB proposes a minor editorial change to Form G–139 to change the date under Section 1 ''General Instructions''.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–139	500	60	500

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–1275 or *Brian.Foster@rrb.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Brian Foster,

Clearance Officer.

[FR Doc. 2020–25893 Filed 11–23–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90455; File No. SR–MRX–2020–21]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule

November 18, 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 November 6, 2020, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule at Options 7, Section 1, ''General Provisions,'' to permit certain affiliated market participants to aggregate volume and qualify for certain pricing incentives. Additionally, the Exchange proposes to amend Options 7, Section 3, ''Regular Order Fees and Rebates;'' Options 7, Section 4, ''Complex Order Fees;'' Options 7, Section 5, ''Other Options Fees and Rebates;'' Options 7, Section 7, ''Market Data;'' and Options 7, Section 8, ''Connectivity Fees.''

The Exchange originally filed the proposed pricing change on October 26, 2020 (SR–MRX–2020–17). On November 6, 2020, the Exchange withdrew that filing and submitted this filing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 7, Section 1, ''General Provisions''; Options 7, Section 3, ''Regular Order Fees and Rebates;'' Options 7, Section 4, ''Complex Order Fees;'' Options 7, Section 5, ''Other Options Fees and Rebates;'' Options 7, Section 7, ''Market Data;'' and Options 7, Section 8, ''Connectivity Fees.'' Each change will be discussed below.

Options 7, Section 1

The Exchange proposes to replace the Appointed Member Program with an aggregation program offered today on ISE for an Affiliated Entity. Specifically, the Exchange proposes to permit Affiliated Entities to aggregate certain volume for purposes of receiving discounted fees. Nasdaq ISE, LLC (''ISE'') also permits Affiliated Entities to aggregate volume for purposes of qualifying for certain pricing.[3] This replacement program is intended to harmonize MRX's program to ISE's program for purposes of permitting the Exchange to administer both programs in the same fashion. The Exchange notes that a key difference in these two programs is that today a Member on MRX can benefit from both the Appointed Member and the Affiliated Member aggregations for purposes of achieving more favorable pricing. With the proposed Affiliated Entity program, a Member would have to elect either the Affiliated Entity or Affiliated Member program during the same time period. This difference is discussed in more detail below.

Today, MRX offers an Appointed Member[4] an opportunity to lower fees by aggregating eligible volume from an Appointed Order Flow Provider[5] with a designated Appointed Market Maker[6] to determine tier eligibility within Table 3 of Options 7, Section 3 and determine eligibility for Market Maker Taker Fees within Options 7, Section 3, as described in note 2 of the Pricing Schedule (''Appointed Member Program'').

The concept of an Appointed Member was established in 2016[7] and was intended to incentivize firms to direct their order flow to the Exchange to the benefit of all market participants. Today, all eligible volume from an Appointed Order Flow Provider is aggregated with its designated Appointed Market Maker's eligible volume in determining the Appointed Market Maker's applicable tiers, provided the Appointed Market Maker is designated by the Appointed Order Flow Provider in accordance with certain instructions. Today, a Market Maker appoints an Electronic Access Member as its Appointed Order Flow Provider and an Electronic Access Member appoints a Market Maker as its Appointed Market Maker, for the purposes of pricing, by each sending an email. The corresponding emails are viewed as acceptance of the appointment.[8] Today, an Appointed Market Maker is eligible to receive and aggregate volume credit from both their Affiliated Members[9] and their Appointed Order Flow Provider. An Appointed Order Flow Provider does not receive volume credit from its Appointed Market Maker or the Appointed Market Maker's Affiliated Members in determining its applicable tiers.[10]

The Exchange proposes to replace the Appointed Member Program with an aggregation program offered today on ISE for an Affiliated Entity to permit the Exchange to administer both programs in the same fashion. Specifically, the Exchange proposes to adopt the term ''Affiliated Entity'' within Options 7, Section 1. An ''Affiliated Entity'' would be a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. An Appointed Market Maker would be re-defined similar to ISE as a Market Maker who has been appointed by an OFP for purposes of qualifying as an Affiliated Entity. An ''Order Flow Provider'' or ''OFP'' is proposed to be defined within Options 7, Section 1 as any Member, other than a Market Maker,[11] that submits orders, as agent or principal, to the Exchange. Finally, an Appointed Order Flow Provider would be re-defined within Options 7, Section 1 as an OFP who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity. The Exchange would remove the term ''Appointed Member'' in connection with eliminating the Appointed Member Program. As noted above, the Affiliated Entity program would be similar to ISE's program.[12]

In order to become an Affiliated Entity, Market Makers and OFPs will be required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month.[13] For example, with this proposal, market participants may submit emails[14] to the Exchange to become Affiliated Entities to qualify for discounted pricing starting November 1, 2020, provided the emails are sent at least 3 business days prior to the first business day of November 2020. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity would qualify for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in

[3] *See* ISE Options 7, Section 1.

[4] An ''Appointed Member'' is either an Appointed Market Maker or Appointed Order Flow Provider. *See* MRX Options 7, General 1.

[5] An ''Appointed Order Flow Provider'' is an Electronic Access Member who has been appointed by a Market Maker pursuant to Section 3, Table 3.

[6] An ''Appointed Market Maker'' is a Market Maker who has been appointed by an Electronic Access Member pursuant to Section 3, Table 3.

[7] *See* Securities Exchange Act Release No. 77841 (May 20, 2016), 81 FR 31986 (May 16, 2016) (SR–ISEMercury–2016–11). ISE Mercury was the prior name of MRX.

[8] The Exchange recognizes one such designation for each party. A party may make a designation not more than once every 6 months, which designation remains in effect until the Exchange receives an email from either party indicating that the appointment has been terminated.

[9] An ''Affiliated Member'' is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. *See* Options 7, Section 1.

[10] *See* Options 7, Section 3 within Table 3.

[11] Market Makers shall not be considered Appointed OFPs for the purpose of becoming an Affiliated Entity.

[12] A Member on ISE and a Member on MRX may affiliate with different Members on each market.

[13] The Exchange shall issue an Options Trader Alert specifying the email address and details required to apply to become an Affiliated Entity.

[14] Emails shall be submitted to *membership@nasdaq.com.*

writing by sending an email [15] to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually. For example, if the start date of the Affiliated Entity relationship is November 1, 2020, the counterparties may determine to commence a new relationship as of November 1, 2021 by requiring each party to send a new email 3 business days prior to the end of November 2021. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. As proposed, an Affiliated Entity shall be eligible to aggregate their volume for purposes of qualifying for certain pricing specified in the Pricing Schedule, as described below.

As stated above, one difference between the Appointed Member Program and the Affiliated Entity Program is that, today, a MRX Member may aggregate volume both as an Affiliated Member and as an Appointed Member for purposes of achieving favorable pricing. With this proposal, a MRX Member may aggregate volume either as an Affiliated Member or as an Affiliated Entity, but may not aggregate under both programs combined during the same time period. Moreover, unlike the Appointed Member Program, with the Affiliated Entity Program, an Affiliated Member may not qualify as a counterparty comprising an Affiliated Entity.

Options 7, Section 3

The note 2 Market Maker Taker Fee is the only fee within Options 7, Section 3 which is currently subject to the Appointed Member Program. Qualifying Tier Thresholds for the Market Maker Taker Fee are determined by Table 3 of Options 7, Section 3. The Exchange proposes to similarly permit Affiliated Entities to aggregate their volume to obtain the note 2 Market Maker Taker Fee within Options 7, Section 3. The note 2 Market Maker Taker Fee will remain the only fee within Options 7, Section 3 which would be subject to the Affiliated Entity Program.

The Exchange proposes to amend note 2 within Options 3, Section 7 to remove references to ‘‘Appointed Member’’. The Exchange is adding references within note 2 to ‘‘Affiliated Entity.’’ As proposed, note 2 to Options 7, Section 3 would provide,

A Taker Fee of $0.05 per contract applies instead when trading with Priority Customer orders entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 5,000 contracts or more. A Taker Fee of $0.00 per contract applies instead when trading with Priority Customer orders entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 50,000 contracts or more.

As is the case today for an Affiliated Member, an Appointed Market Maker would be able to obtain the benefit of the reduced Market Maker Taker Fee if, in the aggregate, the Affiliated Entity meets the Average Daily Volume (‘‘ADV’’) requirements.

Similarly, with respect to Table 3 within Options 7, Section 3, references to ‘‘Appointed Member’’ would be removed and ‘‘Affiliated Entity’’ would be added. Also any details concerning the Appointed Member Program within the notes below Table 3 within Options 7, Section 3 would be removed. Specifically, the bullet points within Table 3 of Options 7, Section 3 that relate to the Appointed Member are being removed because the detail does not relate to the Affiliated Entity program. Finally, other bullets are being removed because they are redundant and not applicable. The Table 3, Options 7, Section 3 tiers, as proposed, would be as follows:

QUALIFYING TIER THRESHOLDS

Tiers	Total affiliated member or affiliated entity ADV
Tier 1	executes 0.00%–0.7499% of Customer Total Consolidated Volume
Tier 2	executes 0.75% or more of Customer Total Consolidated Volume

Finally, the Exchange proposes to capitalize the term ‘‘Taker Fee’’ within note 2 of Options 7, Section 3 and update a cross reference within Options 7, Section 3 within note 1 of Table 1 to Options 7, Section 5.E., as the Exchange is relocating the referenced text within this proposal as noted below.

As noted above, with this proposed change, a MRX Member may aggregate either as an Affiliated Member or an Affiliated Entity during the same time period, but may not aggregate under both programs during the same time period for purposes of achieving the lower Market Maker Taker Fee in note 2.

With this proposal, the Exchange proposes to continue to incentivize certain Members, who are not Affiliated Members, to enter into an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify to reduce their Market Maker Taker Fees. By aggregating volume, the Affiliated Entity, that submits certain requisite volume, offers the Appointed Market Maker an opportunity to lower Taker Fees and encourages Market Makers to submit additional liquidity on MRX.

Options 7, Section 4

Today, a Complex Order Market Maker fee of $0.00 per contract applies, instead of the $0.15 per contract Complex Order fee, when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or an Appointed Member. MRX proposes to replace the one reference to ‘‘Appointed Member’’ within note 2 of Options 7, Section 4 with ‘‘Affiliated Entity.’’

With the proposed change, as is the case under the current pricing, a MRX Member may aggregate either as an Affiliated Member or an Affiliated Entity during the same time period, but may not aggregate under both programs during the same time period for purposes of not paying a Complex Order Market Maker fee. With this proposal, the Exchange proposes to continue to incentivize certain Members, who are not Affiliated Members, to enter into an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify to reduce their Complex Order Market Maker fee from $0.15 to $0.00 per contract. By aggregating volume, the Affiliated Entity, who submits certain requisite volume, offers the Appointed Market Maker an opportunity to not pay Complex Order Market Maker fees and encourages Market Makers to submit additional liquidity on MRX.

Finally, the Exchange proposes to update a cross reference to Options 7, Section 5.E. within Options 7, Section 4, as the Exchange is relocating that related text within this proposal as noted below.

Options 7, Section 5

The Exchange proposes to amend Options 7, Section 5.C., Options Regulatory Fee, to remove the date of the last ORF change because it is a past date that is no longer relevant.

The Exchange proposes to relocate Options 7, Section 5.E., PIM Pricing for Regular and Complex Orders, to new Options 7, Section 3.A. in order that PIM pricing appear with other transactional pricing.

Options 7, Section 8

The Exchange proposes to relocate Options 7, Section 8.E., Exchange

[15] *Id.*

Testing Facilities, to the end of Options 7, Section 7, Market Data. The Exchange proposes to delete Options 7, Section 8, Connectivity Fees, as the remainder of the sections are reserved.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[17] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[18]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[19]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Options 7, Section 1

The Exchange's proposal to replace the Appointed Member Program with an Affiliated Entity program, similar to ISE, is reasonable because the Exchange proposes to continue to incentivize certain Members, who are not Affiliated Members, to enter into an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify for certain lower Market Maker fees. By aggregating volume for purposes of Table 3 of Options 7, Section 3, the Appointed Market Maker, who submits certain requisite volume along with an Appointed OFP, will continue to benefit from lower Market Maker fees. This proposal will harmonize MRX's program with ISE's program. The Exchange notes that a Member that registers for an Affiliated Entity will not be able to aggregate as an Affiliated Member.[20] While a MRX Member may not utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower Market Maker fees, the Exchange believes that continuing to permit aggregation individually under each program, Affiliated Member and the Affiliated Entity program, will encourage Market Makers to continue to submit additional liquidity on MRX if they chose to enter into this relationship.

The Exchange's proposal to replace the Appointed Member Program with an Affiliated Entity program, similar to ISE, is equitable and not unfairly discriminatory as all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. The Exchange believes that market participants that, today, utilize the Appointed Member Program would be able to utilize the Affiliated Entity program to continue to aggregate volume for purposes of obtaining lower fees. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. The Exchange's proposal to exclude Affiliated Members from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because, today, Affiliated Members may aggregate volume for purposes of lowering fees on MRX. Also, as proposed no MRX Member may utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower Market Maker Taker Fees.

The Exchange's proposal to exclude Affiliated Members from qualifying as an Affiliated Entity is reasonable, equitable and not unfairly discriminatory because, today, Affiliated Members may aggregate volume for purposes of lowering fees on MRX. Also, the Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. While a MRX Member may not utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower Market Maker fees, the Exchange believes that continuing to permit aggregation individually under each program, Affiliated Member and the Affiliated Entity program, will encourage Market Makers to continue to submit additional liquidity on MRX if they chose to enter into this relationship.

Options 7, Section 3

The Exchange's proposal to amend note 2 within Options 7, Section 3 to remove references to ''Appointed Member'' and add references within note 2 to ''Affiliated Entity'' is reasonable. As is the case today for an Affiliated Member, an Appointed Market Maker would be able to obtain the benefit of the reduced Market Maker Taker Fee[21] if in the aggregate the

[16] 15 U.S.C. 78 f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[20] As proposed, Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity.

[21] As proposed, a Market Maker Taker Fee of $0.05 per contract applies instead when trading with Priority Customer orders entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 5,000 contracts or more. A Market Maker Taker Fee of $0.00 per contract applies instead when trading with Priority Customer orders entered by an Affiliated Member or Affiliated Entity if the Member has a Total

Continued

Affiliated Entity meets the Average Daily Volume (''ADV'') requirements. The Exchange believes the opportunity to aggregate volume for purposes of lowering the Market Maker Taker Fee will encourages Market Makers to continue to submit additional liquidity on MRX if they chose to enter into this relationship. While a MRX Member may not utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower Market Maker fees, the Exchange believes that continuing to permit aggregation individually under each program, Affiliated Member and the Affiliated Entity program, will encourage Market Makers to continue to submit additional liquidity on MRX if they chose to enter into this relationship.

The Exchange's proposal to amend note 2 within Options 7, Section 3 to remove references to ''Appointed Member'' and add references within note 2 to ''Affiliated Entity'' is equitable and not unfairly discriminatory as all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. The Exchange believes that market participants that, today, utilize the Appointed Member Program would be able to utilize the Affiliated Entity program to continue to aggregate volume for purposes of obtaining lower Market Maker fees. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Permitting Members to aggregate volume for purposes of qualifying the Appointed Market Maker for reduced Market Maker Taker Fees would continue to encourage the counterparties that comprise the Affiliated Entities to incentivize each other to attract and seek to execute more Priority Customer volume on MRX.

Options 7, Section 4

Amending Options 7, Section 4, regarding Complex Orders, within note 2 to remove a reference to ''Appointed Member'' and replace it with a reference to ''Affiliated Entity'' is reasonable. As is the case today for an Appointed Member, an Affiliated Entity would aggregate its volume to permit an Appointed Market Maker to pay no Complex Order Market Maker fee [22] when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or an Affiliated Entity. With the proposed change, as is the case under the current pricing, a MRX Member may aggregate either as an Affiliated Member or an Affiliated Entity during the same time period, but may not aggregate under both programs during the same time period for purposes of not paying a Complex Order Market Maker fee.

Amending Options 7, Section 4, regarding Complex Orders, within note 2 to remove a reference to ''Appointed Member'' and replace it with a reference to ''Affiliated Entity'' is equitable and not unfairly discriminatory as all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. The Exchange believes that market participants that, today, utilize the Appointed Member Program would be able to utilize the Affiliated Entity program to continue to aggregate volume for purposes of obtaining lower fees. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Permitting Members to aggregate volume from an Affiliated Entity would continue to encourage the counterparties that comprise the Affiliated Entities to incentivize each other to attract and seek to execute more Priority Customer volume on MRX.

Options 7, Section 5

The Exchange's proposal to amend Options 7, Section 5.C., Options Regulatory Fee, to remove the date of the last ORF change is reasonable, equitable and not unfairly discriminatory as the date is a past date that is not relevant and this non-substantive change does not impact pricing.

The Exchange's proposal to relocate Options 7, Section 5.E., PIM Pricing for Regular and Complex Orders, to new Options 7, Section 3.A. is reasonable, equitable and not unfairly discriminatory as this non-substantive change does not impact pricing.

Options 7, Section 8

The Exchange's proposal to relocate Options 7, Section 8.E., Exchange Testing Facilities, to the end of Options 7, Section 7, Market Data, is reasonable, equitable and not unfairly discriminatory as this non-substantive change does not impact pricing. The deletion of Options 7, Section 8, Connectivity Fees, is reasonable, equitable and not unfairly discriminatory as this non-substantive change does not impact pricing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

Options 7, Section 1

The Exchange's proposal to replace the Appointed Member Program with an Affiliated Entity program, similar to ISE, does not impose an undue burden on competition as all market participants

Affiliated Member or Affiliated Entity Priority Customer ADV of 50,000 contracts or more.

[22] With this proposed change a Complex Order Market Maker fee of $0.00 per contract applies instead of the above-referenced $0.15 per contract Complex Order fee, when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or an Affiliated Entity.

may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. The Exchange believes that market participants that, today, utilize the Appointed Member Program would be able to utilize the Affiliated Entity program to continue to aggregate volume for purposes of obtaining lower fees. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. The Exchange's proposal to exclude Affiliated Members from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because, today, Affiliated Members may aggregate volume for purposes of lowering fees on MRX. Also, as proposed no MRX Member may utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower Market Maker Taker Fees.

The Exchange's proposal to exclude Affiliated Members from qualifying as an Affiliated Entity does not impose an undue burden on competition because, today, Affiliated Members may aggregate volume for purposes of lowering fees on MRX. Also, the Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. While a MRX Member may not utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower Market Maker fees, the Exchange believes that continuing to permit aggregation individually under each program, Affiliated Member and the Affiliated Entity program, will encourage Market Makers to continue to submit additional liquidity on MRX if they chose to enter into this relationship.

Options 7, Section 3

The Exchange's proposal to amend note 2 within Options 7, Section 3 to remove references to ''Appointed Member'' and add references within note 2 to ''Affiliated Entity'' does not impose an undue burden on competition as all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. The Exchange believes that market participants that, today, utilize the Appointed Member Program would be able to utilize the Affiliated Entity program to continue to aggregate volume for purposes of obtaining lower Market Maker fees. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Permitting Members to aggregate volume for purposes of qualifying the Appointed Market Maker for reduced Market Maker Taker Fees would continue to encourage the counterparties that comprise the Affiliated Entities to incentivize each other to attract and seek to execute more Priority Customer volume on MRX.

Options 7, Section 4

Amending Options 7, Section 4, regarding Complex Orders, within note 2 to remove a reference to ''Appointed Member'' and replace it with a reference to ''Affiliated Entity'' does not impose an undue burden on competition as all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. The Exchange believes that market participants that, today, utilize the Appointed Member Program would be able to utilize the Affiliated Entity program to continue to aggregate volume for purposes of obtaining lower fees. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Permitting Members to aggregate volume from an Affiliated Entity would continue to encourage the counterparties that comprise the Affiliated Entities to incentivize each other to attract and seek to execute more Priority Customer volume on MRX.

Options 7, Section 5

The Exchange's proposal to amend Options 7, Section 5.C., Options Regulatory Fee, to remove the date of the last ORF change does not impose an undue burden on competition as this non-substantive change does not impact pricing.

The Exchange's proposal to relocate Options 7, Section 5.E., PIM Pricing for Regular and Complex Orders, to new Options 7, Section 3.A. does not impose an undue burden on competition as this non-substantive change does not impact pricing.

Options 7, Section 8

The Exchange's proposal to relocate Options 7, Section 8.E., Exchange Testing Facilities, to the end of Options 7, Section 7, Market Data, does not impose an undue burden on competition as this non-substantive change does not impact pricing. The deletion of Options 7, Section 8, Connectivity Fees, does not impose an undue burden on competition as this non-substantive change does not impact pricing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[23] and Rule 19b–4(f)(2)[24] 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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2020–21 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.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number *SR–MRX–2020–21.* 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–MRX–2020–21 and should be submitted on or before December 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25898 Filed 11–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–213, OMB Control No. 3235–0220]

Proposed Collection; Comment Request; Extension: Rule 30b2–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 30b2–1 (17 CFR 270.30b2–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'') requires a registered management investment company (''fund'') to (1) file a report with the Commission on Form N–CSR (17 CFR 249.331 and 274.128) not later than 10 days after the transmission of any report required to be transmitted to shareholders under rule 30e–1 under the Investment Company Act, and (2) file with the Commission a copy of every periodic or interim report or similar communication containing financial statements that is transmitted by or on behalf of such fund to any class of such fund's security holders and that is not required to be filed with the Commission under (1) above, not later than 10 days after the transmission to security holders. The purpose of the collection of information required by rule 30b2–1 is to meet the disclosure requirements of the Investment Company Act and certification requirements of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)), and to provide investors with information necessary to evaluate an interest in the fund.

The Commission estimates that there are 2,207 funds, with a total of 11,977 portfolios, that are governed by the rule. For purposes of this analysis, the burden associated with the requirements of rule 30b2–1 has been included in the collection of information requirements of rule 30e–1 (17 CFR 270.30e–1) and Form N–CSR, rather than the rule. The Commission has, however, requested a one hour burden for administrative purposes.

The collection of information under rule 30b2–1 is mandatory. The information provided under rule 30b2–1 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 18, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25897 Filed 11–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–185, OMB Control No. 3235–0238]

Proposed Collection; Comment Request

Extension:
Form N–6F

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Form N–6F (17 CFR 274.15), Notice of Intent to Elect to be Subject to Sections 55 through 65 of the Investment Company Act of 1940.'' The purpose of Form N–6F is to notify the Commission of a company's intent to file a notification of election to become subject to Sections 55 through 65 of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''1940 Act''). Certain companies may have to make a filing with the Commission before they are ready to elect to be regulated as a business development company.[1] A company that is excluded from the definition of ''investment company'' by Section 3(c)(1) because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such company,

[25] 17 CFR 200.30–3(a)(12).

[1] A company might not be prepared to elect to be subject to Sections 55 through 65 of the 1940 Act because its capital structure or management compensation plan is not yet in compliance with the requirements of those sections.

under certain conditions, would not lose its exclusion if it notifies the Commission on Form N–6F of its intent to make an election to be regulated as a business development company. The company only has to file a Form N–6F once.

The Commission estimates that on average approximately 4 companies file these notifications each year. Each of those companies need only make a single filing of Form N–6F. The Commission further estimates that this information collection imposes burden of 0.5 hours, resulting in a total annual PRA burden of 2 hours. Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N–6F would be approximately $736.

The collection of information under Form N–6F is mandatory. The information provided under the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 18, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25894 Filed 11–23–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90457; File No. SR–CBOE–2020–075]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Make Qualified Contingent Cross Orders Available for FLEX Option Trading

November 18, 2020.

On August 3, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''CBOE'') 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 make Qualified Contingent Cross Orders available for FLEX option trading. The proposed rule change was published for comment in the **Federal Register** on August 20, 2020.[3] On October 1, 2020, the Commission designated a longer period for Commission action on the proposed rule change, until November 18, 2020.[4] On October 23, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change.[5] The Commission has not received any comments on the proposal. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to amend Rule 5.70 and Rule 5.72, as well as Rule 5.33, to make Qualified Contingent Cross (''QCC'') Orders available for FLEX trading. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.70 and Rule 5.72, as well as Rule 5.33, to make QCC Orders, which includes Complex QCC Orders and QCC with Stock Orders, available for electronic FLEX trading. Currently, QCC Orders are available only for electronic non-FLEX trading.

QCC Orders facilitate the execution of option orders that are part of Qualified Contingent Trades (''QCTs''),[7] by permitting Trading Permit Holders (''TPHs'') to cross options orders without exposure while effecting the trade in the equities leg in another market at a price necessary to achieve the net price. Currently, TPHs may choose to submit the options component

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89564 (August 14, 2020), 85 FR 51531.

[4] *See* Securities Exchange Act Release No. 90062 (October 1, 2020), 85 FR 63312 (October 7, 2020).

[5] Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-075/srcboe2020075-7940531-224727.pdf.*

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', paragraph (1), which defines a ''qualified contingent trade'' as a transaction consisting of two or more component orders, executed as agent or principal, where: (A) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (B) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (C) the execution of one component is contingent upon the execution of all other components at or near the same time; (D) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (E) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (F) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

of a QCT as a FLEX Option, yet, are currently unable to execute a FLEX Options component of a QCT on the Exchange in the same efficient, unexposed manner as they may execute a non-FLEX option component of a QCT on the Exchange. The Exchange now seeks to provide TPHs and their customers with the same QCC trading capabilities for FLEX trading that are currently available for non-FLEX trading, thus providing TPHs with the same capability to execute the options parts of QCTs that are comprised of FLEX Options.

Rule 5.6(c) currently provides for the non-FLEX definition of a QCC Order. Specifically, a QCC order is comprised of an originating order to buy or sell at least 1,000 contracts (or 10,000 mini-option contracts) that is identified as being part of a QCT coupled with a contra-side order or orders totaling an equal number of contracts. If a QCC Order has more than one option leg (a ''Complex QCC Order''), each option leg must have at least 1,000 standard option contracts (or 10,000 mini-option contracts). A QCC order represents one component of a QCT, which must be paired with a stock order. When a User enters a QCC Order, the User is responsible for executing the associated stock component of the QCT at or near the same time of the QCC order execution, just as a User is ultimately responsible for complying with execution requirements for any order a User submits. Indeed, the Exchange requires TPHs to properly mark all QCC Orders as such, and has a surveillance program in place which assesses TPH compliance with the requirements applicable to QCC Orders, including the requirement that the stock leg of the transaction be executed at or near the same time as the options leg.[8] To execute the associated stock, a User may choose to either (1) separately submit an option order to the Exchange and the stock order to a stock execution venue in time to be executed at or near the same time of each other, or (2) submit a QCC with Stock Order. A QCC with Stock Order is a type of QCC Order (including a Complex QCC Order) entered with a stock component to be electronically communicated by the Exchange to a designated broker-dealer for execution on behalf of the submitting User and, as indicated, are available to Users on a voluntary basis.[9]

The Exchange proposes to adopt Rule 5.72(e)[10] to govern FLEX QCC Orders. The proposed rule is simply making QCC Order available for FLEX, and as such, the definition of FLEX QCC Orders is substantively identical as non-FLEX QCC Orders in Rule 5.6(c) and FLEX QCC Orders will execute in substantially the same manner with few differences unique to trading in FLEX Trading. Proposed Rule 5.72(e) provides that a ''FLEX QCC'' order is comprised of an originating order to buy or sell at least 1,000 standard FLEX Option contracts (or 10,000 mini FLEX option contracts) that is identified as being part of a QCT (as defined in Rule 5.6(c)) coupled with a contra-side order or orders totaling an equal number of contracts. If a FLEX QCC order has more than one option leg (a ''Complex FLEX QCC'' order), each option leg must have at least 1,000 standard FLEX option contracts (or 10,000 mini FLEX option contracts). This is substantively identical to the non-FLEX QCC definition in Rule 5.6(c). The Exchange notes that Users will enter into the System all FLEX QCC Orders as they would any other FLEX Order pursuant to 5.72(b) (governing the order entry of FLEX Orders) and the applicable FLEX auction rules. As such, the Exchange points out that FLEX QCC Orders may only be submitted for series consistent with the FLEX Rules.[11] Like QCC Orders submitted for non-FLEX trading,[12] FLEX QCC Orders will execute automatically upon entry without exposure pursuant to proposed Rule 5.72(e)(1). The Exchange notes, as there is no FLEX Order Book, the corresponding provisions in Rule 5.6(c)[13] and 5.33(f)(2) regarding QCC Order execution requirements in connection with yielding to prices at which Priority Customer Orders may be resting in the Simple Book[14] and Complex Order Book (''COB''),[15] and in Rule 5.6(c)[16] in connection with pricing QCC Orders at or between the NBBO[17] would not be applicable to QCC Orders submitted to FLEX.[18] Proposed Rule 5.72(e)(1) also provides that a FLEX QCC Order is cancelled if it cannot execute, and that Rule 5.9 (related to exposure of orders on the Exchange) does not apply to FLEX QCC orders, both of which are consistent with the current non-FLEX QCC Rules.[19] Like QCC Orders submitted in non-FLEX classes,[20] QCC orders submitted in FLEX classes must be entered in the standard increment for the class.[21] Therefore, the proposed rule change adds in proposed Rule 5.72(e)(2) that FLEX QCC may only be entered in the increments applicable to FLEX Orders under Rule 5.4(c)(4).

Proposed Rule 5.72(e)(1) also provides that a FLEX QCC with Stock order executes pursuant to Rule 5.33(l). The proposed rule change amends Rule 5.33(1) to specify that the provisions governing QCC with Stock include FLEX QCC with Stock. As such, pursuant to Rule 5.33(l), for a FLEX QCC with Stock Order, a User must include the same requisite information as they must include when submitting such orders for non-FLEX trading pursuant to Rule 5.33(l)(3)(A),[22] and the System will process the option and stock components of such orders in the same manner as it does for non-FLEX QCC orders pursuant to Rule 5.33(l)(3)(B) and (C).[23]

The Exchange seeks to make QCC Orders available for FLEX trading due to the growing customer demand it has received for QCC functionality for FLEX trading. The Exchange notes that a number of TPHs have expressed to the Exchange that use of QCC for FLEX

[8] *See* Securities Exchange Act Release No. 15058 (June 17, 2011), 76 FR 35491 (Order Granting Approval of Proposed Rule Change Establishing Qualified Contingent Cross Orders) (''QCC Approval Order'').

[9] *See* Rule 5.33(a), definition of ''QCC with Stock Order''.

[10] The Exchange also moves current paragraph (e) to paragraph (f).

[11] *See* Rules 5.72(b), (c), and (d).

[12] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', paragraph (2).

[13] *See id.*

[14] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2)(A)(i).

[15] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2)(B)(i) and (iii).

[16] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2).

[17] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2)(A)(ii) and (B)(ii).

[18] This is true for any FLEX Order.

[19] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2)(C) and (2)(C), respectively.

[20] *See* 5.6(c), definition of ''Qualified Contingent Cross or QCC'', paragraph (3).

[21] *See* Rule 5.4(c)(4) (which sets forth minimum increments for FLEX options).

[22] Rule 5.33(l)(3)(A) requires a User to include a net price for the stock and option components in accordance with the minimum increments for stock-option orders and (ii) identify the designated broker-dealer as set forth in Rule 5.33 (l)(2).

[23] Rule 5.33(l)(3)(B) provides that the System executes the option component in accordance with Rule 5.6(c), but does not immediately send the User a trade execution report, and automatically communicates the stock component to the designated broker-dealer for execution at a stock trading venue. If the option component(s) of a QCC with Stock Order cannot execute, the System cancels the QCC with Stock Order, including both the stock and option components. Rule 5.33(l)(3)(C) provides that, if the System receives an execution report for the stock component of a QCC with Stock Order from the designated broker-dealer, the Exchange sends the User the trade execution report for the QCC with Stock order, including execution information for both the stock and option components. If the System receives a report from the designated broker-dealer that the stock component of a QCC with Stock Order cannot execute, the Exchange nullifies the option component trade and notifies the User of the reason for the nullification.

options would increase the efficiency of their executions of the options component of a QCT if the options component consists of a FLEX Option. An investor may seek to use a FLEX Option as an appropriate hedge for a stock order but is currently unable to execute a FLEX Option that is part of a QCT on the Exchange in the same unexposed manner as it may execute a non-FLEX option on the Exchange. Currently, if a TPH wants to execute a FLEX Option that is intended to be part of a QCT, it would have to enter the FLEX Option as a FLEX Order separate from the stock portion or as a stock-option order, which must be exposed for at least three seconds prior to execution.[24] Indeed, a clean cross of the FLEX Option component of a stock-option QCT would provide assurance to the parties to the QCT that their hedge will be maintained.[25] This is particularly significant for a variety of managed funds that recognize the benefits to their investors in employing certain hedging strategies through FLEX Options that allow for their investors to mitigate risk and meet their objectives. For example, a strategy may have an investment goal of protecting potential losses down to a certain amount with the ability to participate in return up to a certain cap in a reference asset (*e.g.,* underlying index or ETF) over a target outcome period that is usually a year or more out. Such a strategy may utilize a combination of FLEX call and put options in which expiration corresponds to the target outcome period overlaid on an exposure to the reference asset. On the seed day (or, the day in which the strategy is created and funded), the options package would reflect customized strikes, necessary to target the strategy's trading objectives a year or more in advance and for which existing standard strikes are typically unavailable. The customized FLEX strikes are used for the duration of the life of the strategy and it is key that the appropriate combination of options is guaranteed to maintain the hedge.

Additionally, the Exchange notes that the Rules currently permit Compression orders, which execute without exposure against another Compression order(s) totaling an equal number of options contracts, for trading in FLEX SPX options.[26] That is, like the proposed FLEX QCC Orders, FLEX Compression orders are not exposed in a FLEX Auction pursuant to Rule 5.72.[27]

As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time. The Exchange conducts surveillance of TPHs to ensure that TPHs execute the options component of a QCT at or near the same time as the stock component, in accordance with the QCT exemption.[28] Therefore, there is compliance risk for TPHs if they do not execute the options component at or near the same time of execution of the stock component. Providing TPHs with QCC Order functionality for FLEX Options will reduce the compliance burden on TPHs by providing a more efficient means of executing the options component of a QCT if the options component consists of a FLEX Option, as QCC Orders did for non-FLEX options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[29] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[30] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[31] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal to make the QCC Order type available for electronic FLEX trading will facilitate TPHs' execution of the options component of QCTs that are comprised of FLEX Options in the same manner that TPHs may currently execute the options component of QCTs that are comprised of non-FLEX options, thereby removing impediments to and perfecting the mechanism of a free and open market and national market system and, in general, protecting investors. QCC Orders for FLEX Options will execute in the same manner as QCC Orders for non-FLEX options; the proposed rule change merely expands the classes in which the Exchange may make QCC Orders available and provides a specific definition of FLEX QCC Orders for clarity. Moreover, the Exchange notes that stock-option orders (which, by definition, must also be a QCT)[32] are already permitted under the Rules for FLEX Options, and thus, the FLEX Options components of QCTs submitted as stock-option orders may currently execute at any price in FLEX (*i.e.,* are not subject to an NBBO or yielding to Customer orders). The proposed rule change merely provides an alternative, more efficient manner of execution for the option component of larger-sized QCTs.

The Exchange believes the availability of QCC Orders for FLEX Options will allow for a more efficient execution of the options component of a QCT on the Exchange. As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time. The Exchange conducts surveillance to ensure a TPH executes the stock and option components of a QCT at or near the same time.[33] As a result, if the option component does not execute when initially submitted to the Exchange, a TPH may be subject to compliance risk if it does not execute the option component at or near the same time of the execution of the stock component. Indeed, the Exchange notes that the compliance risk of not being able to execute a FLEX Options portion of a QCT at or near the same time of the execution of the stock component is greater in a FLEX auction, where it must be exposed for at least three seconds prior to execution, than for non-FLEX option orders that must be exposed for at least one second[34] unless submitted

[24] *See* Rule 5.72(c)(1)(F); Rule 5.73(c)(3); and Rule 5.74(c)(3).

[25] Amendment No. 1 adds additional explanation and detail in support the use of QCC Orders in FLEX trading.

[26] Amendment No. 1 adds explanation regarding another order type that may already execute without exposure in FLEX Options in support of FLEX QCC Orders.

[27] *See* Securities Exchange Release Nos. 89707 (August 28, 2020), 85 FR 55040 (September 3, 2020) (SR–CBOE–2020–074) (Notice of Filing of a Proposed Rule Change Relating To Adopt Compression Orders); *and* 90179 (October 14, 2020), 85 FR 66590 (October 20, 2020) (SR–CBOE–2020–074) (Order Granting Approval of a Proposed Rule Change To Adopt Position Compression Cross (''PCC'') Orders for SPX). As is the case with the proposed FLEX QCC orders, there would be no NBBO or protection of customer orders for the recently approved compression orders for FLEX Options.

[28] *See supra* note 1; *see also infra* note 34.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] *Id.*

[32] *See* Interpretation and Policy .03 to Rule 5.33.

[33] *See* QCC Approval Order.

[34] *See* Rule 5.9.

into an auction with a shorter exposure period. The Exchange believes the proposed rule change will reduce this compliance risk for TPHs executing FLEX Options that are components of QCTs, which will protect investors and the public interest. Since the purpose of a QCT order is for all components to trade at or near the same time, the Exchange believes it is appropriate to provide TPHs with a mechanism to facilitate immediate execution of FLEX Options that comprise the options component of a QCT to reduce the compliance burden on TPHs when effecting QCTs with a FLEX Option component.

The Exchange believes that proposed Rule 5.72(e), while substantially the same in almost all aspects to Rule 5.6(c) governing non-FLEX QCC, will provide clarity to TPHs regarding the submission of their QCC FLEX Options. The only difference between the FLEX and non-FLEX QCC Orders is that FLEX QCC Orders are not subject to the NBBO or prices of customers in the book. The Exchange notes this difference exists for any order type in non-FLEX trading versus FLEX trading.[35] The Exchange notes that the proposed rule changes do not alter any of the current increments applicable to FLEX Options but merely provide additional detail within the specific provision covering QCC Orders regarding the standard increments already permissible for FLEX Options that will also apply to QCC FLEX Orders.

As the Commission has previously found,[36] the execution of QCTs is beneficial to the market as a whole as it contributes to the efficient functioning of the securities markets and the price discovery process. Pursuant to the QCT Release, the options portion of a QCT may consist of non-FLEX or FLEX Options [sic]. However, as noted above, without the availability of QCC Orders for FLEX Options, TPHs are subject to higher compliance risk with respect to QCTs with a FLEX Option component than TPHs who execute QCTs with a non-FLEX option component. The Exchange submits this proposed rule change in response to demand from TPHs and their institutional customers[37] to be able to execute the options components of QCTs comprised of a FLEX Option in the same manner that they are currently able to execute the options components of QCTs comprised of non-FLEX options. Therefore, the proposed rule change will provide TPHs whose hedging strategies involve FLEX Options with the same functionality currently available to TPHs whose hedging strategies involve non-FLEX Options. The Exchange believes this will provide investors with additional flexibility regarding execution of their hedging strategies related to stock positions, which flexibility ultimately benefits investors.

Moreover, the Commission has stated that, while it believes that order exposure is generally beneficial to options markets, it recognizes that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuers, convertible securities, and equity derivatives such as options and that those who engage in contingent trades can benefit the market as a whole by studying the relationships between prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value.[38]

The requirement that a non-FLEX QCC must execute at a price at or between the NBBO merely incorporates an execution requirement applicable to all option order types, as all options must execute at price at or better than the NBBO in accordance with linkage rules.[39] Therefore, this execution requirement is not a heightened execution requirement for an unexposed option order. The additional requirement that a QCC order not execute at the same price as a Priority Customer incorporates the general principle of customer protection in the options markets.[40] If the market model for a class does not include customer priority, this is a heightened execution requirement for execution of an unexposed order.[41] Even without this additional protection, the Exchange believes the proposed FLEX QCC order will protect investors, as it will provide Users of FLEX Options with the same functionality as Users of non-FLEX options. While the Exchange again notes that there is no FLEX book in which Customer orders (or any FLEX orders) may rest, and therefore the principles of customer priority are not currently applicable to FLEX trading, the Exchange observed the top of Book orders in non-FLEX symbols as a comparison point.[42] In a random sample of data drawn from orders resting at the top of the Book,[43] the Exchange observed that, on average, only 0.34% of all orders resting at the top of the Book were Customer orders. As such, the Exchange believes that, even if there was a book for FLEX Options, there would be minimal risk of executing a FLEX QCC at the same price as a Customer order in the Book. Additionally, primarily broker-dealers and institutional investors engage in FLEX trading. Indeed, executions in FLEX Options are generally larger and held long-term for strategies utilized by broker-dealers and institutional investors, as opposed to the smaller, more frequent trades with shorter expiration durations typically executed by retail investors. The Exchange also understands that many large retail brokerage firms do not accept FLEX Options or otherwise have high minimums which may discourage retail trading in FLEX Options.[44] Therefore, there are minimal retail customer orders submitted into the FLEX market and thus it would be unlikely any would be resting at the top of a FLEX book if one existed for a de minimis (if any) amount

[35] The Exchange also notes that the requirement that a QCC order execute at a price at or better than the NBBO is not a unique execution requirement—every option order type approved by the Commission must execute at a price at or better than the NBBO in accordance with the linkage plan. *See* Rule 5.66.

[36] *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (''QCT Release''); *and see* QCC Approval Order.

[37] Amendment No. 1 specifies the customer base for FLEX trading.

[38] *See* QCC Approval Order.

[39] *See* Rule 5.66. In other words, if the definition of a QCC order did not include the provision that it must execute at a price at or better than the NBBO, QCC orders would still be required to execute at a price at or better than the NBBO. The Exchange believes inclusion of this explicit requirement for QCC orders was intended to highlight the difference between execution of the options component and the stock component, which may execute at any price, but was not a unique price requirement necessary for execution of an unexposed order. Every order type on the Exchange approved for non-FLEX trading and FLEX trading has this same distinction.

[40] If there was not a customer order resting at the top of the book, then the second pricing requirement for QCC orders is simply ignored. As there is no book in the FLEX market, the proposed FLEX QCC order is equivalent to a non-FLEX QCC order submitted when there is no customer order resting at the top of the book.

[41] The Exchange has enabled customer priority for all equity option classes that trade on the Exchange (and thus for all classes in which TPHs may submit QCC orders). Therefore, all QCC orders submitted on the Exchange are subject to the same execution pricing requirements as non-QCC orders.

[42] Amendment No. 1 adds a description of the top of Book data sample and the Exchange's observations in connection with the data sample in support of QCC for FLEX trading and that, as proposed, FLEX QCC orders are consistent with the protection of investors.

[43] The random sample was drawn over three days (September 25, September 30, and October 1, 2020) from a different Match Engine each sample day (one of which includes SPY). The sampling of data across different Match Engines is representative of the symbols that trade on the Exchange.

[44] Amendment No. 1 adds additional detail regarding the de minimis amount of retail customer orders submitted into the FLEX market that would require additional protection.

of time that would require additional protection. As discussed above, the Exchange believes the benefits of exposure on an order on the Exchange are outweighed by the benefits offered by immediate execution of these contingent order types. The Exchange does not believe market participants that engage in hedging strategies involving FLEX Options should not have access to the same functionality as market participants with hedging strategies involving non-FLEX options.

The Exchange does not believe the propose rule change raises price protection concerns that market participants may submit FLEX QCC Orders for a FLEX series with slightly different terms than a non-FLEX series in order to get better pricing. Such risk, if any, exists today with respect to all FLEX trading. The Exchange again points out that the linkage rules and customer priority are currently not applicable to any orders submitted to FLEX, wherein there is no order book. The Exchange has observed no trends of TPHs submitting FLEX orders in order to avoid trading in the non-FLEX market. The Exchange believes the risk (if any) of a market participant trading a FLEX Option rather than a non-FLEX option with slightly different terms to use the FLEX market as a substitute for the non-FLEX market and achieve such a result is minimal. This possibility exists today with respect to all options the Exchange lists for FLEX and non-FLEX trading. The Exchange has not observed market participants attempting to trade in the FLEX market rather than the non-FLEX market for this purpose in classes in which this is possible today and believes there would be minimal, if any, benefit to do so. The Exchange compiled a dataset of all FLEX series listed on the Exchange in the last year [45] that matched non-FLEX series on the underlying, expiration date, put/call and exercise-style, but had different strikes. From the dataset, the Exchange was able to observe the differences in strike prices between FLEX series and listed series.[46] The Exchange found that 99.90% of all SPX and SPXW FLEX series created were over $1.00 away from the matching SPX/SPXW listed series strikes, and that 90.10% of these were over $100.00 away from the matching listed series strikes. It also found that 97.61% of all equity and ETP FLEX series created were over $1.00 away from the matching listed series strikes, and that 83% of these were over $10.00 away from the matching listed series strikes and 44.97% of these were over $100.00 away from the matching listed series strikes. As a result, the Exchange believes that there is minimal (if any) risk that market participants desire or attempt to use the FLEX market as a substitute to avoid trading in the non-FLEX market.

The Exchange believes attempting to execute an order in the FLEX market as a substitute for the non-FLEX market would minimize execution opportunities for that order. Such trading would be inefficient for market participants and could introduce price and execution risk to market participants' trading strategies given the reduced liquidity, participation, and price discovery in the FLEX market compared to the non-FLEX market.[47] Additionally, series with different terms have different prices and serve different investment purposes, so trading a ''similar'' FLEX series may not achieve the same investment objective as the non-FLEX series a TPH initially sought to trade. The Exchange notes if a FLEX QCC Orders execute at a price through the book of the ''similar'' non-FLEX series, while that would be a better price for one transaction participant, it would be a worse price for the participant on the opposite side, and thus it may be more difficult for the TPH to find sufficient contra party interest. For example, suppose the market for Aug ABC 800 call with a multiplier of 100 is 10.20–11.00. If a market participant sought interest from counterparties to execute a FLEX QCC Order to buy an Aug ABC 795 call with at 10.00, it is unlikely another market participant would sell at that price if they were looking to sell the Aug ABC 800 call, given that participant could sell the ''similar'' non-FLEX option series at 10.20, which would be a better price for that seller. Given the likely difficulties (such as reduced liquidity and potentially longer timeframe to receive execution) of trading in the FLEX market as a substitute for trading an economically equivalent option in the non-FLEX market (such as to obtain a better execution price), the Exchange believes the risk of this occurring is de minimis. The Exchange believes that any such risk is even lower for FLEX QCC Orders given the additional requirements that apply to FLEX QCC Orders, even without the heightened execution price requirement that a QCC Order cannot execute at the same price as a Priority Customer. The benefits of QCC Orders apply to FLEX options in the same manner as they do for non-FLEX options, which benefits the Exchange believes significantly outweigh any price protection risk that may exist in the FLEX market.

Ultimately, as noted above, QCC Orders in FLEX Options will execute in a substantially similar manner as QCC Orders in non-FLEX options. In addition to this, the Exchange notes that the Rules currently permit Compression orders in FLEX SPX options which, like QCC Orders for FLEX trading, may execute immediately without exposure as opposed to being submitted to a FLEX Auction despite there being no NBBO or customer priority in the FLEX market. Finally, the Exchange notes that QCC functionality is a widely adopted industry order type wherein multiple other options exchanges currently have QCC functionality in place.[48]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because QCC functionality is already available for non-FLEX options. The Exchange is simply proposing to make QCC Orders available for additional classes (FLEX Option classes). The Exchange notes that the proposed order type will be available to all Users on a voluntary basis, and Users are not required to use QCC Orders when executing QCTs. Users may continue to execute the options component of QCTs that are comprised of FLEX Options in the same manner as they do today. The proposed rule change will provide FLEX Traders with the same functionality that is currently available to non-FLEX Traders with respect to execution of option components of QCTs. The Exchange believes all TPHs should have access to this functionality so they can all execute option components of QCTs in the same manner, regardless of whether they choose to hedge the stock portions of QCTs with FLEX or non-FLEX options.

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[45] From October 14, 2019 through October 9, 2020.

[46] Amendment No. 1 provides additional data in support of QCC Orders for FLEX trading, particularly demonstrating that there is minimal risk of trading in the FLEX market as a substitute for trading an economically equivalent option in the non-FLEX market.

[47] *See* Sections VII and X of the ODD regarding risks associated with FLEX Options.

[48] *See e.g.* Nasdaq Phlx Rules Options 3, Section 12 (electronic QCC orders), and Options 8, Section 32(e) (open outcry QCC orders); Nasdaq ISE Options 3, Section 12; BOX Options Rule 7110(c)(6); MIAX Options Rule 516(j); *and* NYSE Arca Options Rule 6.90–O.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is merely making functionality currently available on the Exchange to additional option classes. As noted above, QCC Order functionality is currently available at other options exchanges, which may determine make QCC functionality available to additional option classes as well, including flexible options. To the extent the proposed rule change makes the Exchange a more attractive trading venue for market participants on other exchanges, those market participants may elect to become Exchange market participants.

Overall, the Exchange believes the proposed rule change is appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the economically efficient execution of securities transactions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

II. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2020–075, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [49] to determine whether the proposed rule change, as modified by Amendment No. 1, 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 proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,[50] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act, and, in particular, with Section 6(b)(5) of the 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.[51]

The Exchange's proposal would expand the use of QCC Orders to electronic FLEX options. A QCC Order is comprised of an originating order to buy or sell at least 1,000 standard option contracts (or 10,000 mini-option contracts) that is identified as being part of a qualified contingent trade (''QCT'') coupled with a contra-side order or orders totaling an equal number of contracts and meeting the other conditions described below. As the Exchange stated in its proposal, QCC Orders facilitate the execution of option orders that are part of a QCT,[52] by permitting TPHs to cross non-FLEX options orders without exposure to the market while effecting a trade in the NMS stock component of the order at a price necessary to achieve a net price. The Commission granted an exemption for QCTs that meet certain requirements from Rule 611(a) of Regulation NMS (''QCT Exemption Order'').[53] The QCT Exemption Order enables each NMS stock component of a QCT trade to be exempt from Rule 611(a) of Regulation NMS for any trade-throughs.[54] As the Commission previously stated in the QCC Approval Order, QCC Orders are permitted if the QCC Order is (1) part of a QCT under Regulation NMS; (2) for at least 1,000 contracts; (3) executed at a price at or between the NBBO; and (4) cancelled if there is a public customer on the electronic book.[55]

The Commission also stated in the QCC Approval Order that the four required elements of the QCC Order ''strikes an appropriate balance for the options market in that it is narrowly drawn and establishes a limited exception to the general principle of exposure and retains the general principle of customer priority in the options markets.'' [56] The Exchange has stated that due to the structure of the FLEX options market, such as the lack of a customer order book and that FLEX options have no NBBO, that the applicable QCC Order requirements as to these matters are not applicable to FLEX orders and therefore are not applicable to the proposed FLEX QCC Order. The requirements for a QCC Order to execute at or between the NBBO and that a QCC Order cannot be executed at the same price as a customer order on the book are intended to mitigate the risks to market quality in both the options and underlying equity markets. The Exchange, however, has not detailed why such protections, and the underlying rationale for such protections, are unnecessary considering that FLEX options market participants would be granted an exception to the FLEX options electronic auction order exposure requirements, as well as the equity market trade-through rules, when executing a FLEX QCC Order under its proposal. The Commission therefore believes, as discussed in more detail below, that the Exchange's proposal raises questions as to whether its proposal is consistent with the protection of investors and other requirements of Section 6(b)(5) of the Act, in addition to the maintenance of fair and orderly markets.[57]

Electronic FLEX options trading differs from electronic non-FLEX options because they allow TPHs to customize terms of the option contract (*e.g.,* exercise style, expiration date, and strike price). Notably, FLEX options lack an order book and a requirement to yield to public customer interest. Electronic FLEX option transactions are also conducted through auctions which require an exposure interval that may

[49] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

[50] *Id.*

[51] 15 U.S.C. 78f(b)(5).

[52] A QCT is a transaction consisting of two or more component orders that involve both an option and equity stock component where the execution of one component is contingent upon the execution of all the other components at or near the same time. *See supra* note 7 (defining a QCT, which requires, among other things, that ''at least one component must be an NMS stock, as defined in Rule 600 of Regulation NMS . . .'').

[53] *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (''QCT Exemption Release''), which modifies a release initially granting the QCT exemption, Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (''Original QCT Exemption Release'').

[54] *See id.*

[55] *See* QCC Approval Order, *supra* note 8, 76 FR at 35492. *See also* CBOE Rule 5.6(c)(2), which states, among things, that a ''QCC Order with one option leg may execute automatically upon entry without exposure if the execution price: (i) Is not at the same price as a Priority Customer order resting in the Book; and (ii) is at or between the NBBO.''

[56] *See* QCC Approval Order, *supra* note 8, 76 FR at 35492.

[57] 15 U.S.C. 78f(b)(5).

not be less than three seconds prior to execution.[58] As the Commission has stated in the past, order exposure in the options markets provides an incentive to options market makers to provide liquidity and therefore plays an important role in ensuring competition and price discovery in the options markets.[59] The proposed FLEX QCC Order would permit TPHs to execute a FLEX options component of a QCT without the regular FLEX auction exposure requirement. Therefore, when applying the unique characteristics of the FLEX options market to the current QCC Order framework, the Commission believes there are questions as to whether the Exchange's proposal is consistent with the guidance in the QCC Approval Order and the principles underlying the order, and whether the proposal is consistent with Section 6(b)(5) of the Act.

In particular, the Commission is concerned that the proposed design of the QCC FLEX Order may negatively impact market quality in the options market by removing certain constraints required under the QCC Approval Order. The Exchange states that stock-option orders are already permitted to include FLEX options and ''the FLEX Options components of QCTs submitted as stock-option orders may currently execute at any price in FLEX (*i.e.,* are not subject to an NBBO or yielding to [c]ustomer orders on the book).'' However, the Exchange fails to address that FLEX options that are currently part of a stock-option order are able to achieve potential price improvement through the electronic FLEX auction exposure process,[60] while the proposed FLEX QCC Orders eliminates the exposure requirement. As a result, the proposal to allow FLEX QCC Orders will eliminate the opportunity for any price improvement for the option component, thereby allowing the TPH to set the price at which the FLEX options component of the QCT will cross without being subject to any limits such as an NBBO. Furthermore, the elimination of the exposure requirement reduces the overall transparency of the price discovery process within the FLEX market, which potentially harms a wider range of participants, for example, if participants are less able to use historical FLEX option prices to inform about the prices of other, similar FLEX options.

The proposed FLEX QCC Order also raises concerns about its impact to market quality in the underlying stock leg of a QCC Order. In general, trade-throughs not only harm the individual participants who may receive worse prices, but they also increase wait times and execution risk for limit orders on the book, thereby reducing incentives for market participants to submit limit orders. In this respect, the Commission has previously recognized that any exemption to equity trade-through protection needs to be narrowly drawn. The QCT Exemption Order, in determining the scope of the exemption, states that defining the set of exemptions to trade-through protection too broadly ''could unduly detract from the objectives of Rule 611'';[61] these objectives include assuring ''that markets effect trades at the best available prices,'' but also ''encourag[ing] the display of limit orders by increasing the likelihood that they will receive an execution in a timely manner.''[62] Thus, the Commission has determined that the exemption to trade-through prohibition should only be granted if strictly necessary so as to promote these equity market quality goals. In the FLEX market, the Exchange has not provided justification for why the exemption to equity trade-through protection is strictly necessary. Note that, to qualify as a QCT, only ''the spread between the prices of the component orders'' needs to be defined, not the prices themselves.[63] In the non-FLEX market, if the facilitator of a QCT would be constrained to price both the option and stock legs at their respective NBBOs, the spread between the prices of the two legs would be pre-defined according to the spread between the option NBBO and the stock NBBO. However, in the FLEX market, given the flexibility in determining the price of the FLEX option leg (particularly if not subject to exposure), the Exchange has not explained why a broker could not simply determine a spread, and subsequently adjust the price of the option leg according to the realized price of the stock leg, thus avoiding the need to trade-through the equity market. Likewise, and potentially more concerning, since neither leg of the proposed FLEX QCC Order is constrained to execute at an NBBO, the Exchange has not explained what would prevent a facilitator from determining a spread and setting the price for the FLEX option leg such that the corresponding stock leg price results in a trade-through.

In addition to the significant concerns discussed above regarding the proposal's consistency with the guidance in the QCC Approval Order, and the principles underlying the order, that need to be addressed, the Exchange provided data on retail orders and market participation in FLEX and non-FLEX options in support of its proposal. The Exchange believes that the limited retail customer participation in the FLEX options market would mitigate the requirement for additional customer protections that exist for QCC Orders in the non-FLEX options market. Specifically, the Exchange states that ''there are minimal retail customer orders submitted into the FLEX market and thus it would be unlikely any would be resting at the top of a FLEX book if one existed for a de minimis (if any) amount of time that would require additional protection.'' The Commission is concerned that the proposal does not address how the lack of additional customer protections would be appropriate. The Commission notes that the Exchange did not provide specific data on the level of retail participation or whether that conclusion was based solely on the size of the orders in the FLEX options market. In addition, the Commission notes that the Exchange has stated previously in proposing certain changes to the FLEX options market that they were intended to broaden the base of investors that use FLEX options, including more retail participation.[64] The Commission believes the Exchange has not provided sufficient data to support the conclusion that additional customer protections are unnecessary under the proposal.

The Exchange also stated that it believes that the risk of market participants trading in the FLEX market as a substitute for the non-FLEX market is minimal. The Exchange has provided a summary of data that showed the

[58] *See* CBOE Rule 5.72(c)(1)(F).

[59] *See* QCC Approval Order, *supra* note 8, 76 FR at 35492.

[60] *See* CBOE Rule 5.72(c).

[61] *See* Original QCT Exemption Release, *supra* note 53, 71 FR at 52830.

[62] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37505 (June 29, 2005) (Regulation NMS).

[63] *See* QCT Exemption Release, *supra* note 53, 73 FR at 19272.

[64] *See* Securities Exchange Act Release No. 66934 (May 7, 2012), 77 FR 27822, 27824 (May 11, 2012) (SR–CBOE–2012–040) (Notice of Proposed Rule Change Related to Permanent Approval of its Pilot on FLEX Minimum Value Sizes) (stating that ''eliminating the minimum value size requirement would further broaden the base of investors that use FLEX [o]ptions to manage their trading and investment risk, including investors that current trade in OTC market for customized options, where similar size restrictions do not apply. The Exchange also believes that this may open up FLEX [o]ptions to more retail investors.''). The pilot was permanently approved in Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR–CBOE–2012–040) (Order Granting Approval of Proposed Rule Change Related to Permanent Approval of its Pilot on FLEX Minimum Value Sizes).

number of customer orders resting in non-FLEX options at the top of the book and differences in strike prices in terms of dollar values between the FLEX and non-FLEX options that had similar terms. However, the data provided still raises questions as to whether the proposal would incentivize market participants to use FLEX options as a substitute for non-FLEX options in order to circumvent price and public customer priority constraints under the QCC Approval Order. For example, the data on strike prices for index options only compared SPX and SPXW listed series with SPX and SPXW FLEX series without considering a broader set of FLEX index options that would apply to the proposed FLEX QCC Order, including less liquid index options. In addition, the data sample on FLEX option strike price values would be more appropriately considered if the price differences between the FLEX and non-FLEX options market were described in proportion to the stock price rather than in dollar values. Moreover, the Exchange's proposal does not provide any information on the market share between FLEX and non-FLEX index options and FLEX and non-FLEX equity and ETP options and its variation over time, which could help inform on whether traders have been steadily migrating between the non-FLEX and FLEX market.

Furthermore, the Exchange stated that the proposed FLEX QCC Order would ''reduce compliance burden on TPHs by providing a more efficient means of executing the options component of a QCT if the options component consists of a FLEX [o]ption.'' The Exchange asserted in its proposal that the compliance risk of not being able to execute a FLEX options portion of a QCT at or near the same time of the execution of the stock component is greater in a FLEX auction where the FLEX order must be exposed for at least three second prior to execution. However, the Exchange has not provided any evidence or data on the number of violations or compliance issues that occurred as a result of needing to execute the FLEX option component after the minimum three second exposure period. Accordingly, the Commission requests data to support the Exchange's assertion on compliance issues, including any information on the overall number of FLEX orders that are part of a stock-option order and the number of compliance issues occurring, including those in relation to the timing of execution of the stock and FLEX option component of the order.

Based on the above, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and the requirements that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and in general, to protect investors and the public interest, and whether the proposal is consistent with the maintenance of fair and orderly markets under the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [65] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[66] 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 Act and the applicable rules and regulations.[67] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[68]

For the reasons discussed above, 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.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is inconsistent with Section 6(b)(5) [69] or any other provision of the Act, or the rules and regulation 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 under the Act, any request for an opportunity to make an oral presentation.[70]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by December 15, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 29, 2020.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the statements of the Exchange contained in Amendment No. 1, and any other issues raised by the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–075. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[65] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[66] *See id.*

[67] *See id.*

[68] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[69] 15 U.S.C. 78f(b)(5).

[70] 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).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–075 and should be submitted by December 15, 2020. Rebuttal comments should be submitted by December 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[71]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25909 Filed 11–23–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90409; File No. SR–NYSEArca–2020–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE Arca BBO and NYSE Arca Trades by Modifying the Application of the Access Fee and Amending the Fees for NYSE Arca Trades by Adopting a Waiver Applicable to the Redistribution Fee

November 12, 2020.

Correction

In Notice document 2020–25391, appearing on pages 73522–73533, in the issue of Wednesday, November 18, 2020, make the following correction:

On page 73533, in the first column, in the thirty-eighth line, the entry ''December 9, 2021'' is corrected to read ''December 9, 2020''.

[FR Doc. C1–2020–25391 Filed 11–23–20; 8:45 am]

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[71] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90449; File No. SR–PEARL–2020–25]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

November 18, 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 November 5, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to increase the number of additional Limited Service MIAX Express Order Interface (''MEO'') Ports available to Members.[3] The Exchange does not propose to amend the fees for additional Limited Service MEO Ports.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to offer two (2) additional Limited Service MEO Ports to Members. The Exchange does not propose to amend the fees charged for the additional Limited Service MEO Ports.

The Exchange initially filed the proposal to increase the number of Limited Service MEO Ports available to Members on June 30, 2020, with no change to the actual fee amounts being charged.[4] The First Proposed Rule Change was published for comment in the **Federal Register** on July 20, 2020.[5] The Exchange notes that the First Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the First Proposed Rule Change on August 24, 2020.[6] On August 25, 2020, the Exchange refiled its proposal to increase the number of Limited Service MEO Ports available to Members (without increasing the actual fee amounts) to provide further clarification regarding the Exchange's annual cost for providing additional Limited Service MEO Ports.[7] The Second Proposed Rule Change was published for comment in the **Federal Register** on September 11, 2020.[8] Like the First Proposed Rule Change, the Second Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on October 23, 2020[9] and submitted SR–PEARL–2020–21 (''Third Proposed Rule Change''). On October 26, 2020, the Exchange withdrew the Third Proposed Rule Change and submitted SR–PEARL–2020–22 (''Fourth Proposed Rule Change''). The Fourth Proposed Rule Change to increase the number of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 89316 (July 14, 2020), 85 FR 43898 (July 20, 2020) (SR–PEARL–2020–09) (the ''First Proposed Rule Change'').

[5] *Id.*

[6] *See* Comment Letter from Christopher Solgan, VP, Senior Counsel, the Exchange, dated August 24, 2020, notifying the Commission that the Exchange will withdraw the First Proposed Rule Change.

[7] *See* Securities Exchange Act Release No. 89774 (September 4, 2020), 85 FR 56281 (September 11, 2020) (SR–PEARL–2020–12) (the ''Second Proposed Rule Change'').

[8] *Id.*

[9] *See* Comment Letter from Christopher Solgan, VP, Senior Counsel, the Exchange, dated October 19, 2020, notifying the Commission that the Exchange would withdraw the Second Proposed Rule Change.

additional Limited Service MEO Ports available to Members (without increasing the actual fee amounts) provides additional information regarding the Exchange's revenues, costs, and profitability for the two additional Limited Service MEO Ports. This additional analysis includes information regarding the Exchange's methodology for determining the costs and revenues for the two additional Limited Service MEO Ports.

On November 5, 2020, the Exchange withdrew the Fourth Proposed Rule Change and submitted this filing to increase the number of additional Limited Service MEO Ports available to Members (without increasing the actual fee amounts) to provide further clarification regarding the Exchange's cost analysis for the two additional Limited Service MEO Ports.

The Exchange currently offers different options of MEO Ports depending on the services required by an Exchange Member, including a Full Service MEO Port-Bulk,[10] a Full Service MEO Port-Single,[11] and a Limited Service MEO Port.[12] Currently, a Member may be allocated two (2) Full-Service MEO Ports of either type, Bulk and/or Single, per Matching Engine, and up to eight (8) Limited Service MEO Ports, per Matching Engine. The two (2) Full-Service MEO Ports that may be allocated per Matching Engine to a Member currently may consist of: (a) Two (2) Full Service MEO Ports—Bulk; or (b) two (2) Full Service MEO Ports—Single. The Exchange also has a third option, option (c), which permits a Member to have one (1) Full Service MEO Port—Bulk, and one (1) Full Service MEO Port—Single.

The Exchange currently provides Members the first two (2) requested Limited Service MEO Ports free of charge and charges $200 per month for Limited Service MEO Ports three (3) and four (4), $300 per month for Limited Service MEO Ports five (5) and six (6), and $400 per month for Limited Service MEO Ports seven (7) and eight (8). These fees have been unchanged since they were adopted in 2018.[13]

The Exchange originally added the Limited Service MEO Ports to enhance the MEO Port connectivity made available to Members. Limited Service MEO Ports have been well received by Members since their addition. The Exchange now proposes to offer to Members the ability to purchase an additional two (2) Limited Service MEO Ports per matching engine over and above the current six (6) additional Limited Service MEO Ports per matching engine that are available for purchase by Members. The Exchange proposes making a corresponding change to the text in the Port Fee table and to the text below the Port Fee table in Section 5)d) of the Fee Schedule to specify that Members will now be limited to purchasing eight (8) additional Limited Service MEO Ports per matching engine, for a total of ten (10) per matching engine. All fees related to MEO Ports shall remain unchanged and Members that voluntarily purchase the additional ninth or tenth Limited Service MEO Ports will be subject to the existing $400 monthly fee per port that is charged to Members that request a seventh or eighth Limited Service MEO Port.

The Exchange is increasing the number of additional Limited Service MEO Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to the MIAX PEARL System to all Members. Absent the proposed increase in available MEO Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act[16] because the proposed additional Limited Service MEO Ports will be available to all Members and the current fees for the additional Limited Service MEO Ports apply equally to all Members regardless of type, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange is proposing to increase the number of available Limited Service MEO Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient and equal access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to MIAX PEARL Systems for all Members. Absent the proposed increase in available MEO Ports, the Exchange projects that its current inventory will be depleted and

[10] "Full Service MEO Port—Bulk;" means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[11] "Full Service MEO Port—Single" means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[12] "Limited Service MEO Port" means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[13] *See* Securities Exchange Act Release No. 83867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(5).

it will lack sufficient capacity to continue to meet Members' access needs. Further, the Exchange notes that decision of whether to purchase two additional Limited Service MEO Ports is completely optional and it is a business decision for each Member to determine whether the additional Limited Service MEO Ports are necessary to meet their business requirements.

The Exchange further believes that the availability of the additional Limited Service MEO Ports is equitable and not unfairly discriminatory because it will enable Members to maintain uninterrupted access to the MIAX PEARL System and consequently enhance the marketplace by helping Members to better manage risk, thus preserving the integrity of the MIAX markets, all to the benefit of and protection of investors and the public as a whole.

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act because only Members that voluntarily purchase the two additional Limited Service MEO Ports will be charged the existing $400 monthly fee per port applicable to ports seven (7) and eight (8), which has been unchanged since adopted 2018.[17] The Exchange does not propose to amend the fees applicable to additional Limited Service MEO Ports which have been previously filed with the Commission and become effective after notice and public comment.[18] As stated above, the Exchange proposes to expand its network by making available two additional Limit Service MEO Ports due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. The cost to expand the network in this manner is greater than the revenue the Exchange anticipates the additional Limited Service MEO Ports will generate. Specifically, the Exchange estimates it will incur a one-time cost of approximately $175,000 in capital expenditures on hardware, software, and other items to expand the network to make available the two additional Limited Service MEO Ports. This estimated cost also includes expense associated with providing the necessary engineering and support personnel to transition those Members who wish to acquire the two additional Limited Service MEO Ports.

The Exchange projects that approximately six to seven Members will purchase the additional Limited Service MEO Ports, which will be subject to the existing monthly fee of $400 per port applicable to ports seven (7) and eight (8). Accordingly, the Exchange projects that the annualized revenue from the two additional Limited Service MEO Ports will be approximately $67,200 (assuming seven Members purchase the two additional Limited Service MEO Ports). Therefore, the Exchange's upfront cost in expanding its network to provide its Members with the two additional Limited Service MEO Ports—approximately $175,000—is significant relative to the anticipated annualized revenue the Exchange expects to bring in from the two additional Limited Service MEO Ports—approximately $67,200. Further, the Exchange anticipates it will incur approximately $77,712 in annualized ongoing operating expense in order to support the expanded network and the two additional Limited Service MEO Ports. Thus, even excluding the upfront CapEx expense of $175,000, the Exchange is not generating a supra-competitive profit from the provision of these two additional Limited Service MEO Ports. In fact, even excluding the one-time CapEx expense $175,000, the Exchange anticipates generating an annual loss from the provision of these two additional Limited Service MEO Ports of ($10,512)—that is, $67,200 in revenue minus $77,712 in expense equates to a loss of ($10,512) to support the additional ports annually.

The Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the additional Limited Service MEO Ports, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the additional Limited Service MEO Ports, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with the two additional Limited Service MEO Ports.

Specifically, utilizing 2019 expense figures,[19] total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the two additional Limited Service MEO Ports, was approximately $10,701. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI'') [20], which supports network feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, network services, and infrastructure services for critical components of options network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the services associated with providing the two additional Limited Service MEO Ports.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with the two additional Limited Service MEO Ports. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure

[17] *See supra* note 13.

[18] *Id.*

[19] The Exchange notes that the total 2019 expense figures for each of the external and internal expenses described herein relate only to the Exchange's options market. No expense relating to the Exchange's equities market is included in this filing.

[20] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the services associated with the two additional Limited Service MEO Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the services associated with the two additional Limited Service MEO Ports, only that portion which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEO Ports, approximately 0.5% of the total Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEO Ports, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the services associated with the two additional Limited Service MEO Ports. The Exchange did not allocate all of the Zayo expense toward the cost of providing the services associated with the two additional Limited Service MEO Ports, only the portion which the Exchange identified as being specifically mapped to providing the two additional Limited Service MEO Ports, approximately 0.4% of the total Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEO Ports, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, network services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the services associated with the two additional Limited Service MEO Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEO Ports, approximately 0.5% of the total SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEO Ports.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the services associated with the two additional Limited Service MEO Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEO Ports, approximately 0.3% of the total hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEO Ports.

For 2019, total internal expense, relating to the internal costs of the Exchange to provide the services associated with the two additional Limited Service MEO Ports was $67,011. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the services associated with providing the two additional Limited Service MEO Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the services associated with the two additional Limited Service MEO Ports, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the services associated with the two additional Limited Service MEO Ports. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the services associated with providing the two additional Limited Service MEO Ports.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the services associated with the two additional Limited Service MEO Ports. In particular, the Exchange's employee compensation and benefits expense relating to providing the services associated with the two additional Limited Service MEO Ports was approximately $49,067, which is only a portion of the $8,177,821 total expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of services associated with the two additional Limited Service MEO Ports. Without these employees, the Exchange would not be able to provide the services associated with the two additional Limited Service MEO Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the services associated with providing the two additional Limited Service MEO Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEO Ports, approximately 0.6% of the total employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEO Ports, and not any other service, as supported by its cost review.

The Exchange's depreciation and amortization expense relating to providing the services associated with the two additional Limited Service MEO Ports was $15,584, which is only a portion of the $3,116,781 total expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the services associated with the two additional Limited Service MEO Ports. Without this equipment, the Exchange would not be able to operate the network and provide the services associated with the two additional Limited Service MEO Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the services associated with the two additional Limited Service MEO Ports, only the portion which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEO Ports, approximately 0.5% of the total depreciation and amortization expense, as these services would not be possible without relying on such equipment. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the two additional Limited Service MEO Ports, and not any other service, as supported by its cost review.

The Exchange's occupancy expense relating to providing the services associated with providing the two additional Limited Service MEO Ports was approximately $2,360, which is only a portion of the $590,157 total expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the services associated with the two additional Limited Service MEO Ports. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 160 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the services associated with providing the two additional Limited Service MEO Ports. Without this office space, the Exchange would not be able to operate and support the network and provide the services associated with the two additional Limited Service MEO Ports to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the services associated with the two additional Limited Service MEO Ports. The Exchange did not allocate all of the occupancy expense toward the cost of providing the services associated with the two additional Limited Service MEO Ports, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 0.4% of the total occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the services associated with the two additional Limited Service MEO Ports, and not any other service, as supported by its cost review.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the services associated with the two additional Limited Service MEO Ports will not result in excessive pricing or supra-competitive profit.

For the avoidance of doubt, none of the expenses included herein relating to the services associated with providing the two additional Limited Service MEO Ports relate to the provision of any other services offered by the Exchange. Stated differently, no expense amount of the Exchange is allocated twice.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the services associated with the two additional Limited Service MEO Ports because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing the services associated with the two additional Limited Service MEO Ports to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. Providing the two additional Limited Service MEO Ports at the existing rates is intended to recover the Exchange's costs of operating and supporting the network.

Accordingly, the Exchange believes that providing the two additional Limited Service MEO Ports at the existing rate is fair and reasonable because it does not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected annual revenue from providing the two additional Limited Service MEO Ports.

Further, subjecting the two additional Limited Service MEO Ports to the existing $400 monthly fee per port applicable to ports seven (7) and eight (8) is also designed to encourage Members to be efficient with their port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing the two additional ports.

There is no requirement that any Member maintain a specific number of Limited Service MEO Ports and a Member may choose to maintain as many or as few of such ports as each Member deems appropriate.

Finally, subjecting the two additional Limited Service MEO Ports to the existing $400 monthly fee applicable to ports seven (7) and eight (8) will help to encourage Limited Service MEO Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg. SCI'').[21] Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[22] By encouraging Members to be efficient with their usage of Limited MEO Ports, the current fee that will continue to apply to the proposed two (2) additional Limited Service MEO Ports will support the Exchange's Reg. SCI obligations in this regard by ensuring that unused ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not impose a burden on competition but will benefit competition by enhancing the Exchange's ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposed increase in the number of additional Limited Service MEO Ports available per Member is intended to allow the Exchange to increase its inventory of MEO Ports to meet increased Member demand. The Exchange is increasing the number of available additional Limited Service MEO Ports in response to Member demand for increased connectivity to the MIAX PEARL System. The Exchange's current inventory may soon be insufficient to meet those needs. Again, the Exchange is not proposing to amend the fees for MEO Ports, just to increase the number of MEO Ports available per Member. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because the two additional Limited Service MEO Ports will be available to all Members on an equal basis. It is a business decision of each Member whether to pay for the additional Limited Service MEO Ports.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[23] and Rule 19b–4(f)(2) [24] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2020–25 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–PEARL–2020–25. 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–PEARL–2020–25 and should be submitted on or before December 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25901 Filed 11–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–240, OMB Control No. 3235–0216]

Proposed Collection; Comment Request

Extension:
Rule 19a–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of

[21] 17 CFR 242.1000–1007.

[22] 17 CFR 242.1001(a).

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 240.19b–4(f)(2).

[25] 17 CFR 200.30–3(a)(12).

Management and Budget for extension and approval.

Section 19(a) (15 U.S.C. 80a–19(a)) of the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of such statement by rule.

Rule 19a–1 (17 CFR 270.19a–1) under the Act, entitled ''Written Statement to Accompany Dividend Payments by Management Companies,'' sets forth specific requirements for the information that must be included in statements made pursuant to section 19(a) by or on behalf of management companies.[1] The rule requires that the statement indicate what portions of distribution payments are made from net income, net profits from the sale of a security or other property (''capital gains'') and paid-in capital. When any part of the payment is made from capital gains, rule 19a–1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

The purpose of rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a–1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 12,019 series of registered investment companies that are management companies may be subject to rule 19a–1 each year,[2] and that each portfolio on average mails two statements per year to meet the requirements of the rule.[3] The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1 hour per statement. The total annual burden for all portfolios therefore is estimated to be approximately 24,038 burden hours.[4]

The staff estimates that approximately one-third of the total annual burden (8,013 hours) would be incurred by a paralegal with an average hourly wage rate of approximately $219 per hour,[5] and approximately two-thirds of the annual burden (16,026 hours) would be incurred by a compliance clerk with an average hourly wage rate of $71 per hour.[6] The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $2,892,693 ((8,013 hours × $219 = $1,754,847) + (16,026 hours × $71 = $1,137,846)).

To comply with state law, many investment companies already must distinguish the different sources from which a shareholder distribution is paid and disclose that information to shareholders. Thus, many investment companies would be required to distinguish the sources of shareholder dividends whether or not the Commission required them to do so under rule 19a–1.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a–1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 18, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25896 Filed 11–23–20; 8:45 am]

BILLING CODE 8011–01–P

[1] Section 4(3) of the Act (15 U.S.C. 80a–4(3)) defines ''management company'' as ''any investment company other than a face amount certificate company or a unit investment trust.''

[2] This estimate is based on statistics compiled by Commission staff as of September 21, 2020. The number of management investment company portfolios that make distributions for which compliance with rule 19a–1 is required depends on a wide range of factors and can vary greatly across years. Therefore, the calculation of estimated burden hours is based on the total number of management investment company portfolios, each of which may be subject to rule 19a–1.

[3] A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

[4] This estimate is based on the following calculation: 12,019 management investment company portfolios × 2 statements per year × 1 hour per statement = burden hours.

[5] Hourly rates are derived from the Securities Industry and Financial Markets Association (''SIFMA''), Management and Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[6] Hourly rates are derived from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34099; 812–15156]

Oaktree Strategic Income II, Inc., et al.

November 18, 2020.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act. Applicants request an order to permit certain business development companies to co-invest in portfolio companies with affiliated investment funds.

Applicants: Oaktree Strategic Income II, Inc. (''OSI II''), Oaktree Strategic Income Corporation (''OCSI''), Oaktree Specialty Lending Corporation (''OCSL''), Oaktree Capital Management, L.P. (''OCM LP''), Oaktree Fund Advisors, LLC (''OFA LLC''), Oaktree Capital Management (UK) LLP (''OCM

UK''), Oaktree Strategic Income, LLC, Oaktree High Yield Bond Fund, L.P., Oaktree High Yield Fund II, L.P., Oaktree Expanded High Yield Fund, L.P., Oaktree Global High Yield Bond Fund, L.P., Oaktree European High Yield Fund, L.P., Oaktree Senior Loan Fund, L.P., Oaktree Enhanced Income Fund III, L.P., Oaktree Enhanced Income Fund III (Parallel), L.P., Oaktree CLO 2014–1 Ltd., Oaktree CLO 2014–2 Ltd., Oaktree CLO 2015–1 Ltd., Oaktree CLO 2018–1 Ltd., Oaktree CLO 2019–1 Ltd., Oaktree CLO 2019–2 Ltd., Oaktree CLO 2019–3 Ltd., Oaktree CLO 2019–4 Ltd., Oaktree CLO 2020–1 Ltd., Oaktree EIF I Series A1, Ltd., Oaktree EIF I Series A, Ltd., Oaktree EIF II Series A1, Ltd., Oaktree EIF II Series A2, Ltd., Oaktree EIF III Series I, Ltd., Oaktree EIF III Series II, Ltd., Oaktree Strategic Credit Fund A, L.P., Oaktree Strategic Credit Fund B, L.P., Ace Strategic Credit Holdings (Cayman), L.P., Exelon Strategic Credit Holdings, LLC, Oaktree-Minn Strategic Credit, LLC, Oaktree-NGP Strategic Credit, LLC, Oaktree-TBMR Strategic Credit Fund, LLC, Oaktree-TBMR Strategic Credit Fund C, LLC, Oaktree-TBMR Strategic Credit Fund F, LLC, Oaktree-TBMR Strategic Credit Fund G, LLC, Oaktree-TCDRS Strategic Credit, LLC, Oaktree-TSE 16 Strategic Credit, LLC, INPRS Emerging Markets Total Return Holdings, LLC, Investin Pro RED Holdings, LLC, Investin Pro RED Holdings S.à.r.l., Oaktree Gilead Investment Fund, L.P., Oaktree Gilead Investment Fund AIF (Delaware), L.P., Oaktree Structured Credit Income Fund, L.P., Oaktree Alpha Credit Fund, L.P., Oaktree Mezzanine Fund IV, L.P., Oaktree Mezzanine Fund V, L.P., Oaktree Mezzanine Fund V (Parallel), SCSp, Oaktree SBIC Fund, L.P., Oaktree Middle-Market Direct Lending Fund, L.P., Oaktree Middle-Market Direct Lending Unlevered Fund, L.P., Oaktree Middle-Market Direct Lending Fund (Parallel), L.P., Oaktree Middle-Market Direct Lending Unlevered Fund (Parallel), L.P., Oaktree Middle-Market Direct Lending Fund (Parallel 2), L.P., Oaktree European Capital Solutions Fund (Parallel), L.P., Oaktree European Capital Solutions Fund, L.P., Oaktree European Capital Solutions Fund II, L.P., Oaktree European Capital Solutions Fund II, SCSp, Oaktree European Capital Solutions Fund II, SCSp-RAIF, Oaktree Mercury Investment Fund, L.P., Oaktree European Special Situations Fund, L.P., Oaktree Desert Sky Investment Fund, L.P., Oaktree Desert Sky Investment Fund II, L.P., Oaktree Emerging Markets Debt Total Return Fund, L.P., Oaktree Boulder Investment Fund, L.P., OCM Convertible Trust, Oaktree Non-U.S. Convertible Fund, L.P., Oaktree High Income Convertible Fund, L.P., Oaktree High Income Convertible Fund II, L.P., Oaktree Opportunities Fund X, L.P., Oaktree Opportunities Fund X (Parallel), L.P., Oaktree Opportunities Fund X (Parallel 2), L.P., Oaktree Opportunities Fund Xb, L.P., Oaktree Opportunities Fund Xb (Parallel), L.P., Oaktree Opportunities Fund Xb (Parallel 2), L.P., Oaktree Opportunities Fund XI, L.P., Oaktree Opportunities Fund XI (Parallel), L.P., Oaktree Opportunities Fund XI (Parallel 2), SCSP, Oaktree Opportunities Fund XI (Parallel 3), L.P., Oaktree Latigo Investment Fund, L.P., Oaktree Huntington Investment Fund II, L.P., Oaktree Cascade Investment Fund I, L.P., Oaktree Cascade Investment Fund II, L.P., Oaktree Cascade Investment Fund III, L.P., Oaktree Value Opportunities Fund, L.P., Oaktree Phoenix Investment Fund, L.P., Oaktree BAA Emerging Market Opportunities Fund, L.P., Oaktree Glacier Investment Fund, L.P., Oaktree TX Emerging Market Opportunities Fund, L.P., Oaktree Emerging Market Opportunities Fund, L.P., Oaktree Glacier Investment Fund II, L.P., Oaktree Moraine Co-Investment Fund, L.P., Oaktree Emerging Markets Opportunities Fund II, L.P., Oaktree FF Emerging Markets Opportunities Fund, L.P., Oaktree Oasis Investment Fund, L.P., Oaktree Special Situations Fund, L.P., Oaktree Special Situations Fund II, L.P., OCM Avalon Co-Investment Fund, L.P., Oaktree Avalon Co-Investment Fund II, L.P., Oaktree Star Investment Fund II, L.P., Oaktree European Principal Fund IV, L.P., Oaktree European Principal Fund IV, S.C.S., Oaktree Power Opportunities Fund IV, L.P., Oaktree Power Opportunities Fund IV (Parallel), L.P., Oaktree European Principal Fund V, L.P., Oaktree European Principal Fund V, SCSp, Oaktree Power Opportunities Fund V, L.P., Oaktree Power Opportunities Fund V (Parallel), L.P., Oaktree Transportation Infrastructure Fund, L.P., Oaktree Transportation Infrastructure Fund (Parallel), L.P., Oaktree Transportation Infrastructure Fund (Parallel 2), L.P., Oaktree Transportation Infrastructure Fund (Parallel 3), L.P., Oaktree Ports America Fund, L.P., Oaktree Ports America Fund (HS III), L.P., Oaktree Real Estate Opportunities Fund VII, L.P., Oaktree Real Estate Opportunities Fund VII (Parallel), L.P., Oaktree Real Estate Opportunities Fund VII (Parallel 2), L.P., Oaktree Real Estate Opportunities Fund VII (Parallel 3), L.P., Oaktree Real Estate Opportunities Fund VII (Parallel 4), L.P., Oaktree Real Estate Opportunities Fund VIII, L.P., Oaktree Real Estate Opportunities Fund VIII (Parallel), L.P., Oaktree Real Estate Opportunities Fund VIII (Parallel), S.C.Sp, Oaktree Real Estate Opportunities Fund VIII (Parallel 2), L.P., Oaktree Real Estate Opportunities Fund VIII (Parallel 3), L.P., Oaktree Real Estate Opportunities Fund VIII (Parallel 4), L.P., Oaktree Pinnacle Investment Fund, L.P., Oaktree Real Estate Debt Fund II, L.P., Oaktree Real Estate Debt Fund II (Parallel), L.P., Oaktree Real Estate Debt Fund III, L.P., Oaktree Real Estate Debt Fund III (Lux), S.C.Sp, Oaktree Real Estate Debt Fund III (Parallel), L.P., Oaktree-TSE 16 Real Estate Debt, LLC, Oaktree (Lux.) FS S.C.SP. SICAV RAIF, Oaktree Real Estate Income Fund, L.P., Oaktree Emerging Markets Equity Fund, L.P., Oaktree Value Equity Fund, L.P., Oaktree Private Investment Fund IV, L.P., Oaktree-Forrest Multi-Strategy, LLC, Oaktree TT Multi-Strategy Fund, L.P., Oaktree Global Credit Fund, L.P., Oaktree GC Super Fund, L.P., Oaktree Huntington-GCF Investment Fund, L.P., Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P., Oaktree Absolute Return Income Fund, L.P., Oaktree Global Credit Plus Fund, L.P., Oaktree Global Credit Plus Fund AIF, L.P., Oaktree Emerging Market Debt Fund, L.P.

Filing Dates: The application was filed on August 31, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 14, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov;* Applicants: 333 South Grand Ave., 28th Floor, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Rochelle Plesset, Senior Counsel, or David Marcinkus, Branch Chief, at (202)

551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The Applicants request an order of the Commission under Sections 17(d) and 57(i) and Rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] and one or more other Regulated Funds and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3] The Order sought by this application will supersede the Prior Order,[4] dated October 18, 2017, issued to Oaktree Strategic Income, LLC and certain of its affiliates, with the result that no person will continue to rely on the Prior Order.

Applicants

2. OSI II is a Delaware corporation and a closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[5] OSI II's Board [6] is comprised of a majority of members who are Independent Directors.[7]

3. OCSI is a Delaware corporation and a closed-end, externally managed, non-diversified management investment company that has elected to be regulated as a BDC under the Act. OCSI's Board is comprised of a majority of members who are Independent Directors.

4. OCSL is a Delaware corporation and a closed-end, externally managed, non-diversified management investment company that has elected to be regulated as a BDC under the Act. OCSL's Board is comprised of a majority of members who are Independent Directors.

5. OFA LLC is a Delaware limited partnership that is registered as an investment adviser under the Advisers Act and serves as the investment adviser to OSI II, OCSI, and OCSL. OFA LLC is under common control with OCM LP and OCM UK.

6. OCM LP is a Delaware limited partnership that is registered as an investment adviser under the Advisers Act and serves as the investment adviser to all Existing Affiliated Funds except for certain Existing Affiliated Funds based in Europe, which are advised by OCM UK. OCM LP is under common control with OFA LLC and OCM UK.

7. OCM UK is a limited liability partnership registered in England and Wales that is registered as an investment adviser under the Advisers Act. OCM UK serves as the investment adviser to certain Existing Affiliated Funds based in Luxembourg and certain other Existing Affiliated Funds based in Europe. OCM UK also serves as sub-advisor for the Existing Affiliated Funds that utilize investment professionals in both the United States and in Europe, for which OCM LP serves as investment adviser. OCM UK is an indirect, wholly-owned subsidiary of Oaktree Capital Group (OCG), and is under common control with OFA LLC and OCM LP.

8. The Existing Affiliated Funds are the investment funds identified in Appendix A to the application. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act. OFA LLC, OCM LP, and OCM UK are Advisers to the Existing Affiliated Funds.

9. Each of the Applicants may be deemed to be controlled by Oaktree Capital Group Holdings, LP (''OCGH''). OCGH owns a majority of the voting interests in the Advisers and, thus, may be deemed to control the Regulated Funds and the Affiliated Funds. Applicants state that OCGH is a holding company and does not currently offer investment advisory services to any person and is not expected to do so in the future. Applicants state that as a result, OCGH has not been included as an Applicant.

10. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Entity for purposes of Section 57(a)(4) and Rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Entity that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were

[1] ''Regulated Funds'' means the Existing Regulated Funds and any other Future Regulated Funds. ''Existing Regulated Funds'' means each of OSI II, OCSI, and OCSL. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC and (b) whose investment adviser is an Adviser. ''Adviser'' means any Existing Adviser together with any future investment adviser that (i) controls, is controlled by or is under common control with any Existing Adviser, (ii) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund. ''Existing Advisers'' means OCM LP, OFA LLC, and OCM UK.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund (identified in Appendix A to the application) or any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act and (c) that intends to participate in the program of co-investments described in the application.

[3] All existing entities that currently intend to rely on the Order have been named as Applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application.

[4] Oaktree Strategic Income, LLC, et al. (File No. 812–14758) Investment Company Act Rel. Nos. 32831 (September 22, 2017) (notice) and 32862 (October 18, 2017) (order).

[5] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in Section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[6] ''Board'' means the board of directors (or the equivalent) of a Regulated Fund.

[7] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in Section 2(a)(19) of the Act. No Independent Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[8] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of a SBIC Subsidiary (defined below), maintain a license under the SBA Act (defined below) and issue debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act. ''SBIC Subsidiary'' means a Wholly- Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company.

participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the parent Regulated Fund and the Wholly-Owned Investment Sub. The Board of the parent Regulated Fund would make all relevant determinations under the Conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the parent Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board of the parent Regulated Fund will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

Applicants' Representations

A. Allocation Process

11. Applicants state that each Adviser is presented with thousands of investment opportunities each year on behalf of their clients and will determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of its clients. Such investment opportunities may be Potential Co-Investment Transactions.

12. Applicants represent that each Adviser has established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer, and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

13. Specifically, applicants state that an Adviser is organized and managed such that the portfolio managers and analysts (''Investment Teams''), responsible for evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. If the requested Order is granted, each Adviser will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [9] and any Board-Established Criteria [10] of a Regulated Fund, the policies and procedures will require that the relevant Investment Team responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions.

14. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

15. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will submit a proposed order amount to an internal allocation committee which the Adviser will establish to handle the allocation of investment opportunities in Potential Co-Investment Transactions (the ''Co-Investment Transaction Allocation Committee''). Applicants state further that, at this stage, each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures, by the Co-Investment Transaction Allocation Committee.[11] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[12]

16. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[13] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal

[9] ''Objectives and Strategies'' means with respect to any Regulated Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

[10] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[11] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

[12] ''Required Majority'' means a required majority, as defined in Section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to Section 57(o).

[13] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under Section 57(o) of the Act.

Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[14]

B. Follow-On Investments

17. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments [15] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

18. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[16] If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

19. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment [17] or (ii) a Non-Negotiated Follow-On Investment.[18] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

20. Applicants propose that Dispositions [19] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[20]

21. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [21] or (ii) the securities are Tradable Securities [22] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

22. Applicants represent that under the terms and Conditions of the Application, all Regulated Funds and

[14] However, if the size of the opportunity is decreased such that the aggregate of the original Internal Orders would exceed the amount of the remaining investment opportunity, then upon submitting any revised order amount to the Board of a Regulated Fund for approval, the Adviser to the Regulated Fund will also notify the Board promptly of the amount that the Regulated Fund would receive if the remaining investment opportunity were allocated pro rata on the basis of the size of the original Internal Orders. The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with condition 2, 6, 7, 8 or 9, as applicable.

[15] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[16] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that: (i) Were acquired prior to participating in any Co-Investment Transaction; (ii) were acquired in transactions in which the only term negotiated by or on behalf of such funds was price; and (iii) were acquired either: (A) In reliance on one of the JT No-Action Letters (defined below); or (B) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[17] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[18] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters. ''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[19] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[20] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[21] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[22] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa.[23] Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

23. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of Rule 17d–1 and Section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by Rule 17d–1 and/or Section 57(b), as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) controlled affiliates of OCGH manage each of the Affiliated Funds and may be deemed to control any Future Regulated Fund, (ii) OCGH controls the Existing Advisers, which manages the Existing Regulated Funds. Thus, each of the Affiliated Funds could be deemed to be a person related to the Existing Regulated Funds in a manner described by Section 57(b) and related to other Future Regulated Funds in a manner described by Rule 17d–1; and therefore the prohibitions of Rule 17d–1 and Section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

4. Oaktree Proprietary Accounts are controlled by the Advisers or their affiliates and, therefore, may be under common control with the Existing Regulated Funds, the Existing Affiliated Funds, any future Advisers, and any Future Regulated Funds, the Oaktree Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by Section 17(d) or Section 57(b) and also prohibited from participating in Co-Investment Transactions.

5. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

6. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by Rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the

[23] Applicants state this may occur for two reasons. First, when the Affiliated Fund or Regulated Fund is not yet fully funded because, when the Affiliated Fund or Regulated Fund desires to make an investment, it must call capital from its investors to obtain the financing to make the investment, and in these instances, the notice requirement to call capital could be as much as ten business days. Second, where, for tax or regulatory reasons, an Affiliated Fund or Regulated Fund does not purchase new issuances immediately upon issuance but only after a short seasoning period of up to ten business days.

appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser to a Regulated Fund deems the Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [24] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[25] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[26]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board

[24] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[25] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[26] "Related Party" means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. "Close Affiliate" means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in Section 57(b) (after giving effect to Rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in Section 57(b) to Section 2(a)(3)(D). "Remote Affiliate" means any person described in Section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund [27] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) the participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition [28] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and

(C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such *Disposition* solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Conditions 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [29] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

[27] Any Oaktree Proprietary Account that is not advised by an Adviser is itself deemed to be an adviser for the Purposes of Conditions 6(a)(i), 7(a)(i), and 9(a)(i).

[28] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

[29] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i)(A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[30] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the Application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them *pro rata* based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) Original Investments. All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) Advice of counsel. Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as

[30] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.(b) of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Directors will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[31] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Proportionate Voting.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[31] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90450; File No. SR–ISE–2020–38]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Technical and Conforming Amendments to Options 4, Sections 3 and 5

November 18, 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 November 6, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 4, Section 3, ''Criteria for Underlying Securities,'' and Options 4, Section 5, ''Series of Options Contracts Open for Trading'' to relocate certain rule text and make other minor technical amendments.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 4, Section 3, ''Criteria for Underlying Securities,'' and Options 4, Section 5, ''Series of Options Contracts Open for Trading'' to relocate certain rule text and make other minor technical amendments. This rule change is similar to a rule change filed by Nasdaq BX, Inc.[3]

Options 4, Section 3

The Exchange proposes to amend Options 4, Section 3(k)(i) to add the words ''or ETNs'' after the phrase ''collectively known as ''Index-Linked Securities'' for additional clarity. The Exchange believes that this addition of ''ETNs'' will assist Members in locating this rule text.

Options 4, Section 5

The Exchange proposes to amend and relocate certain portions of Options 4, Section 5, as well as the Supplementary Material to Options 4, Section 5 in order that rule text related to certain strike listing programs be placed with related rule text. Proposed relocated rule text is not being amended with this proposal, unless otherwise noted.

The Exchange proposes to relocate Supplementary Material .10 within Options 4, Section 5 to new Options 4, Section 5(a)(1).

The Exchange proposes to amend ISE Options 4, Section 5(b) to mirror the exact language of BX Options 4, Section 5(b). The amendments to this provision (b) are non-substantive. The introductory clause is being removed as the Rule is read as whole. The phrase ''type of options of a class of options'' is being simplified to read ''class of options.'' The term ''shall'' is being replaced with ''will.'' A number ''(1)'' is being added next to the term ''one.'' The phrase ''expiration month and series for each class of options open for trading on the Exchange'' is being replaced with ''series of options in that class'' for simplicity. The last sentence is being amended to replace ''each'' with ''that'' and replace ''which is reasonably close'' with ''relative.'' Finally, the phrase ''price per share at which the underlying stock is traded in the primary market at about the time that class of options is first opened for trading on the Exchange'' is being replaced with ''underlying stock price in the primary market at about the time that class of options is first opened for trading on the Exchange.'' These amendments are non-substantive.

The Exchange proposes to relocate Options 4, Section 5(f) to the end of Options 4, Section 5(c).

The Exchange proposes to remove the phrase ''this Rule and'' from ISE Options 4, Section 5(d) so that it is identical to BX Options 4, Section 5(d). The Exchange also proposes to add a ''the'' to that sentence. These amendments are non-substantive.

The Exchange proposes to relocate Options 4, Section 5(h) to the end of Options 4, Section 5(d). The Exchange proposes to amend the phrase ''Fund Shares'' to ''Exchange-Traded Fund Shares.'' The citation to ''Section 5(h)'' is being replaced with ''Section 3(h) of this Options 4''. These amendments are non-substantive.

The Exchange proposes to relocate Supplementary Material .13 within Options 4, Section 5 to new Options 4, Section 5(e).

The Exchange proposes to relocate Supplementary Material .11 within Options 4, Section 5 to new Options 4, Section 5(f).

The Exchange proposes to add a new ISE Options 4, Section 5(g), which is identical to BX Options 4, Section 5(g), which provides, ''The Exchange will open at least one expiration month for each class of options open for trading on the Exchange.'' Today the Exchange opens at least one expiration month for each class of options. Adding this rule text will make clear the manner in which ISE lists options.

The Exchange proposes to relocate Supplementary Material .06 within Options 4, Section 5 to new Options 4, Section 5(h).

The Exchange proposes to relocate Supplementary Material .07 within Options 4, Section 5 to new Options 4, Section 5(i).

The Exchange proposes to add a new ISE Options 4, Section 5(j), which is identical to BX Options 4, Section 5(j), which provides, ''The interval of strike prices may be $2.50 in any multiply-traded option class to the extent permitted on the Exchange by the Commission or once another exchange trading that option lists strike prices of $2.50 on such options class.'' The addition of this rule text will align ISE's Rule with BX's Rule and provide context on permissible intervals.

The Exchange proposes to add a new ISE Options 4, Section 5(k), which is identical to BX Options 4, Section 5(k), which provides, ''New series of equity options, options on Exchange Traded Funds, and options on Trust Issued Receipts opened for trading shall be subject to the range limitations set forth in Options 4, Section 6(b).'' The addition of this rule text will align ISE's Rule with BX's Rule and provide a cross-citation to the appropriate range limitation rule.

The Exchange proposes to amend Supplementary Material .01(a) to ISE Options 4, Section 5 to add the word ''national'' before securities exchange to conform ISE's rule text to BX's rule text at Supplementary Material .01(a) to Options 4, Section 5.

The Exchange proposes to amend Supplementary Material .01(b) to ISE Options 4, Section 5 to change the word ''stock'' to ''security.'' This is a non-substantive amendment which conforms ISE's rule text to BX's rule text at Supplementary Material .01(b) to Options 4, Section 5.

The Exchange proposes to amend current Supplementary Material .01(b)(v) to ISE Options 4, Section 5 to add the title ''Long-Term Options Series or'' before ''LEAPS'' for greater context.

The Exchange proposes to amend current Supplementary Material .01(d)

[3] *See* Securities Exchange Act Release No. 90218 (October 19, 2020), 85 FR 67579 (October 23, 2020) (SR–BX–2020–030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Technical Amendments to the Options Listing Rules).

to ISE Options 4, Section 5 to remove the word ''Interval'' in two places to conform ISE's rule text to BX's rule text at Supplementary Material .01(d) to Options 4, Section 5.

The Exchange proposes to relocate Supplementary Material .01(e) to ISE Options 4, Section 5 to the end of Supplementary Material .01(b) to Options 4, Section 5.

The Exchange proposes to relocate ISE Options 4, Section 5(g) to Supplementary Material .02 within Options 4, Section 5 and add a title ''$2.50 Strike Price Interval Program.'' [4]

The Exchange proposes to relocate Supplementary Material .12 within ISE Options 4, Section 5 to the end of renumbered Supplementary .03(e) of Options 4, Section 5.

The Exchange proposes to delete the first sentence of renumbered Supplementary Material .03(e) within ISE Options 4, Section 5 of the Short Term Options Series Program, which provides ''The interval between strike prices on Short Term Option Series shall be the same as the strike prices for series in that same option class that expire in accordance with the normal monthly expiration cycle.'' The Exchange notes that this rule text is not necessary because with the relocation of the strike listing rules for Short Term Option Series, which are proposed to be relocated from Supplementary Material .13 of Options 4, Section 5 to the end of Supplementary .03(e) of Options 4, Section 5, the reference becomes unnecessary.

The Exchange proposes to remove Supplementary Material .04 to ISE Options 5, Section 4 as this cross reference to the Mini-Nasdaq-100 Index (''MNX'' or ''Mini-NDX'') is not necessary as this index is discussed within Options 4A, Section 12(c)(5). This amendment is non-substantive.

Other Technical Amendments

The Exchange proposes to update certain outdated citations to rule text within ISE Options 4, Section 5. The Exchange proposes to re-number and re-letter certain sections for consistency, and remove reserved sections from the rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange's proposal to make a non-substantive amendment to ISE Options 4, Section 3(k)(i) to add the more commonly used term ''ETN'' next to ''Index-Linked Securities'' will allow Members to search the rule text using the term ''ETN''.

Amending ISE Options 4, Section 5 to relocate rule text within the related listing program will make the rule easier to understand. Conforming the rule text of ISE within Options 4, Section 5 to the rule text of BX within Options 4, Section 5 will harmonize the listing rules of these Nasdaq affiliated markets. The proposed amendments to conform ISE's rule text to BX rule text are non-substantive. The technical rule changes within ISE Options 4, Section 5, to re-number and re-letter sections of the rule are non-substantive and intended to provide clarity to the rule text.

The Exchange's proposal to add a new ISE Options 4, Section 5(g), which is identical to BX Options 4, Section 5(g), will add greater clarity to ISE's rule. This rule makes clear that at least one expiration month for each class of options will be opened. Today the Exchange opens at least one expiration month for each class of options. Adding this rule text will make clear the manner in which ISE lists options.

The Exchange's proposal to add a new ISE Options 4, Section 5(j), which is identical to BX Options 4, Section 5(j) will align ISE's Rule with BX's Rule and provide context on permissible intervals. Additionally, the proposal to add a new ISE Options 4, Section 5(k), which is identical to BX Options 4, Section 5(k), will align ISE's Rule with BX's Rule and provide a cross-citation to the appropriate range limitation rule.

The proposal to remove Supplementary Material .04 to ISE Options 5, Section 4 as this cross reference to the Mini-Nasdaq-100 Index (''MNX'' or ''Mini-NDX'') is not necessary as this product is discussed within Options 4A, Section 12(c)(5). This amendment is non-substantive.

The Exchange believes that the proposed amendments are consistent with the Act and the protection of investors and the general public because the amendments bring greater clarity to ISE's listing rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are non-substantive and are intended to provide greater clarity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. As the proposed rule change raises no novel issues and promotes clarity and consistency within the Exchange's options listing rules, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[4] The Exchange proposes to relocate current Supplementary Material .02 to Options 4, Section 5 to new Options 4, Section 6, as described below.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2020–38 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–ISE–2020–38. 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–ISE–2020–38, and should be submitted on or before December 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25899 Filed 11–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90454; File No. SR–FINRA–2020–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Temporary Supplementary Material .17 (Temporary Relief To Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) Under FINRA Rule 3110 (Supervision)

November 18, 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 November 6, 2020, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision) to provide member firms the option, subject to specified requirements under the proposed supplementary material, to complete remotely their calendar year 2020 and calendar year 2021 inspection obligations under FINRA Rule 3110(c) (Internal Inspections), without an on-site visit to the office or location.[4] The temporary rule change is necessitated by the compelling health and safety concerns and the operational challenges member firms are facing due to the sustained COVID–19 pandemic.[5]

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are bracketed.

* * * * *

3000. Supervision and Responsibilities Relating to Associated Persons

3100. Supervisory Responsibilities

3110. Supervision

(a) through (f) No Change

• • • **Supplementary Material**

.01 through .16 No Change

.17 Temporary Relief To Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021

(a) Use of Remote Inspections. Each member obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location in calendar year 2020 and calendar year 2021 pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under Rule 3110 may, subject to the requirements of this Rule 3110.17, satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Rule 3110.16, inspections for calendar year 2020 must be completed on or before March 31, 2021 and inspections for

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] SEC staff and FINRA have stated in guidance that inspections must include a physical, on-site review component. *See* SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) and *Regulatory Notice* 11–54 (November 2011) (''*Notice* 11–54'') (joint SEC and FINRA guidance stating, a ''broker-dealer must conduct on-site inspections of each of its office locations; Office of Supervisory Jurisdictions (''OSJs'') and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.'') (footnote defining an OSJ omitted). *See also* SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (''SLB 17'') (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or ''for cause'' inspections of those offices).

[5] The proposed rule change will automatically sunset on December 31, 2021. If FINRA seeks to extend the duration of the temporary proposed rule beyond December 31, 2021, FINRA will submit a separate rule filing to further renew the temporary relief.

calendar year 2021 must be completed on or before December 31, 2021. Notwithstanding Rule 3110.17, a member shall remain subject to the other requirements of Rule 3110(c).

(b) Written Supervisory Procedures for Remote Inspections. Consistent with a member's obligation under Rule 3110(b)(1), a member that elects to conduct each of its calendar year 2020 or calendar year 2021 inspections remotely must amend or supplement its written supervisory procedures to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations, and with applicable FINRA rules. Reasonably designed procedures for conducting remote inspections of offices or locations should include, among other things: (1) A description of the methodology, including technologies permitted by the member, that may be used to conduct remote inspections; and (2) the use of other risk-based systems employed generally by the member firm to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable FINRA rules.

(c) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the member's overall obligation to have an effective supervisory system and therefore, the member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely. A member's use of a remote inspection of an office or location will be held to the same standards for review as set forth under Rule 3110.12. Where a member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (i.e., ''red flags''), the member may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis when the member's operational difficulties associated with COVID–19 abate, nationally or locally as relevant, and the challenges a member is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts. The temporary relief provided by this Rule 3110.17 does not extend to a member's inspection requirements beyond calendar year 2021 and such inspections must be conducted in compliance with Rule 3110(c).

(d) Documentation Requirement. A member must maintain and preserve a centralized record for each of calendar year 2020 and calendar year 2021 that separately identifies: (1) All offices or locations that had inspections that were conducted remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in Rule 3110.17(c). A member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 13, 2020 the United States declared a national emergency in response to the pandemic.[6] Around this time, many states issued stay-at-home orders and imposed restrictions on businesses, social activities, and travel to slow the spread of COVID–19 and reduce the burden on the U.S. health care system in accordance with the recommendations of public health experts.[7] In response, like many employers across the U.S., member firms closed their offices to the public, transitioned their employees to telework arrangements to comply with stay-at-home orders, and implemented other restrictive measures in an effort to slow the spread of COVID–19 such as curtailing or eliminating non-essential business travel, and significantly limiting or canceling in-person activities.[8] These pandemic-related operational changes have made it impracticable for member firms to conduct the on-site inspection component of Rule 3110(c) at many or most locations for calendar year 2020 because this compliance function requires firm employees to travel to geographically dispersed OSJs, branch offices, and non-branch locations. Such travel not only has been restricted at times by government orders, but also puts the health and safety of employees at great risk of contracting and spreading COVID–19.[9] By mid-year, with many restrictive measures still in place, and in some instances additional quarantine requirements imposed on interstate travel, on-site inspections of offices or locations scheduled for calendar year 2020 continued to remain in abeyance.[10] In recognition of the logistical challenges firms were facing at that time to satisfy the on-site regulatory component of Rule 3110(c), FINRA adopted Rule 3110.16 (Temporary Extension of Time to Complete Office Inspections), extending the time by which member firms must complete

[6] *See* Centers for Disease Control and Prevention (''CDC''), International Classification of Diseases, Tenth Revision, Clinical Modification, *https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-code-for-coronavirus-3-18-2020.pdf. See also* WHO Director-General, Opening Remarks at the Media Briefing on COVID–19 (March 11, 2020), *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.*

[7] *See* S.J. Lange et al., Potential Indirect Effects of the COVID–19 Pandemic on Use of Emergency Departments for Acute Life-Threatening Conditions—United States, January–May 2020, Morbidity and Mortality Weekly Report (June 26, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6925e2.htm.*

[8] *See generally Regulatory Notice* 20–16 (May 2020) (''*Notice* 20–16'') (describing practices implemented by firms to transition to, and supervise in, remote work environment during the COVID–19 pandemic).

[9] *See* CDC, Travel During the COVID–19 Pandemic (stating in part, ''Travel increases your chance of getting and spreading COVID–19. Staying home is the best way to protect yourself and others from COVID–19.''), *https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html* (updated October 21, 2020).

[10] *See, e.g.,* Government of the District of Columbia, Phase Two (June 22, 2020) (announcing certain businesses to reopen and activities to resume under specified conditions and stating that anyone coming into Washington, DC from states specified as high-risk is required to self-quarantine for 14 days), *https://coronavirus.dc.gov/phasetwo* (last visited November 6, 2020); New York Department of Health, Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel (November 3, 2020), available at *https://coronavirus.health.ny.gov/covid-19-travel-advisory* (last visited November 6, 2020); and Chicago Department of Public Health, Emergency Travel Order (issued July 2, 2020) (directing travelers entering or returning to Chicago from specified states experiencing a surge in new COVID–19 cases to quarantine for a 14-day period from the time of last contact within the identified state), *https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travel-order.html* (updated October 27, 2020).

their calendar year 2020 inspection obligations under Rule 3110(c) to March 31, 2021, but emphasizing that the extension of time did not relieve firms from conducting the on-site portion of the inspections of their OSJs, branch offices, and non-branch locations.[11]

The acute health and safety concerns related to COVID–19 persist, with the number of confirmed cases of COVID–19 in the U.S. continuing to rise since March 13, 2020.[12] While firms have continued to supervise OSJs, branch offices, and non-branch locations by, among other things, implementing remote supervisory practices through novel uses of technology as well as existing methods of supervision (*e.g.,* supervisory checklists, surveillance tools, incident trackers, email review, and trade exception reports),[13] firms are still experiencing logistical challenges related to conducting the on-site portion of their inspections due to continuing business and governmental restrictions and public health concerns.[14]

Based on feedback described in *Notice* 20–16, in comment letters submitted in response to File No. SR–FINRA–2020–019,[15] and through recent discussions with FINRA's advisory committees and other industry representatives, FINRA understands that since approximately March 2020, many firms have suspended the on-site component of their inspections scheduled for calendar year 2020. With no certainty as to when pandemic-related health concerns and restrictions will subside, firms will have a considerable backlog of 2020 inspections that may be difficult, if not impossible, to overcome on or before March 31, 2021, even if restrictions are lifted sometime between now and then. Moreover, FINRA recognizes that planning on-site inspections for calendar year 2021 for OSJs, branch offices, and non-branch locations in the current environment may now be impacted as well. In light of pandemic-related developments, including those since the adoption of Rule 3110.16, and the approaching end of year 2020, FINRA believes further sensible and tailored temporary relief is warranted for member firms to meet their inspection obligations under Rule 3110(c) for calendar years 2020 and 2021.

Proposed Supplementary Material .17 to Rule 3110

In order to proactively address these concerns, FINRA is proposing to adopt temporary Supplementary Material .17. Temporary proposed Supplementary Material .17 would provide member firms, subject to specified requirements therein, the option to conduct remotely the inspections of their OSJs, branch offices, and non-branch locations for calendar year 2020 and calendar year 2021, without the requirement to conduct an on-site visit to such office or location. As described further below, proposed Rule 3110.17 would set forth the dates by which inspections for calendar years 2020 and 2021 are due, the requirement to amend or supplement written supervisory procedures for remote inspections, the use of remote inspections as part of an effective supervisory system, and documentation requirements. FINRA believes this temporary remote inspection option is a reasonable alternative to provide to firms to fulfill their Rule 3110(c) obligations during these pressing times, and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances.

The responsibility of firms to supervise their associated persons is a critical component of broker-dealer regulation.[16] The temporary proposed supplementary material is not intended to alter this core responsibility, embodied in Rule 3110, to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. The advent of technology and automation in the financial industry has significantly changed the way in which members and their associated persons conduct their business, communicate, and meet their regulatory obligations. FINRA recognizes that firms generally use an array of technological tools to facilitate their supervisory practices (*e.g.,* surveillance systems; electronic tracking programs or applications; electronic communications, including video conferencing tools), which many firms have leveraged to create and implement remote inspection plans, on a temporary basis, in response to pandemic-related operational challenges.[17] FINRA believes that proposed Rule 3110.17 would provide a sensibly tailored regulatory alternative for firms to fulfill their obligations under Rule 3110(c) that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements under these unique circumstances. FINRA further notes that the proposed relief would be limited in duration to align with the extended dates set forth under Rule 3110.16 of March 31, 2021 for calendar year 2020 inspections and December 31, 2021 for calendar year 2021 inspections.[18]

A. Deadlines To Complete Calendar Year 2020 Inspections and Calendar Year 2021 Inspections (Proposed Rule 3110.17(a))

Currently, Rule 3110(c)(1) provides that an inspection of an office or location must occur on a designated frequency, and the periodicity of the required inspection varies depending on the classification of the location or the nature of the activities that take place. OSJs and supervisory branch offices must be inspected at least annually (on a calendar-year basis); non-supervisory branch offices, at least every three years; and non-branch locations, on a periodic schedule, presumed to be at least every three years.[19] Under Rule 3110.16, firms have until March 31, 2021 to complete their calendar year 2020 inspections in accordance with the current requirements of Rule 3110(c) that include physical, on-site inspections.[20]

Proposed Rule 3110.17(a) would provide that a member firm that is obligated to conduct an inspection of an OSJ, branch office or non-branch location in calendar year 2020 and calendar year 2021 pursuant to the applicable periodicity set forth under

[11] *See* Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No SR–FINRA–2020–019) (stating, among other things, that FINRA will consider whether additional relief may be warranted to address any backlog of 2020 inspections that may continue to exist in light of ongoing public health and safety concerns).

[12] *See* Johns Hopkins, Coronavirus Resource Center, COVID–19 Dashboard by the Center for Systems Science and Engineering at Johns Hopkins University, *https://coronavirus.jhu.edu/map.html* (last visited November 6, 2020).

[13] *See Notice* 20–16.

[14] *See supra* note 10.

[15] *See* Submitted Comments to Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No SR–FINRA–2020–019), *https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019.htm.*

[16] *See* SLB 17. *See also Notice* 11–54 and *Notice to Members* 98–38 (May 1998) (''*Notice* 98–38'').

[17] *See Notice* 20–16. *See generally* FINRA White Paper, ''Technology Based Innovations for Regulatory Compliance (''RegTech'') in the Securities Industry'' (September 2018) (reporting, among other things, that as financial services firms seek to keep pace with regulatory compliance requirements, they are turning to new and innovative regulatory tools to assist them in meeting their obligations in an effective and efficient manner), *https://www.finra.org/sites/default/files/2018_RegTech_Report.pdf.*

[18] *See supra* note 5.

[19] *See generally* Rule 3110(c)(1) and Rule 3110.13 (General Presumption of Three-Year Limit for Periodic Inspection Schedules).

[20] *See supra* note 4.

Rule 3110(c)(1) may satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location subject to the other requirements set forth under the proposed supplementary material. In addition, the proposed supplementary material would expressly provide that in accordance with Rule 3110.16, inspections for calendar year 2020 must be completed on or before March 31, 2021 and inspections for calendar year 2021 must be completed on or before December 31, 2021. FINRA believes that providing firms with the option to satisfy the inspection component of Rule 3110(c) remotely would enable firms to finish their 2020 inspections on or before March 31, 2021, and their upcoming 2021 inspections on or before December 31, 2021, particularly given the uncertainty surrounding planning inspections at this time. Further, proposed Rule 3110.17(a) would affirm that notwithstanding Rule 3110.17, a member would remain subject to the other requirements of Rule 3110(c).[21]

B. Written Supervisory Procedures for Remote Inspections (Proposed Rule 3110.17(b))

FINRA has long emphasized that member firms have a fundamental obligation to implement a supervisory system that is tailored specifically to the member firm's business and addresses the activities of all its associated persons.[22] As part of an effective supervisory system, a member must establish and maintain written procedures.[23] Paragraph (1) (General Requirements) under Rule 3110(b) (Written Procedures) provides that a member must establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

To underscore the importance of this existing requirement in the context of remote inspections, proposed Rule 3110.17(b) would expressly provide that consistent with a member's obligation under Rule 3110(b)(1), a member that elects to conduct each of its calendar year 2020 or calendar year 2021 inspections remotely must amend or supplement its written supervisory procedures to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations, and with applicable FINRA rules. Under proposed Rule 3110.17(b), reasonably designed procedures for conducting remote inspection of offices or locations should include, among other things, a description of the methodology, including technologies permitted by the member, that may be used to conduct remote inspections. In addition, such procedures should include the use of other risk-based systems employed generally by the member firm to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable FINRA rules.[24]

C. An Effective Supervisory System (Proposed Rule 3110.17(c))

Internal inspections are a critical component of a member's fundamental obligation under Rule 3110 to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.[25] Proposed Rule 3110.17(c) would expressly affirm this principle that the requirement to conduct inspections of offices and locations is one part of the member's overall ongoing obligation to have an effective supervisory system and therefore, a member must continue with its reviews of the activities and functions occurring at all offices and locations whether or not such offices or locations are due for an inspection under Rule 3110(c) in a given year, and the member's election to conduct such inspections remotely. In addition, under the proposed supplementary material, a member's remote inspection of an office or location, like the traditional on-site inspection, would be held to the same standards for review as set forth under Rule 3110.12 (Standards for Reasonable Review).[26] Further, in accordance with this obligation, proposed Rule 3110.17(c) would provide that where a member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (*i.e.,* ''red flags''),[27] the member may need to impose additional supervisory

[21] In addition to requiring firms to conduct inspections of their offices and locations on a designated frequency, Rule 3110(c) generally requires a member to retain a written record of the date upon which each review and inspection occurred, reduce a location's inspection to a written report and keep each inspection report on file either for a minimum of three years or, if the location's inspection schedule is longer than three years, until the next inspection report has been written. If applicable to the location being inspected, the inspection report must include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures, in specified areas. *See* Rule 3110(c)(2). In addition, to prevent compromising the effectiveness of inspections due to conflicts of interest, the rule requires a member to ensure that the person conducting the inspection is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to that location. *See* Rule 3110(c)(3).

[22] *See Notice to Members* 99–45 (June 1999) (''*Notice* 99–45''); *see generally Regulatory Notice* 18–15 (April 2018).

[23] *See* Rule 3110(a)(1).

[24] Offices or locations that may present a higher risk profile would include, for example, those that have associated persons engaging in activities that involve handling customer funds or securities, maintaining books and records as described under applicable federal securities laws and FINRA rules, order execution or other activities that may be more susceptible to higher risks of operational or sales practice wrongdoing, or have associated persons assigned to an office or location who may be subject to additional or heightened supervisory procedures.

[25] *See* SLB 17 (stating, in part, ''Inspections are a vital component of a supervisory system.'').

[26] Rule 3110.12 provides: ''In fulfilling its obligations under Rule 3110(c), each member must conduct a review, at least annually, of the businesses in which it engages. The review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with FINRA rules. Each member shall establish and maintain supervisory procedures that must take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of the firm's offices, the nature and complexity of the products and services offered by the firm, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of registered representatives or associated persons, and any indicators of irregularities or misconduct (*i.e.,* ''red flags''), etc. The procedures established and reviews conducted must provide that the quality of supervision at remote locations is sufficient to ensure compliance with applicable securities laws and regulations and with FINRA rules. A member must be especially diligent in establishing procedures and conducting reasonable reviews with respect to a non-branch location where a registered representative engages in securities activities. Based on the factors outlined above, members may need to impose reasonably designed supervisory procedures for certain locations or may need to provide for more frequent reviews of certain locations.''

[27] Red flags that suggest the increased risk or occurrence of violations may include, among other events: Customer complaints; an unexplained increase or change in the types of investments or trading concentration that a representative is recommending or trading; an unexpected improvement in a representative's production, lifestyle, or wealth; questionable or frequent transfers of cash or securities between customer or third party accounts, or to or from the representative; a representative that serves as a power of attorney, trustee or in a similar capacity for a customer or has discretionary control over a customer's account(s); representative with disciplinary records; customer investments in one or a few securities or class of securities that is inconsistent with firm policies related to such investments; churning; trading that is inconsistent with customer objectives; numerous trade corrections, extensions, liquidations; or significant switching activity of mutual funds or variable products held for short time periods. *See generally* SLB 17. *See also Notice* 98–38 and *Notice* 99–45.

procedures for that office or location, or may need to provide for more frequent monitoring or oversight of that office or location, or both, including potentially a subsequent physical, on-site visit on an announced or unannounced basis when the member's operational difficulties associated with COVID–19 meetings abate, nationally or locally as relevant, and the challenges the member is facing in light of the public health and safety concerns make such physical, on-site visits feasible, using reasonable best efforts.

Finally, to underscore the limited duration of proposed Rule 3110.17, the proposed supplementary material expressly states that the temporary relief would not extend to a member's inspection requirements beyond calendar year 2021 and that such inspections must be conducted in compliance with Rule 3110(c).

D. Documentation Requirement (Proposed Rule 3110.17(d))

In general, Rule 3110(c)(2) describes the documentation requirements associated with conducting internal inspections. The rule requires a member to reduce the inspection and review conducted under Rule 3110(c)(1) to a written report and specifies how long the member must keep the report on file.[28] If applicable to the location being inspected, Rule 3110(c)(2)(A) specifies that the inspection report must include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures for: (1) Safeguarding of customer funds and securities; (2) maintaining books and records; (3) supervision of supervisory personnel; (4) transmittals of funds from customers to third party accounts, from customer accounts to outside entities, from customer accounts to locations other than a customer's primary residence, and between customers and registered representatives, including the hand-delivery of checks; and (5) changes of customer account information, including address and investment objectives changes, and validation of such changes.[29]

In addition to the requirements under Rule 3110(c)(2), proposed Rule 3110.17(d) would require supplemental documentation by a member that avails itself of the remote inspection option. The member must maintain and preserve a centralized record for each of calendar year 2020 and calendar year 2021 that separately identifies: (1) All offices or locations that had inspections that were conducted remotely; and (2) any offices or locations that the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in Rule 3110.17(c). A member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection. FINRA believes that this documentation requirement would help readily distinguish the offices and locations that underwent remote inspections and their attendant supervisory procedures, and their more frequent monitoring, as applicable.

FINRA notes that even in the current environment, member firms have an ongoing obligation to establish and maintain a system to supervise the activities of their associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA emphasizes that proposed Rule 3110.17 is not intended to lessen the core obligations prescribed under Rule 3110. FINRA believes that proposed Rule 3110.17, which would permit firms to remotely inspect, subject to specified requirements described above, their offices and locations for calendar years 2020 and 2021 instead of an on-site visit to the office or location would provide firms a way to comply with Rule 3110(c) that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements under these unique circumstances. FINRA notes that potential risks that may arise from providing firms the option to conduct their inspections remotely are mitigated by firms' use of technology to meet their supervisory obligations on an ongoing basis, the unique circumstances under which they are operating, and the temporary nature of proposed Rule 3110.17, which would be in place through December 31, 2021.[30] FINRA will continue to monitor the situation and engage with member firms, other financial regulators, and governmental authorities to determine whether further regulatory relief or guidance related to Rule 3110(c) may be appropriate. In addition, during the time that proposed Rule 3110.17 remains in effect, FINRA will closely monitor the effectiveness of remote inspections and their impacts—positive or negative—on firms' overall supervisory systems to assess whether FINRA should propose to make permanent a remote inspection option for some or all locations that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the requirement to inspect offices or locations in accordance with Rule 3110(c).[31]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In recognition of the impact of COVID–19 on performing the on-site inspection component of Rule 3110(c), the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely for calendar year 2020 in accordance with Rule 3110.16, and for calendar year 2021. This temporary proposed supplementary material does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID–19 pandemic, FINRA believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

[28] *See supra* note 21.

[29] *See* Rule 3110(c)(2)(A)(i)–(v).

[30] *See supra* note 5.

[31] In *Regulatory Notice* 17–38 (November 2017) (''*Notice* 17–38''), FINRA had requested comment on a proposed permanent amendment to Rule 3110 that had contemplated providing firms with the option to conduct remote inspections of ''qualifying offices'' that met specified criteria. At this time, FINRA intends to defer further consideration of the proposal described in Notice 17–38 and will reassess that proposal in light of the experience with and impacts of temporary proposed Rule 3110.17.

[32] 15 U.S.C. 78*o*–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended solely to provide temporary relief given the impacts of the COVID–19 pandemic crisis.[33] As a result of the temporary nature of the proposed relief, an abbreviated economic impact assessment is appropriate.

Economic Impact Assessment

1. Regulatory Objective

FINRA is proposing Rule 3110.17 to address an issue that has arisen due to the impacts of the coronavirus outbreak and restrictions related to health and safety concerns. As pandemic-related health and safety concerns persist across the U.S., firms are continuing to face operational challenges with respect to fulfilling the on-site review component of Rule 3110(c). These challenges persist even with the extended date set forth under Rule 3110.16 to complete calendar year 2020 inspections. In addition, as the end of year 2020 is approaching, planning efforts for the on-site component of year 2021 inspections have also likely been impacted.

Proposed Rule 3110.17 is intended to provide firms a sensibly tailored and temporary regulatory accomodation to fulfill their Rule 3110(c) obligation remotely for calendar year 2020 in accordance with Rule 3110.16 and for calendar year 2021, that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the requirement to inspect offices or locations in accordance with Rule 3110(c). Such accommodation is needed given the current pandemic-related limitations that still remain in place across the U.S. The temporary proposed rule change would permit firms to continue to comply with stay-at-home orders imposed in various states, and limit business travel and other in-person activities for the health and safety of their employees.

2. Economic Baseline

The Economic Baseline of the proposed temporary relief is the obligation under Rule 3110(c), as described above, and the current number and types of FINRA member locations that require on-site internal inspections.

3. Economic Impact

FINRA initially believes that economic impacts of the proposal would result in both benefits and costs to firms that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the requirement to inspect offices or locations in accordance with Rule 3110(c). FINRA will undertake an evaluation of the efficacy of remote inspections within a reasonable period following the implementation date. The aim of such an evaluation is to ensure that the program is meeting its goals, without materially diminishing investor protections or unintentially increasing regulatory burdens on any relevant parties.

The temporary proposed relief is expected to benefit firms by potentially reducing the costs and health-related risks and constraints associated with conducting on-site inspections of offices or locations. These benefits may also include reduced travel costs and lost productivity during travel, as well as avoiding the health and safety risks associated with on-site inspections in the current environment. Firms will be able to better manage any backlog of 2020 inspections that may continue to exist in light of ongoing public health and safety, and upcoming 2021 inspection planning efforts.

In addition to the public safety-related aspects of the temporary proposed rule change, the ability to conduct remote inspections may free up firm resources that could potentially be allocated to other risk monitoring and mitigating programs. For example, firms might improve existing technologies and capabilities or invest in new ones. This could provide long-term benefits by further enhancing a firm's ability to fulfill its ongoing obligation to have an effective supervisory system that includes reviewing the activities and functions occurring at all offices and locations. The proposed rule change may also provide the opportunity for a firm to enhance its risk management programs, and assess the effectiveness of remote inspections and impacts on the firm's supervisory systems. Finally, FINRA preliminarily believes that the temporary proposed rule change would benefit the investor community. Such benefits would stem from the application of a remote monitoring and supervisory system on the firm's activities taking place at the offices and locations, despite the travel restrictions and resulting inability to conduct on-site inspections during the pandemic.

FINRA believes that the temporary proposed rule change would not result in additional significant cost burdens on firms. FINRA recognizes that there may be some firms that have already incurred, or will incur short-term increased costs derived mainly from having to shift to the remote work environment (*e.g.,* relying more on electronic formats and purchasing new hardware and software). FINRA anticipates firms would incur some costs stemming from the proposed documentation requirements. FINRA believes that costs stemming from the need to aggregate branch and office reports of additional supervisory procedures or more frequent monitoring into a centralized record should be minimal, relying on existing firm infrastructure and compliance systems. FINRA additionally believes that the proposed requirement to maintain a centralized record may require firms to incur technology costs to generate such record and could also result in firms being more focused on any additional supervisory procedures or more frequent monitoring that may be imposed on a location or office.

Overall, FINRA believes that the proposal provides a balanced approach to the potential costs and benefits. As noted above, the proposed rule change would be limited in time, and cover the inspection cycles of calendar year 2020 and 2021, or until the conclusion of any extension thereof.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[34] and Rule 19b–4(f)(6) thereunder.[35]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not

[33] *See also Regulatory Notice* 20–08 (March 2020).

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, the ongoing extenuating circumstances of the COVID–19 pandemic make it impractical for FINRA member firms to conduct the on-site inspection component of Rule 3110(c) at many or most locations. Consequently, FINRA believes that firms will have a considerable backlog of 2020 inspections and that planning on-site inspections for 2021 may be impacted as well. FINRA stated that the temporary proposed rule change would help FINRA member firms meet their obligations under Rule 3110(c) using a regulatory alternative that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements under these unique circumstances.

The Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest because it would allow the proposed change to become operative on the date of filing and to provide immediate temporary relief to firms during these extenuating circumstances. In reaching this conclusion, the Commission notes the proposed rule change would provide only temporary relief based on the compelling health and safety concerns and the operational challenges member firms are facing due to the sustained COVID–19 pandemic.[36] Furthermore, the Commission notes that the proposed rule change would not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[37]

[36] *See supra* note 5.

[37] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–040 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2020–040. 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 filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2020–040 and should be submitted on or before December 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25902 Filed 11–23–20; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–177, OMB Control No. 3235–0177]

Proposed Collection; Comment Request

Extension:

Rule 6e–2 and Form N–6EI–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 6e–2 (17 CFR 270.6e–2) under the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a) is an exemptive rule that provides separate accounts formed by life insurance companies to fund certain variable life insurance products, exemptions from certain provisions of the Act, subject to conditions set forth in the rule.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8(a) of the Act if the account files with the Commission Form N–6EI–1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements (in the case of those separate accounts that elect to register), reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Since 2008, there have been no filings of Form N–6EI–1 by separate accounts. Therefore, there has been no cost or burden to the industry since that time. The Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 18, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25895 Filed 11–23–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11265]

Designation of Maalim Ayman as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and Executive Order 13886 of September 9, 2019, I hereby determine that the person known as Maalim Ayman, also known as Ma'alim Ayman, also known as Mo'alim Ayman, also known as Nuh Ibrahim Abdi, also known as Abdiaziz Dubow Ali, also known as Ayman Kabo, is a leader of al-Shabaab, a group whose property and interests in property are blocked pursuant to a prior determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 9, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–25861 Filed 11–23–20; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11266]

Designation of Abdullahi Osman Mohamed as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and Executive Order 13886 of September 9, 2019, I hereby determine that the person known as Abdullahi Osman Mohamed, also known as Engineer Ismail, also known as Abdullahi Osman, also known as Imran, also known as Sharmaki, also known as Thaqafi, also known as Dhega Adde, is a leader of al-Shabaab, a group whose property and interests in property are blocked pursuant to a prior determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 9, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–25862 Filed 11–23–20; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No 2020–0260]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Verification of Authenticity of Foreign License, Rating, and Medical Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on 4/15/2020. The collection involves information used to identify foreign airmen in order to allow the agency to verify their foreign license when used to qualify for a U.S. certificate. Respondents are holders of foreign licenses wishing to obtain U.S. Certificates.

DATES: Written comments should be submitted by December 24, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Margaret A Hawkins by email at: *Margaret.A.Hawkins@faa.gov;* phone: 1–405–954–7045.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0724.

Title: Verification of Foreign License, Rating and Medical Certification.

Form Numbers: Form 8060–71.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on 04/15/2020 (85 FR 21061). The information collected is used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of a foreign license wishing to obtain a U.S. certificate. A person who is applying for a U.S. pilot certificate or rating on the basis of a foreign pilot license must apply for verification of that license at least 90 days before arriving at the designated FAA FSDO where the applicant intends to receive the U.S. pilot certificate.

Respondents: Approximately 8,700 foreign applicants for U.S. certificates annually.

Frequency: On occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 1,450 Hours.

Issued in Oklahoma City, OK, on November 19, 2020.

Margaret A. Hawkins,

Compliance Specialist, Forms Manager, Airmen Certification Branch, AFB–720.

[FR Doc. 2020–25938 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0213; FMCSA–2015–0323]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ‘‘no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.’’ The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0213* or *http://www.regulations.gov/docket?D=FMCSA-2015-0323* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On September 16, 2020, FMCSA published a notice announcing its decision to renew exemptions for seven individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (85 FR 57930). The public comment period ended on October 16. 2020, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received one comment that was outside the scope of this preceding.

IV. Conclusion

Based on its evaluation of the seven renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of September and are discussed below.

As of September 9, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Mark Anderson (NC)
Jeremy Bradford (AL)
Jeffrey B. Green (CA)

The drivers were included in docket number FMCSA–2015–0323. Their exemptions were applicable as of September 9, 2020, and will expire on September 9, 2022.

As of September 16, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Lee H. Anderson (MA)

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[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Gary Combs, Jr. (KY)
Roland Mezger (PA)
Robert Thomas, Jr. (NC)

The drivers were included in docket number FMCSA–2014–0213. Their exemptions were applicable as of September 16, 2020, and will expire on September 16, 2022.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–25888 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0169]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption from J.J. Keller & Associates, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant the application of J. J. Keller & Associates, Inc. (J. J. Keller) for a limited five-year exemption to allow its Advanced Driver Assistance Systems (ADAS) camera to be mounted lower in the windshield on commercial motor vehicles (CMV) than is currently permitted. The Agency has determined that lower placement of the ADAS camera would not have an adverse impact on safety and that adherence to the terms and conditions of the exemption would likely achieve a level of safety equivalent to, or greater than, the level of safety provided by the regulation.

DATES: This exemption is effective November 24, 2020 and will end November 24, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations. The online Federal document management system is available 24 hours a day, 365 days a year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

J. J. Keller's Application for Exemption

J. J. Keller applied for an exemption from 49 CFR 393.60(e)(1) to allow its ADAS cameras to be mounted lower in the windshield than is currently permitted by the Agency's regulations to optimize the functionality of the camera system. A copy of the application is included in the docket referenced at the beginning of this notice.

In its application, J. J. Keller states that the functionality of its camera now includes the ability to provide following distance warnings, lane departure warnings, monitoring of posted speed limit and stop sign abidance, detection of driver drowsiness, and use of cell phones and seat belts and that these features will increase safety. J. J. Keller notes that it piloted the devices' functionality, and found that there was no significant obstruction to the driver's normal sightlines to the road ahead, highway signs and signals, or any mirrors.

The camera housing is approximately 91.5 mm (3.6 inches) tall by 123.5 mm (4.86 inches) wide, and will be mounted in the approximate center of the windshield with the bottom edge of the camera housing approximately 8 inches below the upper edge of the area swept by the windshield wipers. The camera will be mounted outside the driver's normal sight lines to the road ahead, signs, signals and mirrors. This location will allow for optimal functionality of the safety features supported by the camera.

Without the proposed exemption, J. J. Keller states that its clients (1) will not be able to install these devices in an optimal location on the windshield to maximize the effectiveness of the ADAS safety features, and (2) could be fined for violating current regulations. The exemption would apply to all CMVs equipped with J. J. Keller's ADAS camera mounted on the windshield. J. J. Keller believes that mounting the ADAS camera system as described will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Comments

FMCSA published a notice of the application in the **Federal Register** on August 13, 2020 and asked for public comment (85 FR 49416). The Agency received comments from the National Private Truck Council (NPTC), Wisconsin Motor Carriers Association (WMCA), and 72 individuals. The (NPTC) supported the exemption application, noting that the J. J. Keller ADAS camera is designed to provide such features as: Following distance warnings; lane departure warnings; monitoring of posted speed limits; compliance with stop signs; and detection of driver drowsiness, use of cell phones, seat belts, and food and drink while in the cab. NPTC stated that these features promote beneficial safety practices and are of interest to NPTC member companies. The Wisconsin Council of Safety Supervisors, a subdivision of the WMCA, composed of safety and personnel supervisors from regulated for-hire and private motor carriers, unanimously voted at its most recent meeting to support the J. J. Keller petition, citing the safety benefits and referencing similar FMCSA exemptions granted to other ADAS camera technology suppliers. Seventy-two individuals provided comments on the J. J. Keller application, with some arguing that the driver-facing portion of the ADAS camera could present a distraction to the driver. Some commenters also expressed concern that the camera could create a visual blind spot that may obstruct the driver's view of traffic and traffic signs and signals in certain driving situations.

FMCSA Decision

FMCSA has evaluated the J. J. Keller exemption application. The ADAS camera system housing is approximately 3.6 inches tall, and is mounted near the top of the center of the windshield, with the bottom of the camera housing located approximately 8 inches below the top of the area swept by the windshield wipers. The camera needs to be mounted in this location for optimal functionality of the ADAS system. The desired optimal functionality and the relative size of the camera system precludes mounting it (1) higher in the windshield, and (2) within 4 inches from the top of the area swept by the windshield wipers to comply with § 393.60(e)(1)(ii)(A).

The Agency believes that granting the temporary exemption to allow placement of the ADAS camera lower than currently permitted by Agency regulations will likely provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) based on the information available, there is no indication that the ADAS camera would obstruct drivers' views of the roadway, highway signs and signals, and surrounding traffic; (2) generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver and any impairment of available sight lines would be minimal; and (3) the mounting location where the bottom of the ADAS camera housing will not exceed 8 inches below the upper edge of the area swept by the windshield wipers outside the driver's and passenger's normal sight lines to the road ahead, highway signs and signals, and all mirrors, will be reasonable and enforceable at roadside. In addition, the Agency believes the use of the ADAS camera by fleets is likely to improve the overall level of safety for the motoring public.

This action is consistent with the following previously issued Agency actions permitting the placement of similarly-sized devices on CMVs outside the driver's sight lines to the road, and highway signs and signals: Samsara Networks, Inc. 85 FR 68409 (Oct. 28, 2020), Nauto Inc. 85 FR 64220 (Oct. 9, 2020), Lytx Inc. 85 FR 30121 (May 21, 2020), and Navistar Inc. 84 FR 64952 (Nov. 25, 2019). FMCSA is unaware of any evidence showing that installation of other vehicle safety technologies mounted on the interior of the windshield has resulted in any degradation in safety.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning November 24, 2020 and ending November 24, 2025. During the temporary exemption period, motor carriers will be allowed to operate CMVs equipped with J. J. Keller's ADAS camera in the approximate center of the top of the windshield and such that the bottom edge of the camera housing is approximately 8 inches below the upper edge of the area swept by the windshield wipers, outside of the driver's and passenger's normal sight lines to the road ahead, highway signs and signals, and all mirrors. The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating CMVs equipped with J. J. Keller's ADAS camera are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–25889 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0444; FMCSA–2014–0212; FMCSA–2015–0321; FMCSA–2018–0051; FMCSA–2018–0052; FMCSA–2018–0053]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for nine individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2013–0444, FMCSA–2014–0212, FMCSA–2015–0321, FMCSA–2018–0051, FMCSA–2018–0052, or FMCSA–2018–0053, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On August 17, 2020, FMCSA published a notice announcing its decision to renew exemptions for nine individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (85 FR 50064). The public comment period ended on September 16, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the nine renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of August and are discussed below.

As of August 1, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (85 FR 50064):

Brian Checkley (NJ)
Steven Ford (WI)
Paul Gomez (CA)
Thomas Ork (NY)
Milton Tatham (NV)
Phillip Moore (CT)
Joshua Thomas (MN)
Troy Nichols (TX)

The drivers were included in docket number FMCSA–2013–0444, FMCSA–2015–0321, FMCSA–2018–0051, FMCSA–2018–0052, and FMCSA–2018–0053. Their exemptions were applicable as of August 1, 2020, and will expire on August 1, 2022.

As of August 28, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (85 FR 50064):

Terry Hamby (NC)

This driver was included in docket number FMCSA–2014–0212. The exemption was applicable as of August 28, 2020, and will expire on August 28, 2022.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–25886 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–29]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On August 26, 2020, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before December 24, 2020.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Qiana Swayne, Information Collection Clearance Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493–0414) or *Qiana.Swayne@dot.gov.*

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On August 26, 2020, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 85 FR 52657. FRA received no comments in response to this 60-day notice.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.10(b); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Workforce Development Survey.

OMB Control Number: 2130–0621.

Abstract: FRA has statutory responsibility to ensure the safety of railroad operations under 49 U.S.C. 20103. To conduct safe railroad operations, the workforce must have the requisite knowledge and skills to operate equipment and utilize technologies. FRA therefore seeks to promote workforce development policy and standards to ensure the workforce has the necessary knowledge and skills to conduct safe railroad operations. Due to an increasingly dynamic and maturing workforce, combined with continual changes in knowledge and skills required to use new technologies, there is an increasing risk of not having the necessary talent pools to fill critical railroad operational positions.

Since 2011, FRA has routinely performed a comprehensive overview of the railroad industry workforce. The Railroad Industry Modal Profile was a response to the DOT National Transportation Workforce Development Initiative that required each DOT Operating Administration to produce an analysis of its industry workforce. The most recent published update in April 2016, Railroad Industry Modal Profile: An Outline of the Railroad Industry Workforce Trends, Challenges, and Opportunities, highlighted numerous workforce challenges including age, diversity, knowledge management and succession planning, work-life balance, recruitment, and the impact of evolving technology.

The prevailing workforce concerns during the early stages of the DOT National Transportation Workforce Development Initiative were the large number of retirement-eligible employees in transportation-related fields and the national shortage of science, technology, engineering, and math graduates. Because the railroad industry had done very little hiring in the late 1980s and throughout most of the 1990s, the retirement-eligible population became quite large, even beyond that of most other industries and transportation modes (each of which was also grappling with similar retirement population concerns).

These workforce challenges persist. Although the industry has recognized the need to focus on recruitment and retention strategies, it continues to face risks in maintaining a viable workforce and building a pipeline of diverse talent. To take effective and efficient action to minimize these risks, FRA requires reliable information on current workforce development challenges, strategies, and outcomes. Initial data collected for the Railroad Industry Modal Profile established a baseline understanding of the risks and status. However, to confirm and further develop the understanding of the risks, potential solutions, and best practices that have been implemented by railroad stakeholders, this revised survey is proposed. With this submission, FRA is requesting permission to gather the needed information about the railroad industry workforce.

Type of Request: Extension without Change.

Affected Public: Class I freight and passenger railroads, short line and regional railroads, labor unions, major associations, academia, and specialty experts.

Form(s): FRA F 240.

Respondent Universe: 847.

Frequency of Submission: One-time.

Total Estimated Annual Responses: 213.

Total Estimated Annual Burden: 88.75 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $3,637.86.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct or sponsor a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–25916 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of calendar year 2021 random drug and alcohol testing rates.

SUMMARY: This notice announces the calendar year 2021 drug and alcohol random testing rates for employers subject to 49 CFR part 655. The minimum random drug testing rate will remain at 50 percent, and the random alcohol testing rate will remain at 10 percent.

DATES: *Applicable Date:* January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Iyon Rosario, Drug and Alcohol Program Manager in the Office of Transit Safety and Oversight, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–366–2010 or email: *Iyon.Rosario@dot.gov*).

SUPPLEMENTARY INFORMATION: On January 1, 1995, FTA required large transit employers to begin drug and alcohol testing of employees performing safety-sensitive functions, and to submit annual reports by March 15 of each year beginning in 1996, pursuant to drug and alcohol regulations adopted by FTA at 49 CFR parts 653 and 654 in February 1994. The annual report includes the number of employees who had a verified positive test for the use of prohibited drugs, and the number of employees who tested positive for the misuse of alcohol during the reported year. Small employers commenced the required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997.

FTA updated the testing rules by merging them into a new 49 CFR part 655, effective August 1, 2001 (66 FR 42002). The regulation maintains a random testing rate for prohibited drugs at 50 percent and the misuse of alcohol at 10 percent, which the Administrator may lower if the violation rates drop below 1.0 percent for drug testing and 0.5 percent for alcohol testing for two consecutive years. Accordingly, in 2007, FTA reduced the random drug testing rate from 50 percent to 25 percent (72 FR 1057, January 7, 2007). In 2018, however, FTA returned the random drug testing rate to 50 percent for calendar year 2019 based on verified industry data for calendar year 2017, which showed that the rate had exceeded 1 percent (83 FR 63812, December 12, 2018).

Pursuant to 49 CFR 655.45, the Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, in part, on the reported positive drug and alcohol violation rates for the entire public transportation industry. The information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by 49 CFR 655.72. To ensure the reliability of the data, the Administrator must consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates.

The position of Administrator is vacant. The Deputy Administrator is authorized to perform the functions and duties of the position of Administrator for purposes of this rulemaking. For calendar year 2021, the Deputy Administrator has determined that the random drug testing rate for covered employees will remain at 50 percent based on a verified positive rate of 1.16 percent for calendar year 2019. Further, the Deputy Administrator has determined that the random alcohol testing rate for calendar year 2021 will remain at 10 percent, because the violation rate again was lower than the rates for calendar years 2018 and 2019. The random alcohol violation rates were 0.20 percent for 2018 and 0.16 for 2019.

Detailed reports on FTA's drug and alcohol testing data collected from transit employers may be obtained from FTA, Office of Transit Safety and Oversight, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–2010, or at: *https://transit-safety.fta.dot.gov/DrugAndAlcohol/Publications/Default.aspx.*

K. Jane Williams,

Deputy Administrator.

[FR Doc. 2020–25906 Filed 11–23–20; 8:45 am]

BILLING CODE 4910–57–P

FEDERAL REGISTER

Vol. 85 Tuesday,
No. 227 November 24, 2020

Part II

Commodity Futures Trading Commission

17 CFR Part 41

Securities and Exchange Commission

17 CFR Part 242
Customer Margin Rules Relating to Security Futures; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AE88

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–90244; File No. S7–09–19]

RIN 3235–AM55

Customer Margin Rules Relating to Security Futures

AGENCY: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint final rule.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively, the ''Commissions'') are adopting rule amendments to lower the margin requirement for an unhedged security futures position from 20% to 15% and adopting certain conforming revisions to the security futures margin offset table.

DATES: This rule is effective December 24, 2020.

FOR FURTHER INFORMATION CONTACT:

CFTC: Melissa A. D'Arcy, Special Counsel and Sarah E. Josephson, Deputy Director, Division of Clearing and Risk, at (202) 418–5430; and Michael A. Penick, Economist at (202) 418–5279, and Ayla Kayhan, Economist at (202) 418–5947, Office of the Chief Economist, 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; Sheila Dombal Swartz, Senior Special Counsel, at (202) 551–5545; or Abraham Jacob, Special Counsel, at (202) 551–5583; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Background

A security future is a futures contract on a single security or on a narrow-based securities index.[1] The Commodity Futures Modernization Act of 2000 (''CFMA'') lifted the ban on trading security futures and established a framework for the joint regulation of these products by the Commissions.[2] Among other things, the CFMA amended Section 7 of the Securities Exchange Act of 1934 (''Exchange Act'') to establish a margin program for security futures. Section 7(c)(2)(A) of the Exchange Act provides that it shall be unlawful for any broker, dealer, or member of a national securities exchange[3] to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security future unless such activities comply with the regulations prescribed by: (1) The Board of Governors of the Federal Reserve System (''Federal Reserve Board''); or (2) the Commissions jointly pursuant to authority delegated by the Federal Reserve Board.

Section 7(c)(2)(B) of the Exchange Act provides that the customer margin requirements for security futures products adopted by the Federal Reserve Board or jointly by the Commissions, ''including the establishment of levels of margin (initial and maintenance),'' must satisfy four requirements. First, they must preserve the financial integrity of markets trading security futures products.[4] Second, they must prevent systemic risk.[5] Third: (1) They must be consistent with the margin requirements for comparable options traded on any exchange registered pursuant to Section 6(a) of the Exchange Act;[6] and (2) the initial and maintenance margin levels must not be lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded options.[7] Fourth, excluding margin levels, they must be, and remain consistent with, the margin requirements established by the Federal Reserve Board under 12 CFR part 220 (''Regulation T'').[8]

On March 6, 2001, the Federal Reserve Board delegated its authority under Section 7(c)(2)(A) of the Exchange Act to the Commissions.[9] Pursuant to that delegation, the Commissions adopted rules in 2002 establishing a margin program for security futures.[10]

[1] *See* Section 1a(44) of the Commodity Exchange Act (''CEA'') and Section 3(a)(55) of the Exchange Act (both defining the term ''security future''). A ''security future'' is distinguished from a ''security futures product,'' which is defined to include a security future as well as any put, call, straddle, option, or privilege on a security future. *See* Section 1a(45) of the CEA and Section 3(a)(56) of the Exchange Act (both defining the term ''security futures product''). Under Section 2(a)(1)(D)(iii)(II) of the CEA and Section 6(h)(6) of the Exchange Act, the Commissions may, by order, jointly determine to permit the listing of options on security futures. The Commissions have not exercised this authority. The amendments being adopted in this release relate to margin requirements for security futures and not for options on security futures. Most of the discussion in this release relates to security futures. The term ''security futures products'' will be used when discussing security futures and options on security futures.

[2] *See* Appendix E of Public Law 106–554, 114 Stat. 2763 (2000). Futures on security indexes that are not narrow-based are subject to the exclusive jurisdiction of the CFTC.

[3] A futures commission merchant (''FCM'') (as defined in Section 1(a)(28) of the CEA) may be a member of a national securities exchange, a clearing member of a clearinghouse, or a customer of a clearing member of a clearinghouse.

[4] *See* Section 7(c)(2)(B)(i) of the Exchange Act.

[5] *See* Section 7(c)(2)(B)(ii) of the Exchange Act.

[6] *See* Section 7(c)(2)(B)(iii)(I) of the Exchange Act. In this release, this provision of the statute is sometimes referred to as the ''consistent with restriction.''

[7] *See* Section 7(c)(2)(B)(iii)(II) of the Exchange Act. In this release, this provision of the statute is sometimes referred to as the ''not lower than restriction.''

[8] *See* Section 7(c)(2)(B)(iv) of the Exchange Act.

[9] *See* Letter from Jennifer J. Johnson, Secretary of the Board, Federal Reserve Board, to James E. Newsome, Acting Chairman, CFTC, and Laura S. Unger, Acting Chairman, SEC (Mar. 6, 2001) (''FRB Letter''); *see also Customer Margin Rules Relating to Security Futures,* Exchange Act Release No. 44853 (Sep. 26, 2001), 66 FR 50720 (Oct. 4, 2001) (''2001 Proposing Release'') (reprinting the FRB Letter in Appendix B).

[10] *See Customer Margin Rules Relating to Security Futures,* Exchange Act Release No. 46292 (Aug. 1, 2002), 67 FR 53146 (Aug. 14, 2002) (''2002 Adopting Release''). *See also* 17 CFR 41.41 through 41.49 (CFTC regulations, hereinafter referred to as ''CFTC Rule 41.42'', ''CFTC Rule 41.43'' *et seq.*) and 17 CFR 242.400 through 242.406 (SEC regulations,

These rules require security futures intermediaries to collect margin from their customers.[11] A security futures intermediary is a creditor, as defined under Regulation T, with respect to its financial relations with any person involving security futures, and includes registered entities such as brokers-dealers and FCMs.[12]

The Commissions' rules include requirements governing: Account administration; type, form, and use of collateral; calculation of equity; withdrawals from accounts; and the treatment of undermargined accounts. The Commissions stated that ''the inclusion of these provisions in the final rules satisfies the statutory requirement that the margin rules for security futures be consistent with Regulation T.'' [13]

The Commissions' rules contemplate that all security futures intermediaries will pay to or receive from their customers a daily variation settlement (*i.e.,* the daily net gain or loss on a security future) as a result of all open security futures positions being marked to current market value by the clearing organization where the security futures are cleared.[14] In addition, the Commissions' rules establish minimum initial and maintenance margin levels for unhedged security futures equal to 20% of their ''current market value.'' [15]

The Commissions' rules permit a ''self-regulatory authority'' (''SRA''),[16] as that term is defined in the rules, to set initial and maintenance margin levels lower than 20% of the current market value for certain strategy-based offsetting positions involving security futures and one or more related securities or futures.[17] The SRA rules must meet the four criteria set forth in Section 7(c)(2)(B) of the Exchange Act and must be effective in accordance with Section 19(b)(2) of the Exchange Act and, as applicable, Section 5c(c) of the CEA.[18] In connection with these provisions governing SRA rules, the Commissions published a table identifying offsets for security futures that were consistent with the offsets permitted for comparable exchange-traded options (''Strategy-Based Offset Table'').[19] SRAs have adopted margin rules that permit strategy-based offsets between security futures and related positions based on the Strategy-Based Offset Table.[20]

The Commissions' rules also enumerate specific exclusions from the margin requirements for security futures, and those exclusions will continue under the final rule amendments.[21] For example, margin requirements that derivatives clearing organizations (''DCOs'') or clearing agencies impose on their clearing members are not subject to the 20% margin level requirement.[22]

There also is an exclusion providing that the required 20% initial and maintenance margin levels do not apply to financial relations between a customer and a security futures intermediary to the extent that they comply with a portfolio margining system under rules that meet the four criteria set forth in Section 7(c)(2)(B) of the Exchange Act and that are effective in accordance with Section 19(b)(2) of the Exchange Act and, as applicable, Section 5c(c) of the CEA.[23] Subsequent to the adoption of the Commissions' rules, and consistent with this exclusion, two securities SROs implemented portfolio margining rules that permit a broker-dealer to combine certain of a customer's securities and security futures positions in a securities account in order to compute the customer's margin requirements (''Portfolio Margin Rules'').[24] As discussed in more detail below, the Portfolio Margin Rules established a 15% margin level for unhedged exchange-traded options on an equity security or narrow-based equity index (sometimes referred to herein as ''exchange-traded equity options'').[25] The 15% margin level also applies to unhedged security futures held in a securities account that is subject to Portfolio Margin Rules. There is no comparable portfolio margining system for security futures held in a futures account.[26] These same unhedged security futures positions, if held in a futures account, are subject to the required 20% initial and maintenance margin levels set forth in the Commissions' rules.

2019 Proposing Release

In July 2019, the Commissions proposed amending the security futures margin rules to lower the required initial and maintenance margin levels for an unhedged security futures position from 20% to 15% of its current

hereinafter referred to as ''SEC Rule 400'', ''SEC Rule 401'' *et seq.*). CFTC regulations referred to herein are found at 17 CFR chapter I, and SEC regulations referred to herein are found at 17 CFR chapter II.

[11] *See* CFTC Rule 41.45 and SEC Rule 403. *See also* CFTC Rule 41.43(a)(29) and SEC Rule 401(a)(1)(29) (both defining the term ''security futures intermediary'' to include a broker-dealer and an FCM). The term ''security futures intermediary'' includes FCMs that are clearing members or customers of clearing members. As of September 18, 2020, the Options Clearing Corporation (''OCC'') was the only clearinghouse for U.S. exchange-traded security futures.

[12] Because a security future is both a security and a future, customers who wish to buy or sell security futures must conduct the transaction through a person registered both with the CFTC as either an FCM or an introducing broker (''IB'') and with the SEC as a broker-dealer.

[13] *See* 2002 Adopting Release, 67 FR at 53155. As indicated above, Section 7(c)(2)(B)(iv) of the Exchange Act requires that margin requirements for security futures (other than levels of margin), including the type, form, and use of collateral, must be consistent with the requirements of Regulation T.

[14] *See* CFTC Rules 41.43(a)(32), 41.46(c)(1)(vi) and (c)(2)(iii), and 41.47(b)(1), and SEC Rules 401(a)(32), 404(c)(1)(vi) and (c)(2)(iii), and 405(b)(1).

[15] *See* CFTC Rule 41.45(b)(1) and SEC Rule 403(b)(1). *See also* CFTC Rule 41.43(a)(4) and SEC Rule 401(a)(4) (defining the term ''current market value'').

[16] The Commissions' rules define the term ''self-regulatory authority'' to mean a national securities exchange registered under Section 6 of the Exchange Act, a national securities association registered under Section 15A of the Exchange Act, a contract market registered under Section 5 of the CEA or Section 5f of the CEA, or a derivatives transaction execution facility registered under Section 5a of the CEA. *See* CFTC Rule 41.43(a)(30) and SEC Rule 401(a)(30). The term ''SRA'' as used in this release refers to self-regulatory organizations (''SROs'') registered under the Exchange Act and self-regulatory authorities registered under the CEA. The term ''securities SRO'' as used in this release refers only to SROs registered under the Exchange Act.

[17] *See* CFTC Rule 41.45(b)(2) and SEC Rule 403(b)(2). *See also* 2002 Adopting Release, 67 FR at 53158–61. The initial margin level is the required amount of margin that must be posted when the trade is executed. The maintenance margin level is the required amount of margin that must be maintained while the contract is open.

[18] Section 19(b)(2) of the Exchange Act governs SRA rulemaking with respect to SEC registrants, and Section 5c(c) of the CEA governs SRA rulemaking with respect to CFTC registrants.

[19] *See* 2002 Adopting Release, 67 FR at 53158–61.

[20] *See, e.g.,* FINRA Rule 4210(f)(10) and Cboe Rule 10.3(k).

[21] *See* CFTC Rule 41.42(c)(2)(i) through (v) and SEC Rule 400(c)(2)(i) through (v).

[22] *See* CFTC Rule 41.42(c)(2)(iii) and SEC Rule 400(c)(2)(iii). The OCC is registered with the SEC as a clearing agency pursuant to Section 17A of the Exchange Act and registered with the CFTC as a DCO pursuant to Section 5b of the CEA.

[23] CFTC Rule 41.42(c)(2)(i) and SEC Rule 400(c)(2)(i).

[24] *See* FINRA Rule 4210(g) and Cboe Rule 10.4. The broker-dealer would need to be registered with the CFTC (as an FCM) to include security futures in the securities account. *See also* 2019 Proposing Release, 84 FR 36437, n.36. FINRA Rule 4210 (Margin Requirements) was adopted as part of a new consolidated rulebook effective permanently on December 2, 2010, after the pilot program was approved and made available on August 1, 2008. Cboe rules on portfolio margining became effective permanently on July 8, 2008, after they were approved under a pilot program on April 2, 2007.

[25] The amendments adopted in this release were motivated, in part, by changes made to margin requirements for certain exchange-traded options pursuant to securities SRO pilot programs offering risk-based portfolio margining rules. Those pilot programs were later made permanent after review and approval by the SEC. *See* 2019 Proposing Release, 84 FR 36437, n.34–36.

[26] For purposes of this rulemaking a ''futures account'' is an account that is maintained in accordance with the requirements of Sections 4d(a) and 4d(b) of the CEA. *See also* 17 CFR 1.3 (CFTC Rule 1.3).

market value.[27] The Commissions sought to align margin requirements for security futures held in futures accounts and customer securities accounts that are not subject to the Portfolio Margin Rules with security futures and exchange-traded options held in customer securities accounts subject to the Portfolio Margin Rules (''Portfolio Margin Account'').[28] The Commissions also proposed certain conforming revisions to the Strategy-Based Offset Table.[29] Because the Commissions' proposal solely related to the reduction in ''levels of margin'' for security futures, the Commissions stated a preliminary belief that they did not implicate the requirement of Section 7(c)(2)(B)(iv) of the Exchange Act that the Commissions' rules be consistent with Regulation T.[30]

The Commissions received a number of comment letters in response to the proposal.[31] As discussed below, after considering the comments, the Commissions are adopting, as proposed, the amendments to the security futures margin rules to lower the required initial and maintenance margin levels for an unhedged security futures position from 20% to 15%. The Commissions also are publishing a revised Strategy-Based Offset Table as proposed.

Subsequent to the issuance of the 2019 Proposing Release, OneChicago, the only exchange listing security futures in the U.S., discontinued all trading operations on September 21, 2020. At this time, there are no security futures contracts listed for trading on U.S. exchanges. The final rule amendments in this release, however, would apply to customer margin requirements for security futures if an exchange were to resume operations or another exchange were to launch security futures contracts.

II. Final Rule Amendments

A. Lowering the Minimum Margin Level From 20% to 15%

1. The Commissions' Proposal

As discussed above, the current minimum initial and maintenance margin levels for an unhedged long or short position in a security future are 20% of the current market value of the position,[32] unless an exclusion applies.[33] For context, as discussed when adopting the margin requirements for security futures in 2002, the 20% margin levels were designed to be consistent with the margin requirements then in effect for an unhedged *short* at-the-money exchange-traded option held in a customer account where the underlying instrument is either an equity security or a narrow-based index of equity securities.[34] In this case, the margin requirement was 100% of the exchange-traded option proceeds, plus 20% of the value of the underlying equity security or narrow-based equity index.[35] This margin requirement on options continues to apply if the exchange-traded option is held in a securities account that is *not* subject to the Portfolio Margin Rules.[36]

However, as a result of the more recent Portfolio Margin Rules, an unhedged short at-the-money exchange-traded equity option held in a Portfolio Margin Account is now subject to a lower margin level. More specifically, under the Portfolio Margin Rules, a broker-dealer can group options, security futures, long securities positions, and short securities positions in a customer's account involving the same underlying security and stress the current market price for each position at ten equidistant points along a range of positive and negative potential future market movements using a theoretical option pricing model that has been approved by the SEC.[37] In the case of an option on an equity security or narrow-based equity securities index, the ten equidistant stress points span a range from −15% to +15% (*i.e.,* −15%, −12%, −9%, −6%, −3%, +3%, +6%, +9%, +12%, +15%).[38] The gains and losses of each position in the portfolio are allowed to offset each other to yield a net gain or loss at each stress point.[39] The stress point that yields the largest potential net loss for the portfolio is used to determine the aggregate margin requirement for all the positions in the portfolio.[40]

Under the Portfolio Margin Rules, the margin requirement for a short at-the-money exchange-traded equity option generally would be 15% if there were no other products in the account eligible to be grouped with the option position to form a portfolio (*i.e.,* an unhedged position). Consequently, the Commissions proposed to lower the required initial and maintenance margin levels for unhedged security futures

[27] *See Customer Margin Rules Relating to Security Futures,* Exchange Act Release No. 86304 (July 3, 2019), 84 FR 36434 (July 26, 2019) (''2019 Proposing Release''). OneChicago, LLC (''OneChicago'') filed a rulemaking petition requesting that the minimum required margin for unhedged security futures be reduced from 20% to 15%. *See* Letter from Donald L. Horwitz, Managing Director and General Counsel, OneChicago, to David Stawick, Secretary, CFTC, and Nancy M. Morris, Secretary, SEC (Aug. 1, 2008) (''OneChicago Petition''), at 2.

[28] *See* 2019 Proposing Release, 84 FR at 36437.

[29] *See* 2019 Proposing Release, 84 FR at 36441–43.

[30] *See* 2019 Proposing Release, 84 FR at 36440. As discussed above, Section 7(c)(2)(B)(iv) of the Exchange Act requires that margin requirements for security futures *(other than levels of margin),* including the type, form, and use of collateral, must be consistent with the requirements of Regulation T (emphasis added).

[31] The comment letters are available at *https://www.sec.gov/comments/s7-09-19/s70919.htm* and *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3013.* The Commissions address these comments in section II below (discussing the final rule amendments), and in section IV (including the CFTC's consideration of the costs and benefits of the amendments and the SEC's economic analysis (including costs and benefits) of the amendments).

[32] *See* CFTC Rule 41.45(b) and SEC Rule 403(b).

[33] *See* CFTC Rule 41.42(c)(2)(i) through (v) and SEC Rule 400(c)(2)(i) through (v).

[34] *See* 2002 Adopting Release, 67 FR at 53157 (''The Commissions believe that a security future is comparable to a short, at-the-money option . . .''); 2001 Proposing Release, 66 FR at 50725–26 (''The Commissions propose that the initial and maintenance margin levels required of customers for each security future carried in a long or short position be 20 percent of the current market value of such security future because 20 percent is the uniform margin level required for short, at-the-money equity options traded on U.S. options exchanges.'') (footnote omitted). In 2002, the margin requirement for a *long* exchange-traded equity option with an expiration exceeding nine months was 75% of the contract's in-the-money amount plus 100% of the amount, if any, by which the current market value of the option exceeded its in-the-money amount, provided the option is guaranteed by the carrying broker-dealer and has an American-style exercise provision. Otherwise, long exchange-traded options were not margin eligible and the customer needed to pay 100% of the purchase price. These requirements remain in place for long options contracts. *See* FINRA Rule 4210 and Cboe Rule 10.3.

[35] This release generally discusses security futures on underlying equity securities and narrow-based equity security indexes because, while permitted, no exchange has listed security futures directly on one or more debt securities. *See* CFTC Rule 41.21(a)(2)(iii), 17 CFR 41.21(a)(2)(iii), and SEC Rule 6h–2, 17 CFR 240.6h-2 (both providing that a security futures may be based upon a security that is a note, bond, debenture, or evidence of indebtedness or a narrow-based security index composed of such securities).

[36] *See* FINRA Rule 4210 and Cboe Rule 10.3.

[37] *See* FINRA Rule 4210(g) and Cboe Rule 10.4.

[38] This range of price movements (+/−) 15% is consistent with the prescribed 15% haircut for most proprietary equity securities positions under the SEC's net capital rule for broker-dealers. *See* 17 CFR 240.15c3–1(c)(2)(vi)(J).

[39] For example, at the −6% stress point, XYZ Company stock long positions would experience a 6% loss, short positions would experience a 6% gain, and XYZ Company options would experience gains or losses depending on the features of the options. These gains and losses are added up resulting in a net gain or loss at that point.

[40] Because options are part of the portfolio, the greatest portfolio loss (or gain) would not necessarily occur at the largest potential market move stress points ((+/−) 15%). This is because a portfolio that holds derivative positions that are far out-of-the-money would potentially realize large gains at the greatest market move points as these positions come into the money. Thus, the greatest net loss for a portfolio conceivably could be at any market move stress point. In addition, the Portfolio Margin Rules impose a minimum charge based on the number of derivative positions in the account and that applies if the minimum charge is greater than the largest stress point charge.

from 20% to 15%.[41] In doing so, the Commissions preliminarily viewed unhedged exchange-traded equity options as comparable to security futures that may be held alongside the exchange-traded equity options in a Portfolio Margin Account.[42] The Commissions stated that Congress did not instruct the Commissions to set the margin requirement for security futures at the exact level as the margin requirements for exchange-traded equity options. Rather, pursuant to Section 7(c)(2)(B) of the Exchange Act, the Commissions must establish margin requirements that are ''consistent'' with the margin requirements for ''comparable'' exchange-traded equity options and set initial and maintenance margin levels that are not lower than the lowest level of margin for the comparable exchange-traded equity options.

Under the proposal, unhedged security futures held in futures accounts and securities accounts that are not Portfolio Margin Accounts would be subject to the same initial and maintenance margin levels as unhedged security futures held in Portfolio Margin Accounts (*i.e.,* 15%). Thus, the proposed 15% initial and maintenance margin levels for unhedged security futures would bring security futures held in futures accounts and securities accounts that are not Portfolio Margin Accounts into alignment with the required margin level for unhedged security futures held in Portfolio Margin Accounts. At the same time, the amendments would not lower the required margin levels for unhedged security futures below the lowest required margin level for unhedged exchange-traded equity options (*i.e.,* 15%). As discussed below, margin levels for exchange-traded equity options are prescribed in rules promulgated by securities SROs.[43]

2. Comments and Final Amendments

One commenter stated that the proposed amendments would harmonize margin requirements, be simpler to administer and risk manage, and better align with customer use of security futures.[44] This commenter stated that it has long supported securities portfolio margining and has found the 15% margin level for unhedged positions sufficiently robust for intermediaries to risk manage their customer positions.[45] Other commenters, however, raised concerns with the proposal, as discussed below.

Addressing Commenters' Concerns That the Proposal Is Inconsistent With Section 7(c)(2)(B) of the Exchange Act

When proposing these amendments, the Commissions stated a preliminary belief that they would be consistent with Section 7(c)(2)(B) of the Exchange Act.[46] The Commissions noted that, under that section, customer margin requirements, including the establishment of levels of margin (initial and maintenance) for security futures, must be consistent with the margin requirements for comparable options traded on any exchange registered pursuant to Section 6(a) of the Exchange Act.[47] The Commissions stated a preliminary belief that ''[c]ertain types of exchange-traded options, no matter what type of an account they are in, are comparable to security futures'' and therefore the ''margin requirements for comparable exchange-traded options and security futures must be consistent.'' [48] Finally, the Commissions—in proposing to lower the margin level for security futures from 20% to 15%—used the margin level for an unhedged exchange-traded equity option held in a Portfolio Margin Account to ''establish a consistent margin level for security futures held outside'' of a Portfolio Margin Account.[49]

Some commenters stated that the 15% margin level in a Portfolio Margin Account is prudent, given the requirements for these accounts (*e.g.,* risk management, account approval process, and minimum equity required).[50] However, these commenters stated that minimum margin levels for security futures held outside of a Portfolio Margin Account do not govern the levels of margin applicable for security futures held in a Portfolio Margin Account and, similarly, that the rules governing levels of margin for exchange-traded equity options held outside of a Portfolio Margin Account do not govern the levels of margin for exchange-traded equity options held in a Portfolio Margin Account. In the commenters' view, Section 7(c)(2)(B) of the Exchange Act requires initial and maintenance margin levels for security futures held outside of a Portfolio Margin Account to remain at 20% because the initial and maintenance margin levels for exchange-traded equity options held outside a Portfolio Margin Account are 20%.

Some commenters stated that the proposal ''may not be in line with the spirit or letter'' of the CFMA and asked the Commissions to outline how the proposal to lower the required initial and maintenance margin levels from 20% to 15% is consistent with the CFMA.[51]

Other commenters, while fully supportive of harmonizing margin requirements, urged the Commissions to reconsider the proposal or provide for a corresponding change to margin levels for exchange-traded equity options to ensure any final rule is consistent with Section 7(c)(2)(B) of the Exchange Act.[52] In making these comments, these commenters agreed with (or did not state a disagreement with) the Commissions' view that security futures are comparable to exchange-traded equity options in terms of their risk characteristics and uses.

After considering these comments, the Commissions continue to believe that it is appropriate to seek to align the required margin levels for unhedged security futures held in a futures account (or in a securities account that is not subject to Portfolio Margin Rules) with the 15% margin level for unhedged exchange-traded equity options held in a Portfolio Margin Account.[53] The primary benefit to customers of holding positions in a Portfolio Margin Account is the lower margin requirements (*i.e.,* margin levels less than 15%) that can result from grouping and recognizing the risk-reducing offsets between positions involving the same underlying equity security or narrow-based equity securities index. These lower margin requirements also can increase the amount of leverage available to customers who use Portfolio Margin

[41] *See* 2019 Proposing Release, 84 FR at 36438–40.

[42] *See* 2019 Proposing Release, 84 FR at 36439 (''The Commissions are proposing to decrease the margin requirement for unhedged security futures from 20% to 15% in order to reflect the comparability between unhedged security futures and exchange-traded options that are held in risk-based portfolio margin accounts.'').

[43] *See* 12 CFR 220.12(f); FINRA Rule 4210; Cboe Rule 10.3. *See also infra* note 56 and accompanying text (noting securities SROs typically set margin levels for exchange-traded equity options through rule filings with the SEC under Section 19(b) of the Exchange Act).

[44] Letter from Walt Lukken, President & Chief Executive Officer, Futures Industry Association (Aug. 26, 2019) (''FIA Letter'') at 2.

[45] FIA Letter at 2.

[46] *See* 2019 Proposing Release, 84 FR at 36439–40.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 36440.

[50] Letter from Angelo Evangelou, Chief Policy Officer, Cboe Global Markets, Inc. and Shelly Brown, EVP, Strategic Planning & Operations, MIAX Exchange Group (Aug. 26, 2019) (''Cboe/MIAX Letter'') at 4–7.

[51] Letter from the Honorable Mike Bost and Rodney Davis, U.S. Congress (Nov. 13, 2019) (''Bost/Davis Letter'') at 1.

[52] Letter from the Honorable Jerry Moran, Thom Tillis, and M. Michael Rounds, U.S. Senate (Nov. 22, 2019) (''Moran/Tillis/Rounds Letter'') at 1–2.

[53] *See* 2019 Proposing Release, 84 FR at 36439.

Accounts to trade equity positions. To address the lower margin requirements and increased leverage that may result from grouping risk reducing equity positions, Portfolio Margin Accounts are subject to additional requirements, as compared to non-Portfolio Margin Accounts.[54]

An exchange-traded equity option that cannot be grouped with any other risk reducing offsetting equity positions in a Portfolio Margin Account (*i.e.,* an unhedged position) does not receive the benefit of a lower margin requirement and is subject to a 15% margin level. Therefore, the greater leverage that can be achieved by grouping offsetting positions is not available to the customer in the case of an unhedged position. Given the absence of risk-reducing offsetting positions, the risk of the unhedged position held in a Portfolio Margin Account generally is no different than if the unhedged position was held outside of a Portfolio Margin Account. The same is true with respect to an unhedged security futures position held in a Portfolio Margin Account as compared to an unhedged security futures position held outside of a Portfolio Margin Account.

Moreover, there is no comparable portfolio margin system for security futures held in a futures account. Therefore, an unhedged security futures position held in a futures account is subject to the required 20% margin level even though the risk of the position is generally no different than if the position was held in a Portfolio Margin Account, given the absence of risk-reducing offsetting positions. In addition, as discussed above, in 2002, securities SROs had not yet proposed portfolio margin rules for exchange-traded options. With the adoption of the Portfolio Margin Rules, the lower 15% margin level for unhedged security futures and exchange-traded options held in Portfolio Margin Accounts became available as an alternative.

For these reasons, it is appropriate to use the margin level for an unhedged exchange-traded equity option held in a Portfolio Margin Account to establish a consistent margin level for security futures held outside of a Portfolio Margin Account.

In addition, as discussed above, Section 7(c)(2)(B) of the Exchange Act provides that: (1) The margin requirements for security futures must be consistent with the margin requirements for comparable options traded on any exchange registered pursuant to Section 6(a) of the Exchange Act; and (2) the initial and maintenance margin levels for security futures must not be lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded options. The statute requires that the Commissions establish customer margin requirements that are ''consistent'' with the margin requirements for ''comparable'' exchange-traded options. This provides the Commissions with some flexibility in establishing the margin levels for security futures, provided those margin requirements do not set initial and maintenance margin levels for security futures lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded options.

Further, Section 7(c)(2)(B)(iii)(II) of the Exchange Act provides that the initial and maintenance margin levels for security futures must not be lower than the lowest level of margin required for *any* comparable exchange-traded option. It does not specify that the initial and maintenance margin levels must not be lower than the lowest level of margin required with respect to a given type of account. Therefore, it is appropriate to consider the lowest level of margin for an unhedged exchange-traded equity option held in a Portfolio Margin Account when setting initial and maintenance margin levels for security futures held outside of a Portfolio Margin Account (*i.e.,* held in a futures account or a securities account that is not a Portfolio Margin Account).

As discussed above, commenters requested that the Commissions provide for a corresponding change to margin levels for exchange-traded equity options to ensure any final rule is consistent with Section 7(c)(2)(B) of the Exchange Act. This comment is outside the scope of this rulemaking, which is focused on margin levels for security futures. Margin levels for exchange-traded equity options are set forth in securities SRO rules.[55] Securities SROs typically set margin levels for exchange-traded equity options through rule filings with the SEC under Section 19(b) of the Exchange Act.[56]

Some commenters that raised concerns about the proposal's consistency with Section 7(c)(2)(B) of the Exchange Act also stated that the proposal would create a competitive advantage for security futures over exchange-traded equity options through preferential margin treatment for security futures held outside of a Portfolio Margin Account.[57]

These commenters noted that the Commissions recognized in 2001 that security futures can compete with, and be an economic substitute for, equity securities, such as equity options, and stated that the CFMA was specifically designed to avoid regulatory arbitrage between security futures and exchange-traded options.[58] These commenters believed that the proposal implies that exchange-traded options and security futures are not competing products and that the analysis in the proposal unfairly underestimates the utility of options.[59] They also stated that synthetic futures strategies are an important segment of today's options market, and could be used to compete with security futures. They stated that in June 2019 there were over 700,000 contracts traded on their exchanges that replicate long and short security futures.[60]

The Commissions acknowledge that security futures and exchange-traded equity options can have similar economic uses.[61] However, reducing the margin level for an unhedged security future held outside of a Portfolio Margin Account to 15% should not result in a competitive disadvantage for exchange-traded equity options, if security futures trading resumes. First, reducing the required margin levels for unhedged security futures to 15% will result in more consistent margin requirements between futures and securities accounts. Second, subject to certain requirements, customers may hold exchange-traded equity options in a Portfolio Margin Account, in which case the margin level for an unhedged position is 15%.

Finally, customers can hold security futures in a Portfolio Margin Account, in which case the required margin level is 15% for an unhedged position. Nonetheless, the vast majority of

[54] For example, in order to open a Portfolio Margin Account, a customer must be approved for writing uncovered options and meet minimum equity requirements (generally ranging from $100,000 to $500,000). In addition, Portfolio Margin Accounts are subject to enhanced risk management procedures and additional customer disclosure requirements. *See* FINRA Rule 4210(g) and Cboe Rule 10.4; *see also* FINRA Portfolio Margin FAQ, *available at www.finra.org.*

[55] *See* 12 CFR 220.12(f); FINRA Rule 4210; Cboe Rule 10.3.

[56] Under Section 19(b) of the Exchange Act, securities SROs generally must file proposed rule changes with the SEC for notice, public comment, and SEC approval, prior to implementation. 15 U.S.C. 78s(b). Section 19(b)(1) of the Exchange Act requires each securities SRO to file with the SEC ''any proposed rule or any proposed change in, addition to, or deletion from the rules of . . . [a] self-regulatory organization.'' 15 U.S.C. 78s(b)(1).

[57] Cboe/MIAX Letter at 6.

[58] Cboe/MIAX Letter at 6. *See also* 2001 Proposing Release, 66 FR 50721 at n.10.

[59] Cboe/MIAX Letter at 6.

[60] Cboe/MIAX Letter at 7.

[61] For example, commenters noted that to create a synthetic long (short) futures contract, which requires two options, an investor would buy (sell) a call option and sell (buy) a put option on the same underlying security with the same expiration date and strike price. Cboe/MIAX Letter at 6–7.

security futures traded in the U.S. were held in futures accounts subject to required initial and maintenance margin levels of 20% for unhedged positions.[62] Therefore, the relative advantage of a required 15% margin level as compared to a required 20% margin level did not cause customers to migrate their security futures trading to Portfolio Margin Accounts.

Some commenters that opposed lowering the required margin levels from 20% to 15% stated that industry solutions and rule changes that optimize the portfolio margining of security futures and exchange-traded equity options, including the portfolio margining of security futures in both securities and futures accounts, would be a more appropriate solution.[63]

As discussed above, lowering the required margin levels from 20% to 15% is appropriate, consistent with Section 7(c)(2)(B) of the Exchange Act, and should not disadvantage exchange-traded equity options markets if security futures trading resumes. Moreover, the Commissions remain committed to continuing to coordinate on issues related to harmonizing portfolio margining rules and requirements, as well as increasing efficiencies in the implementation of portfolio margining. Further, to the extent securities accounts are not operationally suited for holding security futures, the Commissions support industry efforts to address this issue. Finally, the realization of any potential harmonization efforts or operational improvements with respect to portfolio margining will depend on firms offering such programs to their customers.

Response to Commenters' Request To Use Risk Models To Calculate Margin

In response to the Commissions' request for comments in the 2019 Proposing Release,[64] some commenters stated that the Commissions' rules should permit the use of risk models to calculate required initial and maintenance margin levels for security futures [65]—similar to how DCOs calculate margin requirements for futures and the OCC calculates margin requirements for its clearing members.[66] One of these commenters—OneChicago—believed that the required margin levels for security futures and the proposal to modify them were too conservative.[67] OneChicago characterized the Commissions' proposal as—''at best''—''a first-step towards the risk-based margining that is needed in the [security futures] marketplace.'' [68] It further stated that 92% of the security futures traded on its exchange were ''margined at a level greater than is set by the clearinghouse for comparable products, which are equity swaps'' and that, under the proposal, 84% would still be margined at a greater level.[69] According to OneChicago's analysis, the Commissions' proposal to lower the required margin levels from 20% to 15% would have resulted in a 25% reduction in the value of margin collected (from $540 million to $410 million) for the period between September 1, 2018, and August 1, 2019; whereas using a margin model would have resulted in a 61% reduction (from $540 million to $210 million).[70]

OneChicago believed that the ''margin regime in place today and the proposed margin regime incentivizes market participants to transact in other environments.'' [71] OneChicago stated that the trading volume on its exchange ''has been plummeting in recent years.'' [72] In the exchange's view, these issues would be addressed if the Commissions adopted a risk model approach to calculate required margin levels for security futures. As a more limited alternative, OneChicago suggested the Commissions could adopt a risk model approach for a class of security futures paired transactions executed on its exchange and known as ''securities transfer and return spreads'' (''STARS'').[73]

Risk models calculate margin requirements by measuring potential future exposures based on statistical correlations between positions in a portfolio. For example, the OCC's risk model—known as the System for Theoretical Analysis and Numerical Simulations (''STANS'')—calculates a clearing member's margin requirement based on full portfolio Monte Carlo simulations.[74] The margin requirements in place today for exchange-traded equity options do not use risk models to calculate margin requirements for customer positions.[75] Rather, current rules prescribe margin requirements as a percent of a value or other amount of a single position or combinations of offsetting positions or, in the case of the Portfolio Margin Rules, stress groups of related positions across a preset range of potential percent market moves (*e.g.,* market moves of −15%, −12%, −9%, −6%, −3%, +3%, +6%, +9%, +12%, +15% in the case of exchange-traded equity options).

The Commissions' required initial and maintenance margin levels for security futures (*i.e.,* 20% of the current market value) are based on the margin requirements for exchange-traded equity options and are designed to be consistent with those requirements in accordance with Section 7(c)(2)(B) of the Exchange Act.[76] Consequently, implementing a risk model approach to calculate required margin levels for security futures would substantially alter how the required margin is calculated (or would be calculated under these amendments) and would substantially deviate from how customer margin requirements are calculated for exchange-traded equity options. It also could result in required

[62] In its petition, OneChicago stated that ''because of operational issues at the securities firms, almost all security futures positions are carried in a futures account regulated by the CFTC and not in a securities account. The proposed joint rulemaking would permit customers carrying security futures in futures accounts to receive margin treatment consistent with that permitted under the [portfolio] margining provisions of CBOE.'' *See* OneChicago Petition at 2 and 2019 Proposing Release 84 FR at 36440, n.67.

[63] Cboe/MIAX Letter at 5. More specifically, to the extent securities accounts are not operationally optimal for security futures, the options exchanges support industry efforts to make improvements. *Id.*

[64] The Commissions asked, ''[a]re there any other risk-based margin methodologies that could be used to prescribe margin requirements for security futures? If so, please identify the margin methodologies and explain how they would meet the comparability standards under the Exchange Act.'' 2019 Proposing Release, 84 FR at 36441.

[65] For purposes of this final rule, any references to using ''risk models'' or a ''risk model approach'' to calculate required initial margin levels is intended to mean the same thing. While there are different risk-based margin models, a key component of all such margin regimes is the use of modeling to generate expected potential future exposures that adjust over time in response to market conditions, credit risk, and other inputs.

[66] Letter from Thomas G. McCabe, Chief Regulatory Officer, OneChicago (Aug. 26, 2019) (''OneChicago Letter''); Letter from Thomas G. McCabe, Chief Regulatory Officer, OneChicago (Oct. 7, 2019) (''OneChicago Letter 2''); Letter from Thomas G. McCabe, Chief Regulatory Officer, OneChicago (Apr. 27, 2020) (''OneChicago Letter 3''); OneChicago, *April 27, 2020 OneChicago Comment Letter Summary* (''OneChicago Letter 3 Summary''); Letter from Mike Ianni, individual (Aug. 29, 2019) (''Ianni Letter''); Letter from Scott A. La Botz, individual (Dec. 4, 2019) (''La Botz Letter'').

[67] OneChicago Letter at 1.

[68] OneChicago Letter at 1.

[69] OneChicago Letter at 1. In this release, the term ''clearinghouse'' may refer to a clearing organization or a clearing agency.

[70] OneChicago Letter at 14. However, as discussed in more detail in section IV of this release, it is possible that under certain circumstances the margin requirement under a risk-based margin model may exceed the 15% of the current market value that is required under the final rules.

[71] OneChicago Letter at 2.

[72] OneChicago Letter at 14.

[73] OneChicago Letter at 19; *see also* Memorandum from the SEC's Division of Trading and Markets regarding a July 16, 2019, meeting with representatives of OneChicago.

[74] More information about the OCC's STANS model is available at *https://www.theocc.com/risk-management/Margin-Methodology/.*

[75] *See, e.g.,* FINRA Rule 4210 and Cboe Rule 10.3.

[76] *See* 2002 Adopting Release, 67 FR at 53156–61.

initial and maintenance margin levels for unhedged security futures that are significantly lower than the 20% margin level for unhedged exchange-traded equity options held outside a Portfolio Margin Account as well as the 15% margin level for unhedged exchange-traded equity options held in a Portfolio Margin Account.

For these reasons, implementing a risk model approach to calculate margin for security futures would be inconsistent with how margin is calculated for exchange-traded equity options at this time and may result in margin levels for unhedged security futures positions that are lower than the lowest level of margin applicable to unhedged exchange-traded equity options (*i.e.,* 15%). Consequently, because no exchange-traded equity options are subject to risk-based margin requirements, adopting a risk model approach at this time for security futures would conflict with the requirements of Section 7(c)(2)(B) of the Exchange Act that: (1) The margin requirements for security futures must be consistent with the margin requirements for comparable options traded on any exchange registered pursuant to Section 6(a) of the Exchange Act; and (2) the initial and maintenance margin levels must not be lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded options.[77]

To address the conflict between a risk model approach and Section 7(c)(2)(B) of the Exchange Act, OneChicago argued that the Commissions could adopt a risk model approach because Section 7(c)(2)(B) of the Exchange Act can be read to require that the *level of protection* provided to the marketplace by the margin requirements for security futures must be consistent with the level of protection provided by the margin requirements for exchange-traded options.[78] Similarly, OneChicago argued that the statute can be construed to require that the level of protection provided by the margin requirements for security futures (rather than the margin levels) must not be lower than the lowest level of protection provided by the margin requirements for exchange-traded options.

OneChicago pointed out that Section 7(c)(2)(B)(iii)(I) of the Exchange Act provides that ''margin requirements'' for a security future product must be consistent with the margin requirements for comparable option contracts traded on any exchange registered under the Exchange Act. OneChicago further noted that Section 7(c)(2)(B)(iv) of the Exchange Act also uses the phrase ''margin requirements'' but then qualifies it by excluding ''levels of margin'' from its provisions regarding consistency with Regulation T. Thus, OneChicago concluded that the phrase ''margin requirements'' in Section 7(c)(2)(B)(iii)(I) of the Exchange Act can be read to mean all aspects of margin requirements, including margin levels and the type, form, and use of collateral for security futures products.

OneChicago also argued that futures-style margining includes daily pay and collect variation margining, and options-style margining—in its view—does not include variation margining.[79] Consequently, OneChicago believed that, if Section 7(c)(2)(B)(iii)(I) of the Exchange Act is read to relate to levels of margin, the Commissions would be required to implement a daily pay and collect variation margin feature for options (or to eliminate this feature from the security futures margin requirements) in order to achieve the consistency required by the statute. OneChicago argued that this does not make sense and, therefore, the better reading of the statute is that it requires the level of protection provided by the security futures margin requirements to be consistent with and not lower than the lowest level of protection provided by the margin requirements for comparable exchange-traded options. And, according to OneChicago, in analyzing the level of protection provided by futures-style margining, the Commissions can consider the daily pay and collect variation margin feature to find that a risk model approach to calculating margin would be consistent with Section 7(c)(2)(B)(iii) of the Exchange Act.

The Commissions agree with OneChicago that the phrase ''margin requirements'' in Section 7(c)(2)(B)(iii)(I) of the Exchange Act refers to all aspects of margin requirements, including margin levels and the type, form, and use of collateral for security futures products. However, the Commissions do not agree that the ''consistent with'' and ''not lower than'' restrictions in the statute do not apply to levels of margin. Section 7(c)(2)(B)(iii)(II) of the Exchange Act states, in pertinent part, that ''initial and maintenance *margin levels* for a security future product [must] not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange'' registered under the Exchange Act (emphasis added).[80]

Moreover, the legislative history of the CFMA includes an earlier bill.[81] In that earlier bill, the provisions governing the setting of margin requirements for security futures did not include the ''consistent with'' and ''not lower than'' restrictions in Sections 7(c)(2)(B)(iii)(I) and (II) of the Exchange Act, respectively.[82] Instead, the earlier bill would have required that the margin requirements for security futures must ''prevent competitive distortions between markets offering similar products.'' [83] The Senate Report on the earlier bill explained that ''[u]nder the bill, *margin levels* on [security future] products would be required to be harmonized with the options markets.'' [84] Thus, while the text of the earlier bill was not as explicit in terms of articulating the ''consistent with'' and ''not lower than'' restrictions, the Senate Report indicates that the objective was to harmonize *margin levels* between security futures and options to prevent competitive distortions. This objective was clarified in the text of Section 7(c)(2)(B) of the Exchange Act, as enacted. In light of this statutory text and the legislative history, the best reading of the statute is that the ''consistent with'' and ''not lower than'' restrictions apply to levels of margin.

Consequently, the levels of margin for unhedged security-futures must be consistent with the margin levels for comparable unhedged exchange-traded equity options, and not lower than the lowest level of margin for comparable unhedged exchange-traded equity options. Currently, the margin levels for comparable unhedged exchange-traded

[77] In this adopting release, the Commissions are considering OneChicago's proposed alternative risk model approach for margining security futures. However, as the discussion herein reflects, this alternative is not a viable one because the Commissions are not persuaded that it would satisfy the requirements of Section 7(c)(2)(B) of the Exchange Act at this time.

[78] *See* OneChicago Letter at 30–35.

[79] For purposes of this discussion, the Commissions understand the phrase ''futures-style margining'' to refer to initial margin requirements based on the use of risk models, as well as the daily settlement of variation margin based on marking open positions to market. ''Options-style margining'' will refer to initial and maintenance margin requirements for exchange-traded equity options under the Exchange Act.

[80] The prefatory text of Sections 7(c)(2)(B)(iii)(I) and (II) of the Exchange Act also uses the term ''levels of margin.'' In particular, it provides that the Federal Reserve Board or the Commissions, pursuant to delegated authority, shall prescribe ''regulations to establish margin requirements, including the establishment of *levels of margin* (initial and maintenance) for security futures products under such terms, and at such *levels,*'' as the Federal Reserve Board or the Commissions deem appropriate (emphasis added).

[81] *See* S. Report 106–390 (Aug. 25, 2000).

[82] *See id.* at 39–40.

[83] *Id.* at 39.

[84] *Id.* at 5 (emphasis added).

equity options are determined through a percent of a value. Therefore, using a risk model approach for security futures would be inconsistent with how margin levels are currently determined for comparable exchange-traded equity options. Further, at this time, the lowest level of margin for comparable unhedged exchange-traded equity options is 15%. Accordingly, the margin levels for unhedged security futures cannot be lower than 15%.

OneChicago also cited legislative history to support its reading of the statute.[85] First, OneChicago cited statements that it believed demonstrated that ''Congress intended to prevent the market for security futures from being ceded to overseas competitors'' and that ''Congress wanted to ensure that U.S. exchanges had the potential to compete with these product offerings in overseas markets.'' [86] However, these statements do not bear on whether Sections 7(c)(2)(B)(iii)(I) and (II) of the Exchange Act apply to levels of margin. Rather, if OneChicago's view of Congressional intent is correct, it would support the notion that the CFMA was designed to establish a U.S. market for security futures to compete with overseas markets.[87] Further, Sections 7(c)(2)(B)(iii)(I) and (II) require a comparison of security futures margin requirements to U.S. exchange-traded option margin requirements—not to requirements of overseas security futures markets. For these reasons, these statements do not support OneChicago's reading of the statute or conflict with the Commissions' reading of the statute.

Second, OneChicago cited statements that it believed demonstrated ''[t]here was concern, especially from options industry participants that [security futures] would directly compete with options and Congress wanted to make sure that participants did not migrate between futures and options for regulatory reasons'' and that ''Congress wanted to avoid regulatory arbitrage.'' [88] It cited the following statements in support of this view:

[T]he bill requires that margin treatment of stock futures must be consistent with the margin treatment for comparable exchange-traded options. This ensures that *margin levels* will not be set dangerously low and that stock futures will not have an unfair competitive advantage vis-a-vis stock options.[89]

Our bill would also provide for joint jurisdiction with each agency maintaining its core authorities over the trading of single-stock users. The legislation would further require that *margin levels* on these products be harmonized with the options market.[90]

The SEC has always been charged with protecting investors and providing full and fair disclosure of corporate market information and preventing fraud and manipulation. The CFTC regulates commercial and professional hedging and speculation in an institutional framework. CFTC cannot regulate insider trading. Margin requirements are different. I hate to see investors shopping as to which instrument to use or to buy for that reason. So neither regulation nor the lack of it should pick winners and losers among products or exchanges and fair competition should.[91]

OneChicago argued that these statements indicated that ''[b]ill sponsors made a point to emphasize that they wanted market forces and not margin levels to determine winners and losers'' and that ''[m]argin needed to be set at a level that prevented it from impacting a market participant's decision on what products to trade.'' [92] However, the Congressional concerns and statements identified by OneChicago—that security futures should not have an unfair competitive advantage over exchange-traded options—support a reading of Sections 7(c)(2)(B)(iii)(I) and (II) of the Exchange Act that is consistent with the approach the Commissions are adopting here, namely that the margin levels for security futures must be consistent with and not lower than the lowest level of margin for comparable exchange-traded options.

Contrary to OneChicago's view, the statute does not provide a mechanism that would permit the Commissions to recalibrate margin requirements for security futures to foster greater use of the product. Rather, it contains restrictions that were designed to ensure that the margin requirements for these products were consistent with the margin requirements for comparable exchange-traded options, and not lower than the lowest level of margin for comparable exchange-traded options. This reading of the statute is supported by the following statement from the legislative history of the CFMA that OneChicago did not cite:

A provision in the bill directs that initial and maintenance *margin levels* for a security future product shall not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 6(a) of the Exchange Act of 1934. In that provision, the term lowest is used to clarify that in the potential case where *margin levels* are different across the options exchanges, security future product *margin levels* can be based off the *margin levels* of the options exchange that has the lowest *margin levels* among all the options exchanges. It does not permit security future product *margin levels* to be based on option maintenance margin levels. If this provision were to be applied today, the required initial *margin level* for security future products would be 20 percent, which is the uniform initial *margin level* for short at-the money equity options traded on U.S. options exchanges.[93]

Further, implementing a risk model approach in order to lower the margin requirements to levels in the way OneChicago suggested could create an incentive for market participants to trade security futures, if security futures trading resumes, rather than exchange-traded options precisely because of the more favorable margin treatment.

Based on the text of Section 7(c)(2)(B) of the Exchange Act and the legislative history (including the legislative history cited by OneChicago), the better reading of the statute is that it applies to levels of margin, and requires that initial and maintenance margin levels for security futures be: (1) Consistent with margin levels for comparable exchange-traded options; and (2) not lower than the lowest level of margin for comparable exchange-traded options. Currently, the lowest level of margin for an unhedged exchange-traded equity option is 15%. Consequently, a 15% margin level is the lowest level of margin permitted for an unhedged security future.[94]

[85] OneChicago Letter at 30–32.

[86] OneChicago Letter at 30. The Commissions address comments relating to the competition with foreign securities markets in section IV below (including the CFTC's consideration of the costs and benefits of the amendments and the SEC's economic analysis, including costs and benefits, of the amendments).

[87] The CFMA ended the prohibition on trading security futures in the United States at a time when this product was traded in overseas markets.

[88] OneChicago Letter at 30.

[89] *See* 146 Cong. Rec. H12497 (daily ed. Dec. 15, 2000) (Commodity Futures Modernization Act of 2000, speech of Rep. Dingell, Dec. 15, 2000) (emphasis added).

[90] *See S. 2697—The Commodity Futures Modernization Act of 2000,* Joint Hearing Before the Committee on Agriculture, Nutrition, and Forestry United States Senate and the Committee on Banking, Housing, and Urban Affairs, (June 21, 2000) (''Senate Hearing'') at 3, statement of Sen. Lugar (emphasis added).

[91] *See* Senate Hearing at 28, statement of Sen. Schumer.

[92] OneChicago Letter at 30–31.

[93] *See* 146 Cong. Rec. E1879 (daily ed. Oct. 23, 2000) (Commodity Futures Modernization Act of 2000, speech of Rep. Markey, Oct. 19, 2000) (emphasis added). As discussed above, the Commissions implemented the CFMA establishing 20% initial and maintenance margin levels for security futures.

[94] OneChicago argued that the Commissions could compare unhedged security futures to unhedged long option positions. *See* OneChicago Letter at 35. In its view, the initial and maintenance margin requirement for a long option is 0% and, therefore, a margin level for security futures that is lower than 15% would be appropriate. As discussed earlier, the margin level is 75% for certain long unhedged options with maturities greater than 9 months. However, this margin requirement relates to financing the purchase of a

Continued

OneChicago argued further that ''the margins have not been harmonized and are not consistent'' because security futures ''have variation pay/collect while options do not, which makes a strict comparison of initial margin percentages inappropriate.'' [95] OneChicago stated that the concept of daily variation margin plays a critical role in the margin framework for security futures, and it believed that the failure to take variation margin into account biases the Commissions' margin rule against security futures.[96] OneChicago believed that variation margin rather than minimum initial and maintenance margin levels more effectively protects customers.[97] OneChicago argued that ''the level of initial and maintenance margin should be considered not lower than comparable options when it provides a level of protection against default that is not lower than comparable options'' and that this ''reading would support the Commissions considering variation margin when looking at the appropriate level of initial margin.'' [98]

The Commissions, when adopting the margin requirements for security futures in 2002, modified the proposal to incorporate the concept of daily pay and collect variation margining into the final rules.[99] Variation settlement is any credit or debit to a customer account, made on a daily or intraday basis, for the purpose of marking-to-market a security future issued by a clearing agency or cleared and guaranteed by a DCO.[100] Therefore, in prescribing the required initial and maintenance margin levels for security futures, the Commissions' rules also account for daily variation margining.[101]

The variation margin component of the futures and security futures margining regimes settles the mark-to-market gains or losses on the positions on a daily basis with FCMs collecting payments from their customers and DCOs collecting payments from FCMs. The margin requirements for exchange-traded equity options also account for daily mark-to-market gains or losses on an option position. In particular, margin rules for exchange-traded equity options require that a customer maintain a minimum level of equity in the account (*i.e.,* an amount that equals or exceeds the maintenance margin requirement). A mark-to-market gain will increase account equity and a loss will decrease account equity potentially generating a requirement for the customer to post additional collateral to maintain the minimum account equity requirement (*i.e.,* the maintenance margin requirement). In this way, the margin requirements for exchange-traded equity options cover the broker-dealer's exposure to the credit risk that arises when the customer's position incurs a mark-to-market loss, just as daily pay and collect variation margining protects the security futures intermediary.

Further, if a customer's security futures position has a mark-to-market gain, the clearing agency or DCO will pay the amount of the gain to the security futures intermediary. This is the pay feature of futures-style variation margining. However, if that variation margin payment remains in the customer's account at the security futures intermediary, the customer continues to have credit risk exposure to the intermediary. Similarly, if a customer's exchange-traded equity option has a mark-to-market gain that results in the account having equity above the maintenance margin requirement, the customer will have credit exposure to the broker-dealer with respect to the excess equity in the account.

For these reasons, the Commissions do not believe that the variation margin requirements for futures and security futures are a unique feature that is absent from the margin requirements for exchange-traded options insomuch as both requirements address mark-to-market changes in the value of the positions.[102] Further, there is no basis to conclude that the variation settlement process for security futures when coupled with a risk model approach to calculating required initial and maintenance margin levels for security futures would be consistent with the margin requirements for exchange-traded equity options. The margin requirements for exchange-traded equity options also account for changes in the mark-to-market value of the options, but they do not use risk models to calculate initial and maintenance margin levels.

Moreover, as acknowledged by OneChicago, a risk model approach to calculating required initial and maintenance margin levels for unhedged security futures could result in margin levels that are significantly lower than the 20% margin level for exchange-traded equity options held outside a Portfolio Margin Account as well as the 15% margin level for exchange-traded equity options held inside a Portfolio Margin Account.[103] Consequently, given the ''not lower than restriction'' of Section 7(c)(2)(B)(iii)(II) of the Exchange Act, it would not be appropriate to set initial and maintenance margin levels for security futures using a risk model approach insofar as exchange-traded equity options are not permitted to rely upon a risk model approach.

As an alternative to the statutory construction argument discussed above, OneChicago stated that ''the Commissions can recognize that the concern at the time of the CFMA, that options and [security futures] would trade interchangeably, was unfounded as options and [security futures] are not comparable products.'' [104] Consequently, Section 7(c)(2)(B)(iii)—in OneChicago's view—''was written into the Exchange Act in case the products proved comparable; because they have proven to not be comparable, it no longer needs to bind upon financial markets.'' [105] Relatedly, OneChicago also argued that there are no exchange-traded options that are comparable to security futures and, therefore, the ''consistent with'' and ''not lower than'' restrictions of Section 7(c)(2)(B)(iii) of the Exchange Act are not implicated.

The Commissions stated a preliminary belief when proposing the reduction of the required margin levels from 20% to 15% that an unhedged

long option position. Unlike the case with an unhedged short option, the margin does not serve as a performance bond to secure the customer's obligations if the option is assigned to be exercised. Initial margin for a security future serves as a performance bond. *See, e.g.,* OneChicago Letter at 4. Long options that do not meet the requirements to be subject to the 75% margin level must be paid in full. Thus, from a financing perspective, they have a 100% margin requirement (*i.e.,* they cannot be purchased through an extension of credit by the broker-dealer). For these reasons, the margin requirements for unhedged long exchange-traded options are not comparable to the margin requirements for security futures.

[95] OneChicago Letter at 31.

[96] OneChicago at 4–5; OneChicago Letter 2 at 5–6.

[97] OneChicago Letter at 7.

[98] OneChicago Letter at 34.

[99] *See* CFTC Rules 41.43(a)(32), 41.46(c)(1)(vi) and (c)(2)(iii), and 41.47(b)(1), and SEC Rules 401(a)(32), 404(c)(1)(vi) and (c)(2)(iii), and 405(b)(1).

[100] *See* CFTC Rule 41.43(a)(32) and SEC Rule 401(a)(32).

[101] *See* 2002 Adopting Release, 67 FR at 53157. *See also* FRB Letter (''The authority delegated by the Board is limited to customer margin requirements imposed by brokers, dealers, and members of national securities exchanges. It does not cover requirements imposed by clearing agencies on their members.'') and 2019 Proposing Release, 84 FR at 36435 at n.6 (describing variation settlement and maintenance margin).

[102] *See, e.g.,* SEC, *Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Thereto,* Exchange Act Release No. 22189 (June 28, 1985) at n.10 (''Maintenance margin in the securities industry and variation margin in the commodities industry are basically intended to serve the same purposes'').

[103] *See, e.g.,* OneChicago Letter at 1 and 14.

[104] *See* OneChicago Letter at 35.

[105] *Id.*

security future was comparable to an unhedged exchange-traded equity option held in a Portfolio Margin Account.[106] This belief was grounded on the Commissions' view—when adopting the margin requirements for security futures—that an unhedged short at-the-money exchange-traded equity option is comparable to a security future.[107]

OneChicago stated that security futures products are not comparable to exchange-traded equity options because the latter have different risk profiles than security futures, including dividend risk, pin risk, and early assignment risk.[108] Further, OneChicago stated that security futures are used for different purposes than exchange-traded equity options.[109] In this regard, OneChicago noted that security futures are delta one derivatives used in equity finance transactions and that they compete with other delta one transactions such as total return swaps, master security lending agreements, and master security repurchase agreements.[110] OneChicago commented that equity financing transactions can be used to provide customers with synthetic (long) exposure to a notional amount of a security, while the financing counterparty pre-hedges the position by accumulating an equivalent position in the underlying shares.[111]

OneChicago also provided statistical data and analysis to support its contention that security futures are not comparable to exchange-traded equity options.[112] In particular, OneChicago provided statistical data comparing trade size (number of contacts and notional value) between options and security futures and comparing security futures delivery rates with options exercise rates.[113] OneChicago stated that the delivery data makes ''clear'' that the ''markets view and use the products differently.''[114] OneChicago also provided statistical data on correlations between open interest in security futures and equity options.[115] OneChicago stated that the data results show no correlation between changes in open interest in security futures and options.[116]

After considering these comments, the Commissions note that under Section 7(c)(2)(b)(iii)(I) of the Exchange Act, customer margin requirements for security futures must be consistent with the margin requirements for comparable exchange-traded options. The Commissions recognize that security futures may not be identical to exchange-traded equity options and that there are differences between the products in terms of their risk characteristics and how they are used by market participants. However, the Commissions continue to believe that the approach taken in this release, with respect to margin levels, is sound because these products generally share similar risk profiles for purposes of assessing margin insofar as both products provide exposure to an underlying equity security or narrow-based equity security index.[117] Thus, both products can be used to hedge a long or short position in the underlying equity security or narrow-based equity security index. Each product also can be used to speculate on a potential price movement of the underlying equity security or narrow-based equity security index. Consequently, a financial intermediary's potential exposure to a customer's unhedged security future or unhedged exchange-traded equity option position is based on the market risk (*i.e.,* price volatility) of the underlying equity security or narrow-based equity security index.

In addition, both short security futures positions and certain exchange-traded options strategies produce unlimited downside risk. Investors in security futures and writers of options may lose their margin deposits and premium payments and be required to pay additional funds. In addition, a very deep-in-the money call or put option on the same security (with a delta of one) is an option contract comparable to a security futures contract. Further, as discussed above, one commenter contends that synthetic futures strategies are an important segment of today's options markets, that could compete with security futures, if trading in security futures resumes.

The margin requirements for security futures and short unhedged exchange-traded equity options are designed to ensure that the customer can perform on the contractual obligations imposed by these products. For these reasons, security futures and short exchange-traded equity options can be appropriately considered to be comparable products for the purposes of setting appropriate margin levels for security futures consistent with the provisions of Section 7(c)(2)(B) of the Exchange Act.[118] OneChicago also argued that the Commissions should compare the customer margin requirements for security futures with the margin requirements for over-the-counter total return swaps, equity index futures, and security futures traded overseas.[119] In response, Section 7(c)(2)(B) of the Exchange Act provides that the margin requirements for security futures must be consistent with the margin requirements for comparable options traded on any exchange registered pursuant to Section 6(a) of the Exchange Act. The statute does not directly contemplate comparisons with the margin requirements for the products and markets identified by OneChicago. Rather, it requires comparisons to comparable exchange-traded options.

In this context, an unhedged security future is comparable to an unhedged exchange-traded equity option held in a Portfolio Margin Account for the purposes of setting margin requirements under Section 7(c)(2)(B) of the Exchange Act.

As an alternative to implementing a risk model approach for all security futures, OneChicago suggested implementing it on a more limited basis for security futures combinations that result in STARS transactions.[120] A STARS transaction combines two security futures to form a spread position. The front leg of the spread expires on the date of the STARS

[106] *See* 2019 Proposing Release, 84 FR at 36435, 36438–40.

[107] *See* 2002 Adopting Release, 67 FR at 53157; 2001 Proposing Release 66 FR at 50725–26.

[108] OneChicago Letter at 2, 9; OneChicago Letter 2 at 1–2.

[109] OneChicago Letter at 2–3.

[110] Delta one derivatives are financial instruments with a delta that is close or equal to one. Delta measures the rate of change in a derivative relative to a unit of change in the underlying instrument. Delta one derivatives have no optionality, and therefore, as the price of the underlying instrument moves, the price of the derivative is expected to move at, or close to, the same rate. *See also* 2019 Proposing Release, 84 FR 36435, at n.14.

[111] OneChicago Letter at 2.

[112] The Commissions address the statistical data and analysis provided by OneChicago in more detail in section IV of this release. In addition to the statistical data and analysis discussed below, OneChicago provided statistical data and analysis on possible correlations between changes in price of the underlying security and changes in trading activity in security futures and equity options (*i.e.,* sensitivity to underlying price moves). OneChicago Letter 3 at 12–13. OneChicago stated that the results of this analysis were ambiguous. OneChicago Letter 3 Summary at 1.

[113] OneChicago Letter 3 at 9–11.

[114] OneChicago Letter 3 Summary at 1.

[115] OneChicago Letter 3 at 14–15.

[116] OneChicago Letter 3 Summary at 1.

[117] Derivatives may be broadly described as instruments or contracts whose value is based upon, or derived from, some other asset or metric. *See also Risk Disclosure Statement for Security Futures Contracts, available at https://www.nfa.futures.org/members/member-resources/files/security-futures-disclosure.pdf* and *Characteristics and Risks of Standardized Options, available at https://www.theocc.com/about/publications/character-risks.jsp.*

[118] *See* 2019 Proposing Release, 84 FR at 36436.

[119] OneChicago Letter at 11.

[120] OneChicago Letter at 19; *see also* Memorandum from the Division of Trading and Markets regarding a July 16, 2019, meeting with representatives of OneChicago (July 29, 2019).

transaction and the second (or back) leg expires at a distant date. OneChicago believed that a STARS transaction would be a substitute for an equity repo or stock loan transaction with the transfer of stock and cash accomplished through a security future transaction.[121] OneChicago suggested that it would be appropriate to margin STARS transactions at risk-based levels since they are exclusively used for equity finance transactions.[122] OneChicago also argued that risk-based margin treatment for a STARS transaction would be consistent with the Exchange Act and argued that there are no comparable options that trade as a spread on a segregated platform and no combinations of options can replicate the mechanics of a STARS transaction.[123]

The Commissions note that OneChicago has discontinued trading operations and is no longer offering STARS transactions. However, combining security futures into a STARS transaction does not change the fundamental nature of the security futures involved in the transaction—they remain security futures. In addition, as noted above, the front leg of the spread expires on the date of the STARS transaction, leaving only a single security future position in the customer's account until the expiration of the back leg at a later date. Consequently, for the reasons discussed above, it would not be consistent with Section 7(c)(2)(B) of the Exchange Act to implement a risk margin approach for security futures that are combined to create a STARS transaction.

To summarize, the Commissions are not persuaded by OneChicago's arguments that, at this time, implementing a risk model approach to calculating margin for security futures would be permitted under Section 7(c)(2)(B) of the Exchange Act. Moreover, implementing a risk model approach would substantially alter how the required minimum initial and maintenance margin levels for security futures are calculated. It also would be a significant deviation from how margin is calculated for listed equity options and other equity positions (*e.g.,* long and short securities positions). It would not be appropriate at this time to implement a different margining system for security futures, given their relation to products that trade in the U.S. equity markets. Implementing a different margining system for security futures may result in substantially lower margin levels for these products as compared with other equity products and could have unintended competitive impacts.[124] For these reasons, even if the Commissions were persuaded at this time that OneChicago's interpretation was permitted by the statute, the Commissions would not agree that it was the appropriate interpretation.

Consequently, the Commissions are adopting the amendments to reduce the required initial and maintenance margin levels for an unhedged security futures position from 20% to 15%, as proposed.[125]

The Commissions' margin requirements continue to permit SRAs and security futures intermediaries to establish higher margin levels and to take appropriate action to preserve their financial integrity.[126] OneChicago advocated for two modifications to this provision of the margin rules for security futures.[127] First, it suggested that only exchanges and clearinghouses that *list* and clear security futures products be given the authority to set higher margin levels, because they control the margin levels and thus the competitiveness of the competing venues.[128] In support of this suggestion, it identified an exchange that has prescribed 20% margin levels for security futures even though it does not list any security futures.[129] Relatedly, OneChicago recommended that the Commissions require that margin levels be set higher than the proposed 15% minimum level if justified by the risk of the security future and noted that while one SRA might set higher levels based on risk, another SRA may maintain the 15% levels.[130]

After considering these comments, the Commissions are not incorporating OneChicago's suggested modifications regarding establishing higher margin levels. The security futures margin rules establish minimum levels and do not set any limitations as to maximum levels. SRAs, including clearinghouses, and security futures intermediaries are permitted to raise margin requirements above 15% if justified by the risk of a security futures position. In addition, security futures intermediaries also are subject to rules that require them to raise margin requirements where appropriate to manage credit risk in customer accounts.[131] These rules provide SRAs and security futures intermediaries important flexibility to manage risk as they deem appropriate, including the ability to increase margin requirements for specific positions or customer accounts. Limiting the ability to increase margin requirements only to exchanges and clearinghouses that list and clear security futures would be inconsistent with this approach. For these reasons, it would not be appropriate to modify the provisions in the security futures margin requirements permitting SRAs and security futures intermediaries to set higher margin levels as suggested by OneChicago.

B. Conforming Revisions to the Strategy-Based Offset Table

1. The Commissions' Proposal

The Commissions' rules permit an SRA to set margin levels that are lower than 20% of the current market value of the security future in the case of an offsetting position involving security futures and related positions.[132] The SRA rules must meet the four criteria set forth in Section 7(c)(2)(B) of the Exchange Act and must be effective in accordance with Section 19(b)(2) of the

[121] OneChicago Letter at 19–20. OneChicago noted that the expiration of the front leg results in a transfer of securities for cash on the next business day following the trade date (T+1). When the back leg expires, OneChicago noted that a reversing transaction takes place that returns both parties to their original positions. OneChicago Letter at 19.

[122] OneChicago Letter at 19–20.

[123] OneChicago Letter at 36.

[124] *See* sections IV.A.6. (CFTC—Discussion of Alternatives) and IV.B.5. (SEC—Reasonable Alternatives Considered) (each discussing the use of risk-based margin models as an alternative to the final rule amendments in this release).

[125] The Commissions continue to believe that these amendments—because they relate to levels of margin—do not implicate the requirement in Section 7(c)(2)(B)(iv) of the Exchange Act that margin requirements for security futures (other than levels of margin), including the type, form, and use of collateral, must be consistent with the requirements of Regulation T. The Commissions did not receive any comments objecting to this view.

[126] *See* CFTC Rule 41.42(c)(1) and SEC Rule 400(c)(1). *See* 2019 Proposing Release, 84 FR at 36440.

[127] OneChicago Letter at 17.

[128] OneChicago Letter at 17.

[129] The NYSE has rules related to margin levels for security futures, but it does not list any security futures.

[130] OneChicago Letter at 17.

[131] *See e.g.,* FINRA Rule 4210(d) which requires FINRA members to establish procedures to: (1) Review limits and types of credit extended to all customers; (2) formulate their own margin requirements; and (3) review the need for instituting higher margin requirements, mark-to-markets and collateral deposits than are required by FINRA's margin rule for individual securities or customer accounts; *see also* FINRA Rule 4210(f)(8) (providing authority for FINRA, if market conditions warrant, to implement higher margin requirements). *See e.g.,* 17 CFR 1.11 (CFTC Rule 1.11) (requiring FCMs to establish risk management programs that address market, credit, liquidity, capital and other applicable risks, regardless of the type of margining offered). *See also* National Futures Association (''NFA'') Rule 2–26 *FCM and IB Regulations,* which states that any member or associate who violates CFTC Rule 1.11 (and other rules) shall be deemed to have violated an NFA requirement.

[132] *See* CFTC Rule 41.45(b)(2) and SEC Rule 403(b)(2). *See also* 2002 Adopting Release, 67 FR at 53158–61.

Exchange Act and, as applicable, Section 5c(c) of the CEA.[133] In connection with these provisions governing SRA rules, the Commissions published the Strategy-Based Offset Table.[134]

The Commissions stated the belief that the offsets identified in the Strategy-Based Offset Table were consistent with the strategy-based offsets permitted for comparable offsetting positions involving exchange-traded options.[135] The Commissions further stated the expectation that SRAs seeking to permit trading in security futures will submit to the Commissions proposed rules that impose levels of required margin for offsetting positions involving security futures in accordance with the minimum margin requirements identified in the Strategy-Based Offset Table. SRAs have adopted rules consistent with the Strategy-Based Offset Table.[136]

The Commissions proposed to re-publish the Strategy-Based Offset Table to conform it to the proposed 15% required margin levels.[137] The re-published Strategy-Based Offset Table would incorporate the 15% required margin levels for certain offsetting positions (as opposed to the current 20% levels) and would retain the same percentages for all other offsets.

2. Comments and the Re-Published Strategy-Based Offset Table

OneChicago recommended several changes to the Strategy-Based Offset Table, as proposed to be revised. First, OneChicago suggested reducing the margin requirement for ''delta-neutral'' positions from 5% to the lower of: (1) The total calculated by multiplying $0.375 for each position by the instrument's multiplier, not to exceed the market value in the case of long positions, or (2) 2% of the current market value of the security futures contract.[138] These recommended changes would not be appropriate. The 5% requirement was based on the minimum margin required by rules of securities SROs for offsetting long and short positions in the same security.[139] The 5% margin requirement for this strategy continues to exist in current securities SRO rules.[140] Accordingly, lowering the requirement as recommended by OneChicago would not be consistent with Section 7(c)(2)(B) of the Exchange Act.

OneChicago also requested that the Commissions incorporate total return equity swaps into the Strategy-Based Offset Table.[141] OneChicago stated that total return equity swaps are an exact substitute for security futures. OneChicago did not specify whether it was referring to cleared or non-cleared total return equity swaps. In either case, it would not be appropriate to include them in the Strategy-Based Offset Table. Securities SRO margin rules for options do not, at this time, recognize offsets involving these products. Therefore, adding them to the Strategy-Based Offset Table would not be consistent with Section 7(c)(2)(B) of the Exchange Act.

OneChicago further requested that offset positions margined at 10% should be lowered to 7.5% to mirror the magnitude of the reduction of minimum required margin levels from 20% to 15% for unhedged security futures.[142] This would make the margin requirements for offsets recognized in the Strategy-Based Offset Table lower than offsets for exchange-traded options currently permitted by securities SRO margin rules. Therefore, modifying the Strategy-Based Offset Table in this manner would not be consistent with Section 7(c)(2)(B) of the Exchange Act.

Finally, OneChicago suggested that the Commissions could simplify the Strategy-Based Offset Table by replacing it with an offset rule.[143] Under the suggested rule, offset positions would be margined at the greater of: (1) The total calculated by multiplying $0.375 for each position by the instrument's multiplier, not to exceed the market value in the case of long positions; or (2) 15% of the delta exposed portion of the portfolio. As discussed above, the Strategy-Based Offset Table is designed to permit offsets that are consistent with offsets recognized for comparable exchange-traded options under the securities SRO margin rules. For the reasons discussed above, the rule suggested by OneChicago would not be consistent with the permitted offsets for exchange-traded options and, consequently, would not be consistent with Section 7(c)(2)(B) of the Exchange Act.

For the foregoing reasons, the Commissions are re-publishing the Strategy-Based Offset Table with the proposed revisions.[144] The Commissions expect that SRAs will submit to the Commissions proposed rules that impose levels of required margin for offsetting positions involving security futures in accordance with the minimum margin levels identified in the Strategy-Based Offset Table.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
1. Long security future or short security future.	Individual stock or narrow-based securities index.	15% of the current market value of the security future.	15% of the current market value of the security future.
2. Long security future (or basket of security futures representing each component of a narrow-based securities index [1]) and long put option [2] on the same underlying security (or index).	Individual stock or narrow-based securities index.	15% of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price [3] of the put plus the aggregate put out-of-the-money [4] amount, if any; or (2) 15% of the current market value of the long security future.
3. Short security future (or basket of security futures representing each component of a narrow-based securities index [1]) and short put option on the same underlying security (or index).	Individual stock or narrow-based securities index.	15% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	15% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.[5]

[133] Section 19(b)(2) of the Exchange Act governs SRA rulemaking with respect to SEC registrants, and Section 5c(c) of the CEA governs SRA rulemaking with respect to CFTC registrants.

[134] *See* 2002 Adopting Release, 67 FR at 53158–61.

[135] *Id.* at 53159.

[136] *See, e.g.,* FINRA Rule 4210(f)(10) and Cboe Rule 10.3(k).

[137] *See* 2019 Proposing Release, 84 FR at 36441–36443.

[138] OneChicago Letter at 15. This recommendation would apply to items 4, 10, 13, 17, 18, and 19 in the Strategy-Based Offset Table, as proposed to be revised. *See* 2019 Proposing Release, 84 FR at 36441–43.

[139] *See* 2002 Adopting Release, 67 FR at 53158, n.187.

[140] *See, e.g.,* FINRA Rule 4210(e)(1).

[141] OneChicago Letter at 16.

[142] OneChicago Letter at 16. The reduction in margin from 10% to 7.5% would apply to items 2, 8, 9, 11,12 14, 15 and 16 in the Strategy-Based Offset Table, as proposed to be revised.

[143] OneChicago Letter at 16–17.

[144] Item 1 of the revised Strategy-Based Offset Table lists the margin percentages for a long security future and a short security future. These percentages are the baseline, not offsets, but they are included in the table to preserve consistency with the earlier offset table.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
4. Long security future and short position in the same security (or securities basket [1]) underlying the security future.	Individual stock or narrow-based securities index.	The initial margin required under Regulation T for the short stock or stocks.	5% of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
5. Long security future (or basket of security futures representing each component of a narrow-based securities index [1]) and short call option on the same underlying security (or index).	Individual stock or narrow-based securities index.	15% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	15% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.
6. Long a basket of narrow-based security futures that together tracks a broad based index [1] and short a broad-based security index call option contract on the same index.	Narrow-based securities index.	15% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	15% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.
7. Short a basket of narrow-based security futures that together tracks a broad-based security index [1] and short a broad-based security index put option contract on the same index.	Narrow-based securities index.	15% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	15% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
8. Long a basket of narrow-based security futures that together tracks a broad-based security index [1] and long a broad-based security index put option contract on the same index.	Narrow-based securities index.	15% of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 15% of the current market value of the long basket of security futures.
9. Short a basket of narrow-based security futures that together tracks a broad-based security index [1] and long a broad-based security index call option contract on the same index.	Narrow-based securities index.	15% of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 15% of the current market value of the short basket of security futures.
10. Long security future and short security future on the same underlying security (or index).	Individual stock or narrow-based securities index.	The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.	The greater of: (1) 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.
11. Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price. (Conversion).	Individual stock or narrow-based securities index.	15% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10% of the aggregate exercise price, plus the aggregate call in the money amount, if any.
12. Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price. (Collar).	Individual stock or narrow-based securities index.	15% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 15% of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.
13. Short security future and long position in the same security (or securities basket [1]) underlying the security future.	Individual stock or narrow-based securities index.	The initial margin required under Regulation T for the long stock or stocks.	5% of the current market value, as defined in Regulation T, of the long stock or stocks.
14. Short security future and long position in a security immediately convertible into the same security underlying the security future, without restriction, including the payment of money.	Individual stock or narrow-based securities index.	The initial margin required under Regulation T for the long security.	10% of the current market value, as defined in Regulation T, of the long security.
15. Short security future (or basket of security futures representing each component of a narrow-based securities index [1]) and long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based securities index.	15% of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 15% of the current market value of the short security future.
16. Short security future, Short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion).	Individual stock or narrow-based securities index.	15% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from the put sale may be applied.	10% of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
17. Long (short) a basket of security futures, each based on a narrow-based securities index that together tracks the broad-based index [1] and short (long) a broad based-index future.	Narrow-based securities index.	5% of the current market value of the long (short) basket of security futures.	5% of the current market value of the long (short) basket of security futures.
18. Long (short) a basket of security futures that together tracks a narrow-based index [1] and short (long) a narrow based-index future.	Individual stock and narrow-based securities index.	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).
19. Long (short) a security future and short (long) an identical security future traded on a different market [6].	Individual stock and narrow-based securities index.	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).

[1] Baskets of securities or security futures contracts replicate the securities that compose the index, and in the same proportion.

[2] Generally, unless otherwise specified, stock index warrants are treated as if they were index options.

[3] ''Aggregate exercise price,'' with respect to an option or warrant based on an underlying security, means the exercise price of an option or warrant contract multiplied by the numbers of units of the underlying security covered by the option contract or warrant. ''Aggregate exercise price'' with respect to an index option means the exercise price multiplied by the index multiplier.

[4] ''Out-of-the-money'' amounts are determined as follows: (1) For stock call options and warrants, any excess of the aggregate exercise price of the option or warrant over the current market value of the equivalent number of shares of the underlying security; (2) for stock put options or warrants, any excess of the current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option or warrant; (3) for stock index call options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier; and (4) for stock index put options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant.

[5] ''In-the-money'' amounts are determined as follows: (1) For stock call options and warrants, any excess of the current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option or warrant; (2) for stock put options or warrants, any excess of the aggregate exercise price of the option or warrant over the current market value of the equivalent number of shares of the underlying security; (3) for stock index call options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant; and (4) for stock index put options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier.

[6] Two security futures are considered ''identical'' for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical contract specifications, and would offset each other at the clearing level.

C. Other Matters

One commenter urged the Commissions to make clear, where appropriate, that margin rules of general applicability do not apply to security futures.[145] Specifically, this commenter requested clarification about the intersection of the security futures rules and CFTC general margin requirements under part 39 of the CFTC's regulations for DCOs.[146] The commenter cited to a CFTC rule proposal related to customer initial margin requirements as an example of a rule of general applicability that should be addressed by the Commissions. Earlier this year, the CFTC adopted changes to the DCO core principles, including 17 CFR 39.13(g)(8)(ii) (CFTC Rule 39.13(g)(8)(ii)) relating to customer initial margin requirements.[147] As the CFTC noted in the 2019 Proposing Release[148] and in the final rule adopting changes to DCO core provisions,[149] the CFTC's Division of Clearing and Risk issued an interpretative letter in September 2012 stating that the specific initial margin requirements under CFTC Rule 39.13(g)(8)(ii) do not apply to security futures positions.[150] CFTC Letter No. 12–08 is still in effect and may be relied upon by market participants. The CFTC believes that CFTC Letter No. 12–08 addresses the commenter's concerns, and the CFTC will not be revising the position taken by the CFTC's Division of Clearing and Risk in this rulemaking.

III. Paperwork Reduction Act

A. CFTC

The Paperwork Reduction Act of 1995 (''PRA'')[151] imposes certain requirements on Federal agencies (including the CFTC and the SEC) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The final rule amendments do not require a new collection of information on the part of any entities subject to these rules. Accordingly, the requirements imposed by the PRA are not applicable to these rules.

B. SEC

The PRA[152] imposes certain requirements on Federal agencies (including the CFTC and the SEC) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The final rule amendments do not contain a ''collection of information'' requirement within the meaning of the PRA. Accordingly, the PRA is not applicable.

IV. CFTC Consideration of Costs and Benefits and SEC Economic Analysis (Including Costs and Benefits) of the Proposed Amendments

A. CFTC

1. Introduction

These final rule amendments will permit customers in security futures to pay a lower minimum margin level for an unhedged security futures position. The final rules set required initial margin for each long or short position in a security future at 15% of the current market value. In connection with this change, the Strategy-Based Offset Table will be restated so that it is consistent with the reduction in the minimum initial margin.

Section 15(a) of the CEA requires the CFTC to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[153] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors below. Where reasonably feasible, the CFTC has endeavored to estimate quantifiable costs and benefits. Where quantification is not feasible, the CFTC identifies and describes costs and benefits qualitatively.

The CFTC requested comments on all aspects of the costs and benefits associated with the proposed rule amendments. In particular, the CFTC requested that commenters provide data and any other information upon which the commenters relied to reach their conclusions regarding the CFTC's proposed considerations of costs and benefits.[154] The Commissions received comments that indirectly address the costs and benefits of the proposed amendments. Relevant portions of the comments are discussed in the analysis below.

The CFTC's consideration of costs and benefits includes a brief description of the economic baseline against which to compare the rule amendments, a summary of the amendments, and separate, detailed discussions of the costs and benefits of the amendments. Then, the CFTC examines alternatives offered by commenters. Finally, the CFTC considers each of the section 15(a) factors under the CEA.

2. Economic Baseline

The CFTC's economic baseline for this analysis is the twenty percent margin requirement on security futures positions that was adopted in 2002 and exists today in CFTC Rule 41.45(b)(1), along with the offsetting positions table under CFTC Rule 41.45(b)(2) (Strategy-Based Offset Table). In the 2002 Adopting Release, the Commissions finalized a set of security futures margin rules that complied with the statutory

[145] *See* FIA Letter at 2.

[146] *See* FIA Letter at 2; *see also* CFTC Letter No. 12–08 (Sept. 14, 2012); 2019 Proposing Release, 84 FR 36437, at n.40.

[147] *See Derivatives Clearing Organization General Provisions and Core Principles,* 85 FR 4800 (Jan. 27, 2020) (amending certain CFTC regulations applicable to registered DCOs).

[148] 2019 Proposing Release, 84 FR 36437, at n.40.

[149] *Derivatives Clearing Organization General Provisions and Core Principles,* 85 FR at 4812.

[150] CFTC Letter No. 12–08 (Sept. 14, 2012) at 10, *available at https://www.cftc.gov/csl/12-08/download.*

[151] 44 U.S.C. 3501 *et seq.*

[152] *Id.*

[153] 7 U.S.C. 19(a).

[154] The CFTC sought ''estimates and views regarding the specific costs and benefits for a security futures clearing organization, exchange, intermediary, or trader that may result from the adoption of the proposed rule amendment.'' 2019 Proposing Release, 84 FR at 36446–47.

requirements under Section 7(c)(2)(B) of the Exchange Act. The rules state that, ''the required margin for each long or short position in a security future shall be twenty (20) percent of the current market value of such security future.'' [155] The rules also allow SRAs to set margin levels lower than the 20% minimum requirement for customers with ''an offsetting position involving security futures and related positions.'' [156] In addition, the rules that were finalized under the 2002 Adopting Release permit certain customers to take advantage of exclusions to the minimum margin requirement for security futures.

The CFTC has considered the costs and benefits of the rule amendments as compared with the baseline of the current minimum initial and maintenance margin levels for unhedged security futures, which is 20% of the current market value of such security future. The CFTC notes that OneChicago, the only exchange listing security futures in the U.S., discontinued all trading operations on September 21, 2020. At this time, there are no security futures contracts listed for trading on U.S. exchanges. This release considers the costs and benefits that would occur if OneChicago were to resume operations or another exchange were to launch security futures contracts.

3. Summary of the Final Rules

The final rules lower the required initial and maintenance margin levels for an unhedged security futures position from 20% to 15% of the current market value of such a security futures position. In addition, the final rules make certain revisions to the Strategy-Based Offset Table in line with the revised margin requirement. These amendments to the security futures margin rules bring margin requirements for security futures held in futures accounts, or securities accounts that are not Portfolio Margin Accounts, into alignment with the required margin level for unhedged security futures held in Portfolio Margin Accounts. The final rules do not make any other changes to the security futures margin requirement regime.

4. Description of Costs

As a general matter, the CFTC believes that if security futures trading resumes, the final rules will reduce costs relative to existing CFTC Rule 41.45(b)(1) because the final rules decrease the level of margin required for an unhedged security futures position from 20% to 15%. The CFTC has determined that, because there is no security futures trading at this time, there may be new startup costs such as operational or technology costs associated with calculating security futures customer margin if a new exchange were to launch security futures trading. Such costs would be less significant for OneChicago, if it were to resume operations, given that the infrastructure for calculating such margin already exists and would not require major reprogramming or changes beyond costs that would be incurred to relaunch security futures contracts. One commenter noted that the final rules' ''margin requirements will be simpler to administer and risk manage for intermediaries that facilitate trading in the market, and better aligns with customer use of these products.'' [157] The Commissions received no other comments regarding this cost.

As set forth in the 2019 Proposing Release, the CFTC identified a number of risk-related costs that could result from the final rules and discusses each below.

i. Risk-Related Costs for Security Futures Intermediaries and Customers

One risk-related cost to consider, if security futures trading resumes, is the potential cost to security futures intermediaries and their customers that would result from a default of either an intermediary or a customer.[158] Reducing margin requirements for security futures could expose security futures intermediaries and their customers to losses in the event that margin collected is insufficient to protect against market moves. Pursuant to the OCC's bylaws, any security futures intermediary that is a clearing member of OCC grants a security interest to OCC for any account it establishes and maintains, and therefore a customer's assets may be obligated to OCC upon default.[159] As a result, security futures intermediaries that are FCMs could be exposed to a loss if the 15% margin rate for security futures is insufficient, to offset losses associated with a customer default. However, this risk is mitigated by the fact that if the FCM determines that a 15% margin level is insufficient to cover the inherent risk of the customer position, the FCM has the authority to collect additional margin from its customers, in excess of the minimum requirement, in order to protect its financial integrity.[160] Moreover, the FCM has an incentive to manage the risk of a customer's default and could collect additional margin to do that.

If security futures trading resumes, a similar risk-related cost might arise where an FCM collects only the minimum margin required from customers in order to maintain or expand its customer business, when it has determined or should have determined that additional margin is required to cover the inherent risk of the customer position. Lower margin requirements might facilitate an FCM permitting its customers to take on additional risk in their positions in order to increase business for the FCM. Such additional risks could put the FCM at risk if one of its customers defaulted on its payment obligations, and other customers of the FCM could face losses if the FCM or one of its fellow customers defaulted.

Another risk-related cost could stem from the possibility of increased leverage among security futures customers. Customers posting less initial margin to cover security futures positions might be able to increase their overall market exposure and thereby increase their leverage. Increased leverage in the security futures markets could increase risks to overall financial stability and result in costs to the broader financial markets insofar as security futures customers, security futures intermediaries, and DCOs participate in financial markets other than security futures.

As discussed in the proposal, the CFTC considered two final potential risk-related costs (incentives for FCMs to collect less margin and increased leverage at the customer level). The Commissions received no comments regarding these costs. The CFTC believes these theoretical costs are mitigated, to some degree, by regulations that apply to security futures intermediaries that are registered as FCMs. For example, FCMs are subject to capital requirements under CFTC regulations,[161] and in instances where

[155] CFTC Rule 41.45(b)(1), 17 CFR 41.45(b)(1). *See* CFTC Rule 41.43(a)(4), 17 CFR 41.43(a)(4) (defining the term ''current market value.'').

[156] CFTC Rule 41.45(b)(2), 17 CFR 41.45(b)(2).

[157] *See* FIA Letter at 2.

[158] In this context, an intermediary default describes a clearing member that experiences a default event under the terms of a clearinghouse's rules and procedures. Such default events generally include a failure to deliver funds in a timely manner (*e.g.,* failure to satisfy a margin call). *See* OCC Rule 1102(a)—Suspension, and OCC's Clearing Member Default Rules and Procedures, *available at https://ncuoccblobdev.blob.core.windows.net/media/theocc/media/risk-management/default-rules-and-procedures.pdf.*

[159] *See* OCC Bylaws, Article VI—Clearance of Confirmed Trades, Section 3—Maintenance of Accounts, Interpretations and Policies .07, adopted September 22, 2003, *available at https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_bylaws.pdf.*

[160] *See* CFTC Rule 41.42(c)(1); SEC Rule 400(c)(1).

[161] *See* CFTC Rule 1.17, 17 CFR 1.17.

the security futures intermediary is jointly registered with the SEC as a broker-dealer FCM, the SEC's capital rules also apply.[162] In addition, FCMs are required to establish a system of risk management policies and procedures pursuant to CFTC Rule 1.11.[163] This risk management program is designed to incentivize the FCM to protect itself and its customers against a variety of risks, including the risk of inadequate margin coverage and increased leverage. The regulatory regime to which FCMs are subject is designed to require them to fully account for the potential future exposures of their customers' security futures positions in the form of initial and maintenance margin.

Finally, as explained in the 2019 Proposing Release, risk-related costs to the security futures intermediary have been further mitigated by the fact that the vast majority of OneChicago's open interest was held by eligible contract participants (''ECPs''), as defined in Section 1a(18) of the CEA.[164] OneChicago provided data to support this statement prior to the issuance of the 2019 Proposing Release. Generally speaking, ECPs are financial entities or individuals with significant financial resources or other qualifications that make them appropriate persons for certain investments.[165] The CFTC believes that because ECPs are well capitalized investors, they may be less likely to default and transmit risks throughout the financial system. According to the data provided by OneChicago, over 99% of the notional value of OneChicago's products was held by ECPs as of March 1, 2016, and March 1, 2017.[166] The Commissions received no comments regarding this data. However, the CFTC notes that an exchange that, in the future, launches security futures may decide to market such contracts to retail customers that are not ECPs.

ii. Appropriateness of Margin Requirements

If security futures trading resumes, a possible risk-related cost of lowering margin requirements for security futures is that a DCO may not have sufficient margin on deposit to cover the potential future exposure of cleared security futures positions. However, the risk management expertise at security futures intermediaries and DCOs, as well as the general applicability of CFTC Rule 39.13 to security futures,[167] supports the conclusion that DCOs and security futures intermediaries will continue to manage the risks of these products effectively even with lower minimum margin requirements.[168]

If security futures trading resumes, the risk security futures customers and/or intermediaries would face from reducing initial and maintenance margin would be addressed at the clearinghouse level because there are additional protections under CFTC regulations. For example, CFTC Rule 39.13(g)(2)(i) requires a DCO to establish initial margin requirements that are commensurate with the risks of each product and portfolio.[169] In addition, CFTC Rules 39.13(g)(2)(ii) and (iii) require that initial margin models meet set liquidation time horizons and have established confidence levels of at least 99%.[170] These DCO initial margin requirements are distinct from the margin requirements to which customers are subject pursuant to these final rules and, along with other risk-reducing measures, serve to mitigate the possibility that a DCO may default (possibly resulting in a systemic event). In the event that a DCO were to determine that a 15% margin level for security futures would be insufficient to satisfy a DCO's obligation under CFTC Rule 39.13, the DCO would be required to collect additional margin from its clearing members.[171]

The CFTC observes that customer margin requirements for security futures held by security futures intermediaries are materially distinct from initial margin requirements for DCOs. The initial margin requirements used by DCOs typically are risk-based, and CFTC rules are designed to permit DCOs to use risk-based margin models to determine the appropriate level of margin to be collected, subject to CFTC regulations in Part 39, as applicable.

In addition to the initial margin requirements at the DCO level, clearing members are required to satisfy certain financial resources requirements, including a ''capital'' requirement, to demonstrate that they can withstand certain risks under ''extreme but plausible market conditions.'' [172]

[162] *See* SEC Rule 240.15c3–1, 17 CFR 240.15c3–1.

[163] Under CFTC Rule 1.11, FCMs are required to establish risk management programs that address market, credit, liquidity, capital and other applicable risks, regardless of the type of margining offered. *See also* NFA Rule 2–26 *FCM and IB Regulations,* which states that any member or associate who violates CFTC Rule 1.11 (and other rules) shall be deemed to have violated an NFA requirement.

[164] *See also* CFTC Rule 1.3, 17 CFR 1.3.

[165] For example, an individual can qualify as an ECP if the individual has amounts invested on a discretionary basis, the aggregate of which is in excess of: (i) $10,000,000; or (ii) $5,000,000 if the individual also enters into an agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.

[166] The CFTC sought comments on all aspects of its considerations of costs and benefits in the 2019 Proposing Release. In particular, the CFTC requested data and any other information and did not receive any comments questioning this data, or updated data from OneChicago. As a result, the CFTC continues to refer to the data provided by OneChicago relating to time periods in 2016 and 2017.

[167] As noted above and elsewhere, the general requirements of CFTC Rule 39.13 (17 CFR 39.13) are applicable to security futures intermediaries and DCOs with respect to security futures, however, the specific provision of CFTC Rule 39.13(g)(8)(ii) relating to customer initial margin requirements has been addressed separately by CFTC Letter No. 12–08 and that remains unchanged by this final rule.

[168] As discussed above, security futures intermediaries are authorized to collect margin above the amounts required by the Commissions. However, if security futures trading resumes, security futures intermediaries could be incentivized to lower their margin rates in order to compete for customer business as for-profit entities. If security futures intermediaries were to engage in competition for business based on margin pricing, it is possible that security futures intermediaries would collect only the required level of margin (*i.e.,* 15% under the final rule change), regardless of the market conditions, which could impair their ability to protect against market risk and losses.

[169] CFTC Rule 39.13(g)(2)(i) is not addressed in CFTC Letter No. 12–08.

[170] CFTC Rules 39.13(g)(2)(ii) and (iii) are not addressed in CFTC Letter No. 12–08. In accordance with these rules, OCC Rules 601(c) and 601(e) provide for initial margin for segregated futures customer accounts to be calculated pursuant to the Standard Portfolio Analysis of Risk (''SPAN'') on a gross basis, as well as calculating on a net basis initial margin requirements for each segregated futures accounts using STANS. OCC's scan ranges for the SPAN margin models provide coverage for a minimum 99% confidence level.

[171] The CFTC expects that any difference between the margin charged at the DCO and the margin charged by the security futures intermediary will be addressed by additional margin calls, if necessary. The DCO can require additional margin from its clearing members (which in some cases will be the security futures intermediary), to cover changes in market positions. DCOs and clearing members are familiar with margin call procedures and have established rules to efficiently transfer funds when needed. If a customer's account has insufficient funds to meet the margin call, its clearing member may provide the amount to the DCO and collect it from the customer at a later time. In this scenario, the clearing member may take on a liability or additional risk on the customer's behalf for a short period of time. The CFTC notes that this practice is the same for security futures as it is for other products subject to clearing and it does not view this temporary shifting of risk between the clearing member and the customer as a unique source of risk to security futures. Furthermore, this amendment lowering the required margin from 20% to 15% does not alter the relationship between DCOs and their clearing members, or the relationship between clearing members and their customers. The CFTC acknowledges that it is possible that DCOs and security futures intermediaries will collect different levels of margin, but it is not necessarily a result of the final rules. Moreover, the difference in margin collected is not an unmitigated source of risk for the security futures intermediaries because they have the authority to collect additional funds from their customers in the event of a margin call and can choose to set margin levels higher than the minimum level required by the Commissions.

[172] 17 CFR 39.12 (CFTC Rule 39.12(a)(2)) (defining the capital requirement for clearing

Continued

Furthermore, the DCO is required to maintain its own financial resources, which may include its own capital, guaranty fund deposits by clearing members, default insurance, assessments for additional guaranty fund contributions, and other financial resources, as permitted.[173] In combination, financial resource requirements for clearing members, initial margin contributions, guaranty fund contributions, and other resources provide additional protections at the DCO level against the risk that a default by a customer or security futures intermediary will create systemic risk.

In the event that a clearing member defaults on its obligations to the DCO, the DCO has a number of ways to manage associated risks, including transferring (or porting) the positions of the defaulted clearing member and using the defaulting clearing member's margin and other collateral on deposit to cover any losses. In order to cover the losses associated with a clearing member default, the DCO would typically draw from (in order): (1) The initial margin posted by the defaulting clearing member; (2) the guaranty fund contribution of the defaulting clearing member; (3) the DCO's own capital contribution; (4) the guaranty fund contribution of non-defaulting clearing members; and (5) an assessment on the non-defaulting clearing members. In the event that a DCO could not transfer the positions of the defaulted clearing member, it could liquidate those positions. Taken together, these mutualized risk mitigation capabilities are largely unique to clearinghouses, and help to ensure that they remain solvent when dealing with defaults of their members, their members' customers, and/or other periods of stressed market conditions.

As noted in the 2019 Proposing Release, the CFTC reviewed data from security futures markets under normal market conditions and concluded that a 15% level of margin would be sufficient to cover daily price moves in most instances (*i.e.,* more than 99.5%).[174] This is consistent with what the CFTC expects from risk-based margin regimes at DCOs. The Commissions received no comments regarding this data analysis. In addition, no commenters provided any quantitative data in support or refutation of the CFTC's risk analysis. Therefore, the CFTC continues to believe that the final rules will not have a substantial negative impact on (1) the protection of market participants or the public, (2) the financial integrity of security futures markets in the United States, if trading resumes, or (3) sound risk management practices of DCOs or security futures intermediaries.

iii. Potential Costs Related to Competition and Market Arbitrage

One commenter responded to the 2019 Proposing Release with concerns that a change in margin requirements for security futures would provide an advantage to security futures and create a competitive disadvantage for exchange-traded equity options.[175] This commenter explained that exchange-traded equity options are regularly used to establish synthetic long and short exposures that produce exposures that are nearly identical to exposure created by security futures.[176] According to this commenter, there exists the possibility that the lower margin requirements for security futures could result in customers shifting from trading in equity options to security futures, which in turn, could result in decreased liquidity and less price discovery in the equity options markets.

However, another commenter argued there may be reason to doubt that changes in trading behavior would be precipitated by the lower margin levels set forth in these final rules. OneChicago provided data to support its view that security futures (referred to as "single stock futures" in OneChicago Letter 3) and equity options did not trade interchangeably.[177] The five analyses that OneChicago conducted were valuable to the CFTC's consideration of costs and benefits.

In particular, OneChicago provided analysis comparing SPX (S&P 500) options to E-mini S&P 500 futures contracts.[178] This analysis indicates that the products do not trade interchangeably and that the ratios of SPX options open interest to E-mini futures open interest, and SPX options volume to E-mini futures volume are not correlated with the margin rate on the E-mini S&P 500 futures contracts.[179] The CFTC recognizes that there are many reasons why customers decide to trade in one product over another (including tax ramifications), and that security futures and equity options are not perfect substitutes. The CFTC acknowledges that if security futures trading resumes, lower margin requirements could increase trading in security futures above their historical volumes (and some of that activity could be from customers that previously traded equity options). However, a customer's choice of trading instrument is not determined solely by margin requirements.

Another reason to doubt the negative competitive impact of these final rules on exchange-traded equity options is that the 2008 adoption of Portfolio Margin Rules for exchange-traded equity options did not cause security futures customers to migrate their positions to those products, even though it arguably provided those options with a competitive advantage over security futures because of the lower minimum margin rate.[180] Moreover, the vast majority of security futures customers would have been eligible for lower margin requirements but did not move their positions from futures accounts to Portfolio Margin Accounts, which were margined under the Portfolio Margin Rules (*i.e.,* margin required was equal to 15% for an unhedged position). The CFTC believes that, if trading in security futures resumes, the final rules' amendments are unlikely to create a competitive disadvantage for exchange-traded equity options, as the 15% margin rate is already in effect for positions held in a Portfolio Margin Account.

OneChicago's closure after years of much lower trading activity than in exchange-traded equity options suggests that security futures in the U.S. may

members with cross-references to the CFTC's part 1 rules for FCMs and the SEC's rules for broker-dealers).

[173] *See generally* 17 CFR 39.11(a) through (e) (CFTC Rule 39.11(a) through (e)). *See also* 17 CFR 1.12 (CFTC Rule 1.12) (setting forth minimum financial requirements for FCMs and IBs).

[174] Conducting a value-at-risk analysis of 74 of the most liquid security futures contracts during a limited time-frame (November 2002–June 2010), CFTC staff found that there were 195 instances where a 15% margin was insufficient and 99 instances where a 20% margin was insufficient. For all observations, a 15% margin was sufficient for 99.81% of all observations while a 20% margin was sufficient for 99.91% of all observations. While the period covered by this study does include the high volatility exhibited in 2008, it does not include the comparably high volatility exhibited in early spring 2020.

[175] Cboe/MIAX Letter at 2.

[176] Cboe/MIAX Letter at 6.

[177] OneChicago Letter 3 at 2.

[178] The CFTC notes that the E-mini futures contracts are not security futures, but are futures regulated solely by the CFTC (*i.e.,* they are not jointly regulated by the CFTC and SEC). The comparison between E-mini futures contracts and SPX options is still helpful to understand the interplay between the futures and equity options markets.

[179] According to OneChicago's analysis, there is a statistically significant negative correlation between SPX options and E-mini futures. OneChicago Letter 3 at 6.

[180] A competitive advantage for options may have existed because options are held in a securities account by default. In contrast, most security futures positions were held in futures accounts, and in order for a trader to take advantage of the lower margin rate for a security futures position, such a trader would have to move those positions into a different type of account (*i.e.,* from a futures account to a securities account) with associated costs.

have been operating at a competitive disadvantage to related markets. However, based on publicly available Eurex volume data,[181] security futures trading on U.S. stocks in other jurisdictions is lower than trading in security futures on European companies, even on the Eurex exchange in Germany where margin requirements are calculated using risk-based methodologies.[182] Therefore, factors other than margin requirements may be influencing demand for security futures (*e.g.,* tax ramifications or availability of competing products). Nonetheless, the CFTC expects that lowering the security futures margin requirement to 15% from 20% will help mitigate this competitive disadvantage and could encourage a resumption of security futures trading in the U.S.

iv. Costs and Benefits Associated With Requested Changes to the Margin Offsets Table

The Commissions are updating and restating the table of offsets for security futures to reflect the new (15%) minimum margin requirement. The CFTC believes that if security futures trading resumes, lowering the margin requirements for certain offsets will not increase costs to customers, security futures intermediaries, or DCOs. The categories of permissible offsets will remain the same and there is no change to the inputs used to calculate the offset, other than to decrease the initial and maintenance margin on all security futures from 20% to 15%. Moreover, the same risk to the customers and security futures intermediaries will exist if the Commissions decrease the margin required for security futures trading combinations eligible for offsets as it will with security futures without an offset.

As discussed above, OneChicago suggested that the Commissions make a number of changes to the Strategy-Based Offset Table.[183] OneChicago asked that the Offset Table be amended to account for customers holding delta-neutral positions (*e.g.,* a customer holds an equal and opposite position in stock and/or a security future).[184] Although the CFTC agrees that it would make sense to account for a neutral position when setting margin levels, the CFTC believes the revised margin offset table included in this release balances the efficiencies of offsetting positions against the outstanding risks associated with these financial products in light of the fact that equity markets and security futures markets are subject to separate regulatory oversight. In addition, as explained above, the Commissions determined that lowering the offset table requirements further is inconsistent with current securities SRO rules, and thus would be inconsistent with the Exchange Act. For this reason, the Commissions are not adopting OneChicago's requested amendments to the Strategy-Based Offset Table.

OneChicago also asked that the Commissions add total return equity swaps to the Strategy-Based Offset Table.[185] Total return equity swaps serve a similar, if not identical, economic function to security futures contracts as commonly used at OneChicago. Providing an offset for swaps could incentivize customers to trade in either product, or this combination of products, and could result in increased liquidity. Adding a new product to the offset table would provide a benefit to customers trading in total return equity swaps and security futures because those customers would be subject to lower margin requirements. However, as stated above, the Commissions have determined that adding a total return swap offset to the Strategy-Based Offset Table would be inconsistent with securities SRO rules at this time and thus would be inconsistent with the Exchange Act. For this reason, the Commissions are not adopting this suggested change to the Strategy-Based Offset Table.

In addition, OneChicago recommended that the Commissions reduce the maintenance margin required for certain types of positions from 10% to 7.5%.[186] A lower margin requirement under the offset table would provide an individual customer with an offsetting position a small benefit. However, as stated above, the Commissions have determined that lowering the margin requirement for certain strategies from 10% to 7.5% in the Strategy-Based Offset Table would be inconsistent with securities SRO rules at this time and thus would be inconsistent with the Exchange Act. For this reason, the Commissions are not adopting this suggested change to the Strategy-Based Offset Table.

Finally, OneChicago requested that the Commissions simplify the Strategy-Based Offsets Table overall by replacing the table with a rule. The CFTC has not identified specific benefits associated with adopting a rule rather than updating the Strategy-Based Offsets Table. However, the CFTC believes that any structural change to the offset table that is adopted for the security futures regime but not for the equity options regime could introduce uncertainty and confusion in the markets, and could inhibit customers seeking the reduced margin benefits of offsetting positions. OneChicago stated that the rule change it identified would not result in margin levels that are lower than margin levels required under the Strategy-Based Offset Table for exchange-traded equity options under Portfolio Margin Rules. As stated above, the Commissions have determined that replacing the Strategy-Based Offsets Table with a rule would be inconsistent with the securities SRO rules at this time and thus would be inconsistent with the Exchange Act. For this reason, the Commissions are not adopting this suggested change to the Strategy-Based Offset Table.

Although the Commissions are not revising the Strategy-Based Offset Table as requested by OneChicago, the CFTC believes the offsets described in this release will, if security futures trading resumes, offer certain benefits and will not increase costs by materially decreasing protections or increasing risks. Again, as added assurance that there are multiple levels of risk protection for security futures, the CFTC notes that security futures intermediaries and customers will continue to be required to comply with daily mark-to-market and variation

[181] *See* Eurex statistics published daily, *available at https://www.eurexchange.com/exchange-en/data/statistics.*

[182] Trading by U.S. persons in security futures contracts listed on Eurex is subject to certain conditions under an SEC order and a CFTC staff advisory. Provided that a number of conditions are met, only qualified U.S. persons are permitted to trade security futures on a single security issued by a foreign private issuer or a narrow-based security index that is listed on a non-U.S. exchange that is not required to register with the SEC. *See* SEC's *Order under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Exchange Act Section 6(h)(1) for Certain Persons Effecting Transactions in Foreign Security Futures and under Exchange Act Section 15(a)(2) and Section 36 Granting Exemptions from Exchange Act Section 15(a)(1) and Certain Other Requirements,* Exchange Act Release No. 60194 (June 30, 2009), 74 FR 32200 (Jul. 7, 2009), and Division of Clearing and Intermediary Oversight Advisory Concerning the Offer and Sale of Foreign Security Futures Products to Customers Located in the United States, *available at https://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/ssproject/fsfpadvisory.pdf* (June 8, 2010).

[183] OneChicago Letter at 15–17.

[184] According to OneChicago's suggestion, margin for delta-neutral positions should be equal to the lower of: (1) The total calculated by multiplying $0.375 for each position by the instrument's multiplier, not to exceed the market value in the case of long positions, or (2) 2% of the current market value of the security futures contract. OneChicago Letter at 15.

[185] OneChicago Letter at 16.

[186] OneChicago Letter at 16. As suggested by OneChicago, the reduction in margin from 10% to 7.5% would apply to items 2, 8, 9, 11, 12, 14, 15, and 16 in the Strategy-Based Offset Table.

settlement procedures applied to security futures, as well as the large trader reporting regime that applies to futures accounts.[187]

5. Description of Benefits Provided by the Final Rules

The CFTC believes that the final rules will, if security futures trading resumes, produce significant benefits by reducing minimum margin requirements for security futures positions to levels equal to margin levels for exchange-traded options. The amendment to CFTC Rule 41.45(b)(1) will align customer margin requirements for security futures held in a futures or a securities account with those that are held in a Portfolio Margin Account. The CFTC believes this alignment may increase competition by establishing a level playing field between security futures carried in a Portfolio Margin Account and security futures carried in a futures account or a securities account that is not subject to Portfolio Margin Rules should OneChicago begin offering these products again or new market entrants emerge.

This benefit is expected to apply most directly to customers with security futures positions held in futures accounts because they cannot be margined under Portfolio Margin Rules. According to OneChicago, because of operational issues, almost all security futures positions were carried in futures accounts.[188] As a result, almost all, if not all, security futures were held in futures accounts and subject to the CFTC's customer account requirements. Therefore, any reduction in customer initial and maintenance margin requirements, if security futures trading resumes, would be expected to benefit all or close to all security futures customers because they historically held positions in futures accounts and did not benefit from Portfolio Margin Rules.

Additionally, the reduced minimum margin level could, if security futures trading resumes, facilitate more trading in security futures than would otherwise occur, which could enhance the likelihood a revival would succeed and increase market liquidity to the benefit of market participants and the public.[189] Increased liquidity could contribute to the financial integrity of security futures markets overall. For example, market liquidity may be particularly beneficial in the context of a customer default at an FCM, when the FCM must manage the defaulting customer's security futures positions through transferring or liquidating those positions.[190]

The lower minimum margin requirement also could, if security futures trading resumes, decrease the direct cost of trading in security futures. In response to the Commissions' request for comments providing data, OneChicago estimated that for the time period between September 1, 2018, and August 1, 2019, the notional value of margin collected on OneChicago positions would be reduced by $130 million if the lower 15% margin requirement had been in place.[191] This would have represented significant savings in the amount of margin required to be paid by and collected from customers in satisfaction of the CFTC's part 41 margin requirements. A decrease in trading costs, through lower minimum margin requirements should OneChicago begin offering these products again or new market entrants emerge, also may increase capital efficiency because additional funds would be available for other uses.

As noted above, the final rules may have beneficial competitive effects vis-à-vis domestic markets. In addition, lowering the minimum margin requirement may enable a U.S. security futures exchange to better compete in the global marketplace, where security futures traded on foreign exchanges are subject to risk-based margin model requirements that are generally lower than those applied to security futures traded in the U.S.[192] Apart from OneChicago's letters and a comment from one of its customers, the Commissions received no comments regarding benefits associated with increased domestic or global competition.

The final rules restate the table of offsets for security futures to reflect the proposed 15% minimum margin requirement. As discussed in detail above, these offsets will, if security futures trading resumes, provide the benefits of capital efficiency to customers because offsets recognize the unique features of certain specified combined strategies and would permit margin requirements that better reflect the risk of these strategies. Moreover, the same benefits of lowering margin costs for customers and increasing business in security futures could result from lowering margin requirements for offsetting security futures positions.

6. Discussion of Alternatives

Although the CFTC did not identify any alternatives in the proposal,[193] commenters suggested a number of alternative security futures margin options, along with other suggestions for the Commissions to consider. This discussion of those alternatives includes certain commenter proposals that the Commissions still do not believe are viable at this time for the reasons discussed by the Commissions in more detail above.

i. Reducing Contract Sizes for Security Futures

One commenter, citing a statement by SEC Commissioner Jackson, indicated that the Commissions failed to consider reasonable alternatives such as reducing the contract size for security futures.[194] According to Commissioner Jackson's Statement, ''reducing contract size could also increase access to single-stock futures for the most popular securities and improve efficiency.''[195] The CFTC agrees that changing the contract size for security futures might make the products more attractive to a wider group of market participants, resulting in increased liquidity,[196] but

[187] Under the CFTC's large trader reporting regime, clearing members and FCMs (as well as foreign brokers) file reports with the CFTC containing futures and options position information for traders that have positions at or above certain reporting thresholds. *See* part 17 of the CFTC's regulations and 17 CFR 15.03(b) (CFTC Rule 15.03(b)).

[188] *See* OneChicago Petition at 2.

[189] OneChicago represented that one of its customers (Jurrie Reinders, Societe General) believed that the ''uncompetitive'' margin requirements for security futures have reduced trading volumes. OneChicago Letter at 29.

[190] As noted above, the FIA Letter stated that the final rules would help FCMs manage their risk. *See* FIA Letter, at 2. *See also* discussion of CFTC rules under parts 1 and 39, above.

[191] OneChicago estimated that between September 1, 2018, and August 1, 2019, the notional value of margin collected on OneChicago positions was approximately $540 million (under a 20% minimum margin requirement) compared to $410 million that would have been collected under the final rules (under a 15% minimum margin requirement). OneChicago Letter at 14.

[192] OneChicago stated that the Eurex exchange lists futures on U.S. stocks with risk-based margins that are lower than the 20% margin for futures on the same stocks that were listed at OneChicago (OneChicago Letter at 13). However, based on publicly available data, the volume on Eurex for futures on U.S. stocks is much lower than occurred at OneChicago even as security futures volume is high for stocks in European companies.

[193] *See* 2019 Proposing Release, 84 FR at 36446. In the proposal, the CFTC stated that it did not believe that there were any reasonable alternatives to consider given statutory constraints tied to current practices in the exchange-traded equity options market. *Id.* at n. 92.

[194] Letter from the Jeffrey Mahoney, General Counsel, Council of Institutional Investors (Aug. 26, 2019) (''CII Letter'') at 4. *See also* Commissioner Robert J. Jackson Jr., Public Statement, Statement on Margin for Security Futures (July 3, 2019), *available at https://www.sec.gov/news/public-statement/jackson-statement-margin-security-futures* (''Commissioner Jackson's Statement'').

[195] Commissioner Jackson's Statement.

[196] A security futures exchange could change the contract size for security futures by amending terms of the security futures contract such that one security futures contract represents only 50 shares of the underlying stock instead of 100.

would not change the overall amount of margin required for a given position. Thus, the CFTC believes that this alternative would be less effective at increasing liquidity than lowering margin requirements. Reducing the security futures contract size would lower the initial capital expenditure for a customer and could attract wider participation, but could possibly increase transaction costs, as a percentage of overall initial costs in putting on the position.[197] As explained above, the Commissions anticipate that these final rules may produce greater liquidity in security futures, as well as create more efficient capital distribution. Market participants will be able to reallocate funds that are saved on lower margin levels. Under this alternative, market participants would not benefit from any increased capital efficiencies. Because reducing contract sizes does not provide the same capital efficiency opportunities to customers, the CFTC does not believe it offers as many benefits as the final rules.

ii. Rules-Based Margin With Flexible Margin Collection Intervals

One commenter agreed with Commissioner Jackson's concern that the proposal did not consider other reasonable alternatives such as a rules-based margin regime that includes flexible margin collection, or settlement intervals, which is an idea proposed by former SEC economists.[198] According to the economists' research paper on this topic, security futures that are subject to strategy-based margining may be less sensitive to changes in market conditions.[199] The economists analyzed different margin collection time periods to determine whether risks to customers would be affected by the length of time that passed between contract execution and settlement. The economists found that a 1-day margin collection period (*i.e.,* initial and maintenance margins are required to be collected within 1 day of the trade) likely would lead to higher margin requirements than would otherwise be required under a risk-based margin regime. As a comparison, they also studied a 4-day collection period (*i.e.,* initial and maintenance margins are required to be collected within 4 days of the trade) and found that the additional time could lead to both significant over- and under-margining relative to a risk-based margin model regime.

This research explores how changes in the date on which margin is collected could provide different levels of protection for customer positions in security futures.[200] The paper suggests that such a rule change could produce adequate margin coverage, if calibrated correctly, to protect against default. On the other hand, one commenter opposed the alternative of changing the margin collection period, arguing that this could ''build up exposures'' and would remove one of the critical futures market protections (*e.g.,* paying and collecting margin to prevent customers from accumulating large exposures).[201]

The CFTC has not analyzed a particular program offered by an exchange or security futures intermediary, nor examined any rulebooks outlining how such a program would be implemented. However, if such a change were submitted for review, the CFTC would consider, among other things, how a change in the date of margin collection would affect how FCMs manage margin funds. CFTC rules govern FCM practices and require that FCMs take certain precautions with customer funds.[202] In some cases, customers may benefit from a more prompt payment of margin funds to FCMs because those funds will be subject to certain protections, and FCMs would encourage prompt payment of margin funds to protect against customer position risk. The CFTC also observes that changes to the collection period would depend on changes in contractual provisions between clearinghouses and their clearing members, and between the clearing members and their customers, as well as rule changes for exchange operating procedures.

The Commissions are adopting the final rules because they produce a desired policy outcome of aligning the minimum margin requirements for security futures held in non-Portfolio Margin Accounts with the margin required for security futures in a Portfolio Margin Account, for the reasons discussed above. The CFTC believes that any changes to the date of margin collection period are distinct from this policy objective, may not be uniformly adopted by security futures markets, and may result in an accumulation of risk for customers and security futures intermediaries. Accordingly, changing the margin collection period is not a viable alternative to the final rules adopted in this release.

iii. Use of Risk-Based Margin Models

In the 2019 Proposing Release, the Commissions specifically requested comment on ''any other risk-based margin methodologies that could be used to prescribe margin requirements for security futures.'' In response, a number of commenters expressed a preference for using risk-based models to margin security futures and argued that such a regime would be consistent with the Exchange Act.[203] As discussed in section II.A. above, implementing a risk model approach to calculate margin for security futures would be inconsistent with how margin is calculated for exchange-traded equity options at this time and may result in margin levels for unhedged security futures positions that are lower than the lowest level of margin applicable to unhedged exchange-traded equity options (*i.e.,* 15%). Consequently, because no exchange-traded equity options are subject to risk-based margin requirements, adopting a risk model approach at this time for security futures would conflict with the requirements of Section 7(c)(2)(B) of the Exchange Act.[204]

The CFTC is considering a risk-based model alternative solely for purposes of analyzing the potential costs and benefits of the final rules under a hypothetical future scenario. The CFTC has extensive familiarity and experience with overseeing entities that use risk-based margin model regimes for derivatives clearing.[205] Risk-based margin models produce efficiencies because the initial margin is calculated using certain macro-economic risk factor inputs that change with market

[197] The increase in transaction costs would be the result of the fixed cost staying the same, but the initial expenditure being lower.

[198] *See* Commissioner Jackson's Statement; *see also* CII Letter at 4.

[199] Hans R. Dutt & Ira L. Wein, *On the Adequacy of Single-Stock Futures Margining Requirements,* 10 J. FUTURES MARKETS 989 (2003).

[200] The CFTC notes that this research paper was published in 2003, before significant changes to the CFTC's regulatory regime were adopted pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. It is uncertain whether the alternatives considered and discussed in the research paper would comply with current CFTC requirements. Additionally, there are no programs offering this alternative, and whether such a program could comply with the statutory constraints under the Exchange Act is uncertain.

[201] OneChicago Letter at 6.

[202] *See* 17 CFR 1.20 through 1.30 (CFTC Rules 1.20 through 1.30).

[203] *See* La Botz Letter (''I request the Commission to please correct the margin discrepancy placed upon the [security futures] products by going to a risk based margining as utilized by clearinghouses on other [security futures] products worldwide.''). *See also* Ianni Letter, and OneChicago Letter.

[204] *See* section II.A. above (discussing a risk model approach and Section 7(c)(2)(B) of the Exchange Act).

[205] As a market regulator with jurisdiction over derivatives clearinghouses, one of the CFTC's primary functions is to supervise the derivatives clearing activities of DCOs, their clearing members, and any entities using the DCOs' services. The CFTC supervisory program takes a risk-based approach.

conditions. DCOs successfully manage the initial margin requirements for clearing members using risk-based margin models. Risk-based margin model regimes also provide effective protection against default for customers, intermediaries, and clearinghouses. While the CFTC is broadly supportive of risk-based margin models and believes there are benefits to those regimes, in the context of security futures, the costs and benefits require careful attention.

As seen in some of the data provided by OneChicago, risk-based margin does not necessarily mean that the margin collected will be lower than under current margin requirements for security futures or the amended final rules under part 41 of the CFTC's regulations. In fact, there may be reason to believe that it could be higher. OneChicago provided an example from the 2008–2010 financial crisis. During that time period, margin requirements on SPX options remained constant at 8% (the maximum initial margin), if held in a Portfolio Margin Account.[206] However, during that same time period, E-mini futures contracts were charged margin at levels higher than 8% because they were subject to risk-based margin and the volatility at the time required greater margin levels.[207] In this instance, the margin required under a risk-based model would be higher than the maximum initial margin that is set at a constant percentage rate. The CFTC observes that this comparison is informative, but not dispositive.

Importantly, because the security futures margin regime includes a minimum margin requirement only, it is less likely that there would be an instance in which a risk-based model results in greater margin levels than the margin charged to a customer under the final rules. As the Commissions have emphasized throughout this release, FCMs and DCOs may, if security futures trading resumes, charge additional margin above the 15% minimum level required, if it would be prudent to protect against increased risk. In practice, this means that in a period of market volatility a risk-based model may require higher margin levels to account for that volatility, but an FCM and/or DCO likely would require higher margin during such periods of market volatility under the current rules. Even under the initial and maintenance margin requirements today, FCMs and DCOs provide a backstop for margin purposes by being required to collect higher margins if market conditions or other circumstances change.[208] Use of a risk-based margin model would sometimes result in higher margins than the 15% minimum margin level adopted in this release, but it would not necessarily change the margin amount posted by a customer.

The CFTC recognizes there may be savings that can accrue under risk-based margin models for purposes of initial and maintenance margin, but notes that variation margining practices will not change for security futures.[209] Taken together, the overall margin regime for security futures under a risk-based margin model regime ultimately may at various times be equal to, greater than, or less than, the margin requirements set forth under the final rules.

However, as discussed in section II.A. above, the CFTC is not persuaded by commenters' arguments that, at this time, implementing a risk model approach to calculating margin for security futures would be permitted under Section 7(c)(2)(B) of the Exchange Act. Moreover, implementing a risk model approach would substantially alter how the required minimum initial and maintenance margin levels for security futures are calculated. It also would be a significant deviation from how margin is calculated for listed equity options and other equity positions (*e.g.,* long and short securities positions). It would not be appropriate at this time to implement a different margining system for security futures, given their relation to products that trade in the U.S. equity markets. Further, implementing a different margining system for security futures may result in substantially lower margin levels for these products as compared with other equity products and could have unintended competitive impacts. For this reason, the suggested alternative to permit risk-based margin models to determine customer margin requirements for security futures is not viable.

iv. Risk-Based Margin for STARS Transactions

Recognizing that the Commissions may not be able to adopt risk-based margin for all security futures, OneChicago asked the Commissions to consider the alternative of adopting risk-based margin for its STARS transactions only. The CFTC notes that OneChicago has shut down and is no longer offering STARS transactions. For purposes of this discussion of suggested alternatives, the CFTC will examine whether subjecting STARS transactions or similar products that may be offered in the future to risk-based margin requirements would provide additional costs or benefits when compared to the final rules.

STARS transactions represented a combination of two security futures contracts that formed a spread position. After combining the two legs of the spread in the customer's account, one leg expired, and a single security future position remained in the account. A STARS transaction resulted in a hedged transaction that involved two customers transferring either a stock position or a security futures position, and once the back leg of the transaction expired the parties returned to their original positions. According to OneChicago, there would be cost savings to structuring the transaction this way for purposes of facilitating equity repo or stock loan transactions.

As stated above, the Commissions have determined that because no exchange-traded equity options are subject to risk-based margin requirements, adopting a risk model approach at this time for STARS transactions would conflict with the requirements of Section 7(c)(2)(B) of the Exchange Act.[210] For this reason, as well as the recent announcements by OneChicago, this alternative is not viable.

7. Consideration of Section 15(a) Factors

This section analyzes the expected results of amending CFTC Rule 41.45(b)(1) to reduce the minimum initial and maintenance margin levels for each security future from 20% to 15% of the current market value of such contract, and adopting the Margin Offset Table changes as proposed, in light of

[206] OneChicago Letter 3 at 3.

[207] As noted above, E-mini futures contracts are not jointly regulated by the CFTC and SEC because they are broad-based equity index futures and do not fall under the definition of "security futures" under the CEA. However, for purposes of examining the relationship between futures contracts and options, the comparison may be relevant.

[208] For example, OneChicago provided a sample dataset that compares the margin level required under the current security futures margin rule (20%), the new rule (15%), and under a risk-based margin approach used by OCC. Out of the 20 security futures, 17 security futures would be subject to lower margin requirements under risk-based margining. One contract would be subject to a 17.7% margin requirement under the new rule and the risk-based model, because that contract is exposed to higher market risks. One contract would continue to be margined at a 20% level, even under the new rule and risk-based margining. Finally, one contract would continue to be margined at a 23% level regardless of the approach taken to determine margin requirements. Thus, the idea that risk-based margining would produce lower margin levels for all contracts at all times is incorrect. OneChicago Letter at 27.

[209] In the context of security futures, FCMs are required to continue daily mark-to-market valuations and exchange of variation margin.

[210] *See* section II.A. above (discussing a risk model approach and Section 7(c)(2)(B) of the Exchange Act).

the five factors under Section 15(a) of the CEA.

i. Protection of Market Participants and the Public

The CFTC believes that the final rules maintain the protection of market participants and the public from the risks of a default in the security futures market, if trading in that market resumes. The CFTC continues to believe that a 15% minimum initial and maintenance margin requirement in combination with other protections, such as certain provisions of CFTC Rule 39.13, applicable to DCOs that offer to clear security futures products,[211] will protect U.S. market participants, including security futures customers and security futures intermediaries, from the risk of a default in security futures markets.

In addition, security futures intermediaries, such as FCMs, are authorized to collect additional margin from their customers if the FCM believes a customer's positions may pose unmanaged risk.[212] In addition, any DCOs offering to clear security futures are required to maintain certain risk management procedures, which include measures to prevent potential losses from clearing member defaults and methods to limit risks to the DCO's financial resources.[213] The objective is that DCOs will always have sufficient financial resources to manage the risks presented by security futures.

One commenter expressed a concern that, based on the statutory criteria prescribed in the Exchange Act for determining security futures' margin requirements, lowering margin requirements for security futures could result in ''potential significant risks to the capital markets and investors.''[214] Further, this commenter cited to the Commissions' discussions in the 2019 Proposing Release regarding margin's role in risk mitigation and the potential costs associated with reducing margin levels. As stated above, the CFTC continues to believe that the reduction in margin requirements under the final rules will not decrease the protection to market participants or the public because, although margin requirements are a critical component of any risk management program for cleared financial products, they are not the only risk management technique in place for DCOs or their clearing members.

ii. Efficiency, Competitiveness, and Financial Integrity of the Markets

The final rules are intended to enhance the efficiency and competitiveness of the security futures market in the United States by bringing the initial and maintenance margin requirements for security futures in line with requirements for security futures subject to Portfolio Margin Rules. Market participants trading in security futures will benefit from lower margin requirements. Furthermore, a decrease in initial and maintenance margin requirements from 20% to 15% of the current market value of each security futures contract may increase the attractiveness of security futures and help facilitate the revival of the security futures markets, whether at OneChicago, or at another exchange. However, even with lower margin requirements, customer decisions to trade in security futures would still be influenced by hedging demands and competition with substitutes or similar products.

The final rules also are expected to improve the competitiveness of security futures as compared to exchange-traded options. The final rules' amendments to reduce margin requirements also may facilitate a more competitive security futures market in the United States as compared with international markets.[215] Overall, the CFTC believes that the final rules will have a positive effect on competition in the U.S. security futures market without providing an undue competitive advantage to security futures over comparable exchange-traded equity options.[216]

The CFTC continues to believe that a 15% margin requirement for security futures will, if security futures trading resumes, be sufficient to protect customers and DCOs against the risk of default in greater than 99% of cases. According to economic data reviewed by CFTC staff, the CFTC believes that a 15% margin requirement for security futures will protect other customers and DCOs against most risks of default.

Furthermore, the final rules could enhance the financial integrity of any potential security futures market in the United States. Lowering the amount of initial and maintenance margin required for customers trading in security futures may facilitate the revival of security futures markets, and if that revival occurs, increase the number of customers trading in security futures and/or increase the amount of trading. An increase in the number of customers in the security futures market also could increase the number of FCMs offering to clear for such customers, which could lead to more efficient transfers of customer positions by a DCO in the event of a clearing member or customer default. Furthermore, a larger and more diversified customer base could reduce risks in the security futures market overall. For all of these reasons, enhanced liquidity would serve to strengthen the financial integrity of the security futures market.

Again, the CFTC notes that the DCOs that may clear security futures would be subject to CFTC regulations requiring the DCO to maintain adequate risk management policies and overall financial resources. DCOs may require additional margin, in an amount that is greater than 15%, on certain security futures positions or portfolios if the DCO notes particular risks associated with the products or portfolios. Accordingly, the CFTC believes that the final rules will maintain, or possibly improve, the financial integrity of the security futures markets in the U.S.

The CFTC believes that the final rules effectively address the need for market efficiency, competition, and financial integrity consistent with the statutory requirements under Section 7(c)(2)(B)(iii) of the Exchange Act. The CFTC also considered alternatives presented by commenters, as discussed above, but does not believe that there are any viable alternatives to the final rules at this time.

iii. Price Discovery

The lower margin requirements adopted under the final rules may facilitate the revival of security futures markets, and if that revival occurs, could increase competition and result in some new customers entering the security futures market along with increased trading by previously existing customers. In addition, trading from foreign markets could shift to the U.S. security futures market as a result of the change in margin requirements. All

[211] As discussed above, in response to the FIA Letter, under CFTC Letter No. 12–08, the CFTC's Division of Clearing and Risk interpreted certain sections of CFTC Rule 39.13 and stated that the customer margin rule under CFTC Rule 39.13(g)(8)(ii) does not apply to customer initial margin collected as a performance bond for customer security futures positions. CFTC Letter No. 12–08 at 10 (Sept. 14, 2012). However, there are other aspects of CFTC Rule 39.13 that offer protections such as other risk controls like risk limits that may prevent a clearing member from carrying positions with potential exposures above certain thresholds. *See* CFTC Rule 39.13(h)(1).

[212] *See* CFTC Rule 41.42(c)(1) and SEC Rule 400(c)(1). *See* 2019 Proposing Release, 84 FR at 36440.

[213] *See* CFTC Rule 39.13(f) and (h).

[214] CII Letter at 2.

[215] Data from OneChicago indicates that the risk-based margining system applied by Eurex (a non-U.S. security futures exchange), is consistently lower than the 15% margin requirement adopted in the final rules. *See e.g.,* Figure 2—Margin Levels for Dow Components at Eurex and OneChicago. OneChicago Letter at 25.

[216] *See also* the CFTC's analysis of anti-trust considerations in section VII. below. The CFTC has identified no anticompetitive effects of the final rules.

things being equal, this increased activity in the U.S. security futures market could have a positive effect on price discovery in the security futures market, if trading resumes. However, as the CFTC has noted before, price discovery in security futures markets most likely has occurred in the liquid and transparent security markets underlying previously existing security futures contracts, rather than the relatively low-volume security futures themselves.[217]

One commenter, citing to SEC Commissioner Jackson's Statement, shared the view that a serious economic analysis would have considered whether reducing margin requirements improves price discovery or, instead, incentivizes a shift toward futures markets in order to seek out leverage.[218] SEC Commissioner Jackson's Statement noted that if market participants shifted toward futures markets, it could result in less liquidity in related markets (*i.e.,* equity markets) without contributing to any additional price discovery. Although some portion of increased trading in security futures may be the result of customers switching from equity markets to security futures markets, the lower margin requirements for security futures may, if security futures trading resumes, facilitate arbitrage between the underlying security and security futures markets. This arbitrage between the two markets may enhance price discovery and provide a benefit to customers.

The CFTC notes that changes in price discovery may be difficult to measure.[219] However, the CFTC believes that the final rules' amendments are unlikely to harm price discovery and indeed may improve price discovery in the security futures market in the United States if security futures trading resumes.

iv. Sound Risk Management Practices

The final rules' amendments will lower the minimum initial and maintenance margin required for security futures positions. If security futures trading resumes, this may encourage potential hedgers or other risk managers to increase their use of security futures for risk management purposes. Moreover, a lower margin requirement could encourage new market participants to enter the security futures markets for potential hedging and risk management purposes. The final rules' amendments are consistent with sound risk management practices, especially to the extent that there is increased liquidity in potentially revived security futures markets.

In addition, as discussed in detail above, margin requirements are a critical component of any risk management program for cleared derivatives. Security futures have been risk-managed successfully through central clearing and initial and maintenance margin requirements for almost twenty years (including time periods of historic market volatility).[220] Current minimum margin requirements for security futures (20%) are higher than minimum margin requirements for comparable exchange-traded equity options held in a Portfolio Margin Account.

The CFTC recognizes the necessity of sound initial and maintenance margin requirements for DCO and FCM risk management programs. Initial and maintenance margin collected addresses potential future exposure, and in the event of a default, such margin protects non-defaulting parties from losses. The final rules maintain those protections. As noted above, based on past data, the 15% margin level is likely to cover more than 99% of the risks of default associated with security futures positions, if trading resumes.

v. Other Public Interest Considerations

The CFTC has not identified any additional public interest considerations related to the costs and benefits of the final rules.

B. SEC

1. Introduction

In the following economic analysis, the SEC considers the benefits and costs, as well as the effects on efficiency, competition, and capital formation that the SEC anticipates will result from the SEC's final rules.[221] The SEC evaluates these benefits, costs, and other economic effects relative to a baseline, which the SEC takes to be the current state of the markets for security futures products and the regulations applicable to those markets. The economic effects the SEC considered in adopting these rule amendments are discussed below and have informed the policy choices described throughout this release.

The final rule amendments will lower the required initial and maintenance margin levels for unhedged security futures from the current level of 20% to 15%. Furthermore, in connection with the SEC's rules which permit an SRA to set margin levels that are lower than 15% of the current market value of the security future in the presence of an offsetting position involving security futures and related positions, the SEC is re-publishing the Strategy-Based Offset Table with the proposed revisions, to conform it to the adopted 15% required margin levels.[222]

The SEC received a number of comments on the proposal. Some commenters supported the proposal,[223] while other commenters raised concerns.[224] The SEC has considered these comments, as discussed in detail in the sections that follow. This adopting release also revisits the benefits, the costs, and other economic effects identified in the 2019 Proposing Release.[225] Much of the discussion below on the costs, benefits, and other effects is qualitative in nature. Wherever possible the SEC has attempted to quantify potential economic effects, incorporating data and other information provided by commenters in its analysis of the economic effects of

[217] *See* Position Limits and Position Accountability for Security Futures Products, 84 FR 51020.

[218] CII Letter at 4.

[219] One commenter shared SEC Commissioner Jackson's view that the effects of a lower margin requirement on price discovery in financial markets could be studied by looking at relevant data. CFTC staff reviewed trading volume data at OneChicago to determine whether a change to increase the default maximum level of equity security futures products' position limits resulted in a change in trading activity in security futures products, but without additional data on related equity contracts it is not possible to draw a definitive conclusion about effects on price discovery.

[220] The CFTC staff notes that the VIX, which measures market expectations of near term volatility as conveyed by stock index option prices, has recently approached peak levels due to increased market volatility in March 2020 (the VIX measurement on March 16, 2020, was close to 83). Previously high volatility was measured in October and November 2008 during the financial crisis (when the VIX measurement reached the 80s). *See, e.g.,* VIX data available from the Federal Reserve Bank of Saint Louis at *https://fred.stlouisfed.org/series/VIXCLS.*

[221] The Exchange Act states that when the SEC is engaging in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the SEC shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In addition, Exchange Act Section 23(a)(2) requires the SEC, when making rules or regulations under the Exchange Act, to consider, among other matters, the impact that any such rule or regulation would have on competition and states that the SEC shall not adopt any such rule or regulation which would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

[222] Conforming reductions to minimum margin percentages on hedged security futures positions will be reflected in a restatement of the table of offsets published in the 2002 Adopting Release. The Strategy-Based Offset Table is not part of the Code of Federal Regulations.

[223] *See* FIA Letter.

[224] *See* OneChicago Letter; OneChicago Letter 2; OneChicago Letter 3; Cboe/MIAX Letter; CII Letter; Bost/Davis Letter; Moran/Tillis/Rounds Letter.

[225] *See* 2019 Proposing Release, 84 FR at 36447.

the final rules. In addition to more detailed information on current activity in the security futures market, the SEC considered information supplied by commenters on the potential reduction in margin required to support security futures positions based on current levels of market activity and on the likelihood that investors migrated to the security futures market from related markets. However the SEC generally lacks the data necessary to estimate, among other things, the potential impact of the final rule amendments on overall investor participation in the security futures markets and bid-ask spreads in that market and related markets.

2. Baseline

The SEC evaluates the impact of final rules relative to a baseline that includes the regulatory regime applicable to the markets for security futures, as well as the current state of these markets. As discussed above, the term ''security future'' refers to a futures contract on a single security or on a narrow-based security index.[226] More generally, ''security futures product'' refers to security futures as well as any put, call, straddle, option, or privilege on a security future.[227]

Unlike futures markets on commodities or ''broad-based'' equity indexes, security futures have had a limited role in U.S. financial markets, which may be due in part to uncertainty relating to tax treatment[228] and competition from the more developed equity, equity swap, and options markets.[229] Incentives to participate in the security futures markets (rather than the markets for the underlying security, options, or swap markets) may stem from reduced market frictions (*e.g.,* short sale constraints), lower cost of establishing a short position compared to the equity market, and reduced counterparty risk due to daily resettlement, relative to comparable OTC instruments (*e.g.,* equity swaps).

As with other types of futures, both the buyer and seller in a security futures transaction can potentially default on his or her respective obligation. Because of this, an intermediary to a security futures transaction will typically require a performance bond (''initial and maintenance margin'') from both parties to the transaction. The clearing organization will also require such performance bonds from its clearing members (*i.e.,* the clearing intermediary of the security futures transaction). Higher margin levels imply lower leverage, which reduces risk. Private incentives encourage a broker-dealer that intermediates security futures transactions to require a level of margin that adequately protects its interests.

However, in the presence of market frictions, private incentives alone may lead to margin levels that are inefficient. For example, intermediaries may set margin levels that, while privately optimal, do not internalize the cost of the negative externalities caused by the potential high leverage level associated with low margins. Moreover, even when all parties are fully aware of the risks of leverage, privately negotiated margin arrangements may be too low. For example, the risk resulting from higher leverage levels can impose negative externalities on financial system stability, the costs of which would not be reflected in privately negotiated margin arrangements. To the extent that such market failures are not ameliorated by existing market institutions,[230] they provide an economic rationale for regulatory minimum margin requirements.[231]

i. The Security Futures Market

Security futures can provide a convenient means of obtaining delta exposure to an underlying security.[232] To effectively compete with other venues for obtaining similar exposures (*e.g.,* equity and equity options markets), security futures markets must reduce market frictions or provide more favorable regulatory treatment. Security futures markets may reduce market frictions by providing a lower cost means of financing equity exposures. They can simplify taking short positions by eliminating the need to ''locate'' borrowable securities.[233] Security futures can also be used to create synthetic equity repurchase agreements or equity loans, which carry similar terms as their over-the-counter counterparts.[234] Finally, security futures can also provide an opportunity for customers to gain greater leverage through lower margin requirements (relative to margin in securities or options transactions).

The one U.S. exchange that provided trading in security futures, OneChicago, discontinued all trading operations on September 21, 2020. As of the end of 2019, 13,792 security futures contracts[235] on 1,638 symbols were traded on the exchange. Of these 13,792 contracts, 343 had open interest at the end of the year. Total open interest at the end of the year was 602,276 contracts. Annual trading volume in 2019 was close to 7.4 million contracts, an increase of approximately 4% from the prior year. At this time, however, no security futures contracts are listed for trading on U.S. exchanges.

According to OneChicago, prior to the cessation of trading, almost all security futures positions were carried in futures accounts of CFTC-regulated FCMs.[236] Consequently, the SEC believes only a small fraction of security futures accounts previously fell under the SEC's customer margin requirements for security futures. The SEC believes that none of the accounts that were subject to the SEC's security futures margin rules used the Portfolio Margin Rules.[237] Therefore, the SEC believes that all of the securities accounts that previously fell under the SEC's margin rules would have been subject to the general initial and maintenance margin requirement of 20% and the associated Strategy-Based Offset Table.

[226] *See supra* note 1.

[227] *See* Section 1a(45) of the CEA and Section 3(a)(56) of the Exchange Act (both defining the term ''security futures product'').

[228] Specifically, the proposition that exchange-for-physical single stock security futures qualify for the same tax treatment as stock loan transactions under Section 1058 of the Internal Revenue Code has not been tested. *See e.g.,* Exchange Act Release No. 71505 (Feb. 7, 2014).

[229] Security futures markets face competition from equity and options markets because in principle, the payoff from a security futures position is readily replicated using either the underlying security, or through options on the underlying security.

[230] For centrally cleared markets, including the security futures market, clearinghouses may impose membership and minimum margin requirements that cause clearing members to internalize a greater share of the costs associated with customers' higher leverage.

[231] Monetary authorities may also rely on regulatory margin requirements as a policy tool. The SEC does not consider such motives here.

[232] The derivative of the theoretical price of a futures contract with respect to the price of the underlying (*i.e.,* the ''delta'') is 1. For a $1 increase (decrease) in the price of an underlying security, the theoretical price of its security future increases (decreases) by $1.

[233] In these respects, a security future functions like a cleared total return swap.

[234] This can be achieved by simultaneously entering into a security futures position that expires at the end of the trading day and another security futures position of the same size and on the same underlying security but in the opposite direction and expiring at a future date, compared to the other position. *See also* Memorandum from the SEC's Division of Trading and Markets regarding a July 16, 2019, meeting with representatives of OneChicago (including OneChicago's presentation on STARS as synthetic equity repos or equity loans).

[235] The typical contract is written on 100 shares of underlying equity.

[236] *See* OneChicago Petition.

[237] If security futures positions were held in a Portfolio Margin Account they would be included in the risk-based portfolio margin calculation and thus effectively subject to a lower (*i.e.,* 15%) margin requirement under the baseline. Based on an analysis of FOCUS filings from year-end 2019, no broker-dealers had collected margin for security futures accounts in a Portfolio Margin Account.

ii. Regulation

In the U.S., a security future is considered both a security and a future, so customers who wish to buy or sell security futures must conduct the transaction through a person registered both with the CFTC as either an FCM or an IB and the SEC as a broker-dealer.[238] In addition, an investor can trade security futures using either a futures account or a customer securities account.

As discussed in section I, Section 7(c)(2)(B) of the Exchange Act provides that the customer margin requirements must satisfy four requirements. First, they must preserve the financial integrity of markets trading security futures products.[239] Second, they must prevent systemic risk.[240] Third: (1) They must be consistent with the margin requirements for comparable options traded on any exchange registered pursuant to Section 6(a) of the Exchange Act; [241] and (2) the initial and maintenance margin levels must not be lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded equity options.[242] Fourth, excluding margin levels, they must be, and remain consistent with, the margin requirements established by the Federal Reserve Board under Regulation T.[243]

Under existing SEC rules, the minimum initial and maintenance margin requirement for a customer's unhedged security futures position, not subject to an exemption is 20% of its current market value.[244] SRAs may allow margin levels lower than 20% for accounts with ''strategy-based offsets'' (*i.e.,* hedged positions).[245] Strategy-based offsets can involve security futures as well as one or more related securities or security futures position, consistent with the Strategy-Based Offset Table.[246]

Accounts subject to the Portfolio Margin Rules are also exempt from the customer margin requirements for security futures.[247] Under currently approved Portfolio Margin Rules, the effective margin requirement for an unhedged security futures position or an exchange-traded option on a narrow-based index or an individual equity is 15%.[248] Under current rules, only customer securities accounts held through SEC-regulated broker-dealers could potentially be subject to the Portfolio Margin Rules; however, the SEC is not aware of any broker-dealers offering such accounts. Margin requirements for security futures positions of clearing members (*i.e.,* their accounts at a clearing agency or DCO) are also exempt from the security futures margin requirements.[249]

3. Considerations of Costs and Benefits

Under the final rule amendments being adopted in this release, the initial and maintenance margin requirements for a security futures position will be reduced from 20% to 15% of the current market value of the position. This section discusses both the likely economic effects of the final rule amendments conditional on the resumption of trading in security futures, and the extent to which the final rule amendments may affect the likelihood that trading in security futures contracts resumes.

One commenter expressed concern that the SEC did not present any substantive analysis of the proposed amendment's possible benefits.[250] In response to this comment, as stated in the 2019 Proposing Release, the SEC cannot quantify the benefits to investors from the potential effects of the final rule amendments on investor demand, investor participation, price discovery and liquidity.[251] As discussed in more detail below, OneChicago provided information about the likely reduction in initial margin requirements it expected from the proposed rule amendments. Although this information supports the SEC's view that the final rule amendments could increase investor participation in the security futures market if trading resumes, it is not possible to meaningfully estimate the magnitude of any such increase, and related implications for the market for exchange-traded equity options without additional information about investors' sensitivity of demand for security futures and exchange-traded equity options positions with respect to changes in margin levels.[252] This sensitivity is difficult to estimate because it requires historical data on positions and associated margins from customer securities accounts, which broker-dealers currently do not report to the SEC.[253] While the SEC's analysis of the costs and benefits of the final rule amendments are qualitative in nature, the inability to quantify certain benefits and costs does not mean that the overall benefits and costs of the final rule amendments are any less significant.

Security futures prices reflect the aggregate demand for security futures of all participating investors, including those that are subject to margin requirements and those that are not. Among other things, this demand depends on the costs associated with margin requirements, such as the opportunity cost of the margin collateral. All else equal, higher margin levels may reduce individual demand because of potential higher trading costs.

As stated above, at the end of 2019, open interest in the U.S. security futures markets was 602,276 contracts. SEC staff understands that approximately 2% of these contracts were held in securities accounts subject to SEC margin requirements.[254] None of these accounts is believed to have been subject to Portfolio Margin Rules. This information, in combination with information supplied by commenters, can be used to construct a hypothetical estimate of the effect of the final rules on initial margin collected were security futures to continue to trade at OneChicago. According to OneChicago, the total reduction in margin collected (including margin collected on security futures held in futures accounts,) would have been $130 million.[255] Because the SEC estimates approximately 2% of these contracts were held in securities accounts, the margin reduction attributable to securities accounts would have been approximately $2.6 million.[256] The SEC expects this may overestimate the impact of the final rule, as broker-dealers may currently impose

[238] *See supra* note 12.

[239] *See* Section 7(c)(2)(B)(i) of the Exchange Act.

[240] *See* Section 7(c)(2)(B)(ii) of the Exchange Act.

[241] *See* Section 7(c)(2)(B)(iii)(I) of the Exchange Act.

[242] *See* Section 7(c)(2)(B)(iii)(II) of the Exchange Act.

[243] *See* Section 7(c)(2)(B)(iv) of the Exchange Act.

[244] *See* SEC Rule 403(b)(1).

[245] *See* SEC Rule 403(b)(2).

[246] *See* section II.B. above (discussing the Strategy-Based Offset Table).

[247] *See* CFTC Rule 41.42(c)(2)(i), 17 CFR 41.42(c)(2)(i); SEC Rule 400(c)(2)(i), 17 CFR 242.400(c)(2)(i).

[248] This follows from the methodology of current SRO Portfolio Margin Rules as applied to delta one securities. There is no comparable portfolio margining system for security futures held in a futures account and, therefore, these positions, if unhedged, are subject to the required 20% initial and maintenance margin levels.

[249] *See* SEC Rule 400(c)(2)(i) through (v), 17 CFR 242.400(c)(2)(i) through (v). Clearing members are instead subject to margin rules of the clearing organization as approved by the SEC pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2).

[250] *See* CII Letter at 3.

[251] *See* 2019 Proposing Release, 84 FR at 36449.

[252] This sensitivity is more formally known as the margin elasticity of demand.

[253] While the minimum margin requirements are set by regulation and therefore known, the actual margin associated with a position is set by a broker-dealer and may be different from the regulatory minimum.

[254] *See* 2019 Proposing Release, 84 FR at 36449.

[255] OneChicago Letter at 14.

[256] Calculated as $130 million × 0.02 = $2.6 million.

initial margin requirements exceeding 20% on certain security futures if they deem higher margin amounts necessary for risk management.[257]

i. Impact on Investor Participation

By lowering the minimum margin requirement for unhedged security futures positions held outside Portfolio Margining Accounts, the final rule amendments may affect participation in the security futures market, in the event that trading in security futures resumes in the United States. Reducing the trading costs for investors that hold these positions outside of Portfolio Margin Accounts may increase demand for security futures and may benefit investors by reducing the costs of taking on or laying off risk exposures.

The potential trading cost savings associated with the final rule amendments may also increase the competitiveness of security futures relative to certain potential close substitutes that are not directly affected by the margin requirements of the final rule amendments. As a result, if security futures trading resumes, the final rule amendments may encourage higher investor participation in the security futures market relative to what was previously observed under current initial margin requirements, to the benefit of financial intermediaries that offer security futures to their customers and exchanges that list security futures for trade, while potentially reducing fees earned by intermediaries and exchanges from services provided in related markets.

In addition to margin requirements, individual demand for security futures depends on the availability of other financial instruments (or strategies based on these instruments) that may be viewed by an investor as close substitutes to security futures. For example, certain OTC instruments that offer delta one exposure to the underlying security and certain security futures positions may be viewed as close substitutes.[258] Furthermore, certain option spread positions and certain futures positions may be viewed by some investors as close substitutes.[259] These potential substitutes exist on a continuum, and some alternative strategies have risk profiles and cash flows more similar to security futures than others.[260] In the presence of these alternatives, individual demand for a security futures position depends on the relative cost of alternative strategies, including the cost of financing the alternative position (*e.g.,* margin requirements) and the cost of bearing risk exposures that are incremental to the desired risk exposure obtainable through security futures.

The final rule amendments will also result in more consistent margining for identical unhedged security futures positions held within or outside Portfolio Margining Accounts. This will promote regulatory parity of security futures margin requirements between Portfolio Margin Accounts and securities accounts that do not offer portfolio margining, as well as between securities and futures accounts. To the extent that customers are currently unwilling to bear the costs of opening Portfolio Margin Accounts, they may decline opportunities to participate in the security futures market or may instead bear the costs of holding security futures in their securities accounts. If trading resumes, parity in margin requirements could result in efficiencies for customers who might otherwise open separate accounts to obtain security futures exposure in response to differing margin requirements across account types.

ii. Impact on use of Leverage and Investor Behavior

If security futures trading resumes, the final rule amendments may provide investors with opportunities to take on additional leverage. Because security futures allow investors to acquire 100% exposure in the underlying security (also known as ''delta one'' exposure) for a fraction of the cost of funding a position in the cash market, the final rule amendments may reduce the cost of financing leveraged exposures through security futures. In particular, the final rule amendments may increase the attractiveness of security futures as means to finance delta one exposure.

Increased leverage can result in larger investor losses, and may exacerbate the potential costs to investors from trading patterns that reflect behavioral biases. For example, in equity markets, retail investors may be subject to costs from certain trading patterns that are consistent with the so-called ''disposition effect''—an aversion to realize losses. To the extent that the final rule amendments lower the cost that retail investors bear when they participate in the security futures market and encourage more participation, the potential costs associated with the ''disposition effect'' and other behavioral biases could be exacerbated.

However, the potential costs associated with retail investors' behavioral biases are likely to be limited in aggregate, because (i) under the baseline, retail investors are believed to represent a very small fraction (less than 1%) of open interest in security futures; and (ii) broker-dealers may still impose higher initial margin requirements and other measures to manage risk exposures to their customers and meet clearing organization requirements.

One commenter noted that the daily variation settlement in the futures market would counter the disposition effect as it relates to security futures, while the current margining system in the options markets exacerbate the effect.[261] The SEC appreciates the analysis provided by this commenter. However, contrary to the conclusion of this analysis, both the margin on a futures position and the margin on an options position move in the same direction (as compared to opposite directions, as suggested by the commenter), because in the exchange-traded equity options market, the initial and maintenance margin generally applies to the short position only.[262]

iii. Impact on Financial Intermediaries

The final rule amendments may also provide benefits to financial intermediaries that facilitate trading in security futures, thereby providing incentives to list security futures. Broker-dealers and exchanges generally charge fees for purchases and sales of listed securities and derivatives contracts. To the extent that the final rule amendments increase future participation in security futures markets if trading resumes, security futures exchanges and broker-dealers that offer customers the ability to trade security futures in securities accounts may earn higher fees from security futures activity, than would be the case in the absence of the final rule amendments, although an increase in revenues in the security futures market may reduce fees earned from activity in related markets.

[257] *See* OneChicago Letter at 14 (stating that as of August 26, 2019, 92% of OneChicago security futures had a risk level above 20%).

[258] *See* OneChicago Letter (describing these OTC instruments, including equity swaps and stock loans).

[259] *See* section IV.B.4.ii.a *infra* (discussing comparability of exchange-traded options and security futures).

[260] One commenter specifically argued that that single stock futures and equity options are sufficiently distinct that they do not trade interchangeably, and supplied data to support its claim. *See* section IV.B.4.ii.a *infra.*

[261] *See* OneChicago Letter, Appendix A.

[262] Thus, when the option position increases in value for the long investor, the maintenance margin assessed to the short investor (the seller of the position) increases proportionally. Customers who buy long exchange-traded options generally must pay for them in full. *See supra* note 94 (discussing margin requirements for long exchange-traded options).

In turn, opportunities to earn higher fees from enabling transactions in security futures may encourage exchanges to list security futures. As a result, the final rule amendments could incrementally increase the likelihood that trading in security futures contracts resumes.

Lowering the regulatory minimum margin requirements for security futures margin could also impose costs on broker-dealers, their customers, and counterparties. To the extent that lower regulatory margin requirements cause some broker-dealers to impose lower margin requirements on customers if trading resumes, the final rule amendments could increase the default risk of the broker-dealer, and a broker-dealer default would likely impact the defaulting broker-dealer's customers and counterparties. However, broker-dealers participating in security futures markets would be subject to clearing organizations' margin requirements and the SEC's broker-dealer financial responsibility rules (including minimum capital requirements).[263] Such requirements are reasonably designed to mitigate the risk of a broker-dealer's default. In addition, in the event of such a default, the SEC's customer protection rule would protect customers' assets held in a securities account.[264]

iv. Resumption of Trading in the U.S. Security Futures Market

The final rule amendments may increase investors' willingness to participate in the security futures markets to an extent that is sufficient to result in resumption in exchange trading of security futures in the U.S. Although we expect the final rule amendments to have, at most, an incremental effect on the likelihood that trading resumes, the potential revitalization of the U.S. security futures market could produce economic consequences for investors, intermediaries, and financial markets.

A liquid U.S. security futures market could result in both costs and benefits for investors. Access to security futures could benefit investors by reducing the costs that investors incur to obtain risk exposures or finance other transactions. As discussed earlier, security futures can allow investors to obtain low-cost exposure to underlying securities.[265] In particular, security futures can simplify the process of taking short positions by eliminating the need to locate borrowable securities. Moreover, security futures can be combined to produce synthetic equity loans or equity repurchase agreements.[266] These activities, however, have attendant risks. As discussed above, an investor that uses security futures to obtain leveraged exposure to underlying securities also is exposed to the risk of larger losses.

Resumption of trade in the U.S. security futures market could permit intermediaries to earn additional revenues by serving investors that participate in the security futures market. Whether revenues from transaction services increase depends on whether investors transact in security futures in addition to cash market securities rather than simply reallocating their cash market activities to security futures markets.

v. Effects of Revisions to Strategy-Based Offset Table

As discussed in section II.B. above, the revised Strategy-Based Offset Table is being re-published as proposed.[267] The re-published Strategy-Based Offset Table incorporates the 15% required margin levels for certain offsetting positions and retains the same percentages for all other offsets. The revisions to the Strategy-Based Offset Table would promote consistency with the lower margin levels on unhedged security futures positions of the final rule amendments. If security futures trading resumes, the revisions would generally benefit investors from the lower cost of carrying offset positions. The SEC also expects any additional costs incurred by broker-dealers to incorporate the revised Strategy-Based Offset Table into their existing policies and procedures to be similarly insubstantial.

4. Effects on Efficiency, Competition, and Capital Formation

In addition to the specific costs and benefits discussed above, the reductions to minimum margin requirements on unhedged security futures that the SEC is adopting may have broader effects on efficiency, competition, and capital formation.

i. Efficiency

Should trading in security futures resume, the SEC expects the final rule amendments to result in incremental improvements in efficiency to the extent that they permit investors to obtain the risk exposures they desire at lower cost. The final rule amendments may also improve liquidity in the security futures market and impact the informational efficiency of security futures prices, as well as the prices for related financial instruments. Reducing minimum margin requirements could also impact the financial system more broadly though, as discussed below, we do not expect such effects to be substantial.

a. Efficiency and Transactions Costs

Under the current minimum margin requirements two identical security futures positions may be subject to different margin levels because they are held in different types of accounts. A potential concern with the current margin requirements in these situations, and more generally, is whether they can result in price distortions or introduce inefficiencies in how investors allocate funds.

Current margin requirements may not necessarily result in price distortions. This is because certain participating investors, such as market makers,[268] are exempt from the current margin requirements (which would still apply to any positions held on behalf of a customer), and they may step in to become the "marginal investor" in situations where current margin requirements might otherwise distort prices.[269] For example, if security futures trading resumes investors trading from outside a Portfolio Margin Account, who are not exempt from margin requirements, would face trading costs associated with margin requirements that may hinder their ability to trade with each other. A seller and a buyer who agree on the value of a security futures product may nevertheless fail to agree on a transaction price because the buyer demands a discount to compensate herself for the cost of meeting margin requirements, while the seller demands a premium to compensate herself for the same costs. On their own, these distortions would result in wider bid-ask spreads in security futures markets. However, because market participants such as market makers, who are exempt from margin requirements, bear minimal costs to transact, these investors have the ability to provide quotes that are

[263] 17 CFR 240.15c3–1.

[264] 17 CFR 240.15c3–3. The SEC acknowledges that any security futures held in futures accounts would benefit from the CFTC's customer protection rules found in part 1 of the CFTC's regulations.

[265] *See* section IV.B.2.i.

[266] *Id.*

[267] *See* 2019 Proposing Release, 84 FR at 36441–43.

[268] Market makers are subject to exemptions from margin requirements. *See* CFTC Rule 41.42(c)(2)(v); SEC Rule 400(c)(2)(v).

[269] A market participant or investor is considered "marginal" if they are willing to buy or sell security futures even for small deviations between the price of a security futures contract and the contract's fundamental value and thus sets the price of the contract. Such activities may be more profitable for market makers if they encounter lower trading frictions (including margin requirements) relative to other market participants.

generally more competitive than the quotes provided by other types of investors, reducing uncertainty in the value of security futures.

Nevertheless, current margin requirements may result in potential allocative inefficiencies. Trading costs associated with the current margin requirements may impact investor demand, and therefore willingness to take on or lay off risk exposures using security futures. In particular, risk sharing under the regulatory minimum margin requirements may be different relative to the case where margin levels are optimally determined to reflect the risks of security futures positions. The difference between the allocation of financial risk that result from current margin requirements and the allocation associated with the margin requirements that are optimally determined may be viewed as an allocative inefficiency. Allocative inefficiency may also manifest if trading costs in security futures drive investors to use alternative products to obtain financing or manage risk, which are less suited to their needs.

If security futures trading resumes, certain investors could reduce these potential allocative inefficiencies by trading out of a Portfolio Margin Account,[270] where margin requirements can result in much lower margin levels compared to those that apply outside such accounts. However, as of the fourth quarter of 2019, no investors appeared to be trading in security futures out of Portfolio Margin Accounts, despite the fact that they did trade significantly in exchange-traded equity options out of these accounts. This observation may indicate that investors that qualify for Portfolio Margin Accounts have not traded security futures.[271] Alternatively, such investors may have chosen to trade security futures outside of Portfolio Margin accounts, implying that the costs they faced as a result of the current margin requirements were not sufficiently large to discourage their participation or to persuade them to open a Portfolio Margin Account.

Nevertheless, because opening Portfolio Margin Accounts entails costs, not all investors can trade out of these accounts,[272] therefore some investors may face barriers to participation in the security futures market, if trading resumes. The potential inefficiencies associated with these barriers arise when the margin levels associated with current minimum margin requirements for security futures are larger than the margin levels associated with margin requirements that are optimally determined, and not because similar positions are margined differently in other markets.

The final rule amendments will lower the minimum initial margin requirements for certain security futures positions, and in turn reduce the trading costs for these positions. To the extent trading costs result in inefficiencies, the final rule amendments, by lowering trading costs, may reduce potential inefficiencies associated with the current initial margin requirements.

Furthermore, as discussed above, lower trading costs in certain security futures positions may increase investor demand for security futures, and may encourage greater market participation in this market if trading in security futures resumes. Greater participation may increase competition over prices, which in turn may result in improved price discovery and liquidity in the security futures market. However, the effect of the final rule amendments on price discovery and liquidity may be limited because, as discussed above, the marginal participant in this market is likely one that is currently exempt from the customer margin requirements for security futures and therefore, able to supply liquidity at relatively low cost.

One commenter stated that the lower minimum margin requirements combined with investors' search for sources of leverage, may increase liquidity in the security futures market while simultaneously reducing liquidity and price efficiency in other related markets.[273] The SEC acknowledges that the final rule amendments may encourage resumption of trading in the U.S. security futures market and, if trading resumes, may encourage arbitrageurs to rely more on the security futures market to take advantage of potential mispricing compared to other markets, or may increase the risk of adverse selection in equity markets if it encourages less-informed investors to migrate to the security futures market to obtain leveraged equity exposure at low cost.[274] However, the SEC does not believe that the resumption of trading in security futures or heightened focus on the security futures market would necessarily reduce informational efficiency or liquidity in aggregate across related markets. Markets that support trade in financial instruments that reference the same underlying security tend to be interconnected to a high degree.[275] Furthermore, investors may access security futures quotes and post-trade information. As such, even if trading in security futures resumes and the final rule amendments shift price discovery from related markets to the security futures market, information impounded in security futures prices may inform trading in those related markets.[276]

b. Systemic Considerations

The final rule amendments may also impact efficiency through their impact on risk management. As discussed above, broker-dealers likely weigh the costs associated with customer defaults against the benefits of lower margin requirements when setting margin requirements for their customers. Although such private considerations would produce market-determined margin levels that were optimal from a broker-dealer's perspective, market imperfections could lead broker-dealers to impose margin requirements on customers that are not efficient for the financial system as a whole. The relevant market imperfections in the context of margin requirements relate to

[270] Not all investors are eligible to open a Portfolio Margin Account. *See* Cboe/MIAX Letter at 4.

[271] With the exception of investors that are exempt from margin requirements, the investors that hold or are eligible to open a Portfolio Margin Account are best positioned to trade security futures at margin levels that could be substantially below the current minimum margin requirements. The extent to which they face low margin levels on a new security futures position depends on any offsetting positions—either security futures or exchange-traded options positions—that they hold in their Portfolio Margin Account at that time when they seek to enter the new security future position.

[272] *See* Cboe/MIAX Letter (describing potential costs and requirements associated with opening a Portfolio Margining Account).

[273] *See* CII Letter at 3.

[274] *See* Stewart Mayhew, Atulya Sarin & Kuldeep Shastri, *The Allocation of Informed Trading Across Related Markets: An Analysis of the Impact of Changes in Equity-Option Margin Requirements,* 50 J. FIN. 1635 (1995) (showing that a reduction in options margin requirements decreased options market bid/ask spreads and increased option market depth-of-book, while increasing equity market bid/ask spreads and decreasing equity market depth-of-book).

[275] *See, e.g.* Sugato Chakravarty, Huseyin Gulen & Stewart Mayhew, *Informed Trading in Stock and Option Markets,* 59 J. FIN. 1253 (2004) (showing that price discovery takes place both in the equity market and the equity options market, with the latter contributing by about 17%). Similarly, another study documents informational flows between credit default swap markets, equity options markets and equity markets. *See* Antje Berndt & Anastasyia Ostrovnaya, *Do Equity Markets Favor Credit Market News over Options Market News?,* 4(2) Q. J. FIN. 1 (2014).

[276] *See, e.g.* David Easley, Maureen O'Hara & P. S. Srinivas, *Option Volume and Stock Prices: Evidence on Where Informed Traders Trade,* 53 J. FIN. 431 (1998) and Jun Pan & Allen Poteshman, *The Information in Option Volume for Future Stock Prices,* 19 REV. FIN. STUD. 871 (2006) (both showing that equity options trading provide valuable information for equity markets).

externalities on financial stability arising from excessive leverage.[277]

Historically, a key aspect of the rationale for regulatory margin requirements on securities transactions was the belief that such requirements could improve efficiency by limiting stock market volatility resulting from ''pyramiding credit.'' [278] Leveraged exposures built up during price run-ups could lead to the collapse of prices when a small shock triggers initial and maintenance margin calls and a cascade of de-leveraging. The utility of such margin requirements in limiting such ''excess'' volatility and the contribution of derivatives markets to such volatility have been a perennial topic of debate in the academic literature, rekindled periodically by crisis episodes.[279] Most recently, the 2007–2008 financial crisis saw similar concerns (*i.e.,* procyclical leverage, margin call-induced selling spirals) raised in the securitized debt markets.[280] While lower margin requirements can increase the risk and severity of market dislocations—given the current limited scale of the security futures markets and the limited role played by SEC registrants in these markets—the adopted reductions to minimum margin requirements are unlikely to present a material financial stability concern.

One commenter expressed concern that the criteria for prescribing margin requirements under the Exchange Act to preserve the financial integrity of markets trading security futures products and preventing systemic risk appear to indicate potential significant risks to the capital markets and investors by lowering margin requirements.[281] This commenter noted that the 2019 Proposing Release specifically acknowledged that margin requirements are a critical component of any risk management program for cleared financial products and that higher margin levels imply lower leverage, which reduces risk.[282] As described in the baseline, the vast majority of security futures positions were held in futures accounts at CFTC-regulated entities, and, consequently, only a small fraction of the security futures accounts were subject to the SEC's margin rules. Therefore, even if trading in security futures resumes and participation in security futures markets were to increase modestly as a result of the final rule amendments, the adopted reductions to minimum margin requirements are unlikely to have a significant impact on the financial integrity of the security futures market and are unlikely to lead to systemic risk.[283]

ii. Competition

The SEC has considered the potential impact of the final rule amendments on competition. This section discusses those impacts in detail and considers the views of commenters on the extent to which reducing minimum margin requirements for certain accounts introduces or eliminates competitive disparities between markets for different types of financial instruments and markets in different jurisdictions.

a. Competition Among Related Markets

The 2019 Proposing Release stated that the proposed initial and maintenance margin requirements would establish a more level playing field between options exchanges and security futures exchanges, and between broker-dealers/securities accounts and FCMs/futures accounts.[284] Although the SEC continues to expect the final rule amendments to place these exchanges and account types on a more level footing, some commenters took issue with this view. One commenter argued that the final rule amendments would give unhedged security futures a competitive advantage over exchange-traded equity options when held outside a Portfolio Margining Account.[285] This commenter suggested that subjecting security futures and exchange-traded equity options to different margin requirements in this way may disrupt the regulatory parity that currently exists between security futures and exchange-traded equity options as the proposal would create preferential margin levels for unhedged security futures held outside of a Portfolio Margin Account.[286] This commenter also believed that the proposal implies that exchange-traded equity options and security futures are not competing products, stating that currently there is significant trading in option spread positions that ''replicate long and short security futures'' outside Portfolio Margin Accounts.[287]

The SEC agrees that security futures and exchange-traded equity options can have similar economic uses. Nevertheless, for the reasons discussed in section II.A.2 of this release, reducing the margin levels for an unhedged security future held outside of a Portfolio Margin Account to 15% is unlikely to result in a competitive disadvantage for exchange-traded equity options in practice if trading in security futures resumes.

The SEC acknowledges that because the adopted margin requirements apply only to unhedged security futures positions held outside Portfolio Margining Accounts, the final rule amendments may result in different margin requirements across security futures positions and exchange-traded equity options positions held in this type of account. To the extent some investors view a security futures position and an option spread position that replicates the contractual payoffs of the security futures position as close substitutes, the final rule amendments may result in different costs for these positions when held outside of a Portfolio Margining Account and may cause these investors to prefer the security futures position to the option spread position. From this perspective, the final rule amendments may potentially have an adverse competitive effect on exchange-traded equity options if trading in security futures resumes in the U.S. However, this potential adverse competitive impact likely would be small as a substantial portion of exchange-traded equity options are traded in Portfolio Margin Accounts where the margin requirement for an unhedged exchanged-traded option on a

[277] The SEC acknowledges that other market imperfections (*e.g.,* asymmetric information, adverse selection) may also play a role, although the SEC believes these to be less relevant to this context. Asymmetric information about market participants' quality can lead privately negotiated margin levels to be inefficient. For example, competition among broker-dealers may lead to a ''race to the bottom'' in margin requirements when customers' ''quality'' is not perfectly observable. *See e.g.,* Tano Santos & Jose A. Scheinkman, *Competition among Exchanges,* 116 Q. J. ECON. 1027 (2001). Alternatively, problems of adverse selection (*e.g.,* potential to re-invest customer margin in risky investments) or moral hazard (*e.g.,* expectations of government rescue) may also create incentives for broker-dealers to offer margin requirements that are too low. Asymmetric information about broker-dealer quality may make it impossible for customers to provide sufficient market discipline, leading to a problem similar to that faced by bank depositors. *See* Mathias Dewatripont & Jean Tirole, *Efficient Governance Structure: Implications for Banking Regulation, in* CAPITAL MARKETS AND FINANCIAL INTERMEDIATION 12 (Colin Mayer & Xavier Vives eds., 1993).

[278] *See* Thomas Gale Moore, *Stock Market Margin Requirements,* 74 J. POL. ECON. 158 (1966).

[279] *See id. See also* Stephen Figlewski, *Futures Trading and Volatility in the GNMA Market,* 36 J. FIN. 445 (1981). *See also* Franklin R Edwards, *Does Futures Trading Increase Stock Market Volatility?,* 44 FIN. ANALYSTS J. 63 (1988). *See also* Paul H Kupiec, *Margin Requirements, Volatility, and Market Integrity: What Have We Learned Since the Crash?,* 13 J. FIN. SERVICES RES. 231 (1998).

[280] *See e.g.,* Tobias Adrian & Hyun Song Shin, *Liquidity and Leverage,* 19 J. FIN. INTERMEDIATION 418 (2010).

[281] *See* CII Letter at 2.

[282] *See* CII Letter at 2.

[283] *See* 2019 Proposing Release, 84 FR at 36438, and 36449–50.

[284] *See* 2019 Proposing Release, 84 FR at 36451.

[285] *See* Cboe/MIAX Letter at 6–8.

[286] *See* Cboe/MIAX Letter at 2.

[287] *See* Cboe/MIAX Letter at 6–8.

narrow-based index or single-equity is 15%.[288]

OneChicago disagreed with the notion that security futures and exchange-traded equity options strategies could be comparable, noting that because security futures provide an investor with 100% exposure (*i.e.,* delta one exposure) to the underlying security, security futures should instead be compared to other financial instruments that offer delta one exposure, such as uncleared OTC equity swaps and cleared OTC stock loans.[289]

OTC total return equity swaps and stock loans may compete with security futures to provide delta one exposure at lower cost compared to outright acquisition of the underlying security. From this perspective, to the extent that security futures compete with these OTC instruments, the final rule amendments would increase the competitiveness of security futures relative to these OTC instruments. However, this potential competitive effect is limited, because, as OneChicago noted, under certain conditions, the costs of financing delta one exposure through OTC equity swaps and stock loans can be substantially smaller compared to the cost of security futures.[290]

OneChicago further argued that the risk profile of a security futures position cannot be replicated with exchange-traded equity options, and on this basis challenged the argument that lower margin requirements for security futures would reduce the competitiveness of exchange-traded equity options.[291] OneChicago stated that security futures products are not comparable to exchange-traded equity options because they have different risk profiles; exchange-traded equity options are subject to dividend risk, pin risk, and early assignment risk, while security futures are not.[292] Further, OneChicago challenged the concerns raised by other commenters that the proposed margin requirements would result in ''regulatory arbitrage,'' arguing that the many salient differences between security futures and exchange-traded equity options make it virtually impossible to replicate a security futures position using exchange-traded equity options.[293] OneChicago suggested that the comparison between a security futures position and an option spread position that ''replicates'' the security futures cannot be limited to a comparison between the contractual payoffs of these two positions. In particular, this commenter argued that a proper comparison should include payoffs that may occur throughout the life of the position, including payoffs from the security future's daily settlement of variation margin (*i.e.,* marking-to-market and paying or collecting variation margin) that differs from initial and maintenance margin requirements in options markets.[294]

The SEC acknowledges that even if the contractual payoffs of a security futures position could be perfectly replicated with the payoffs of an option spread position,[295] the risk profiles of the two positions may still be different.[296] For example, the daily variation margin settlement of the security futures position may give rise to payoffs throughout the life of the positions that could expose the holders of the position to funding risk. Similarly, the exchange of variation margin for the options spread position also exposes investors to funding risk, but to a lesser degree compared to a security futures position.[297] As noted by OneChicago, unlike a security futures position, an option spread position may be subject to a number of risks that reflect potential strategic behavior that is commonplace in the options markets, including dividend risk, assignment risk, and pin risk.[298] Because funding risks and the risks that reflect strategic behavior in options markets may affect the security futures and the option spread positions differently, the two positions may not have the same risk profile.

Notwithstanding these differences, under certain conditions, the risk profiles of the two positions may be sufficiently similar for some investors, and may be viewed by these investors as close (but not necessarily perfect) substitutes. These strategies are economic equivalents to a certain degree because both provide exposure to an underlying equity security or narrow-based equity security index outside the cash equity market.[299] Thus, both strategies can be used to hedge, at least partially, a long or short position in the underlying equity security or narrow-based equity security index. Similarly, each strategy can also be used to speculate on a potential price movement of the underlying equity security or narrow-based equity security index. Furthermore, both short security futures positions and certain exchange-traded equity options strategies produce unlimited downside risk. Investors in security futures and writers of options may lose their initial and maintenance

[288] *See* 2019 Proposing Release, 84 FR 36450.

[289] OneChicago Letter.

[290] OneChicago Letter. In addition, as discussed in section II.A. of this release, Section 7(c)(2)(B) of the Exchange Act provides that the margin requirements for security futures must be consistent with the margin requirements for comparable exchange-traded options. The Exchange Act does not directly contemplate comparisons with the margin requirements for the products and markets identified by OneChicago. Rather, it requires comparisons to comparable exchange-traded options.

[291] *See* OneChicago Letter; OneChicago Letter 2.

[292] OneChicago Letter at 2, 9; OneChicago Letter 2 at 1–2.

[293] *See* OneChicago Letter 2.

[294] *See also* OneChicago Letter (providing a more in depth analysis of these issues together with some data that outlines various payoff structures for different strategies based on currently traded contracts).

[295] It is well known that in theory a long security futures position can be perfectly replicated with an option spread position consisting of a long European call and a short European put. Both options have the same expiration, and each has a strike price equal to the futures price. This result is also known as the put-call parity. *See, e.g.* JOHN C. HULL, FUNDAMENTALS OF FUTURES AND OPTIONS MARKETS, (Pearson Prentice Hall, 2017).

[296] A number of practical factors challenge the extent to which security futures can be perfectly replicated using an options spread position. First, most stock options currently trading are American style rather than European style. American style options typically sell at a premium relative to European style options because of the value of exercising early. Second, if the strike price of these options (which is set to equal the futures price) falls outside the range currently trading, liquidity may be limited and these options may sell at a premium (or at a discount if short). Third, certain features of the futures and options markets may introduce payoffs throughout the life of these positions that may further complicate the replication strategy. For example, the daily settlement process in the futures market may result in additional payments or payouts to the holder of the futures position, relative to the contractual payoffs of the position. Similarly, the practice of exchanging variation margin in the options market may result in additional payments/payouts to the holder of the options positions. These additional payments generally help reduce the potential loss due to a counterparty failure, but may also expose a counterparty to funding risk. Finally, the option spread position may be subject to a number of risks that reflect potential strategic behavior that is commonplace in the options markets, including dividend risk, assignment risk, and pin risk (for definitions of dividend risk, assignment risk and pin risk, *see* OneChicago Letter 3, at n.23, 24, and 25). The futures position may also be exposed to some of these risks through the daily settlement process (for example, the price of a futures contract on a dividend-paying stock would reflect an unanticipated change in the dividend policy at the time when this change in policy is made public). The factors outlined above point to potential price disparities between the security futures and the option spread positions that cannot be arbitraged away. The last two factors also point to sources of potential risks, and therefore sources of potential losses, that may impact the two positions differently. In general, these factors may cause the risk profile of the security futures and the risk profile of the option spread positions to drift apart.

[297] The margin on the security futures position is calculated on the current market value of the position, while the margin on the option spread position is generally calculated on the value of the short leg of the position, outside of a Portfolio Margin Account.

[298] *See supra* note 296 (describing what these risks are). *See also* OneChicago Letter 3, at n.23–25.

[299] *See supra* note 117.

margin on deposit and premium payments and be required to pay additional funds in the event of a default of a broker-dealer or clearinghouse.

In addition, a deep-in-the money call or put option on the same security can have a delta approaching one if the underlying security takes values in a certain range of outcomes. Over such a range of outcomes, equity option contracts may be comparable to a security futures contract. Further, as stated by one commenter, synthetic futures strategies are an important segment of today's options markets competing everyday with security futures.[300]

OneChicago provided empirical analyses to support its claim that changes to security futures margin rates would not impact exchange-traded equity options. In one analysis, OneChicago observed data inconsistent with a statistically positive correlation between the E-mini margin rates and either the ratio of SPX (S&P 500) options open interest to E-mini S&P 500 futures open interest or the ratio of SPX trading volume to E-mini trading volume.[301] In another analysis, OneChicago provided statistical data on the correlation in open interest between security futures and exchange-traded equity options. This analysis shows that there is no significant correlation between the two types of open interest, and OneChicago saw this finding as supporting their conclusion that market participants have discrete uses for security futures and ''equity options and that the derivatives are not interchangeable.'' [302]

The SEC appreciates the empirical analyses provided by OneChicago, while also noting that the inferences in these analyses are subject to multiple limitations that make it difficult to conclude on the basis of these analyses that reducing minimum initial and maintenance margin requirements for security futures would not reduce the use of comparable options strategies. It is unclear to what degree results from the SPX options market and the E-mini futures market can be generalized to exchange-traded equity options and security futures. Unlike their single-stock counterparts, derivatives that are based on broad-based indices can be used by a wide range of institutional and retail investors for purposes broader than obtaining exposure to individual equities or obtaining cash to finance other positions. Participants in these markets may seek to efficiently hedge market risk or express views on the direction or volatility of equity indices. Moreover, the markets for futures and options that track the S&P 500 index or track an investable portfolio of S&P 500 equities include more than just the products that OneChicago analyzed. This makes it difficult to extrapolate results from these markets to the markets for exchange-traded options and security futures. Furthermore, OneChicago's analysis of security futures and exchange-traded equity options compares security futures to all equity options contracts, without focusing on those segments of the equity options market most comparable to security futures, such as strategies that approximate delta one exposure.

The final rule amendments may improve the ability of security futures intermediaries and exchanges to compete in the market for other financial services. Certain analyses submitted by OneChicago to the comment file support this view with evidence that security futures would be used for different purposes than exchange-traded equity options.[303] For example, OneChicago compared trade size (number of contacts and notional value) in security futures with trade size in options markets and security future delivery rates with options exercise rates,[304] and concluded that the higher trade size and higher delivery rates in security futures markets indicated that investors use the security futures market for financing purposes. When summarizing its findings, OneChicago stated that the delivery data makes ''clear'' that the ''markets view and use the products differently.'' [305] OneChicago further asserted that certain security futures strategies represent exchange-traded substitutes for securities lending and equity repo transactions.[306]

b. Foreign Markets for Security Futures

Finally, OneChicago noted that U.S. security futures markets faced competition from foreign markets that rely on risk-based initial margin that, in contrast to Portfolio Margin Accounts, do not have a strategy-based floor and in which ''naked positions are margined at risk-based levels.'' [307] OneChicago supplied initial margin requirements for security futures written on Dow Jones Industrial Average components at Eurex on July 25, 2019, ranging from 6.64% to 14.71%. The SEC acknowledges that other jurisdictions may choose to implement initial margin requirements for security futures under local legal regimes that differ from those of the United States. To the extent that customers may access a number of different markets, higher initial margin requirements in one jurisdiction may place intermediaries and exchanges regulated by that jurisdiction at a competitive disadvantage relative to others.[308] However, as discussed above, the SEC is not persuaded by arguments that implementing a risk model approach to calculating margin for security futures would at this time be permitted under U.S. law and, furthermore, notes that the final rule amendments may reduce the degree of competitive disadvantage if trading resumes in the U.S., at least insofar as foreign markets would draw away customers that would otherwise trade security futures outside of Portfolio Margin Accounts.[309]

iii. Capital Formation

As discussed above, the potential benefits to investors that flow from the final rule amendments including a lower cost of obtaining underlying securities, the opportunity to take on more leverage (relative to the baseline), and the potential increase in price competitiveness, may increase investor demand for access to security futures contracts. To the extent security futures trading resumes in the U.S., and investor participation causes the market for security futures to grow, the final rule amendments would have an impact on capital formation. An active security futures market can reduce the frictions associated with shorting equity exposures (making it easier for negative information about a firm's fundamentals to be incorporated into security prices) or financing securities exposures. This could promote more efficient capital allocations by facilitating the flow of financial resources to their most productive uses.

5. Reasonable Alternatives Considered

In the 2019 Proposing Release, the SEC stated it did not believe there are reasonable alternatives to the proposal to reduce minimum margin levels for unhedged security futures.[310] Two

[300] *See* Cboe/MIAX Letter at 6–7.

[301] OneChicago Letter 3 at 12–15.

[302] OneChicago Letter 3 at 15.

[303] OneChicago Letter at 2–3.

[304] OneChicago Letter 3 at 9–12.

[305] OneChicago Letter 3 Summary at 1.

[306] OneChicago Letter 3, at 22.

[307] OneChicago Letter, at n.54 and accompanying text.

[308] OneChicago submitted a customer letter supporting this point. *See* OneChicago Letter, Appendix C.

[309] *See supra* note 182 in section IV.A.4. (CFTC—Description of Costs) (noting that trading by U.S. persons in security futures contracts listed on Eurex is subject to certain conditions under an SEC order and a CFTC staff advisory).

[310] 2019 Proposing Release, 84 FR at 36451.

commenters took issue with this observation and suggested several alternatives for the SEC to consider.[311] One commenter suggested two alternatives: (1) Reduce the size of security futures contracts; and (2) rule-based margin with flexible settlement intervals.[312] The other commenter suggested two additional alternatives: (1) Risk-based margins for all security futures products; and (2) risk-based margins for select security futures products involving STARS transactions.[313]

The SEC addresses the suggested alternatives below. The discussion of those alternatives includes certain commenter proposals that the Commissions still do not believe are viable at this time for the reasons discussed by the Commissions in more detail above.

i. Reduce the Size of the Security Futures Contract

One commenter suggested that an alternative to lowering the margin on security futures could be to reduce the size of a security futures contract.[314] This commenter noted that a similar reduction in the size of the S&P e-mini futures contract that led to the creation of S&P micro e-mini futures could increase access to single-stock futures for the most popular securities and improve efficiency.[315] The SEC acknowledges that one way to reduce the dollar value of margin required for a position in a given contract is to reduce the size of the contract. However, an investor is more likely to determine her optimal exposure in terms of notional value or as a proportion of her available financial resources, rather than as a number of contracts. This alternative would not change the amount of margin that would be assessed on such an investor's optimal exposure. For example, if the size of the contract were reduced by half, so would the value of margin required, subject to certain caveats,[316] but the investor would need twice as many contracts to establish her optimal exposure. Thus, the total margin for this exposure would not change significantly from the baseline. However, a reduction in contract size is known to encourage market participation, and therefore, this alternative may spur demand for security futures.[317]

ii. Rule-Based Margins With Flexible Margin Settlement Intervals

The same commenter suggested another alternative that would maintain the current minimum margin requirements and reduce margins by changing the margin settlement intervals for security futures.[318] This alternative is based on the findings of one study, which quantifies the extent to which current margin requirements overmargin or undermargin a futures position relative to a risk-based margin requirement (*e.g.,* traditional futures).[319] This study finds that current margin requirements are overly conservative, and that increasing the length of the margin settlement interval may help alleviate the problem. The study further suggested that exchanges should be allowed to set the length of the margin settlement interval as a means of competing with one another.

While changing the length of the margin settlement interval may provide another way of reducing margins, it is not clear how feasible this method would be in practice. Allowing exchanges to set different margin settlement intervals for different products and update these over time would increase complexity and potentially impose operation costs on market participants. Because this alternative is not used currently in any equity markets (to the SEC's knowledge), and because there is uncertainty about how to calibrate the mechanism to deliver margin requirements in this context, the operational costs of this alternative could be large.

Moreover, the SEC recognizes that daily margin settlement is an important risk management tool in the markets for security futures, especially in light of recent market volatility. OneChicago—the only exchange trading security futures at the time the rule amendments were proposed—also cited risk management concerns, arguing that such an approach would remove a critical protection in futures markets.[320]

Finally, the Commissions are adopting the final rules because they produce a desired policy outcome of aligning the minimum margin levels for security futures held in non-Portfolio Margin Accounts with the margin levels for security futures in a Portfolio Margin Account, for the reasons discussed in section II.A. above. Modifying margin settlement intervals would not accomplish this policy outcome.

For these reasons, the SEC is not adopting an approach that includes rules-based margin requirements with flexible settlement intervals in this release.

iii. Risk-Based Margin for All Security Futures Products

OneChicago suggested the alternative of using risk-based margin requirements for security futures products. OneChicago stated that risk-based margin requirements would give security futures the best chance to compete with other products that provide delta one exposure to an underlying security, including products traded in overseas markets and that are subject to similar risk-based margin requirements.[321] According to OneChicago's analysis, the Commissions' proposal to lower the required margin levels from 20% to 15% would have resulted in a 25% reduction in the value of initial margin collected (from $540 million to $410 million); whereas using a risk-based margin model would have resulted in a 61% reduction (from $540 million to $210 million).[322] This suggests that the margin savings to investors from risk-based margin requirements may be economically significant.

OneChicago also supported its position that the Commissions should permit risk-based margin for security futures, presenting analysis that estimated that 92% of OneChicago products were ''overmargined'' (in the sense that the minimum margin requirement was greater than the level that would result from a risk-based margin calculation) at a 20% minimum margin requirement and 84% of OneChicago products would be ''overmargined'' at a 15% minimum margin requirement. This analysis suggests that the final rule amendments would set margin requirements for 8% of OneChicago products equal to the margin levels that would arise from risk-based margining but that a substantial majority of OneChicago products would have minimum margin requirements above risk-based levels, if security

[311] *See* CII Letter at 4; OneChicago Letter.

[312] *See* CII Letter at 4; *see also* Commissioner Jackson's Statement.

[313] *See* OneChicago Letter; OneChicago Letter 2; OneChicago Letter 3; *see also* Ianni Letter; La Botz Letter.

[314] *See* CII Letter at 4; *see also* Commissioner Jackson's Statement.

[315] *See* CII Letter at 4.

[316] There may be other factors that may affect whether the margin scales up or down with the size of the contract, in a linear fashion.

[317] *See, e.g.,* Lars Nordén, *Does an Index Futures Split Enhance Trading Activity and Hedging Effectiveness of the Futures Contract,* 26 J. FUTURES MARKETS 1169 (2006).

[318] *See* CII Letter at 4.

[319] Hans R. Dutt & Ira L. Wein, *On the Adequacy of Single-Stock Futures Margining Requirements,* 10 J. FUTURES MARKETS 989 (2003).

[320] OneChicago Letter at 6.

[321] *See* OneChicago Letter at 12–13.

[322] OneChicago Letter at 14.

futures trading at OneChicago resumes.[323]

The SEC acknowledges that risk-based initial margin requirements may result in more efficient levels of margin being collected compared with margin requirements based on fixed margin levels. Moreover, moving to risk-based margin requirement would likely achieve a larger reduction in competitive frictions between security futures and alternative means of financing delta one exposure (*e.g.,* use of OTC equity swaps and stock loans) than the final rules.

However, as discussed in section II.A. above, the SEC is not persuaded by OneChicago's arguments that, at this time, implementing a risk model approach to calculating initial margin for security futures would be permitted under Section 7(c)(2)(B) of the Exchange Act given that such risk-based margin models are not currently used to set initial margin for customers in the equity options markets. Moreover, implementing a risk model approach would substantially alter how the required minimum initial and maintenance margin levels for security futures are calculated. It also would be a significant deviation from how margin is calculated for listed equity options and other equity positions (*e.g.,* long and short securities positions). It would not be appropriate at this time to implement a different margining system for security futures, given their relation to products that trade in the U.S. equity markets. Further, implementing a different margining system for security futures may result in substantially lower margin levels for these products as compared with other equity products and could have unintended competitive impacts. For these reasons, this suggested alternative to permit risk-based margin models to determine customer margin requirements for security futures is not viable.

iv. Risk-Based Margin for a Subset of Security Futures Products

OneChicago suggested the alternative of using risk-based margin requirements for STARS transactions.[324] OneChicago stated that risk-based margin requirements would allow STARS transactions to compete with other transactions that market participants currently use to finance their activities.

The SEC's consideration of this alternative is similar to the alternative of permitting risk-based initial margin requirements for all security futures transactions. While the SEC acknowledges that risk-based initial margin requirements may be more efficient than margin requirements based on fixed margin levels, the SEC is not persuaded by OneChicago's arguments that, at this time, implementing a risk model approach to calculating initial margin for STARS transactions would be permitted under Section 7(c)(2)(B) of the Exchange Act. For this reason, as well as the recent announcements by OneChicago, this suggested alternative for STARS transactions is not viable.

V. Regulatory Flexibility Act

A. CFTC

The Regulatory Flexibility Act (''RFA'') requires that Federal agencies, in promulgating rules, consider the impact of those rules on small entities.[325] The final rules would affect designated contract markets, FCMs, and customers who trade in security futures, if security futures trading resumes. The CFTC has previously established certain definitions of ''small entities'' to be used by the CFTC in evaluating the impact of its rules on small entities in accordance with the RFA.[326]

In its previous determinations, the CFTC has concluded that contract markets are not small entities for purposes of the RFA, based on the vital role contract markets play in the national economy and the significant amount of resources required to operate as SROs.[327] The CFTC also has determined that notice-designated contract markets are not small entities for purposes of the RFA.[328]

The CFTC has previously determined that FCMs are not small entities for purposes of the RFA, based on the fiduciary nature of FCM-customer relationships as well as the requirements that FCMs meet certain minimum financial requirements.[329] In addition, the CFTC has determined that notice-registered FCMs,[330] for the reasons applicable to FCMs registered in accordance with Section 4f(a)(1) of the CEA,[331] are not small entities for purposes of the RFA.[332]

Finally, the CFTC notes that according to data from OneChicago, 99% of all customers that transacted in security futures as of March 1, 2016, and March 1, 2017, qualified as ECPs. The CFTC has found that ECPs should not be considered small entities for the purposes of the RFA.[333] Based on this information, an overwhelming majority of the customers that traded security futures in the past were ECPs and not small entities. Although it is possible that an exchange that launches security futures trading in the future may market these contracts to retail customers that are not ECPs, the CFTC believes that it is still unlikely that the final rules will affect small entities. Therefore, a change in the margin level for security futures is not anticipated to affect small entities.

Accordingly, the CFTC Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b), that the final rules will not have a significant economic impact on a substantial number of small entities.

B. SEC

The RFA requires that Federal agencies, in promulgating rules, consider the impact of those rules on small entities.[334] Section 3(a) [335] of the RFA generally requires the SEC to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on small entities unless the SEC certifies that the rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.[336]

Pursuant to Section 605(b) of the RFA,[337] the SEC certified in the 2019 Proposing Release, that the proposed amendments to reduce the required margin for security futures from 20% to 15% would not have a significant economic impact on any ''small entity'' for purposes of the RFA.[338] The SEC solicited comment on the RFA analysis

[323] *Id.*

[324] OneChicago Letter at 19; *see also* Memorandum from the SEC's Division of Trading and Markets regarding a July 16, 2019, meeting with representatives of OneChicago.

[325] 5 U.S.C. 601 *et seq.*

[326] *Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act,* 47 FR 18618, 18618–21 (Apr. 30, 1982).

[327] *Id.* at 18619.

[328] *Designated Contract Markets in Security Futures Products: Notice-Designation Requirements, Continuing Obligations, Applications for Exemptive Orders, and Exempt Provisions,* 66 FR 44960, 44964 (Aug. 27, 2001).

[329] *Supra* note 326 at 18619.

[330] A broker or dealer that is registered with the SEC and that limits its futures activities to those involving security futures products may notice register with the CFTC as an FCM in accordance with Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)).

[331] 7 U.S.C. 6f(a)(1).

[332] 2002 Adopting Release, 67 FR at 53171.

[333] *Opting Out of Segregation,* 66 FR 20740, 20743 (Apr. 25, 2001).

[334] 5 U.S.C. 601 *et seq.*

[335] 5 U.S.C. 603.

[336] 5 U.S.C. 605(b). The final rule amendments are discussed in detail in section II. above. The SEC discusses the economic consequences of the amendments in section IV. (Economic Analysis) above. As discussed in section III. (Paperwork Reduction Act) above, the final rule amendments do not contain a ''collection of information'' requirement within the meaning of the PRA.

[337] *See* 5 U.S.C. 605(b).

[338] *See* 2019 Proposing Release, 84 FR at 36452.

in the 2019 Proposing Release.[339] The SEC received no comments in response to this request. The SEC is adopting the amendments in this release, as proposed.

For purposes of SEC rulemaking in connection with the RFA,[340] a small entity includes a broker-dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d),[341] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[342] The final rule amendments will reduce the required margin for security futures from 20% to 15%. The final rule amendments will affect brokers, dealers, and members of national securities exchanges, including FCMs required to register as broker-dealers under Section 15(b)(11) of the Exchange Act, relating to security futures.[343]

IBs and FCMs may register as broker-dealers by filing Form BD–N.[344] However, because such IBs may not collect customer margin they are not subject to these rules. In addition, the CFTC has concluded that FCMs are not considered small entities for purposes of the RFA.[345] Accordingly, there are no IBs or FCMs that are small entities for purposes of the RFA that would be subject to the final rule amendments.

In addition, all members of national securities exchanges registered under Section 6(a) of the Exchange Act are registered broker-dealers.[346] The SEC estimates that as of December 31, 2019, there were approximately 873 broker-dealers that were ''small'' for the purposes of SEC Rule 0–10. Of these, the SEC estimates that there are approximately ten broker-dealers that are carrying broker-dealers (*i.e.,* can carry customer margin accounts and extend credit).[347] However, based on December 31, 2019, FOCUS Report data, none of these small carrying broker-dealers carried debit balances.[348] This means these ''small'' carrying firms are not extending margin credit to their customers, and therefore, the final rule amendments likely will not apply to them. Finally, OneChicago was the only U.S. national securities exchange listing security futures until it discontinued all trading operations on September 21, 2020. Therefore, while some small broker-dealers could be affected by the final rule amendments, the amendments will not have a significant impact on a substantial number of small broker-dealers.

Accordingly, the SEC certifies that the final rule amendments will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VI. Other Matters

Pursuant to the Congressional Review Act,[349] the Office of Information and Regulatory Affairs has designated these rules as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

If any of the provisions of these final rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

VII. Anti-Trust Considerations

Section 15(b) of the CEA requires the CFTC to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any CFTC rule or regulation (including any exemption under Section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[350] The CFTC believes that the public interest to be protected by the antitrust laws is generally to protect competition.

The CFTC has determined that the final rules are not anticompetitive and have no anticompetitive effects. In the proposal, the CFTC requested comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA. The objective of the proposal was to bring margin requirements for security futures held in futures accounts or securities accounts that are not Portfolio Margin Accounts, into alignment with the required margin level for unhedged security futures held in Portfolio Margin Accounts.

One commenter argued that the final rules could create a competitive disadvantage for exchange-traded equity options.[351] As explained in more detail above, if security futures trading resumes, these final rules will reduce the margin level for an unhedged security future held outside of a Portfolio Margin Account to 15% and should not result in a competitive disadvantage for exchange-traded equity options, as the 15% margin rate is already in effect for exchange-traded options held in a Portfolio Margin Account.

A different commenter argued that the current strategy-based margin regime does not level the playing field with options, but rather, acts as a barrier to entry for competition and puts security futures at a competitive disadvantage.[352] The CFTC notes that, given the statutory constraints that require the margin requirements for security futures to be consistent with the margin requirements for comparable exchanged-traded equity options, the CFTC has not identified any less anticompetitive means of achieving the purposes of the CEA.

VIII. Statutory Basis

The SEC is amending SEC Rule 403(b)(1) pursuant to the Exchange Act, particularly Sections 3(b), 6, 7(c), 15A and 23(a). Further, these amendments are adopted pursuant to the authority

[339] *Id.*

[340] Although Section 601 of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The SEC has adopted definitions for the term ''small entity'' for the purposes of SEC rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in SEC Rule 0–10 (under the Exchange Act), 17 CFR 240.0–10. *See Statement of Management on Internal Accounting Control,* Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

[341] SEC Rule 17a–5(d) (under the Exchange Act).

[342] *See* 17 CFR 240.0–10(c).

[343] *See* SEC Rule 400(a), 17 CFR 242.400(a).

[344] These notice-registered broker-dealers are not included in the 873 small broker-dealers discussed below, because they are not required to file FOCUS Reports with the SEC. *See* SEC Rule 17a–5(m)(4), 17 CFR 240.17a–5(m)(4).

[345] *See* 47 FR 18618, 18618–21 (Apr. 30, 1982). *See also* 66 FR 14262, 14268 (Mar. 9, 2001).

[346] National securities exchanges registered under Section 6(g) of the Exchange Act—notice registration of security futures product exchanges—may have members who are floor brokers or floor traders who are not registered broker-dealers; however, these entities cannot clear securities transactions or collect customer margin, and, therefore, the final rule amendments will not apply to them.

[347] These small broker-dealers file a FOCUS Report Part II on a monthly basis, which is required to be filed by broker-dealers that clear transactions or carry customer accounts and do not use models to calculate net capital. *See* 17 CFR 240.17a–5(a)(2)(ii).

[348] In addition, based on December 31, 2019, FOCUS Report data, none of these small broker-dealers posted margin to a clearing agency/DCO related to security futures positions written, purchased or sold in customer accounts (FOCUS Report, Line 4467).

[349] 5 U.S.C. 801 *et seq.*

[350] 7 U.S.C. 19(b).

[351] Cboe/MIAX Letter at 2 and 6.

[352] OneChicago Letter at 2.

delegated jointly to the SEC, together with the CFTC, by the Federal Reserve Board in accordance with Exchange Act Section 7(c)(2)(A).

List of Subjects

17 CFR Part 41

Brokers, Margin, Reporting and recordkeeping requirements, Security futures products.

17 CFR Part 242

Brokers, Confidential business information, Reporting and recordkeeping requirements, Securities.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

For the reasons discussed in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 41 as set forth below:

PART 41—SECURITY FUTURES PRODUCTS

■ 1. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

■ 2. In § 41.45, republish paragraph (b) heading and revise paragraph (b)(1) to read as follows:

§ 41.45 Required margin.

* * * * *

(b) *Required margin*—(1) *General rule.* The required margin for each long or short position in a security future shall be fifteen (15) percent of the current market value of such security future.

* * * * *

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

In accordance with the foregoing title 17, chapter II, part 242 of the Code of Federal Regulations is amended as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 3. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 4. Section 242.403 is amended by revising paragraph (b)(1) to read as follows:

§ 242.403 Required margin.

* * * * *

(b) * * *

(1) *General rule.* The required margin for each long or short position in a security future shall be fifteen (15) percent of the current market value of such security future.

* * * * *

By the Securities and Exchange Commission.

Dated: October 22, 2020.

Vanessa A. Countryman,

Secretary.

Issued in Washington, DC, on October 29, 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.

CFTC Appendices to Customer Margin Rules Relating to Security Futures—Commission Voting Summary and Commissioners' Statements

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—Statement of Support of CFTC Commissioner Brian Quintenz

I am pleased to support today's final rule lowering the minimum margin requirement to hold security futures, from 20% to 15% of a position's market value.[1] The lower margin requirement would apply to security futures held in a futures account and to positions held in a securities account not subject to portfolio margin rules. The new margin requirement would be consistent with the current margin requirements both for security futures positions held in a securities account subject to portfolio margin rules and for exchange-traded equity options.

I note that today's final rule indicates that OneChicago, the only exchange that has listed security futures in the United States, has recently discontinued trading operations. This underscores the determinative impact statutory provisions can have on the viability of both products and whole business lines. The Securities Exchange Act requires security futures to be margined comparably to options traded on an exchange registered with the SEC.[2] While the intent of that provision is understandable, the economics underlying it appear to be severely sub-optimal. Today's lowering of the required minimum margin, consistent with the Securities Exchange Act, should make trading this product more cost effective than it has been, but it still may not be sufficiently cost effective to make the product economically viable. From that perspective, I hope policy makers revisit this provision, to ensure its ultimate effect is consistent with its intent. I believe financial markets policy should appropriately balance concerns of safety and soundness with promoting a range of innovative products, and more can certainly be done in that regard on this issue.

Finally, as I noted above, this rule serves as a positive example of productive cooperation between the CFTC and the SEC, and I hope that additional joint actions arise in the future.

[1] Amended CFTC regulation 41.45(b) and SEC rule 242.403(b).

[2] Section 7(c)(2)(B) of the Securities Exchange Act.

Appendix 3—Statement of CFTC Commissioner Dawn D. Stump

I am pleased to be a part of today's Joint Open Meeting of the Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC''). I commend:

- Chairmen Tarbert and Clayton for holding this Meeting to provide transparency into our work in jointly addressing issues of mutual interest to both our agencies;
- Commissioner Quintenz at the CFTC and Commissioner Peirce at the SEC for laying the groundwork for this Joint Meeting through their efforts to harmonize the regulatory regimes of the agencies, as these harmonization efforts benefit not only those we regulate, but also the public we all serve; and
- The staff of the agencies for putting before us a Joint Final Rule that will lower the margin level for an unhedged security futures position from 20% to 15%, which I firmly believe is sound public policy.

And yet, while I don't want to rain on today's parade, I nevertheless feel compelled to express a few regrets.

I regret, for example, that the Commissions did not take the common-sense step of reducing the security futures margin level from 20% to 15% years ago. After all, OneChicago, the only U.S. exchange that made a long-term effort to develop a market for security futures, asked us to take this step 12 years ago in 2008. And the self-regulatory organization rules establishing a 15% margin level for unhedged security futures held in a securities portfolio margin account (with which the action we are taking will align) have been in effect for at least 10 years since 2010. I appreciate that the global financial crisis and the ensuing regulatory focus on swaps and other reforms diverted attention from security futures. But it is nonetheless disappointing that it took the Commissions a decade to take the step we take today—and even more disappointing given that OneChicago did not survive to see it, as it discontinued all trading operations about a month ago on September 21.

I also regret that the adopting release does not recognize the unique circumstances presented by the recent exit of OneChicago and the fact that no U.S. exchange currently lists security futures for trading, and thus issues opinions on hypothetical questions that I do not believe we should be addressing here. By way of background, when the Commissions proposed to reduce the margin level of an unhedged security futures position from 20% to 15%, we also requested comment on whether there are any other risk-based margin methodologies that could be used to prescribe margin requirements for security futures.[1] In response, OneChicago urged the Commissions to permit the use of risk-based margin models for security futures—similar to what is done for other futures contracts. I am in complete agreement that we should not adopt such a sweeping change to the manner in which margin is calculated for security futures based solely on the response to a single request for comment in a proposal designed to address a wholly different type of margin calculation rule.

Unfortunately, though, the adopting release goes further, and rejects OneChicago's arguments regarding the Commissions' authority to adopt risk-based margining for security futures. Some of these arguments are fact-based, and thus a future change in facts could yield a different conclusion, which is appropriate.[2] But the adopting release also rejects OneChicago's interpretive arguments that the Commissions can adopt risk-based margining for security futures even absent a change in factual circumstances.[3] I think that is unfortunate, for three reasons.

First, I do not believe that we should be offering advisory opinions on interpretive questions that, in light of the demise of OneChicago, no CFTC- or SEC-registered exchange is currently asking. In my view, these hypothetical questions are not material given the circumstances before us, and should therefore be left to future CFTC and SEC Commissioners, to be decided in the context of a live request to list and trade security futures.

Second, risk-based margining for security futures is permitted in Europe, and while factors other than margin requirements may influence demand for security futures, its rejection in the adopting release creates a potential competitive disadvantage for U.S. exchanges vs. their international counterparts. The Commodity Exchange Act (''CEA'') specifies that one of its purposes is ''to promote *responsible innovation* and *fair competition* among boards of trade, other markets and market participants.''[4] The interpretation in the adopting release fails to fulfill that purpose.

Third, it should be remembered that the trading of security futures on U.S. exchanges before the year 2000 was prohibited due to jurisdictional disputes over the treatment of products that have attributes of both SEC-regulated securities and CFTC-regulated derivatives. In the Commodity Futures Modernization Act of 2000 (''CFMA''), Congress repealed that prohibition and permitted security futures to trade on U.S. exchanges pursuant to a framework of joint regulation by the CFTC and the SEC.[5] Yet, the rejection of risk-based margining in the adopting release risks stifling the very security futures market that the CFMA intended to promote.

Nevertheless, it is my sincere hope that while the reduction in margin level for an unhedged security futures position from 20% to 15% may have come too late for OneChicago, it will incentivize another U.S. exchange to launch security futures. And in that event, it is my further hope that the Commissions will bring an open mind to any interpretive arguments the exchange may advance if it requests recognition of risk-based margining for its contracts.

In the meantime, I support the Joint Final Rule that is before us.

[1] Customer Margin Rules Relating to Security Futures, 84 FR 36434, 36441 (July 26, 2019). The proposing release also asked commenters, if their answer to this question was yes, to ''please identify the margin methodologies and explain how they would meet the comparability standards under the [Securities] Exchange Act [of 1934].'' *Id.*

[2] The Securities Exchange Act of 1934 (''Exchange Act'') provides that margin levels for security futures must, among other things, be: (i) *Consistent with* the margin requirements for *comparable* options traded on any exchange registered pursuant to Section 6(a) of the Exchange Act; and (ii) *not lower than* the lowest level of margin, exclusive of premium, required for any *comparable* exchange-traded options. *See* Sections 7(c)(2)(B)(iii)(I)–(II) of the Exchange Act (emphasis added). The adopting release concludes that risk-based margining for security futures is inappropriate, in part, because it would substantially deviate from how margin requirements are calculated for exchange-traded equity options at this time. If risk-based margining were permitted for such equity options in the future, then risk-based margining for security futures might follow, too.

[3] OneChicago's interpretive arguments included that: (i) The Commissions' reading of Sections 7(c)(2)(B)(iii)(I)–(II) of the Exchange Act as focusing on margin levels is incorrect; and (ii) security futures contracts are not ''comparable'' to equity options and, therefore, the ''consistent with'' and ''not lower than'' margin restrictions in Sections 7(c)(2)(B)(iii)(I)–(II) of the Exchange Act do not apply.

[4] CEA section 3(b), 7 U.S.C. 5(b) (emphasis added).

[5] Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000).

Appendix 4—Supporting Statement of CFTC Commissioner Dan M. Berkovitz

I support today's final rule on customer margin requirements for security futures (''Final Rule''), issued jointly with the Securities and Exchange Commission (''SEC''). The Final Rule ensures that margin requirements for unhedged security futures will be consistent regardless of the type of customer account in which they are held. The Final Rule presents no new risks to the financial system, and is an overdue effort to align margin requirements for security futures.[1]

Unhedged security futures held in a ''portfolio margin'' account have been subject to a 15 percent minimum margin amount since certain securities self-regulatory organizations (''SROs'') launched portfolio margining pilot programs starting in 2007.[2] In contrast, prior to this Final Rule, such unhedged security futures held in a futures account or in a securities customer account that is *not* subject to portfolio margining were subject to a 20 percent margin requirement. This structure produced disparate treatment of security futures based solely on the customer account class in which they were held.

The Final Rule addresses this disparate treatment with no increased risks to the financial system. It brings all unhedged security futures to the same 15 percent margin requirement, consistent with existing margin requirements for security futures and equity options held in portfolio margin accounts that have been in place for over a decade.

I support the two Commissions' efforts in today's Final Rule to address one aspect of trading in security futures, consistent with the CFMA's statutory requirements. Unfortunately, these efforts are too late to be of any near-term benefit. Notably, the only U.S. derivatives exchange that offered security futures products discontinued trading in September, 2020.

I look forward to continuing to work with staff and my fellow Commissioners at both the CFTC and the SEC on a viable margin regime for security futures going forward.

I thank my fellow Commissioners at the CFTC and the SEC, as well as staff of the two agencies, for their work on this Final Rule.

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BILLING CODE 6351–01–8011–01–P

[1] Congress established a framework for the trading and joint regulation of security futures in the Commodity Futures Modernization Act of 2000 (''CFMA''). Among other requirements, the CFMA specified that customer margin requirements for security futures products must be consistent with the margin requirements for comparable options traded on a registered securities exchange, and that the initial and maintenance margin levels must not be lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded options.

[2] Portfolio margining allows a broker-dealer to combine certain of a customer's securities and security futures positions held in a securities account for purposes of determining the margin requirements for those positions. Such portfolio margining began with a 2007 pilot program pursuant to the rules of CBOE Exchange. The program became permanent in 2008. FINRA adopted its own portfolio margining rules in 2010. Portfolio margining for security futures is not available in a futures customer account. Thus, prior to this Final Rule, the 15 percent treatment available to security futures held in a portfolio margined account was unavailable to security futures held in a futures account.

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 733, 736 and 842

Clarification of Provisions Related to the Issuance of Ten-Day Notices to State Regulatory Authorities and Enhancement of Corrective Action for State Regulatory Program Issues; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 733, 736 and 842

[Docket ID: OSM–2019–0010; S1D1S SS08011000 SX064A000 212S180110; S2D2S SS08011000 SX064A00 21XS501520]

RIN 1029–AC77

Clarification of Provisions Related to the Issuance of Ten-Day Notices to State Regulatory Authorities and Enhancement of Corrective Action for State Regulatory Program Issues

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: On May 14, 2020, the Office of Surface Mining Reclamation and Enforcement (OSMRE) published a proposal to clarify the Federal regulations about how OSMRE notifies State regulatory authorities, via issuance of a ten-day notice (TDN), of possible violations of any requirement of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This final rule adopts, with minor adjustments, much of OSMRE's proposals to streamline the process for OSMRE's coordination with State regulatory authorities in order to minimize duplication of inspections, enforcement, and administration of SMCRA. This final rule comports with the specific language of SMCRA, remedies internal disparate application of existing regulations, and will operate to ensure more effective enforcement of SMCRA. Additionally, the final rule will enhance the procedures for early identification of, and implementation of corrective action to address, State regulatory program issues.

DATES: This rule is effective on December 24, 2020.

FOR FURTHER INFORMATION CONTACT: Kathleen G. Vello, OSMRE, Division of Regulatory Support, 1849 C Street NW, Mail Stop 4558, Washington, DC 20240, telephone number: (202) 208–1908. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at: (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Background and Overview of the Final Rule

A. Background

SMCRA requires the Secretary of the Interior, acting through OSMRE, to, among other things, ''publish and promulgate such rules and regulations as may be necessary to carry out the provisions of [SMCRA]'' and to ''cooperate with . . . State regulatory authorities to minimize duplication of inspections, enforcement, and administration of [SMCRA].'' 30 U.S.C. 1211(c)(2) and (12). Consistent with these statutory obligations, based on OSMRE's 43 years of experience administering SMCRA, after consultation with OSMRE's State regulatory authority partners, and after consideration of public comments received on the proposed rule, OSMRE is finalizing its proposal to enhance the early identification of State regulatory program issues and clarify the regulations found at 30 CFR 842.11 and 842.12 to state, among other things, that, before issuing a notification to a State regulatory authority when a possible violation exists, OSMRE will consider any information readily available. OSMRE's final rule will reduce inefficiencies by ensuring that, before OSMRE issues a TDN to a State regulatory authority, OSMRE considers any readily available information about the alleged violation, including information that a State regulatory authority may provide. OSMRE's consideration of this information is critical because a State regulatory authority has primary enforcement responsibility under its State regulatory program. Thus, the final rule eliminates duplication of inspection and enforcement under SMCRA by clarifying that OSMRE's authorized representative will consider all readily available information, from any source, including any information provided by the State regulatory authority, before issuing a notification of an alleged violation, in the form of a TDN, to that State regulatory authority. Also, the final rule clarifies the meaning of the statutory terms ''appropriate action'' and ''good cause,'' as used in 30 CFR 842.11, to better describe the State regulatory authority's action that will qualify as ''appropriate action'' or scenarios in which a State regulatory authority's inaction may have ''good cause'' after OSMRE notification that a possible violation exists. Examples of what constitutes a State regulatory authority's ''appropriate action'' in response to a TDN or ''good cause'' for not taking an action in response to a TDN are in the existing regulations;

however, in OSMRE's experience, the existing examples and explanations of what qualify as an ''appropriate action'' or ''good cause'' for inaction are not exhaustive and do not fully reflect the array of in-the-field scenarios.

In addition, because OSMRE must evaluate whether a State regulatory authority has taken appropriate action or has good cause for inaction with respect to a possible violation, OSMRE has observed that not all issues that are raised in the TDN process warrant a Federal inspection,[1] but they may require further evaluation and action as they may raise issues with how a State is implementing its approved State regulatory program. To address these issues comprehensively and to ensure more complete and efficient enforcement of SMCRA, OSMRE has expanded 30 CFR part 733 to add procedures for corrective action of State regulatory program issues, including implementation of action plans. As finalized, 30 CFR part 733 includes definitions of the terms ''action plan'' and ''State regulatory program issue'' and adopts a mechanism for early identification and corrective action to address State regulatory program issues. We refer to these added procedures and definitions in this preamble as the ''enhanced Part 733 process.''

The final rule is consistent with SMCRA and will add transparency to OSMRE's oversight responsibilities; promote regulatory certainty for State regulatory authorities, regulated entities, and the public; enhance OSMRE's relationship with the State regulatory authorities; reduce redundancy in inspection and enforcement; and streamline the process for notifying State regulatory authorities of possible violations.

B. Key Provisions of the Final Rule

OSMRE is adopting the following key provisions from the proposed rule in this final rule:

• *Enhancement of 30 CFR part 733: Early Identification and Corrective Action.*

The regulations at existing 30 CFR part 733 establish requirements for the maintenance of State regulatory programs, as well as the procedures for the rare remedy of substituting Federal enforcement for State enforcement of State regulatory programs and withdrawing approval of State regulatory programs. In coordination with State regulatory authorities, OSMRE has determined that mechanisms exist for addressing identified State regulatory program issues to avoid the need to substitute Federal enforcement for State enforcement of a State regulatory program. In this final rule at § 733.12, OSMRE is codifying this existing OSMRE practice of identifying State regulatory program issues and ensuring that prompt corrective action is taken.

• *Clarification of Distinction Between OSMRE Enforcement Actions under 30 U.S.C. 1271(a) and (b).*

The TDN and Federal inspection process in 30 U.S.C. 1271(a) applies to oversight enforcement of alleged violations at specific sites. In this preamble, we refer to these types of OSMRE oversight actions (TDNs and Federal inspections) that OSMRE may take under 30 U.S.C. 1271(a) as ''site-specific'' enforcement actions. Congress differentiated these site-specific enforcement actions from the type of actions that OSMRE may take under the State regulatory program enforcement provisions of 30 U.S.C. 1271(b), which are aimed at ensuring that a State regulatory authority is properly enforcing its approved State program. This type of OSMRE oversight action under 30 U.S.C. 1271(b) is intended to address what we will refer to in this preamble as a ''State regulatory program issue'' and which could, in the most serious circumstances, result in revocation of all or part of a State program. OSMRE recognizes that its review of State regulatory authority permit issuance guidelines and practices generally are systemic in nature and that those guidelines and practices squarely fall within a State regulatory authority's implementation, administration, enforcement, and maintenance of an approved program. In this final rule, OSMRE further clarifies the distinction between the situations to which 30 U.S.C. 1271(a) and (b) apply, while also recognizing that there may be situations in which OSMRE becomes aware of a State regulatory authority that is not adequately implementing, administering, maintaining, or enforcing a part or all of a State program (governed by 30 U.S.C. 1271(b) and the implementing regulations at 30 CFR part 733) in the course of OSMRE's oversight enforcement of alleged violations at specific mine sites (governed by 30 U.S.C. 1271(a) and the implementing regulations at 30 CFR part 842). In acknowledgement of OSMRE's obligation to resolve 30 U.S.C. 1271(a) site-specific violations and 30 U.S.C. 1271(b) State regulatory program issues using two separate mechanisms, this final rule clarifies in 30 CFR 842.11(b)(1)(ii)(B)(*3*) that a State regulatory authority may be deemed to have taken appropriate action in response to a TDN if corrective action to resolve an identified State regulatory program issue has been initiated consistent with the final rule § 733.12.

• *Nothing in This Final Rule Prevents OSMRE From Issuing A TDN for a Site-Specific Violation.*

Despite the two separate enforcement mechanisms outlined in 30 U.S.C. 1271(a) and (b), these SMCRA enforcement provisions may still overlap in practice. As alluded to above, and discussed more thoroughly in response to public comments below, OSMRE maintains its legal position that SMCRA authorizes OSMRE to issue a TDN to a State regulatory authority, if a State regulatory program issue results in or may imminently result in a violation of an approved State program. Specifically, in these situations, under final § 733.12(d), OSMRE may still take a direct site-specific enforcement action.

• *Before Issuing a TDN, OSMRE Will Consider All Readily Available Information From Any Source.*

OSMRE proposed to clarify that when formulating a decision about whether there is reason to believe that a possible violation exists for purposes of direct enforcement under 30 U.S.C. 1271(a)(1), it will consider all readily available information, including information it receives from the State regulatory authority, about an alleged violation. (Throughout this preamble, we will, at times, use an abbreviated way of referring to this decision-making process about whether there is reason to believe that a possible violation exists as ''formulating reason to believe'' or simply as ''reason to believe'' in quotation marks.) OSMRE is adopting this clarification in this final rule, with a minor modification, which specifies that OSMRE will consider all readily available information it receives from ''any source'' in order to promote more efficient and effective enforcement of SMCRA.

C. Summary of Changes Since the Proposed Rule

OSMRE has made 11 revisions to the proposed rule in preparing this final rule. These revisions are based on a process of reasoned decision-making, including reliance on over 43 years of OSMRE experience overseeing the implementation of SMCRA, including review of past OSMRE data and practices, meaningful consideration of the 93 comments received from the public, and adherence to plain language principles to ensure regulatory clarity. Specific details of the final rule are

[1] A Federal inspection in the context of 30 U.S.C. 1271(a) is an inspection of a surface coal mining and reclamation operation conducted by an OSMRE authorized representative.

discussed in finer detail in the section-by-section analysis below. For the ease of the public, a summary of the changes from the proposed rule to the rule being finalized today (organized by section, brief summary of the change, and succinct rationale for change) include:

Section No.	Brief summary of change	Rationale
30 CFR 733.5 (definition of "Action plan").	Insert "State" before "regulatory authority".	OSMRE maintaining consistency and clarity.
30 CFR 733.12(a)(1)	Substitute "any source" for "any person".	Accommodate citizen comments to allow the subsection to be more inclusive consistent with the intent of the proposed rule.
30 CFR 733.12(b)	Change "State regulatory program issues" to singular "a State regulatory program issue".	OSMRE maintaining consistency and clarity.
30 CFR 733.12(b)	Substitute "a violation of the approved State program" for "an on-the-ground violation".	Accommodate citizen comments and OSMRE evaluation to ensure OSMRE preserves the ability to take enforcement action.
30 CFR 733.12(b)(1)–(3)	Change "action plans" to singular "action plan" in three instances.	OSMRE maintaining consistency and clarity.
30 CFR 733.12(c)	Insert "any associated action plan" after "State regulatory program issues".	OSMRE evaluation and accommodates citizen comments requesting transparency and review of action plans that are found in Annual Evaluation reports.
30 CFR 733.12(c)	Acknowledge that Annual Evaluations reports will be accessible on OSMRE's website and at the applicable OSMRE office.	Accommodate citizen comments and OSMRE evaluation to ensure transparency to the public.
30 CFR 733.12(d)	Substitute "a violation of the approved State program" for "an on-the-ground violation".	OSMRE evaluation and accommodates citizen comments about State regulatory program issues that may also result in a site-specific violation.
30 CFR 842.11(b)(1)	Substitute "must" for "will".	OSMRE maintaining consistency with the **Federal Register** and Plain Language Act.
30 CFR 842.11(b)(1)(i)	Add, "from any source, including any information a citizen complainant or the relevant State regulatory authority submits,".	OSMRE evaluation to specifically state the intention of the clarification.
30 CFR 842.11(b)(2)	Change to conform to 30 CFR 842.11(b)(1)(i).	Accommodate citizen comments requesting consistency between this subsection and 30 CFR 842.11(b)(1)(i).

II. Summary of Public Comments

A. Overview of Comments

OSMRE received 93 written comments on the proposed rule, consisting of hundreds of pages of text. The majority of the comments received were from individuals, who reside in many different States, including some States that do not have coal mining. The States in which these commenters reside include: Alaska, California, Colorado, Illinois, Indiana, Kentucky, Massachusetts, Missouri, Montana, New Mexico, North Carolina, North Dakota, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. The majority of the individual comments originated from citizens residing in Montana. The 39 comments received from Montana residents were almost identical in nature. As discussed further below, these commenters generally objected to the proposed rule, requested an extended comment period, and suggested that public hearings should be held in the "4 coal regions" within the United States. Additionally, several other individual commenters referenced support for non-governmental organizations (NGOs) within their comments that generally disapproved of the proposed rule without giving specific rationale. For example, six commenters supported Coal River Mountain Watch and provided very similar comments opposed to the proposed rule.

Additionally, many comments either supported other comments and incorporated them by reference or were submitted on behalf of multiple parties. Most of the comments representing multiple parties were submitted on behalf of NGOs. OSMRE received comments from the following NGOs: Alaska Center, Alaska Community Action on Toxics, Appalachian Citizens' Law Center, Appalachian Mountain Advocates, Appalachian Voices, Black Warrior Riverkeeper, Inc., Castle Mountain Coalition, Center for Biological Diversity (CBD), Citizens Against Longwall Mining, Citizens Coal Council (CCC), Coal River Mountain Watch, Conservation Council for Hawaii, Cook Inlet Keeper, Dakota Resource Council, Earthworks, Eastern Pennsylvania Coalition for Abandoned Mine Reclamation, Endangered Habitats League, Foundation for Pennsylvania Watersheds, Gila Resources Information Project, Great Old Broads for Wilderness, Heartwood, Kentuckians for the Commonwealth, Kentucky Resources Council, Inc., National Wildlife Federation, Native Plant Conservation Campaign, NH Audubon, Northern Plains Resource Council, NY4WHALES, Ohio Valley Environmental Coalition, Oil Change International, Powder River Basin Resource Council, Save Our Sky Blue Waters, Save the Scenic Santa Ritas, Sierra Club, Stand Up to Coal, The Lands Council, Trustees for Alaska, Turtle Island Restoration Network, West Virginia Highlands Conservancy, West Virginia Rivers Coalition, Western Nebraska Resources Council, Western Organization of Resource Councils, Western Watersheds Project, WildEarth Guardians, and Wilderness Workshop. With few exceptions, most of these commenters generally objected to the proposed rule, requested that the comment period be extended, and advocated for public hearings. A few of these commenters made suggestions on how to improve the proposed rule. As discussed in detail below, OSMRE has considered these suggestions and, in some circumstances, is adopting the suggestions in the final rule.

The following industry and trade groups submitted comments: Indiana Coal Council, Kentucky Coal Association, National Mining Association (NMA), and Virginia Coal and Energy Alliance. Generally, as discussed more fully below, these commenters supported the proposed rule and made suggestions for improvements. In some circumstances, OSMRE is incorporating suggestions made by these organizations in the final rule.

A few State and quasi-governmental organizations provided comments, including the Central Illinois Healthy Community Alliance and the Interstate Mining Compact Commission (IMCC) representing the following 27 States: Alabama, Alaska, Arizona, Arkansas, Colorado, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. One of these commenters was generally opposed to the proposed rule, while the other, IMCC, supported the proposed rule.

B. OSMRE Provided an Adequate Period To Comment on the Proposed Rule and Hearings Were Not Necessary

OSMRE provided a 30-day comment period for the proposed rule. OSMRE received many comments requesting an extension of the comment period from an additional 30 days to an additional 180 days. One commenter, citing one of the purposes of SMCRA at 30 U.S.C. 1202(i), essentially suggested that the alleged absence of ''a reasonable comment period'' deprived the public of meaningful participation in this rulemaking. OSMRE is aware of this statutory provision, but, as explained below, finds that the 30-day comment period was adequate for meaningful participation in this rulemaking. In contrast to the other commenters, a commenter stated that this rule was ''long overdue'' and that ''additional time is not necessary for the formulation and submittal of comments on a 14-page **Federal Register** notice.'' Additionally, many commenters requested that public hearings—virtual or in person when ''safe''—be held, and many of those commenters, particularly the 39 commenters from Montana, requested that at least four public hearings be held in different coal regions across the country. Other commenters suggested that SMCRA requires OSMRE to offer to hold public hearings for rulemakings affecting SMCRA's permanent regulatory program. These commenters opine that holding public hearings has been the standard and expected practice.

Section 553(c) of the Administrative Procedure Act (APA) requires that agencies, such as OSMRE, provide ''interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without an opportunity for oral presentation.'' 5 U.S.C. 553(c). Notably, the APA does not contain a requirement to hold public hearings. It is squarely within OSMRE's discretion to decline to either extend the comment period or offer public hearings or meetings. Additionally, the Office of the Federal Register states that comment periods generally last 30 to 60 days. *See* Office of the Federal Register, ''A Guide to the Rulemaking Process,'' *available at https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf* (last accessed August 12, 2020). As discussed above, OSMRE received a diverse set of substantive comments from a diverse set of commenters within the 30-day comment period. Based on this and several other reasons, regardless of what other agencies have done with regard to extension requests, the public had a meaningful opportunity to comment with sufficient time to prepare their comments.

First, OSMRE's proposed revisions would not significantly alter OSMRE's implementation of the SMCRA program. As stated in the proposed rule, the proposed changes were primarily intended to clarify a potential ambiguity in OSMRE's existing regulations, eliminate duplicative efforts of OSMRE and the State regulatory authorities when responding to citizen complaints, and enhance procedures for corrective action of State regulatory program issues. *See, e.g.,* 85 FR at 28905, 28910. Previously, OSMRE has addressed these issues through guidance documents, such as the memorandum from Director Joseph G. Pizarchik to Regional Directors regarding Application of the Ten-Day Notice Process and Federal Enforcement to Permitting Issues Under Approved Regulatory Programs, which were issued without any opportunity for advance public comment. Memorandum from Director Joseph G. Pizarchik (Nov. 15, 2010). By addressing these issues through the APA rulemaking process, OSM has provided the public an opportunity to comment.

Second, the proposed rule proposed to make only limited changes to the Federal regulations. The changes OSMRE proposed primarily occurred in three sections—30 CFR 733.12, 842.11, and 842.12. The other proposed changes were conforming changes. If this rule was significant, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) would have classified it as such; however, it has not because this final rule is not expected to have a $100 million annual impact on the economy, raise novel legal issues, or create significant impacts. *See* ''Procedural Determinations'' below.

Third, as stated in section 6(a)(1) of Executive Order (E.O.) 12866, ''before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials).'' The State regulatory authorities were the parties most likely to be affected if the changes in the proposed rule were finalized. As such, before publishing the proposed rule, OSMRE involved the State regulatory authorities by seeking their suggestions on what the proposed rule should accomplish. For example, as part of a program efficiency work group, OSMRE requested that State regulatory authorities provide information about the number of citizen complaints received; the number of TDNs received; whether duplication exists between citizen complaints the State regulatory authority receives directly from citizens and TDNs received from OSMRE; and the amount of time State regulatory authority personnel expend responding to TDNs and citizen complaints that the State regulatory authority receives directly from citizens. In addition, OSMRE directly engaged with its State regulatory authority partners by requesting input on the development of internal OSMRE guidance about TDNs, which, when finalized, were made publicly available on OSMRE's website at *https://www.osmre.gov/lrg/directives.shtm.*

Comment: Although most of the commenters seeking extensions of time or public hearings were general in nature, some of the commenters provided specific rationales for the requests for extensions of time or public hearings. In most circumstances, these specific requests for extensions of time or hearings were prompted by the impacts of the COVID–19 pandemic, including the potential for lack of access to the internet due to library closures and obligations associated with caring for family members infected with COVID–19. Some of these commenters cited other Federal agencies' decisions to extend comment periods because of COVID–19. Other commenters supported an extension of the comment period because the 30-day comment period included the Memorial Day holiday. Finally, as indicated above, a group of commenters suggested that 30 U.S.C. 1251(b), through its reference to section 1251(a), requires OSMRE to offer to hold public hearings for rulemakings affecting SMCRA's permanent regulatory program. These commenters also opine that holding public hearings has been the standard and expected practice.

Response: OSMRE recognizes that the comment period for this rule occurred during the COVID–19 pandemic, which may have changed the manner in which people and organizations would have traditionally reviewed and submitted comments on the proposed rule. Although it is true that the pandemic may have changed operating procedures, it is also true that OIRA recognized that ''work on behalf of the American people must continue during this period, including work on regulations . . . .'' *See* Memorandum from Paul J. Ray, OIRA Administrator (March 23, 2020). OIRA, therefore, declined to issue a ''wholesale extension of the comment periods of pending notices of proposed rulemakings . . . .'' *Id.* Despite the hardships posed by the pandemic and the existence of a Federal holiday within the comment period, OSMRE received 93 comments from a representative group of interests. In total, these comments presented a thorough examination of the limited number of changes proposed, and the commenters did not appear to be hampered by the length of the comment period.

In addition, OSMRE disagrees with the comment that SMCRA, at 30 U.S.C. 1251(b), requires OSMRE to offer to hold public hearings for rulemakings such as this one. On its face, section 1251(b) applies to the permanent regulatory program that OSMRE promulgated long ago. While OSMRE can still hold public hearings with regard to proposed rules that are published after the permanent program regulations were promulgated, it is not required to do so. For many of the same reasons a 30-day comment period was adequate, including receipt of a diverse set of substantive comments from a diverse set of commenters within the 30-day comment period, OSMRE also finds that public hearings were not necessary to inform OSMRE of the various issues and viewpoints at play. Instead, as explained above, OSMRE obtained a full range of comments from a diverse group of commenters. In sum, OSMRE values public participation in its rulemaking efforts and finds that there was reasonable and adequate public participation in this particular rulemaking.

Comment: A few commenters stated that OSMRE should extend the comment period beyond 30 days because Federal employees' teleworking arrangements as a result of the COVID–19 pandemic impinged on the commenting process.

Response: Despite the challenges posed by the COVID–19 pandemic, OSMRE has been diligent in responding to inquiries regarding the proposed rulemaking either via email or telephone. As previously stated, OIRA has made clear that ''work on behalf of the American people must continue during this period, including work on regulations . . . .'' See Memorandum from Paul J. Ray, OIRA Administrator (March 23, 2020). OSMRE did not shut down or stop its work on behalf of the American people as a result of the COVID–19 pandemic. As is its customary practice, OSMRE specified the methods for submitting comments in the proposed rule. 85 FR at 28904. This included submission of comments via *regulations.gov* or hard copy. The submission of comments on *regulations.gov* was not affected by the pandemic, and OSMRE personnel still regularly collected the comments that were submitted in hard copy.

Comment: A few commenters cited the Native American population as being disproportionally affected by the COVID–19 pandemic. According to commenters, many of these same population centers are located adjacent to coal mine sites, are affected by the coal mine operations, and need to voice their comments on the proposed rulemaking. Commenters cited the lack of developed information technology infrastructure and widespread COVID–19 illnesses within the Native American community as sufficient reasons to extend the comment period. OSMRE appreciates the commenters' focus on, and is sensitive to, the COVID–19 pandemic's effect on Native American populations.

Response: No Tribe currently has primacy to regulate surface coal mining operations within its jurisdiction. Because this rule relates to OSMRE's enforcement in primacy States, these revisions will have no direct impact on any Tribe. Once a Tribe obtains primacy, that Tribe would be in the same position as a State regulatory authority. 30 U.S.C. 1300(j). Therefore, OSMRE would consider information from a Tribal regulatory authority, just as OSMRE considers information from a State regulatory authority, in determining whether to issue a TDN to the Tribal regulatory authority. Despite this final rule not affecting any Tribe directly, OSMRE directly engaged with the three Indian Tribes that have either expressed an interest in achieving primacy or that have traditionally had surface coal mining operations—the Navajo Nation and the Hopi and Crow Tribes. *See* ''Procedural Determinations,'' E.O. 13175—Consultation and Coordination With Indian Tribal Governments, below. In addition, Tribes were able to comment on the proposed rule. To the extent the commenters were concerned about the rule's effects on individual Native Americans, as opposed to Indian Tribes, OSMRE's final rule will not hamper any citizen's ability to submit a citizen complaint to OSMRE. Thus, any citizen, including a Tribal member, can continue to raise concerns to OSMRE about potential SMCRA violations.

Comment: One commenter cites the ongoing improvements to *regulations.gov,* one of the methods of submitting comments on the proposed rule to OSMRE, as a rationale for extending the comment period.

Response: OSMRE is aware that *regulations.gov* has been undergoing beta testing since July 2019, and it is fully cooperating with the U.S. General Services Administration (GSA) in its ongoing efforts to improve the experience of a user while participating in the Federal government rulemaking process. Contrary to the commenter's assertions, the core functionality of *regulations.gov* has not been affected by the beta testing. In fact, the *regulations.gov* site has merely been updated to be more accessible to the public and improve the public interface. GSA has characterized the beta testing and associated improvements as efforts to create transparency and expose the public to improvements contemplated for the website and to solicit feedback. *See* Beta Frequently Asked Questions *available at https://beta.regulations.gov/faq?type=beta* (last accessed August 17, 2020). Moreover, the standard *regulations.gov* site is still available, and users may choose the ''classic'' version if they prefer. *Id.* Therefore, the improvement process for *regulations.gov* was not a basis for extending the comment period.

For all of these reasons, including the limited nature of this rulemaking and the sufficient time available to provide meaningful comment, as evidenced by the diverse and thorough comments received, neither an extension of time nor public hearings were warranted.

C. This Final Rule is Properly Characterized as a Clarification

In the proposed rule, OSMRE characterized the provisions related to 30 CFR part 842 as clarifications because OSMRE primarily sought to remove ambiguity as to what information should be considered by the OSMRE authorized representative when formulating reason to believe that any person is in violation of any requirement of [SMCRA] or any permit condition required by [SMCRA].'' 30 U.S.C. 1271(a). Many commenters objected to OSMRE's use of the term clarification to describe the changes to part 842; however, some industry commenters supported this characterization. OSMRE maintains that clarification is an appropriate descriptor. As discussed in more detail in specific comment responses below, several citizen group commenters alleged that OSMRE invented ambiguity in the existing regulations where none existed to justify the regulatory changes. OSMRE strongly disagrees with this assertion.

Due to the complex nature of SMCRA, and coal mining in general, ambiguity has arisen about how OSMRE should perform some of its oversight functions. Through this final rulemaking, OSMRE is seeking to end any ambiguity. Notably, over the years, OSMRE has had varying interpretations of how to administer 30 U.S.C. 1271(a) and the implementing regulations at 30 CFR part 842. An example of disparate implementation of the existing regulations by OSMRE is evidenced by the fact that OSMRE has revised its primary Directive on the TDN process, INE–35, eight times in 33 years—an average of approximately once every four years—each time without taking prior public comment. Tellingly, the various interpretations documented within OSMRE policy have the common theme of attempting to define the right balance of expertise and professional discretion and due diligence. With this final rulemaking, OSMRE has achieved better balance. In proposing this rule, OSMRE closely examined the concepts of expertise and professional discretion and due diligence in its enforcement of SMCRA. For example, when considering an early draft of SMCRA, the House of Representatives recognized the importance of formulating ''reasonable belief'' based on available information.

When the Secretary receives information from any source that would give rise to a reasonable belief that the standards of the Act are being violated, the Secretary must respond by either ordering an inspection by Federal inspectors during the interim period or, after the interim, notice to the States in the follow-up inspection that the State's response is inadequate. It is anticipated that ''reasonable belief'' could be established by a snapshot of an operation in violation or other simple and effective documentation of a violation.

H.R. Rep. No. 93–1072, at 11 (May 20, 1974).

If OSMRE simply passes along a citizen complaint without considering available information, it is not establishing the requisite reasonable belief that was Congress' intent. Congress recognized the value of relying on the professional competence and capacity of OSMRE staff to ensure effective and efficient processing of citizen complaints. In fact, the Senate Report recognized the importance of OSMRE experts in achieving the twin goals of efficiency and effectiveness for State enforcement programs:

Efficient enforcement is central to the success for the surface mining control program contemplated by S.7. For a number of predictable reasons—including insufficient funding and the tendency for State agencies to be protective of local industry—State enforcement has in the past often fallen short of the vigor necessary to assure adequate protection of the environment. The Committee believes, however, that the implementation of minimal Federal standards, the availability of Federal funds, and the assistance of the experts in the Office of Surface Mining Reclamation and Enforcement in the Department of Interior, will combine to greatly increase the effectiveness of State enforcement programs operating under the Act. While it is confident that the delegation of primary regulatory authority to the States will result in adequate State enforcement, the Committee is also of the belief that a limited Federal oversight role as well as increased opportunity for citizens to participate in the enforcement program are necessary to assure that the old patterns of minimal enforcement are not repeated.

S. Rep. No. 95–128, at 90 (May 10, 1977). These factors have weighed heavily in OSMRE's analysis and the formulation of this final rule. In order to achieve an effective balance of these concepts, OSMRE has always focused on the mandates of SMCRA, including expeditious enforcement. In the final rule, OSMRE's clarifications act to resolve the internal struggle to exercise expertise and professional judgment and due diligence to best implement the existing regulations at 30 CFR part 842, despite the potential ambiguities contained within those regulations. Strategies employed in versions of the INE–35 Directive have included various interpretations of the ''reason to believe'' standard, what constitutes appropriate action, and how to address various types of violations. The regulations that OSMRE is finalizing today aim to remove the potential ambiguity related to the ''reason to believe'' standard that made those various interpretations possible. OSMRE's final rule is crafted to create a more uniform, efficient, and transparent process for resolving citizen complaints. These changes do not diminish the public's access to enforcement or reinvent the TDN process.

In response to a commenter's suggestion that OSMRE should provide objective support for this rule, including data, OSMRE notes that it proposed this rulemaking to clarify issues raised by State regulatory authorities and identified by OSMRE's own experience. Additionally, a goal of the proposed rulemaking is to ensure OSMRE uniformly applies the statute and regulations and no disparate application occurs within the agency. Recognizing that there may have been inconsistent application of the existing regulations, analysis of past data is not germane to the rulemaking as the commenter suggests. For example, if various OSMRE authorized representatives applied the existing regulatory language inconsistently, relying on data related to the number of citizen complaints that led to the issuance of TDNs would not illustrate how those authorized representatives might have interpreted the existing regulations in formulating ''reason to believe''. Because ensuring that information from the State regulatory authority is considered when formulating ''reason to believe'' is a major component of this final rule, revisiting individual TDN analyses under previous interpretations of the existing regulations or internal OSMRE policies is not useful or informative.

OSMRE's clarifications harmonize the implementing regulations with congressional intent. These improvements were needed because one possible interpretation of 30 CFR 842.11(b)(2) was that OSMRE's authorized representative was required to find that reason to believe that a violation exists whenever any information submitted to OSMRE would, if true, constitute a violation. Under this possible interpretation, OSMRE would merely serve as a conduit to the State regulatory authority, eviscerating the authority bestowed upon OSMRE by Congress to act with ''professional competence and capacity to administer the provisions of [SMCRA].'' 30 U.S.C. 1211(a). In practice, if this interpretation were implemented, OSMRE would almost always be required to immediately issue a TDN to the State regulatory authority.

This interpretation removes any aspect of an OSMRE authorized representative's discretion and prevents the authorized representative from exercising best professional judgment. OSMRE's clarification reduces ambiguity in the regulations that could lead to this unwarranted interpretation. Instead, the final rule makes clear that OSMRE's authorized representative, a qualified, trained, professional with SMCRA expertise, is in the best position to consider all readily available information available to him or her before making a determination about whether there is reason to believe a violation exists before deciding whether to issue a TDN. Instead of simply accepting what is submitted to OSMRE as true, under this final rule, OSMRE's authorized representative can review all readily available information, regardless of the source of that information. This change also better aligns the Federal regulations with the carefully crafted language of 30 U.S.C. 1271(a), and, as explained below, reduces duplication of effort between OSMRE and a State regulatory authority as mandated by 30 U.S.C. 1211(c)(12).

The ambiguity in the regulations was leading to inconsistent interpretations of the ''reason to believe'' standard in the regulations. As discussed more thoroughly below, the comments to the proposed rule illustrate the inconsistent interpretations that existed within OSMRE and among the State regulatory authorities, citizens, and industry. Some have interpreted the regulatory standard in a way that would make OSMRE a mere conduit of citizen complaints to the State regulatory authority while others interpreted the regulatory ''reason to believe'' standard to evoke more discretion, in the form of OSMRE's authorized representative exercising professional judgment. Additionally, there have been varying views about the type of information that OSMRE's authorized representative should consider and from whom that information originates, with some groups claiming that OSMRE should only consider citizen information while others found it essential that OSMRE also consider information provided by the State regulatory authority—the primary SMCRA enforcement authority under approved State programs. This inconsistency has manifested itself in the various internal directives that OSMRE has issued throughout the years, which have contained various interpretations of the regulations regarding, among other things, what information should be considered when determining if the OSMRE authorized representative has a ''reason to believe.''

With the assistance and comments of OSMRE's State regulatory authority partners, citizens, and industry, OSMRE identified these inconsistent interpretations as significant enough to warrant a resolution through a clarifying rulemaking.

Comment: A commenter expressed concern that the current TDN process was not working and gave an example of a TDN that seemingly took many years to resolve. The commenter further opined that the proposed rulemaking was not a step in the right direction and will result in ''protracted delays'' of enforcement to correct on-the-ground issues.

Response: OSMRE agrees with the commenter that the existing process needed to be clarified to avoid unnecessary delays, and that is one of the reasons why OSMRE is issuing this final rule. OSMRE notes that this final rule will improve the TDN process by, among other things, increasing collaboration and coordination between OSMRE and the State regulatory authorities. OSMRE acknowledges that, historically, there have been challenges associated with the TDN process, and sometimes TDN issues were not resolved as quickly as OSMRE would have liked. However, while this final rule will not eliminate all future delays in TDN outcomes, just as the existing regulations did not, this final rule is intended to enhance the overall efficiency of the TDN process going forward in addressing violations. Because State regulatory program issues will be more appropriately addressed through the enhanced Part 733 process, rather than through the TDN process, OSMRE and the State regulatory authorities will be able to focus more quickly on site-specific violations that arise.

To be clear, neither the proposed rule nor the final rule substantively impacts the TDN process. Instead, in the final rule, OSMRE removes ambiguity by clarifying that the OSMRE authorized representative can review information received from any source, including the State regulatory authority, when deciding whether he or she has reason to believe a violation exists as contemplated by SMCRA. 30 U.S.C. 1271(a). When an OSMRE authorized representative has reason to believe a violation exists, the information about the alleged violation will continue to be transmitted to the State regulatory authority via a TDN. The distinction between the existing regulations and the final rule is that, under the final rule, the OSMRE authorized representative will consider all readily available information when formulating reason to believe. Most importantly, all readily available information includes information that the OSMRE authorized representative may receive from the State regulatory authority.

OSMRE also notes that some of the other revisions that OSMRE proposed and is finalizing today, namely the enhancement to 30 CFR part 733 related to State regulatory authority action plans to address State regulatory program issues, are a variation of an administrative process that has been contained in OSMRE's Directives REG–8 and REG–23 since as early as 1988. Given OSMRE's longstanding use of these action plans, the changes to these regulations also are not a material alteration of the administrative process that OSMRE has already used to interact with State regulatory authorities to enforce SMCRA. OSMRE is codifying these practices to avoid ambiguity about when these State regulatory authority corrective action plans are appropriate to use.

In summary, Merriam-Webster Dictionary defines clarify as, ''to make understandable; to free from confusion.'' *See Clarification, Merriam Webster Online Dictionary, available at merriam-webster.com/dictionary/clarification* (last accessed August 14, 2020). Because of the varying interpretations of what information may be considered when formulating reason to believe, not only by SMCRA stakeholders, but by OSMRE itself, a clarification is certainly warranted. Moreover, codifying the enhancements to early identification of corrective action to address State regulatory program issues will remove ambiguity as to when this process should be applied. OSMRE finds it essential to be transparent and make the regulations ''understandable'' and ''free from confusion'' so that the TDN process pursuant to 30 U.S.C. 1271(a) and the enhanced 30 CFR part 733 process pursuant to 30 U.S.C. 1271(b) work efficiently and effectively. This clarification is necessary to remove ambiguity.

D. This Final Rule Neither Inhibits a Citizen's Ability To Report Violations to OSMRE Nor Limits OSMRE's Ability To Exercise Oversight Enforcement

OSMRE received comments that evidence a misconception by many commenters that the changes OSMRE proposed, if finalized, would alter the obligations of 30 U.S.C. 1271. As discussed below, in response to specific comments, the statutory obligations under SMCRA are not altered by this rulemaking, and OSMRE will continue to take action on citizen complaints and engage in oversight enforcement consistent with statutory mandates and the Federal regulations.

Comment: Many commenters, including citizen group commenters, suggested that the proposed rule clarification would eliminate the ability of the public to report violations directly to OSMRE. According to several commenters, the proposed clarification would alter the process citizens would use to report alleged violations, make it prohibitively difficult, impair enforcement, and would lengthen the amount of time for a State regulatory authority to respond to a TDN from 10 days to unlimited, and make a TDN response from the State regulatory authority discretionary instead of mandatory. A commenter also opined that the clarification of the TDN process that OSMRE proposed explicitly contradicts the letter and intent of SMCRA. Similarly, another commenter suggested that, under the proposal, OSMRE would be able to simply ignore complaints against mining companies.

Response: OSMRE disagrees with the premise of these comments. The rule, as proposed and finalized today, does not materially alter the manner in which OSMRE already enforces SMCRA. Specifically, OSMRE disagrees with the commenters who suggested that the proposed provisions and clarifications in 30 CFR parts 733 and 842 would impair, weaken, or eliminate the ability of the public to report violations directly to OSMRE. To the contrary, the public will be able to continue to report possible violations directly to OSMRE, and OSMRE will continue to take such complaints seriously and issue a TDN to the State regulatory authority when appropriate. OSMRE's consideration of all readily available information before issuing a TDN will make the process more efficient and effective by making correction of the violation the objective.

Indeed, the purpose of this final rule is to ensure that both alleged violations and potential State regulatory program issues are corrected promptly and effectively. After working closely with State regulatory authority partners for over 40 years, OSMRE has learned that, within the cooperative federalism framework established by SMCRA, effective enforcement requires close cooperation with primacy states. Furthermore, OSMRE notes that the United States Supreme Court has recognized that SMCRA has established a system of cooperative federalism involving an essential relationship between OSMRE in an oversight capacity and State regulatory authorities. In *Hodel* v. *Va. Surface Mining and Reclamation Ass'n,* 452 U.S. 264, 289 (1981) (citing *In re Permanent Surface Min. Regulation Litigation,* 617 F.2d 807, 808 (1980)), the Supreme Court explained that SMCRA ''established a program of cooperative federalism that allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs.'' Given the unique nature of cooperative federalism embodied in SMCRA, coupled with the specific requirements within SMCRA to consider ''any information available'' when formulating reason to believe in the TDN context, it makes sense for OSMRE to consider available information from the State regulatory authority. 30 U.S.C. 1271(a)(1).

OSMRE's clarification in the final rule to provide explicitly that OSMRE will consider all ''readily available information,'' including any information that a State regulatory authority provides, promotes the goal of ensuring that the entities with primary jurisdiction over respective State programs supply OSMRE with information essential to its assessment of alleged violations. After OSMRE considers readily available information, including any information that a State regulatory authority provides, OSMRE will continue to make an independent assessment regarding whether it has reason to believe a possible violation exists. Further, the basic principle of SMCRA and the implementing regulations at 30 CFR 842.11 remains unchanged—OSMRE will continue to issue a TDN to a State regulatory authority when it concludes there is reason to believe a violation exists. As OSMRE explained in the proposed rule, and as embodied in this final rule, any information that OSMRE considers must be ''readily'' available to ensure that the process proceeds as quickly as possible and does not become open-ended.

The existing regulations at 30 CFR 842.12(a) already require that, if a citizen requests a Federal inspection, then the citizen is required to notify a State regulatory authority of a possible violation before or simultaneously with notification to OSMRE. In fact, OSMRE's proposal, and ultimately this final rule, is fundamentally no different from the existing rule because it retains language that requires citizens to notify the State regulatory authority prior to, or simultaneously with, reporting violations to OSMRE. The language in existing 30 CFR 842.12(a) requires citizens, as part of a request for Federal inspection, to do several things, including furnishing OSMRE with ''a signed, written statement . . . giving the authorized representative reason to believe that a violation, condition or practice referred to in § 842.11(b)(1)(i) exists and that the State regulatory authority, if any, has been notified . . . .''

Moreover, contrary to some commenters' assertions that this proposed rule clarification would institute a new requirement for citizen complainants to contact the State regulatory authority before requesting a Federal inspection under section 842.12, the requirement for citizens to contact the State regulatory authority, before or simultaneously with a request to OSMRE for a Federal inspection, has been in 30 CFR 842.12(a) since August 16, 1982. 47 FR 35620. Because OSMRE continues to believe, as OSMRE has since 1982, that most alleged violations will be resolved by a State regulatory authority without intrusion by OSMRE (47 FR at 35628), OSMRE strongly encourages a citizen also to report a violation to the State regulatory authority first. However, neither the proposed rule nor the final rule mandates that a citizen report an alleged violation to the State regulatory authority before reporting it to OSMRE. The proposed rule clarification, which is adopted in this final rule, does not change or alter the requirement for citizen complainants to contact the State regulatory authority before or simultaneously with requesting a Federal inspection from OSMRE.

SMCRA confers exclusive jurisdiction upon a State regulatory authority after that State has achieved primacy. *See Bragg* v. *W. Va. Coal Ass'n,* 248 F.3d 275, 288 (4th Cir. 2001) (explaining that once a State achieves primacy, it has '' 'exclusive jurisdiction over the regulation of surface coal mining' within its borders'') (citing 30 U.S.C. 1253(a)). However, a State's exclusive jurisdiction is subject to the statutory exceptions outlined in SMCRA sections 521 and 523 and Title IV of SMCRA, 30 U.S.C. 1271, 1273, and 1231–1244. Given the prominent role that the States play in administering and enforcing SMCRA, OSMRE has found, in its experience, that including a State regulatory authority early in the process is advantageous to both the State regulatory authority and OSMRE because it reduces duplicative efforts to address potential violations. In OSMRE's experience, when a citizen first contacts the State regulatory authority, violations are often promptly and effectively resolved without OSMRE's direct involvement.

In OSMRE's experience implementing SMCRA, it has witnessed instances when citizens filed complaints for the same or similar alleged violations on the same permit with both the State regulatory authority and OSMRE. Resolution of the violation was not efficient or effective because the State regulatory authority was simultaneously trying to use the same resources to respond to the citizen complaints and the various TDNs issued by OSMRE. For example, in one instance, OSMRE issued six TDNs on the same permit in less than six months. Instead of focusing directly on correcting the alleged violations at the site, both OSMRE and the State regulatory authority were subsumed by the paperwork exercise of issuing TDNs, responding to TDNs, and evaluating the State's responses to the TDNs; correcting the alleged violations became secondary to following the TDN process. Specifically, under one interpretation of the ''reason to believe'' standard in the existing regulations, the OSMRE authorized representative considered information in OSMRE's possession but ultimately issued separate TDNs, automatically assuming the allegations in the complaints to be true and without considering all readily available information—most importantly, the information that the State regulatory authority, with primary regulatory authority over the mine site, had available. Because the State regulatory authority knows its specific permits best, this is a perfect example of why considering any information the State regulatory authority provides is essential. In the anecdote above, had the State regulatory authority provided all ''readily available information'' to OSMRE up front, both OSMRE and the State regulatory authority could have better understood the alleged violations, cooperated effectively, and spent valuable time and resources addressing the alleged violations and not simply generating duplicative paperwork. Tellingly, in this example, the OSMRE field office ultimately found no violations of the approved program. The citizens filed a request for informal review with an OSMRE regional director, and, ultimately, the regional director affirmed the OSMRE field office's original decision. This duplication of effort unnecessarily diminished OSMRE and State regulatory authority resources that could have better been directed to resolving real issues, not merely preparing and exchanging paperwork. Thus, under this final rule, OSMRE must consider all readily available information, including any information the State regulatory may provide, when the authorized representative determines whether there is reason to believe that a violation exists.

As noted above, the removal of the language that essentially required OSMRE to automatically accept citizen complaints as true removes a potential ambiguity in the existing regulations and clarifies the information OSMRE can consider in forming a ''reason to believe.'' Finalizing the rule in this manner does not hinder the ability of citizens to report a violation directly to OSMRE. Because the regulations continue to require that the citizen notify the State regulatory authority before or simultaneously with requesting that OSMRE initiate a Federal inspection, a primacy State will have an opportunity to address an alleged violation before OSMRE, which is advantageous because the State regulatory authorities are more familiar with the operations in their States and can typically respond to alleged violations faster than OSMRE. This is consistent with primacy, as described by a U.S. Court of Appeals:

> the Secretary is initially to decide whether the proposed state program is capable of carrying out the provisions of the Act but is not directly involved in local decision making after the program has been approved.

In re Permanent Surface Min. Regulation Litigation, 653 F.2d 514, 518 (D.C. Cir. 1981). The court further stated that:

> [o]nce a state program has been approved, the state regulatory agency plays the major role, with its greater manpower and familiarity with local conditions. It exercises front-line supervision, and the Secretary will not intervene unless its discretion is abused.

Id. at 523. Although a State plays the major role in enforcing its State program, the court did note that: ''Ultimate responsibility for guaranteeing effective state enforcement of uniform nationwide minimum standards lies with the Secretary.'' *Id.* States are expected to fully implement their programs, including all applicable enforcement provisions. OSMRE will exercise its oversight responsibility, in part, through this final rule and will continue to issue TDNs when it has reason to believe a possible violation exists; the relevant provisions of this final rule clarify the process that OSMRE will use to arrive at a ''reason to believe.'' Further, if a State does not effectively enforce its State program, Congress authorized OSMRE to address such inadequacies in the State's implementation through SMCRA section 521(b). 30 U.S.C. 1271(b).

Some commenters asserted that the time frames for responding to TDNs have been extended or made indefinite by the proposed rule. While it is true that there is no time frame set forth in the final rule for OSMRE's authorized representative to make a determination about whether they have reason to believe a violation exists, it is also true that there has never been a stringent time frame imposed. Further, as OSMRE explained in the proposed rule, OSMRE proposed, and is finalizing, inclusion of the word ''readily'' to the revised regulations at 30 CFR 842.11(b)(1)(i) to modify the phrase ''available information'' to ensure that the process proceeds as quickly as possible and does not become open-ended. 85 FR at 28907; *see also* OSMRE's response to a request to specifically define ''readily available.'' Once OSMRE's authorized representative has determined that they have reason to believe that a possible violation exists, the State regulatory authority will still have only ten days to respond to the TDN. *See* 30 CFR 842.11(b)(1)(ii)(B)(*1*). Thus, this rule ensures that reported alleged violations will be responded to in a reasonable amount of time.

Finally, this rule neither makes a State regulatory authority's response to a TDN discretionary nor impinges on OSMRE's ability to perform oversight of a State regulatory program. OSMRE is not changing the nondiscretionary requirement that a State regulatory authority must respond to a TDN with good cause for inaction or by taking appropriate action within ten days. 30 CFR 842.11(b)(1)(ii)(B)(*1*). OSMRE is, however, revising its regulations to ensure a more uniform and efficient process when OSMRE receives a citizen complaint. The revised regulation clarifies what the OSMRE authorized representative should consider when they receive a citizen complaint, which eliminates the possibility that different OSMRE offices will apply different standards when determining whether to issue a TDN. This revised process also ensures that the OSMRE authorized representative who receives a citizen complaint is able to apply their independent, professional judgment to determine whether they have reason to believe a possible violation exists based on all readily available information before them. Once an OSMRE authorized representative determines that they have ''reason to believe,'' they must issue a TDN to the State regulatory authority. *See* 30 CFR 842.11(b)(1). Therefore, OSMRE's oversight of alleged violations is not materially altered.

Comment: Very similar to the comment addressed above, a citizens' group commenter expressed the opinion that the rule gives the coal industry a free pass to break environmental laws and provides no meaningful way for citizens to bring potential violations to the attention of OSMRE. As evidence for this claim, the commenter references a statement by OSMRE in regard to the spirit of cooperative federalism, at 85 FR at 28905 in the preamble of the proposed rule, ''to alleviate unnecessary regulatory burden'' consistent with E.O. 13777.

Response: This rulemaking does not, and could not, alter OSMRE's statutory responsibilities to enforce SMCRA. Moreover, this rulemaking does not impair, weaken, or eliminate OSMRE's ability to enforce SMCRA and the implementing regulations or the public's ability to report alleged violations directly to OSMRE. *See also* OSMRE's further explanations in this section.

To the extent that OSMRE referred to the spirit of cooperative federalism in the preamble, it was a recognition of the fundamental importance of cooperative federalism to SMCRA's administrative and enforcement framework. *See, e.g., Bragg,* 248 F.3d at 288 (SMCRA ''accomplishes [its] purposes through [ ] 'cooperative federalism,' in which responsibility for the regulation of surface coal mining in the United States is shared between the U.S. Secretary of the Interior and State regulatory authorities.''). It was in this spirit that we coordinated with our State regulatory partners as we conceptualized this rulemaking. This spirit also informed how we chose to clarify any potential ambiguities in the existing regulations and develop a more efficient process for addressing alleged violations of SMCRA within the limits of our statutory authority. Cooperative federalism does not mean that OSMRE will no longer perform its statutory duty to oversee a State regulatory authority's implementation, administration, enforcement, and maintenance of its State program. Instead, it means that, given the prominent role that the States play in administering and enforcing SMCRA, including State regulatory authorities early in the process is advantageous to both the State regulatory authority and OSMRE because it reduces duplicative efforts to address potential violations. Also, as stated above, in OSMRE's experience, when a citizen first contacts the State regulatory authority, violations are often promptly and effectively resolved without OSMRE's direct involvement.

Likewise, the fact that this action is consistent with E.O. 13777 and helps to alleviate unnecessary regulatory burdens does not mean that OSMRE will fail to perform its statutory responsibilities set forth in SMCRA—including its oversight responsibilities. It simply means that by removing a potential ambiguity from the Federal regulations and creating a more uniform process for OSMRE authorized representatives to follow when determining whether they have ''reason to believe,'' OSMRE is reducing the likelihood of duplicative processes between OSMRE and the State regulatory authorities. It does not mean that permittees will be held to a lesser standard for abating SMCRA violations when they occur.

Comment: In the same vein, a citizen commenter states that United States citizens and taxpayers have a right to seek accountability for violations of mining laws that protect citizens and the environment. As a rationale for not finalizing the proposed rule, the commenter also cites to a State constitution and asserts that there is a provision that is aimed at protecting citizens' rights to a ''clean and healthful environment.''

Response: Nothing in this final rule diminishes a citizen's ability to bring potential violations of SMCRA or State counterparts to SMCRA to OSMRE's attention. Further, when OSMRE has reason to believe that a violation exists, OSMRE will continue to send a TDN to the relevant State regulatory authority and take appropriate enforcement action. This final rule is fully authorized by SMCRA. In order for a State to be granted primacy of an approved SMCRA State program, the State must follow the procedures of section 503 of SMCRA, 30 U.S.C. 1253; however, ''[n]o State law or regulation . . . shall be superseded by any provision of [SMCRA] or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of [SMCRA],'' and State laws and regulations may be more stringent than SMCRA and its implementing regulations. *See* 30 U.S.C. 1255. Therefore, nothing in SMCRA prevents any State from adopting laws and regulations related to surface coal mining operations that are more stringent than SMCRA or its implementing regulations, including this final rule. Moreover, this final rule is consistent with SMCRA's purpose of protecting society and the environment from the adverse effect of surface coal mining operations, which is similar to the State constitutional provision cited by the commenter.

Comment: A citizen commenter expressed concern that OSMRE's proposed rule, if finalized, would reduce the efficacy of OSMRE's oversight of approved State programs. Similarly, another commenter opined that the proposed rule, if finalized, would reduce or hinder OSMRE's ability to conduct oversight of State regulatory programs.

Response: OSMRE disagrees with these commenters' characterization of the impacts of the regulatory clarification that OSMRE proposed and is finalizing today. As explained in response to other comments within this section, OSMRE drafted the regulatory revisions to improve the efficiency and effectiveness of OSMRE's oversight by focusing State and OSMRE resources on addressing alleged violations and not on simply generating paperwork. Nothing in the final rule prevents OSMRE from exercising the full panoply of oversight actions that Congress authorized in SMCRA. To the contrary, OSMRE's regulatory revisions seek to build on the oversight responsibilities at 30 U.S.C. 1254(b) and 1271(b), which authorize OSMRE to provide Federal enforcement when a State is not enforcing all or part of its approved program or to take over all or part of a State regulatory program if the State regulatory authority fails to enforce the approved State program. Specifically, OSMRE is adding the concept of action plans to 30 CFR 733.12, which enhances the tools available to OSMRE to ensure the approved State program continues to be effectively implemented, maintained, enforced, and administered. This addition will codify an existing OSMRE practice and result in more accurate and concise solutions to State regulatory program issues.

Comment: One citizen commenter expressed concerns that SMCRA does not intend the citizen complaint process to be so complicated that it would impair citizens' access to filing complaints or inhibit citizens from filing complaints. This citizen was particularly concerned that the clarification as proposed would make the filing of a citizen complaint more difficult for those who are not experts in SMCRA and SMCRA procedures. For example, the citizen alleges that, as proposed, the clarification would be similar to a legal filing instead of an informational filing as SMCRA intended. Similarly, another citizen commenter expressed concern that the proposed requirement to specify the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation is too burdensome upon the public and will reduce the number of Federal inspections.

Response: OSMRE disagrees with the commenters' views; the clarification adopted in this final rule has very little practical effect on how citizens may file complaints and places no additional burden on the citizen complaint process from a complainant's perspective. The majority of the proposal finalized today only affects OSMRE's process after receipt of a citizen complaint. For a citizen, the finalized regulation at 30 CFR 842.12(a) reconfirms the requirement in existing 30 CFR 842.12(a) that, when requesting a Federal inspection, the citizen must include a statement that the citizen has informed the State regulatory authority of the existence of the possible violation, condition, or practice. As proposed, the final rule will also require the citizen to provide the basis for the citizen's assertion that the State regulatory authority has not taken action with respect to the possible violation. OSMRE finds this necessary because any information the citizen can provide to OSMRE about the State regulatory authority's response would be very helpful in OSMRE's efforts to efficiently resolve the alleged violation. OSMRE is not suggesting that a citizen complainant enter a mine to verify whether or not the State regulatory authority has acted on the possible violation. To the contrary, OSMRE asks citizens not to do so and is merely asking the requester of the Federal inspection to provide any information he or she may have about the State regulatory authority's action or inaction. By no means is this requirement aimed at reducing requests for Federal inspections; it is intended to ensure that OSMRE has all readily available information.

Furthermore, OSMRE does not expect a citizen to provide the level of information that would be required for a legal filing. For instance, just as in the existing regulations, under the final regulation at 30 CFR 842.12(a), OSMRE specifies that an oral report is sufficient for submitting a citizen complaint that requests a Federal inspection as long as it is followed up by a written statement. Of course, the more detail that a citizen can provide to OSMRE, the more information the authorized representative will have when he or she determines whether there is reason to believe there is a violation, which could expedite the correction of any violation that the citizen complaint brings to OSMRE's attention. However, OSMRE recognizes that obtaining significant information is frequently beyond most citizens' ability, and the final rule does not require any more information than the citizen has available, such as information explaining why the citizen believes there is a violation, that the State regulatory authority was notified, and, possibly, the State regulatory authority's response.

Comment: One commenter interpreted OSMRE's preamble statement at 85 FR at 28910 that ''OSMRE should never be acting as a mere conduit for transmitting a citizen complaint to a State regulatory authority in the form of a TDN'' to mean that OSMRE's proposed rule would eliminate the ability of a citizen to seek Federal relief.

Response: As explained in the response immediately above, citizens can still avail themselves of the citizen complaint process set forth in 30 U.S.C. 1267(h)(1). This rule does not materially alter the ability of a citizen to contact OSMRE about an alleged violation. OSMRE included the language quoted by the commenter in the preamble of the proposed rule because 30 U.S.C. 1271(a)(1) requires OSMRE's authorized representative to use their discretion to make an independent, professional judgment based on all readily available information, including information provided by a citizen, to determine if they have reason to believe a violation exists before issuing a TDN. In other words, OSMRE has the discretion to determine whether it has reason to believe a violation exists. *See, e.g., Castle Mountain Coal.* v. *OSMRE,* No. 3:15–CV–00043, 2016 WL 3688424, at *6 (D. Alaska July 7, 2016) (30 U.S.C. 1271(a)(1) ''does not assign any non-discretionary duties to the agency unless and until the Secretary has found 'reason to believe' that a violation exists.''). Once OSMRE determines it has reason to believe a violation exists, the final rule still recognizes that OSMRE has a mandatory duty to issue a TDN to a State regulatory authority.

This comment, in fact, highlights one of the reasons that OSMRE is revising its regulations—to clarify a potential ambiguity in its existing regulations. This commenter appears to interpret OSMRE's existing ambiguous regulations as requiring OSMRE to automatically issue a TDN every time it receives a citizen complaint. To the extent that this is the case, the commenter is not alone. The ambiguity in the existing regulations has, in some instances, created the impression that the existing regulation at 30 CFR 842.12(a) means that OSMRE will be merely serving as a conduit for a citizen complaint, *i.e.,* automatically issuing a TDN anytime it receives a citizen complaint. *See, e.g., W. Va. Highlands Conservancy,* 152 IBLA 158, 187 (Apr. 25, 2000) (When examining the existing regulations, the IBLA stated: ''[W]e agree with appellants that *the regulations* do not envision 'fact-finding' to determine if a violation exists before deciding whether a 'possible' violation may exist. Rather, the preamble language to the 1982 rule makes clear that the possibility of a violation triggers *the regulatory requirements* to notify the State.'' (emphasis added)). To the extent that our existing regulations were interpreted, by the Interior Board of Land Appeals and others, to mandate a TDN on receipt of every citizen complaint, that interpretation is in clear contrast with the language of 30 U.S.C. 1271(a)(1), which requires an OSMRE authorized representative to use his or her discretion to determine whether there is ''reason to believe'' before issuing a TDN. Therefore, the revised regulations seek to eliminate any possible ambiguity—it is now clear, consistent with the plain language of 30 U.S.C. 1271(a)(1), that the OSMRE authorized representative has discretion to determine whether to issue a TDN based on whether they have ''reason to believe'' based on all readily available information. Any other interpretation would change OSMRE's role from an independent, professional expert on mining to that of a clerical worker without the discretion to discern facts underlying a complaint and that is not contemplated by SMCRA.

Comment: A commenter, providing input on behalf of a citizens' group, expressed concern that the proposed changes to OSMRE's regulations would undermine OSMRE's ability to perform its oversight role and prevent public participation in the process. The commenter stressed the importance of OSMRE's ability to hold mine operators accountable in addition to what the States do to protect the public and the environment.

Response: OSMRE appreciates the commenter's recognition of the important role that OSMRE plays in ensuring public safety and environmental protection. However, in a primacy State, OSMRE is secondary to the State regulatory authority. Section 503(a) of SMCRA specifies that in a primacy State, the State has ''exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in sections 521 and 523 and title IV'' of SMCRA. 30 U.S.C. 1253(a). Thus, in a primacy State, OSMRE's role is limited to those functions specified in sections 521 and 523 and Title IV (30 U.S.C. 1271, 1273, and 1231–1244). Most relevant to this rulemaking, section 521 sets forth the circumstances in which OSMRE may exercise its oversight enforcement authority in a primacy

State. This authority operates to better assure that the goals of SMCRA are met.

Although OSMRE's enforcement authority in a primacy State is limited to that authorized by 30 U.S.C. 1271, OSMRE disagrees that the rule, as proposed, would further limit OSMRE's ability to enforce SMCRA and to protect the public and the environment. OSMRE also disagrees that the proposed rule would, in any way, prevent public participation. Public participation is an important tenet of SMCRA. As the U.S. Court of Appeals for the Fourth Circuit stated:

> SMCRA is designed in part to ''assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under [the Act].'' [30 U.S.C.] 1202(i). One of the ''appropriate procedures'' to assure public participation in enforcing SMCRA standards allows any adversely affected person to notify OSM[RE] of the existence of a SMCRA violation at any surface mining operation. *Id.* § 1267(h). The notification is commonly known as a ''citizen complaint.''

W. Va. Highlands Conservancy, Inc. v. *Norton,* 343 F.3d 239, 242 (4th Cir. 2003).

The final rule does not change the public's ability to submit a citizen complaint. A citizen may still submit a complaint to OSMRE just as he or she has been able to do for more than 40 years.

The final rule clarifies OSMRE's process after receipt of a citizen complaint. Specifically, it provides that OSMRE will verify the requirement that has been in our regulations since 1982 that, in a primacy State, a citizen, when requesting a Federal inspection, must notify the State regulatory authority of an alleged violation before or simultaneously with notification to OSMRE. 47 FR at 35620. Also, as described in response to comments about OSMRE's clarification that when formulating a decision about whether there is ''reason to believe,'' ''any information readily available'' includes information received from the State regulatory authority, OSMRE is also removing the potential ambiguity in the existing regulations about the information that OSMRE's authorized representative will review before determining whether he or she has reason to believe a violation exists. These clarifications to OSMRE's process after receiving a citizen complaint will allow both OSMRE and the State regulatory authority to dedicate resources toward addressing any violation alleged by a citizen instead of preparing superfluous paperwork for each other. The clarification also enhances cooperation and minimizes duplication of administration with the State regulatory authority as required by 30 U.S.C. 1211(c)(12).

OSMRE will continue to follow the requirements of 30 U.S.C. 1271(a) and the implementing regulations found at 30 CFR parts 842 and 843 and issue a TDN when appropriate. Therefore, the final rule does not eliminate the existing TDN process or lessen OSMRE's overall oversight authority, including OSMRE's ability to enforce violations in primacy States, if that is necessary.

Comment: One citizen commenter emphasized that mining operations must be held accountable for daily mining practices and reclamation to ensure protection of the environment. The commenter did not support the proposed regulation in any way without explicitly stating a rationale or support for this position. Additionally, the commenter states that costs for reclamation should be secured initially and ''no closure should happen before all work and costs are absorbed by the company.'' The commenter also asserts that a mining company ''CEO should be paid what is left if there is anything.''

Response: Although certain aspects of the comment are not entirely clear or do not relate to the proposed rule, OSMRE agrees that mining operations must be held accountable for their mining practices to ensure that mining and reclamation are done in an environmentally protective manner. One of the stated purposes of SMCRA is to ''assure that surface coal mining operations are so conducted as to protect the environment,'' 30 U.S.C. 1202(d), and OSMRE always has a duty to further the purposes of SMCRA. Moreover, as stated elsewhere, this final rule will enhance OSMRE's and the State regulatory authorities' ability to identify and address alleged violations of State regulatory programs so that any violations can be corrected as soon as possible. Also, as we have stated in response to other comments, should a citizen have information related to an alleged violation at a specific mining operation, he or she is entitled to file a citizen complaint, and OSMRE will address any citizen complaints it receives in accordance with SMCRA and the relevant regulations to ensure that any violations are timely corrected. In addition, information in a citizen complaint may result in OSMRE identifying a State regulatory program issue, which OSMRE will address under § 733.12 of this final rule. A citizen may also request that OSMRE evaluate a State program as outlined in existing 30 CFR 733.12(a), that has been redesignated as 30 CFR 733.13(a) under this final rule. With regard to reclamation requirements and the cost of reclamation, OSMRE notes that those issues were not a part of the proposed rule, and this final rule does not alter any of the existing reclamation regulations. Importantly, SMCRA section 509, 30 U.S.C. 1259, and the existing regulations at 30 CFR part 800, have bonding requirements to assure, among other things, completion of reclamation plans.

Comment: One commenter asserted that State agency personnel have been physically relocated farther from mine sites and have become less effective. The commenter also notes that agency personnel have recently changed, which has resulted in a loss of institutional memory.

Response: OSMRE recognizes that the loss of staff and their institutional knowledge can be a problem for both OSMRE and State regulatory authorities. Similarly, budget savings, which may have been the reason that personnel from State regulatory authorities were relocated, is a part of government. Both reasons, however, support OSMRE revising its regulations, as OSMRE is doing here, to make them more efficient and effective, and to avoid duplication of efforts between a State regulatory authority and OSMRE. This final rule enhances OSMRE's ability to engage in appropriate oversight of State regulatory programs.

Comment: Several commenters offered examples of alleged OSMRE oversight enforcement failures.

Response: To the extent the commenters believe there is a failure of any State regulatory authority to implement, administer, enforce, or maintain an approved program, OSMRE directs the citizens to the provisions of existing 30 CFR 733.12(a) that are being redesignated as 30 CFR 733.13(a) pursuant to this final rule. Moreover, as to a concern expressed by one commenter that the proposed rule would impact an individual's ability to ''protest projects going through their own or state/fed[eral] property,'' OSMRE's proposed rule clarification, as adopted in this final rule, will not change a citizen's ability to ''protest'' or comment on proposed mining projects or permitting actions of any individual mine located on private, State, or Federal property. OSMRE did not propose to revise, and is not revising, 30 CFR 773.6, which details how citizens can participate in permit processing. Thus, the opportunities for the public to comment on proposed mining projects or permitting actions provided by SMCRA and further explained in 30

CFR 773.6 remain unchanged, including the time to file objections to individual mine permits on all property, regardless of ownership. In conclusion, OSMRE will continue to take its oversight responsibilities very seriously, in accordance with SMCRA and the implementing regulations.

E. OSMRE's Authorized Representative Will Continue To Formulate ''Reason To Believe'' As Mandated by SMCRA; This Includes Using Best Professional Judgment

Comment: One citizens' group representing many national citizen organizations and ''thousands of individuals'' across the country questioned OSMRE's assertion that the information used to formulate ''reason to believe'' has created ambiguity within the TDN process, in particular related to on-the-ground violations. To support this contention, the citizens' group states that ''a search of all [Interior Board of Land Appeals (IBLA or the Board)] decisions fails to disclose even *one* instance where the Board found the long-established OSMRE Ten Day Notice procedure to be problematic.''

Response: As explained below, OSMRE disagrees with the commenter's opinion that OSMRE is creating an ambiguity where it does not exist. First, this rule is being promulgated to improve OSMRE's coordination with State regulatory authorities to minimize duplication of inspections, enforcement, and administration of SMCRA. Specifically, this rule provides a streamlined, more uniform, and efficient process for OSMRE to follow when it receives a citizen complaint. Because the IBLA typically does not get involved until after OSMRE makes a decision on whether to issue a TDN, conduct a Federal inspection, or issue a notice of violation or cessation order, it is unsurprising that the IBLA has not identified OSMRE's internal process leading to the issuance of a TDN as a problem.

Second, some of the IBLA cases that the commenter cites illustrate how the existing regulations may result in a disparate application of OSMRE's various enforcement tools. For example, the commenter highlights a decision in which the IBLA found OSMRE's decision to defer violations for programmatic review under the 30 CFR part 733 process was not in accordance with the existing regulations. *W. Va. Highlands Conservancy, et al.,* 152 IBLA at 193. While it is true that the commenter accurately summarized the holding of this decision, it is also true that the facts presented in that case demonstrate an OSMRE internal inconsistency when applying the existing Federal regulations. Specifically, the case focused on when it was appropriate for OSMRE to use the different enforcement tools set forth in 30 U.S.C. 1271(a) and (b) in response to complex citizen complaints. *See, e.g., id.* at 187–188 (The Board rejected OSMRE's attempt to justify its failure to issue TDNs on specific sites as required by 30 U.S.C. 1271(a) based upon its use of the programmatic review process in 30 U.S.C. 1271(b)).

The rule OSMRE is finalizing today helps to clarify to agency personnel and the public when each of the enforcement tools in 30 U.S.C. 1271(a) and (b) will be used and what information OSMRE will rely on when it makes a determination that it has reason to believe a violation exists. For instance, if a similar fact pattern to the one in *West Virginia Highlands Conservancy* arose under the regulations finalized today, OSMRE's authorized representative would make a determination whether they have reason to believe a violation exists on a specific site based on all readily available information available to them. If they have ''reason to believe,'' they would then issue a TDN. However, the revisions made to 30 CFR 842.11(b)(1)(ii)(B)(*3*) would also allow the State regulatory authority to respond that it has taken appropriate action because it, along with OSMRE, is immediately implementing steps to correct a programmatic issue using the action plan process set forth in revised 30 CFR 733.12. The revised regulations also clarify that OSMRE may still take enforcement action under 30 U.S.C. 1271(a) if the State regulatory program issue ''results in or may imminently result in a violation of the approved State program.'' Therefore, the revisions to the Federal regulations finalized today should help reduce the ambiguity that lead to the *West Virginia Highlands Conservancy* case.

Third, despite the cases cited by the commenters, there is no judicial or administrative decision defining ''reason to believe'' as used in 30 U.S.C. 1271(a). One case, *Castle Mountain Coalition* v. *OSMRE,* explicitly recognizes that OSMRE does not have a mandatory duty to act under 30 U.S.C. 1271(a) until it has determined there is reason to believe that a violation exists. 2016 WL 3688424, at *6. In another case, a court reviewed the ''reason to believe'' standard in 30 U.S.C. 1271(b) and concluded that a determination as to ''whether the Secretary of the Interior ''has 'reason to believe' a violation has occurred is a matter committed to her discretion by law.'' *Dacotah Chapter of Sierra Club* v. *Jewell,* No. 12–065, 2013 WL 12109410, at *8 (D.N.D. Oct. 22, 2013). The rulemaking that OSMRE is finalizing today ensures that there is no debate that the OSMRE authorized representative is allowed to use their independent, professional discretion, based on all readily available information, to determine whether they have ''reason to believe.'' This clarification is needed because many of the comments received in response to the proposed rulemaking show that the public misunderstands the discretion committed to OSMRE's authorized representative by 30 U.S.C. 1271(a).

Comment: Many commenters, including industry groups that represent operations that mine coal through surface and underground methods, submitted questions and comments about the requisite information necessary to establish reason to believe a violation exists under the revisions to 30 CFR 842.11 and 842.12 adopted in this final rule. Within this general category of comments, one commenter requested that OSMRE include a provision in the final rule that the OSMRE authorized representative should not base his or her decision to issue a TDN on ''bare allegations.'' This same commenter also requested that OSMRE include language in the final rule that clarifies that the OSMRE authorized representative will use and consider information obtained from any source, including the permittee, to establish reason to believe a violation exists.

Response: In accordance with 30 U.S.C. 1271(a), OSMRE can formulate a decision about whether reason to believe that a violation exists ''on the basis of *any information available.* . . . , including receipt of information from *any person.* . . .'' Emphasis added. Consistent with this statutory provision, §§ 842.11(b)(1)(i) and 842.12(a) of this final rule specify that OSMRE's authorized representative will consider any readily available information when he or she is deciding whether there is reason to believe a violation exists, including information from a citizen complainant and any information that the relevant State regulatory authority submits to the authorized representative. Any readily available information includes information from any person, including the permittee, and is not limited to information that OSMRE receives from a citizen or State regulatory authority. In addition, as OSMRE stated in the preamble to the proposed rule, other examples of sources of readily available information include permit files or public records. 85 FR at 28911. However, based on this commenter's suggestion for clarification and other commenters' similar suggestions, in the rule OSMRE is finalizing, OSMRE includes the phrase ''from any source'' within 30 CFR 842.11(b)(1)(i) and (b)(2). This addition will further remove any ambiguity relevant to information an OSMRE authorized representative considers when formulating reason to believe and reinforces internal consistency in the Federal regulations.

Moreover, as OSMRE explained in the proposed rule preamble, OSMRE considers ''any information that is accessible without unreasonable delay'' to be ''readily available information.'' 85 FR at 28907. In the proposed rule, OSMRE chose the phrase ''readily available'' purposely ''so that the process will proceed as quickly as possible and will not become open-ended.'' *Id.* OSMRE agrees with the commenter that the authorized representative should not base the decision to issue a TDN on ''bare allegations.'' SMCRA establishes a firm foundation for an authorized representative to exercise professional judgment when formulating reason to believe a violation exists. Thus, under this final rule, OSMRE's authorized representative, while using best professional judgment, will make the ''reason to believe'' determination based upon readily available information, rather than bare allegations.

Comment: One commenter suggested that an authorized representative should not have discretion to use his or her best professional judgment when evaluating alleged violations. The commenter also suggested that, in lieu of the authorized representative, the most appropriate person to determine that ''reason to believe'' a violation exists should be a qualified OSMRE career staff employee, who should have a degree in engineering, geology, environmental science, or a related field.

Response: This comment appears to focus on OSMRE's authorized representative's formulating ''reason to believe.'' OSMRE agrees with the commenter that an OSMRE authorized representative should be a qualified individual with the appropriate educational background and specialized experience required to be certified by the Director of OSMRE to serve as an authorized representative. However, OSMRE disagrees with the commenter's suggestion that an authorized representative should not have discretion to use his or her best professional judgment when evaluating alleged violations. The use of best professional judgment is essential for an authorized representative.

When enacting SMCRA, Congress mandated that OSMRE ''shall have a Director who shall be appointed by the President. . . .'' 30 U.S.C. 1211(b). Congress required the Director to, among other things, ''make those investigations and inspections necessary to [e]nsure compliance with this Act[.]'' 30 U.S.C. 1211(c)(1). Integral to the Director carrying out these obligations is hiring appropriate, qualified employees within OSMRE. To this point, Congress mandated that ''[e]mployees of the Office shall be recruited on the basis of their professional competence and capacity to administer the provisions of the Act.'' 30 U.S.C. 1211(b). Ultimately, it is the OSMRE Director who must ensure that employees of OSMRE—including a designated authorized representative—have the ''professional competence and capacity'' to undertake the ''investigations and inspections necessary'' to ensure compliance with SMCRA. *See* 30 U.S.C. 1211(b) and (c). Only an OSMRE employee who is certified as an authorized representative with inspection authority may issue a TDN pursuant to section 521(a)(1) of SMCRA. 30 U.S.C. 1271(a)(1). An employee who is certified as an authorized representative receives a badge and identification credentials that he or she carries when on duty. Outside the context of this rulemaking, only these same authorized representatives may undertake inspection and enforcement actions under section 517 of SMCRA. 30 U.S.C. 1267. OSMRE promulgated regulations specific to these tasks at 30 CFR parts 842 and 843. Additionally, as set forth in OSMRE's Directive INE–18, ''Authorized Representatives'', OSMRE has established a rigorous process to ensure that the best qualified candidates are selected for positions as authorized representatives and that these individuals have the ''professional competence and capacity'' to appropriately issue TDNs based on their best professional judgment, consistent with 30 U.S.C. 1211(b). *See https://www.osmre.gov/LRG/docs/directive958.pdf* (last accessed Aug. 23, 2020). Based on established OSMRE practice and procedure, the Director (or approved designee) may certify an OSMRE employee as an authorized representative only upon satisfactory completion of significant training and certification requirements. Furthermore, the Director (or approved designee) may suspend or withdraw the certification of any authorized representative. Each authorized representative with authority to issue TDNs is required to hold a four-year college degree with major study in the areas of hydrology, agronomy, geology, range conservation, forestry, ecology, civil engineering, mining engineering, natural science, biological sciences, natural resources, environmental planning, or earth sciences as required by the U.S. Office of Personnel Management's Federal Position Classification and Qualifications. *See https://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/1800/surface-mining-reclamation-specialist-1801/* (last accessed Aug. 23, 2020). Authorized representatives with authority to issue TDNs are highly educated, highly trained individuals who must also undergo a progressive on-the-job training and mentoring plan before becoming an authorized representative. The OSMRE Director (or designee) approves the training and mentoring plan to ensure competency and capacity to administer SMCRA. This information is documented in the authorized representative's personnel file.

In sum, OSMRE authorized representatives are highly educated, trained, and qualified individuals who OSMRE hires precisely because of their ability to exercise professional judgment. Specific to this final rule, these individuals are uniquely qualified, based upon their professional judgment, to determine whether there is reason to believe a violation exists, issue TDNs when necessary, and ensure that violations of a State regulatory program are corrected in a timely manner.

Comment: Several citizen commenters oppose the clarification of the TDN process, alleging that the proposed rule would no longer treat citizen complaints as true. These commenters state that the proposed rule would result in citizen complaints not being formally investigated within 10 days of the complaint being filed. The commenters state that the proposed rule would result in OSMRE dismissing public concerns and ignoring mining violations. Many commenters also suggested that the proposed rule was not simply a clarification of existing rules.

Response: OSMRE disagrees with these characterizations of the proposed rule and notes that, under this final rule, OSMRE will continue to take citizen complaints seriously, in recognition of the important role citizens play in the SMCRA enforcement process. When OSMRE issues a TDN to a State regulatory authority, the TDN may be based upon information that OSMRE initially received in a citizen complaint. However, to fully address this comment, OSMRE will explain the existing TDN process as authorized by section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a), and implemented in OSMRE's existing regulations at 30 CFR 842.11.

Section 521(a)(1) provides that the ''reason to believe'' determination in the TDN context is based upon ''any information available to [the Secretary], including receipt of information from any person.'' Likewise, under the existing regulations at section 842.11(b)(1)(i), as they pertain to the TDN process, OSMRE's authorized representative's determination of whether he or she has ''reason to believe'' is based upon ''information available.'' Moreover, under existing § 842.11(b)(2), upon receipt of a citizen complaint, OSMRE's authorized representative transmits the citizen complaint to the State regulatory authority as a TDN *after* the authorized representative has formulated reason to believe that a violation, condition or practice exists.'' The OSMRE authorized representative's formulation of reason to believe includes analysis based on SMCRA and the Federal regulations, surface coal mining expertise, and any information readily available. OSMRE explained in the proposed rule that some might have interpreted existing § 842.11(b)(2) to mean that all OSMRE has to do is determine whether the facts alleged in a citizen complaint would constitute a violation before issuing a TDN. However, the existing regulations are not designed to have OSMRE merely serve as a conduit to the State regulatory authority. OSMRE's authorized representative must analyze the information. In the proposed rule, OSMRE explained that when the authorized representative performs the analysis necessary to formulate reason to believe, he or she should consider all readily available information—including information ascertained from the State regulatory authority and any additional information that citizens provide. While it is accurate that OSMRE proposed to remove the phrase ''if true'' from existing § 842.11(b)(2), and has adopted that change in this final rule, the proposed rule was not intended to weaken the TDN rules with respect to an OSMRE authorized representative's analysis of whether he or she has ''reason to believe'' that a violation exists. In fact, in the proposed rule, OSMRE proposed that the authorized representative would consider information that is vital to understanding and examining an alleged violation. OSMRE's authorized representative must weigh the evidence in front of him or her, especially if some of that evidence is contradictory—this is part of the OSMRE authorized representative's exercise of professional judgment based upon readily available information in determining whether he or she has reason to believe a violation exists.

In this final rule, the removal of the phrase ''if true'' from 30 CFR 842.11(b)(2) coupled with the insertion of the phrase ''on the basis of any information readily available'' found at proposed 30 CFR 842.11(b)(1)(i) removes ambiguity in the existing TDN process, increases efficiency, and allows OSMRE's authorized representative to more fully exercise his or her professional judgment. This approach is consistent with SMCRA and even OSMRE's existing regulations at § 842.11(b)(1)(i). In this regard, the relevant provisions that OSMRE is adopting in this final rule are a clarification of the existing regulations. However, this clarification is necessary to remove any confusion that was created by the ''if true'' language.

Moreover, Congress created OSMRE as the expert agency that administers SMCRA, 30 U.S.C. 1211(a) and (c), and requires that ''[e]mployees of [OSMRE] shall be recruited on the basis of their professional competence and capacity to administer the provisions of this Act'' (30 U.S.C. 1211(b)). Thus, it stands to reason that OSMRE, through its authorized representative, must apply expertise and professional judgment in determining whether ''reason to believe'' exists. Interpreting SMCRA in a manner that relegates the OSMRE authorized representative to a position of a mere conduit of a citizen complaint to the State regulatory authority is not supported by SMCRA or its implementing regulations. Therefore, the commenters' assumption that a citizen complaint must be treated ''as true'' ignores OSMRE's expertise in administering SMCRA and does not comport with SMCRA or even OSMRE's existing TDN regulations and practice. Nothing in SMCRA requires OSMRE to accept alleged facts as true in a vacuum; the totality of readily available information must be considered in order to prevent issuing an unwarranted TDN to a State regulatory authority, which would needlessly waste OSMRE's and the State regulatory authority's time and resources.

For these precise reasons, the proposed clarification, which OSMRE is adopting in this final rule, removes any unnecessary conflict between OSMRE and the State regulatory authority. OSMRE's experience has shown that when OSMRE works cooperatively with State regulatory authorities, the TDN process works best, and problems are resolved more efficiently, furthering the purposes of SMCRA. *See generally,* 30 U.S.C. 1202(a) and (d). For example, under the existing TDN process, OSMRE does not always receive important information from the State regulatory authority that would inform the ''reason to believe'' inquiry, but it may receive such information from a citizen. Under this final rule, OSMRE must consider information the State regulatory authority provides about an alleged violation, eliminating duplication of resources and processes between Federal and State agencies. Cooperation between OSMRE and State regulatory authorities is mandated by SMCRA to ''minimize duplication of inspections, enforcement, and administration of the Act.'' 30 U.S.C. 1211(c)(12). This final rule does just that. Once OSMRE formulates reason to believe that a possible violation exists and sends a TDN to a State regulatory authority, the State will continue to have ten days to take appropriate action to cause the alleged violation to be corrected or to demonstrate good cause for not correcting the alleged violation. Thus, the regulations OSMRE is adopting in this final rule will continue to be in conformity with section 521(a)(1) of SMCRA.

Comment: Several commenters suggested that the proposed rule clarification would provide states with unlimited time to review and respond to citizen complaints. Further, these commenters alleged that the proposed rule provision would render action on citizen complaints discretionary. According to one commenter, the proposed rule would undermine SMCRA at section 521(a) by changing the specified response time and eliminating a mandated deadline.

Response: These characterizations neither accurately reflect the proposed rule nor reflect a proper understanding of SMCRA. The proposed rule was aimed at enhancing the coordination process between OSMRE and its State regulatory program partners to ensure that all information readily available is considered by the authorized representative before deciding whether there is reason to believe that a violation exists. The existing regulations do not specifically state that the authorized representative may consider information that a State regulatory authority provides in his or her determination of whether there is reason to believe a violation exists. Explicitly stating that information from the State regulatory authority may be considered will remove ambiguity and ensure that all stakeholders are aware of the information that OSMRE can consider when its authorized representative formulates reason to believe. Moreover, there may have been inconsistent levels of review of information across the bureau. Specifically stating that OSMRE will consider readily available information when formulating reason to believe will also ensure that it uniformly considers all simple and effective documentation of the alleged violation, condition, or practice. Historically, while OSMRE typically considered information in its possession, the potential ambiguity in OSMRE's existing regulations may have resulted in OSMRE accepting allegations in a complaint as true without the benefit of any information that the State regulatory authority may have chosen to provide. The practice of issuing TDNs without the benefit of information from the State regulatory authority increasingly resulted in the issuance of TDNs when the State regulatory authority was already investigating the issue or had previously determined that there was not a violation of the approved State regulatory program. As described in response to other comments, this is inefficient and has resulted in duplicative processes for both OSMRE and the State regulatory authorities. OSMRE does not always receive important information from a citizen that would inform the ''reason to believe'' inquiry, but it may receive such information from the State regulatory authority, and the OSMRE authorized representative should be afforded this opportunity.

By way of example, a recent complaint received by an OSMRE field office involved blasting related to road construction. This complaint was ultimately found to be unrelated to a SMCRA permit. Simply generating a TDN, without considering all information readily available, resulted in a waste of OSMRE and State regulatory authority resources and taxpayer money and time; it also unnecessarily redirected resources and time away from true SMCRA-related issues. These inefficiencies could easily have been avoided by considering all readily available information, including any information the State regulatory authority chose to provide. Again, it is a basic requirement of SMCRA that OSMRE must ''cooperate with . . . State regulatory authorities to minimize duplication of inspections, enforcement, and administration of [SMCRA].'' 30 U.S.C. 1211(c)(12). Furthermore, as noted above, the Supreme Court in *Hodel,* 452 U.S. at 289, explained that: ''[SMCRA] establishes a program of cooperative federalism that allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs.''

The removal of the potential inconsistency between existing § 842.11(b)(1)(i) and existing § 842.11(b)(2) in this final rule properly enhances the cooperative federalism intended by Congress when it enacted SMCRA by allowing OSMRE to consider information that a State regulatory authority chooses to provide when OSMRE is assessing whether it has reason to believe that a violation exists. Furthermore, removing the phrase ''if true'' eliminates any perception that OSMRE is a mere conduit to the State regulatory authority when in reality OSMRE should exercise best professional judgment when formulating reason to believe. The objective of the rulemaking is to minimize, to the extent possible, duplication of efforts associated with inspections, enforcement, and administration of SMCRA, while also ensuring that the public is involved in the enforcement process, which will allow potential violations of SMCRA and approved State programs to be identified and addressed as soon as possible. Of course, after the revisions to the existing regulations that OSMRE is adopting in this final rule take effect, OSMRE will continue to exercise the oversight of State regulatory programs that SMCRA requires.

OSMRE disagrees with the commenters' suggestion that the rule change OSMRE is adopting will result in a State regulatory authority having unlimited review time. The final rule does not alter the SMCRA-mandated ten days that a State regulatory authority has to respond once OSMRE issues a TDN. 30 U.S.C. 1271(a)(1). However, the clarification does afford OSMRE an opportunity to consider all readily information, including any information the State regulatory chooses to provide, when formulating reason to believe before issuing any TDN to the State regulatory authority. Under existing § 842.11(b)(1)(i), the authorized representative already has the authority to consider ''information available'' before determining that reason to believe exists. In the proposed rule, OSMRE explained that information that the authorized representative considers must be ''readily available, so that the process will proceed as quickly as possible and will not become open-ended.'' Thus, considering ''readily available information'' under this final rule may create, at most, only a modest increase in the amount of time it takes the authorized representative to decide whether he or she has ''reason to believe.'' Further, affording OSMRE the opportunity to easily ascertain if the State regulatory authority has been appropriately put on notice of a request for Federal inspection, including the possible violation—as is already required under the existing regulations at 30 CFR 842.12(a)—and whether or not the State regulatory authority has investigated or is actively investigating the subject of the complaint eliminates duplication and redundancy of State and Federal enforcement activities. For example, if OSMRE obtains readily available information that demonstrates that the State regulatory authority is actively investigating a citizen complaint, the OSMRE authorized representative may, using professional judgment, consider the State regulatory authority's action before determining whether reason to believe exists.

In summary, this final rule clarifies the existing TDN regulations set forth at 30 CFR 842.11 and 842.12. Nothing in this final rule nullifies the statutory requirements that OSMRE must issue a TDN when it determines that there is reason to believe that a violation exists and that a State regulatory authority has ten days to respond. As is true with the existing regulations, the final rule requires that there are only two possible outcomes when an authorized representative reviews a citizen complaint: (1) The authorized representative issues a TDN because there is reason to believe a possible violation exists, or (2) the authorized representative declines to issue a TDN because he or she does not have reason to believe a possible violation exists. Under this final rule, the authorized representative does not have discretion to not issue a TDN to the State regulatory authority once he or she determines, based on professional judgment, that there is reason to believe that a violation exists; issuance of a TDN then becomes mandatory. If the information in the citizen complaint, along with any other readily available information, is not sufficient to formulate reason to believe, the authorized representative will not issue a TDN. Finally, to ensure transparency, OSMRE will continue the practice of sending a letter to the citizen complainant explaining the decision to issue or not issue a TDN and the rationale for this decision. It is standard OSMRE practice, absent a citizen complainant's request for confidentiality, to also provide the State regulatory authority a copy of the letter to facilitate collaboration.

F. It is Important To Clarify That ''Any Information'' Under 30 U.S.C. 1271(a) Includes Information From the State Regulatory Authority

Comment: A coal industry group comprised of several companies in an Appalachian Basin-based coal State offered significant support for OSMRE's proposed clarification of the existing regulations related to the issuance of TDNs and the proposed enhancement of corrective action for State regulatory program issues. This group remarked that the proposed clarification to the existing regulations would allow regulatory authorities to use more information as part of their decision-making. Because, under the proposal, the regulations would clearly set forth that OSMRE will consider all readily available information prior to issuing a TDN, the commenter expressed that view that the proposed clarification would provide more transparency about the TDN process and allow for more cooperation between the State regulatory authority and OSMRE. The commenter also noted that the enhanced cooperation between OSMRE and the State regulatory authority would ensure that mine operations comply with SMCRA.

The coal industry group commenter noted that allowing State regulatory authorities to provide information that is directly relevant to citizen complaints before OSMRE issues TDNs is positive and improves the process. The commenter pointed out that the clarification would be an improvement and would promote efficiency because the existing process may result in the issuance of a TDN despite the fact that the State regulatory authority has valuable information that is directly related to the alleged violation. The commenter noted that without relevant information from the State regulatory authority, OSMRE may not have an opportunity to consider the totality of the situation in advance, and such an omission decreases efficiency. The commenter also noted that frequently the State regulatory authority and OSMRE receive the same complaint resulting in both agencies undertaking duplicative investigations, which the commenter claimed is in contravention of section 201(c)(12) of SMCRA, 30 U.S.C. 1211(c)(12).

Response: OSMRE concurs with these comments as they highlight the value of coordination between the primary SMCRA regulatory authority, which is the State regulatory authority, and OSMRE as the oversight authority. Although, in the TDN context, OSMRE is exercising oversight of State regulatory authorities, there is still room for up front cooperation between OSMRE and the State regulatory authority to minimize duplication of inspections, enforcement, and administration of SMCRA, as section 201(c)(12) of SMCRA, 30 U.S.C. 1211(c)(12), contemplates. Most importantly, OSMRE values the commenter's recognition of the positive impacts of the clarification OSMRE is adopting in this final rule as it will improve compliance with SMCRA by promoting cooperative federalism and ensuring that OSMRE considers all readily available information. For four decades OSMRE has observed that protecting society and the environment from the adverse effects of surface coal mining operations is accomplished more effectively and efficiently when State regulatory authorities—that have direct authority to administer SMCRA within their borders—and OSMRE work cooperatively, rather than working in isolation, to ensure timely resolution of issues. Not only does this coordination promote the cooperative federalism construct established within SMCRA, it more effectively achieves the purposes of SMCRA as outlined in section 102 of SMCRA, 30 U.S.C. 1202. Specifically, considering a State regulatory authority's unique position to assess its approved State program, it makes sense to consult with the State regulatory authority to determine if steps have already been taken or are underway to address alleged violations. This commenter understands that, with OSMRE's consideration of all readily available information, including information provided by the State regulatory authority, the existing process is improved. However, OSMRE notes that being able to consider ''readily available information'' is not the same as being able to consider ''the totality of the situation in advance.'' Considering only ''readily available information'' up front will allow the process to proceed relatively quickly. Even with this distinction, OSMRE is confident that the clarification that OSMRE is adopting in this final rule will achieve the intended result of greater cooperation and a more efficient and effective enforcement of SMCRA.

Comment: Several commenters objected to OSMRE's proposal to add ''readily available'' to provisions at 30 CFR 842.11(b)(1)(i) and (b)(2) and 842.12(a), raising concerns that information that is not currently in OSMRE's possession and that has to be gathered does not constitute ''readily available information.'' Furthermore, one of these commenters opined that any delay resulting from gathering information was not acceptable and directly conflicts with the ''shall immediately'' order a Federal inspection language found in 30 U.S.C. 1271(a)(1) and the existing regulations. Another commenter suggested that OSMRE's explanation of the proposed provision inserts more uncertainty into the TDN process because it does not define what OSMRE deems ''accessible without unreasonable delay.'' A commenter further opined that the language ''shall immediately'' in 30 U.S.C. 1271(a) requires OSMRE to accept only information submitted in a citizen complaint, rather than readily available information, to establish reason to believe that a violation exists.

Response: With respect to the information OSMRE can consider when making a ''reason to believe'' determination, the statutory language is not as specific as the commenter suggests. As explained throughout this final rule notice, SMCRA grants the Secretary, acting through OSMRE, the authority to promulgate regulations that may be necessary to carry out the purposes and provisions of SMCRA. 30 U.S.C. 1211(c)(2). OSMRE is using SMCRA's rulemaking authority, in part, to specify the information that OSMRE's authorized representative can obtain and consider when making a ''reason to believe'' determination. The proposed rule language, which OSMRE is adopting in this final rule, is consistent with the statutory language at 30 U.S.C. 1271(a)(1) and allows an authorized representative to review information that is readily available. A more detailed discussion of the information that OSMRE considers to be ''readily available'' is contained elsewhere in the proposed rule preamble (85 FR at 28911) and in this final rule, but most certainly includes information that the OSMRE authorized representative can easily and promptly access, such as permit documentation about the specific mine site, OSMRE's inspection history, and data retrieved from the State regulatory authority. Fundamentally, as to the commenter's other point about the ''shall immediately'' language in 30 U.S.C. 1271(a), OSMRE notes that the statute provides, absent an imminent harm scenario, that OSMRE ''shall immediately order Federal inspection'' in a primacy State only after it issues a TDN to the State regulatory authority, and OSMRE finds that a violation remains uncorrected at the conclusion of the TDN process. The aspect of the final rule that the commenters take issue with—OSMRE's consideration of readily available information as part of the ''reason to believe'' determination—occurs before OSMRE issues a TDN to a State regulatory authority and is therefore consistent with SMCRA. Importantly, at the conclusion of the TDN process, OSMRE will immediately undertake a Federal inspection if it finds that a violation continues to exist.

Moreover, accepting only information contained in a citizen complaint as the basis for a ''reason to believe'' determination is not in accordance with prudent regulatory implementation as explained in the proposed rule. 85 FR at 28908, 28910–11. If OSMRE were to accept only information contained in a citizen complaint to establish ''reason to believe,'' OSMRE could be in a situation of issuing a TDN to a State regulatory authority when a complainant lacks information or knowledge concerning the possible violation that OSMRE may be able to readily ascertain under this final rule. OSMRE could also be in a situation of concluding that the citizen complaint does not establish ''reason to believe'' and refusing to issue a TDN, but for readily available information from the State regulatory authority that might otherwise establish ''reason to believe.'' Moreover, if OSMRE considers only information in a citizen complaint, the complaint process could be misused, unwittingly or otherwise, resulting in frivolous and unfounded allegations and unnecessary TDNs. Also, a fair reading of the legislative history supporting the passage of SMCRA indicates that considering only information in a citizen complaint when formulating reason to believe in association with the TDN process is not consistent with congressional intent. This issue was addressed in 1977 in House Report 95–218: ''[i]t is anticipated that 'reasonable belief' could be established by a snapshot of an operation or *other simple and effective documentation* of a violation.'' Emphasis added. As noted in the proposed rule, while this passage from the legislative history appears to be referring to information that a citizen may provide, it is reasonable to apply the same principle to 30 U.S.C. 1271(a)(1), as enacted. This final rule is consistent with congressional intent in the formulation of SMCRA, and, more importantly, consistent with SMCRA, as enacted, with respect to information that can be used to establish reason to believe that a violation exists.

Comment: A commenter indicated that OSMRE should consider all available information, not just readily available information, and should include information from any person and not just the State regulatory authority.

Response: OSMRE has considered this comment and agrees that OSMRE should consider information from any source; however, as explained below, OSMRE disagrees that it should consider ''all available information'' rather than readily available information. OSMRE has revised the final rule text at 30 CFR 842.11(b)(1)(i) to further clarify that the authorized representative will consider all readily available information ''from any source, including any information a citizen complainant or the relevant State regulatory authority submits[.]'' This change reflects OSMRE's intent with respect to readily available information obtained from *any* source. For consistency, OSMRE has also incorporated the phrase ''from any source'' into revised 30 CFR 842.11(b)(2). The plain language of this revised text makes clear that OSMRE will consider information from any source and not just the two possible sources of information that OSMRE proposed to list as examples of sources—the State regulatory authority and a citizen. As OSMRE stated in the preamble to the proposed rule, other examples of sources of readily available information may also include permit files or other public records. 85 FR at 28911.

The only limitation as to the source of information that OSMRE's authorized representative can consider is that the information must be readily available. As stated in the proposed rule, inclusion of the word ''readily available'' to modify ''any information'' is important to ensure that the process of making a ''reason to believe'' determination proceeds as quickly as possible and does not become open-ended. 85 FR at 28907; *see also* OSMRE's other responses in this section. If OSMRE were to delay its ''reason to believe'' determination until all available information was discovered, there could be substantial delays in the process, which would be contrary to the process Congress set forth in 30 U.S.C. 1271(a)(1). Substantial delays in determining ''reason to believe'' would also be contrary to a goal of this rulemaking—ensuring that alleged violations are addressed quickly, effectively, and efficiently. Thus, OSMRE is not making a change to its proposed rule to consider all information that could possibly be obtained; OSMRE will consider only that information which is readily available.

Comment: One commenter expressed doubt about OSMRE's rationale for clarifying that a State regulatory authority should be a source of information necessary to formulate reason to believe. Specifically, the commenter expressed doubt that OSMRE and the State regulatory authorities are inundated with duplicative complaints.

Response: SMCRA provides that OSMRE will issue a TDN ''[w]henever, *on the basis of any information available to him, including receipt of information from any person,* the Secretary has reason to believe that any person is in violation of any requirement of this Act. . . .'' 30 U.S.C. 1271(a)(1) (emphasis added). A plain reading of this provision is that OSMRE can consider any information it has available regardless of the source. It is only natural that a State regulatory authority could be a source of information that OSMRE's authorized representative uses to formulate reason to believe.

OSMRE has not claimed that it is ''inundated'' with citizen complaints that have also been issued to the State regulatory authority. However, OSMRE has experienced many instances where it has received a citizen complaint that was identical to a citizen complaint received by a State regulatory authority. When this has occurred, oftentimes OSMRE has learned that the State regulatory authority was either already investigating the alleged violation or had reached a decision about the alleged violation. Such information would be useful to OSMRE in formulating reason to believe. It has been a regulatory requirement since 1982 that, when requesting a Federal inspection, citizens are required to submit complaints to the State regulatory authority before or simultaneously with submitting the complaint to OSMRE. 47 FR at 35628. In OSMRE's experience, and based upon data acquired over 43 years of implementing SMCRA, it has become obvious, as OSMRE expected in 1982, that ''if citizens contact the State initially, most problems will be resolved satisfactorily without the need for intrusion by the Federal government.'' *Id.* Thus, it only makes sense for OSMRE to revise the SMCRA implementing regulations to allow OSMRE's authorize representative to consider readily available information from the State regulatory authority that is relevant to the possible violation before OSMRE issues a TDN. That way, OSMRE and the State regulatory authority can avoid an unnecessary exchange of paperwork instead of resolving alleged violations. This simple change will make the process more effective and will conserve scarce government resources.

Comment: A commenter supported the proposed rule clarification at 30 CFR 842.11(b)(1)(i) and (b)(2) that would allow OSMRE to consider any information readily available when determining whether there is reason to believe that a violation exists. The commenter, which represents the coal industry, added that it is appropriate for OSMRE to provide these clarifications to the process so that OSMRE can determine whether information submitted in a citizen complaint constitutes documentation of alleged violations; the commenter also notes that OSMRE must have the authority to evaluate information objectively in order to determine the validity of allegations. Further, the commenter supports OSMRE's ability to review readily available information, from any source, including information that may be available to the State regulatory authorities. The commenter finds that this would allow OSMRE to more accurately identify the specific nature of an alleged violation or program issue identified by a citizen. Moreover, the commenter stated that the clarification would provide OSMRE an opportunity to apply a remedy that most appropriately corresponds to the alleged violation—whether it is a permit specific violation, on-the-ground violation, or is better characterized as a State regulatory program issue.

Response: OSMRE agrees with the commenter that it is necessary for the OSMRE authorized representative to consider any information readily available when formulating reason to believe. This clarification specifies that information provided by the State regulatory authority is included in the ''any information'' that an OSMRE authorized representative may consider, consistent with 30 U.S.C. 1271(a), while also highlighting the importance of timely formulation of reason to believe to ensure prompt resolution of a possible violation. The latter point is clarified by OSMRE adopting the proposal to include the word ''readily'' in 30 CFR 842.11(b)(1)(i) and (b)(2). Also, the clarification of 30 CFR 842.11(b)(2), which OSMRE is adopting in this final rule, codifies OSMRE's flexibility to more appropriately analyze and identify the existence of violations, and, if necessary, to issue a TDN or use the enhanced part 733 process for a State regulatory program issue. The ability to efficiently and effectively differentiate between violations addressed under revised section § 842.11 and State regulatory program issues, as defined in this final rule and addressed under revised § 733.12, is an important point. As the regulations currently exist, there is ambiguity related to these two distinct resolutions of problems that may be alleged in citizen complaints—those outlined in section 521(a) of SMCRA (site-specific) and those outlined in section 521(b) of SMCRA (program issue). As the commenter notes, it is important to clearly differentiate between site-specific alleged violations governed by section 521(a) and 30 CFR part 842, under which the TDN process is invoked, and State regulatory program issues related to a State regulatory authority's alleged failure to implement, administer, maintain, or enforce its approved program governed by section 521(b) of SMCRA and 30 CFR part 733. In this final rule, OSMRE is seeking to eliminate this ambiguity and afford OSMRE the discretion to resolve site-specific violations and program issues by the most appropriate method while working in coordination with the State regulatory authority.

G. Citizens' Ability To Request Federal Inspections Is Not Diminished

As discussed throughout OSMRE's responses to comments received, several commenters expressed concern over the impact of the proposed rule on Federal inspections, while other commenters offered suggestions for further altering the regulations related to requesting Federal inspections pursuant to 30 CFR 842.12.

Comment: A commenter challenged OSMRE's proposed language in § 842.12(a) requiring a citizen, when requesting a Federal inspection, to provide the basis for their assertion that a State regulatory authority failed to act upon an alleged violation.

Response: As proposed and finalized in this rule, this provision will not be overly burdensome for a citizen complainant. For example, if the complainant notifies the State regulatory authority simultaneously with filing a complaint with OSMRE, the basis for the person's assertion could be as simple as restating the allegations in the complaint made to the State regulatory authority, coupled with the action, if any, taken by the State regulatory authority in response. However, OSMRE notes that a citizen complainant should provide as much information as possible, as that information will inform the OSMRE authorized representative's ''reason to believe'' determination. In all cases, OSMRE's authorized representative will consider readily available information, in addition to any information that the complainant may provide, as part of the authorized representative's ''reason to believe'' determination. As noted previously, requiring the citizen complainant to notify the State regulatory authority before or simultaneously with filing a request for a Federal inspection with OSMRE will give the State regulatory authority an opportunity to address the issue raised. This requirement is not unreasonable and should help prevent duplicative efforts.

Comment: A commenter requested that OSMRE amend § 842.12(a) to incorporate text contained in 30 U.S.C. 1267(h)(1) by inserting the phrase ''at the surface mining site'' after the word ''exists'' in the first sentence in proposed § 842.12(a), so that it would read: Any person may request a Federal inspection under § 842.11(b) by providing to an authorized representative a signed, written statement (or an oral report followed by a signed written statement) setting forth information that, along with any other readily available information, may give the authorized representative reason to believe that a violation, condition, or practice referred to in § 842.11(b)(1)(i) exists [at the surface mining site]. The commenter suggested that the same change be made to proposed § 842.11(b)(1)(i) by inserting the same phrase in the first sentence after the first appearance of the word ''exists'' and before the term ''a violation'' in the middle of the first sentence to limit citizen complaints, and any accompanying inspection, to on-the-ground impacts.

Response: OSMRE declines to make the suggested change because SMCRA does not include this language in 30 U.S.C. 1271(a). As explained elsewhere in this final rule, if a citizen complainant makes OSMRE aware of a State regulatory program issue that has not resulted in actual or imminent violation of the approved State program that often manifests as an on-the-ground impact at a specific site, OSMRE will handle the issue initially through the enhancements to the 30 CFR part 733 process adopted in this final rule. However, as noted repeatedly, OSMRE will still initiate an appropriate Federal enforcement action, such as issuance of a TDN, if the State regulatory program issue results in, or may imminently result in, a violation of the approved State program.

Comment: A commenter requested that OSMRE clarify that a request for a Federal inspection under 30 CFR 842.12 may be denied if it is clear that the request is a repeat of substantially identical requests made by the same person on the same issue.

Response: This rulemaking does not provide that OSMRE will automatically deny a request for a Federal inspection simply because a substantially identical request has been made previously. Instead, this rulemaking requires OSMRE to make a fact-specific determination each time it receives a citizen complaint or other allegation of a violation.

First, the OSMRE authorized representative must determine whether the alleged violation would constitute imminent harm. If so, OSMRE will bypass the TDN process and will proceed directly to a Federal inspection if the person supplying the information (usually in the form of a citizen complaint) provides adequate proof that there is an imminent danger to the public health and safety or a significant, imminent environmental harm and the State has failed to take appropriate action. *See* 30 U.S.C. 1271(a)(1) and (2). Nothing in this final rule is intended to modify these essential provisions of SMCRA and the existing regulations, which are aimed at immediately identifying and correcting imminent harm scenarios.

Second, the OSMRE authorized representative must issue a TDN to a State regulatory authority whenever he or she has reason to believe a violation exists. 30 U.S.C. 1271(a)(1) and 30 CFR 842.11(b)(1). The final rule makes clear that when determining whether he or she has ''reason to believe,'' OSMRE's authorized representative must make a fact-specific inquiry based on readily available information. 30 CFR 842.11(b)(1)(i). If OSMRE has already received a similar citizen complaint or if a substantially identical complaint has been filed with the State regulatory authority, and the State regulatory authority has investigated the matter, OSMRE may have more information readily available to determine if it has reason to believe a violation exists. Such information could lead the OSMRE authorized representative to determine that he or she does not have ''reason to believe'' because earlier, similar complaints had not revealed a violation. Similarly, if OSMRE has already issued a TDN based on a previously received similar complaint, it is unlikely that OSMRE will have reason to believe that another violation exists; without the requisite ''reason to believe,'' the authorized representative will not issue another TDN. Instead, as has been OSMRE's practice, OSMRE will inform the citizen in writing that subsequent citizen complaints are already being resolved through an existing TDN process, and a new TDN process will not be initiated. OSMRE will retain all citizen complaints in the record of the existing TDN process. It is also possible, however, that the OSMRE authorized representative will review what seems to be a similar complaint and formulate reason to believe that a different or renewed violation exists. In that scenario, the OSMRE authorized representative will issue a new TDN. Although many variations are possible, the OSMRE authorized representative will consider the facts alleged in each citizen complaint and any other readily available information before deciding if he or she has reason to believe a violation exists.

Comment: A commenter suggested that OSMRE clarify the final rule text at 30 CFR 842.12 to require citizens to exhaust all remedies afforded to them under each respective State regulatory program before requesting a Federal inspection. The commenter further opined that OSMRE should better delineate between the process it will follow when it receives a request for a Federal inspection in a State where OSMRE operates a Federal program and a primacy State. For primacy States, the commenter states that OSMRE should defer to the State process under which the alleged violation occurs, including the exhaustion of all State remedies.

Response: Nothing in SMCRA authorizes OSMRE to require that a citizen exhaust their remedies under a State regulatory program before requesting a Federal inspection. *See* 30 U.S.C. 1267(h)(1) and 1271(a)(1). Thus, OSMRE did not propose and is not finalizing a rule that would require a citizen to exhaust its remedies under a State program before requesting a Federal inspection from OSMRE. OSMRE notes, however, that by clarifying that OSMRE's authorized representative can review information from a State regulatory authority before determining whether he or she has ''reason to believe,'' OSMRE is recognizing that a State regulatory authority, as the primary SMCRA enforcement agency within its jurisdiction, is likely to have relevant information. Although the OSMRE authorized representative will make an independent determination of his or her ''reason to believe,'' this change better recognizes the State regulatory authority's expertise.

In response to the commenter's suggestion that OSMRE should delineate between situations where the State regulatory authority is the primacy enforcement authority—as in most situations—and when OSMRE is the primary regulatory authority, such as in the State of Tennessee, OSMRE reviewed its regulations and concluded that 30 CFR part 842, as finalized today, clearly distinguishes between OSMRE's oversight function in monitoring and evaluating the administration of approved State programs, including inspections and enforcement of Federal programs. *Compare* 30 CFR 842.11(b)(1)(ii)(A) (Federal program states) *with* 30 CFR 842.11(b)(1)(ii)(B) (primacy states). As specified in these regulations, the TDN process does not apply to Federal programs, where OSMRE is the regulatory authority.

Comment: One commenter supported the proposed addition to 30 CFR 842.12(a) requiring that a citizen provide an email address, if the citizen possesses one, when submitting the statement required to accompany a request for a Federal inspection.

Response: OSMRE agrees and is adopting this proposal in the final rule to allow for a more expeditious manner to contact citizen complainants, if necessary.

H. OSMRE's Enhancement to the Existing 30 CFR Part 733 Process is Aimed at Addressing State Regulatory Program Issues Early and Promptly Resolving the Issues

Comment: Several commenters opine that the 30 CFR part 733 process is an inadequate method of dealing with State regulatory program issues because it creates a delay in enforcement. These same commenters also claim that the existing 30 CFR part 733 process does not require prompt action by the State regulatory authority because of the public notice requirement found in existing 30 CFR 733.12(d).

Response: OSMRE agrees with the commenters that use of the existing 30 CFR part 733 process can take more time than is warranted to address issues requiring a timely response. However, the use of action plans as described in the finalized and redesignated § 733.12 does not have the same time requirements that are associated with existing § 733.12, which will be redesignated as 30 CFR 733.13 under this final rule. This will promote more prompt resolution of State regulatory program issues, as these issues will be identified prior to the issues escalating to the point where substitution of Federal enforcement or withdrawing part or all of a State program are necessary. Moreover, as OSMRE has repeatedly noted, even if OSMRE and the State regulatory authority are engaged in the corrective action process, including developing an action plan pursuant to the enhanced provisions of 30 CFR part 733, finalized in this rulemaking, the State regulatory authority and OSMRE will still take an appropriate enforcement action if there is an actual or imminent violation of the approved State program. In OSMRE's experience, a violation of the approved State program often manifests itself as an on-the-ground impact, but may also manifest by other means, such as a failure to submit a required certification or monitoring report.

Comment: A few commenters asserted that the existing process outlined in 30 CFR part 733 has only been used 10 times in the history of SMCRA.

Response: OSMRE agrees with the commenters that OSMRE has used the 30 CFR part 733 process infrequently since the inception of SMCRA. Prior to the enhancements to 30 CFR part 733, finalized in this rulemaking, the existing 30 CFR part 733 process, which was limited to substituting Federal enforcement of State programs or withdrawing approval of part or all of a State program, was a lengthy process that involved significant OSMRE and State regulatory authority interaction over a long period. The seriousness of substitution or withdrawal of State regulatory programs (whether in whole or in part), when necessary, should not be minimized, and OSMRE continues to find that this process is prudent. However, this type of enforcement mechanism is not well-suited to smaller, non-imminent harm issues that may require a much shorter time frame to effectuate resolution. This final rule does not change the fact that imminent harm issues will continue to be addressed promptly through Federal enforcement, as appropriate, to protect public health and safety. OSMRE's proposal to use early identification of State regulatory program issues and implement corrective action through action plans and to use Federal enforcement for site-specific violations bridges the two enforcement mechanisms of the existing 30 CFR part 733 process, as outlined in 30 U.S.C. 1271(b), and the TDN process, as outlined in 30 U.S.C. 1271(a). Development of a definition of ''State regulatory program issue'' and the use of compliance strategies and action plans to address State regulatory program issues *before* these issues develop into a more systemic, and potentially more environmentally harmful program issue requiring substitution of Federal enforcement or withdrawal of a State program, is much more efficient, addresses issues earlier, and potentially reduces the need to invoke the rare remedies of existing 30 CFR part 733. The intermediate process adopted in this final rule should minimize or prevent any unnecessary burdens as OSMRE and the State regulatory authority promptly resolve the State regulatory program issue.

Comment: A commenter supported the proposed addition at 30 CFR 733.5 of the definition of ''action plan'' and the explanation in the proposed rule that an ''action plan'' would be an efficient means of addressing State regulatory program issues. The commenter also favors the concept of identifying these issues early to avoid OSMRE exercising its oversight authority in the form of substitution or withdrawal of an approved State program.

Response: OSMRE agrees with these comments because, overall, OSMRE's final rule clarifications and enhancements at 30 CFR parts 733 and 842 will enable OSMRE to more quickly identify whether an alleged violation requires more immediate resolution through 30 CFR part 842 and the potential issuance of a TDN or whether the problem should be more appropriately and effectively handled through the 30 CFR part 733 process because it is a State regulatory program issue, as defined in this final rule, or a systemic problem within the approved program. This is a necessary distinction as set forth in SMCRA at 30 U.S.C. 1271(a) and (b). The latter statutory provision—30 U.S.C. 1271(b)—is aimed at correcting systemic, programmatic issues with State programs. Under this final rule, OSMRE will handle State regulatory program issues under the authority of section 1271(b). It is imperative for the Federal regulations to comport with this distinction. One of the reasons OSMRE proposed to specifically define the term ''State regulatory program issue'' is that, after four decades of oversight enforcement, citizens have sometimes conflated the provisions of sections 1271(a) and 1271(b), resulting in frustration, duplication, and unnecessary complication of the TDN process, which was designed to quickly address on-the-ground impacts. Moreover, not properly distinguishing the actions available under 30 U.S.C. 1271 has resulted in inefficient use of Federal and State resources, as it frequently resulted in duplication of State and OSMRE efforts without any clear environmental benefit. OSMRE's enhancements and clarifications in this final rule that distinguish features of the remedies for potential violations and State regulatory program issues will improve efficiency and effectiveness by appropriately narrowing the focus of 30 CFR part 842 because, under this final rule, State regulatory program issues will be addressed using the ''action plan'' process in final 30 CFR 733.12. OSMRE's ''action plan'' concept, which OSMRE is adopting in this final rule through the definition of ''action plan'' at 30 CFR 733.5 and the regulatory provisions at 30 CFR 773.12(b), will enhance OSMRE's ability to resolve programmatic issues as quickly as possible, resulting in better implementation of SMCRA. Furthermore, the addition of this enhancement will result in OSMRE taking action in advance of the rare remedies of withdrawal or substitution of an approved State program.

Comment: Similar to other commenters, as discussed above, that recognize the value in the enhancement of the existing 30 CFR part 733 process, a commenter also agrees with the proposed rule clarification that would allow programmatic concerns that OSMRE may identify involving a State regulatory authority to be handled outside the TDN process because programmatic concerns are more appropriately addressed under section 521(b) of SMCRA, 30 U.S.C. 1271(b), and the Federal regulations implementing that section. The commenter also supports OSMRE's proposed, minor revision to the circumstances that constitute ''good cause'' at existing § 842.11(b)(1)(ii)(B)(*4*) and OSMRE's proposed clarification of what constitutes ''reason to believe'' at existing § 842.11(b)(2). The commenter supported the proposed, minor revisions to the ''good cause'' provisions at existing 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*ii*) because, after OSMRE issues a TDN to a State regulatory authority, ''good cause'' for the State regulatory authority not taking appropriate action to cause an alleged violation to be corrected includes a State regulatory authority's initiation of an investigation into the alleged violation, and a reasonable amount of time is required to complete that investigation before OSMRE initiates a Federal inspection.

Response: OSMRE agrees with the commenter's statements about how the proposed rule would clarify the terms ''reason to believe'' and ''good cause,'' which should greatly reduce the number of situations when these terms, as implemented under the existing regulations, may have thwarted successful collaboration between OSMRE and the relevant State regulatory authority. OSMRE appreciates the commenter's support for the provision that OSMRE is adopting in this final rule that allows initiation of an investigation into an alleged violation to establish good cause. Moreover, successful collaboration between OSMRE and the State regulatory authority is a lynchpin to successful enforcement of SMCRA and State regulatory programs and is necessary under SMCRA's cooperative federalism framework. The provisions OSMRE is adopting in this final rule will enhance OSMRE's ability to consult with the State regulatory authority to efficiently and effectively solve problems. Implementation of OSMRE's proposed changes, which OSMRE is adopting in this final rule, will result in OSMRE being able to act more quickly to differentiate between violations that need immediate attention, and systemic program problems that are appropriately addressed through the existing 30 CFR part 733 process. In OSMRE's experience, OSMRE has observed that the existing TDN process frequently results in a State regulatory authority and OSMRE engaging in unnecessary duplication of effort and processes rather that working cooperatively to quickly resolve problems. This is contrary to the intent of section 201(c)(12) of SMCRA, which requires OSMRE to ''cooperate with . . . State regulatory authorities to minimize duplication of inspections, enforcement, and administration of [SMCRA].'' 30 U.S.C. 1211(c)(12). Furthermore, the implementation of the relevant clarifications in OSMRE's proposed rule, which OSMRE is adopting in this final rule, is consistent with E.O. 13777 of February 24, 2017, 82 FR 12285 (March 1, 2017). E.O. 13777 is aimed at alleviating unnecessary regulatory burdens placed on the American people, and this final rule achieves that goal by removing unwarranted duplication of processes by OSMRE and State regulatory authorities.

Comment: Unlike other commenters supporting the enhancement of 30 CFR part 733, regarding OSMRE's proposal to codify the process of early identification and corrective action to address State regulatory program issues as authorized by 30 U.S.C. 1271(b), a citizen commenter asserts that historically OSMRE had stronger oversight capabilities and that the proposed rule clarification is an attempt to redress OSMRE's alleged loss of oversight authority to resolve problems with State regulatory enforcement and recapture OSMRE oversight capabilities after State primacy is achieved. The citizen commenter expressed the concern that the 30 CFR part 733 process is like using a club to fix what is wrong with State enforcement. As an alternative, the commenter suggests repealing OSMRE's Directive REG–8 as a more effective tool than trying to enhance 30 CFR part 733. The commenter provided an example of the alleged slowness of a State regulatory authority's response to a recently filed citizen complaint. The commenter also asserts that OSMRE is attempting to address on-the-ground violations through the 30 CFR part 733 process, not through the TDN process. Notably, the citizen acknowledges that the rationale for citizens to notify both the State regulatory authority and OSMRE serves a positive purpose—essentially to ensure checks and balances resulting in more prompt resolution of issues.

Response: SMCRA and the implementing regulations provide OSMRE with two primary tools to ensure that a State regulatory authority is enforcing its approved program appropriately. First, SMCRA provides that, in certain circumstances, OSMRE may issue a notice of violation or cessation order directly to a permittee in a primacy State; the circumstances in which OSMRE can exercise direct Federal enforcement are outlined in 30 U.S.C. 1271(a) and 30 CFR parts 842 and 843. One relevant example of OSMRE's ability to engage in direct Federal enforcement is OSMRE performing a Federal inspection after determining that the State regulatory authority lacked good cause or did not take appropriate action to cause a violation to be corrected after OSMRE reviews the State regulatory authority's response to a TDN. 30 U.S.C. 1271(a)(1) and 30 CFR 842.11. The second tool OSMRE can use is outlined in 30 U.S.C. 1254(b), 1271(b), and 30 CFR part 733. This tool allows OSMRE to address a failure of a State to effectively enforce all or part of its State program. Under these provisions, OSMRE may substitute Federal enforcement for all or part of a State regulatory program or withdraw approval of all or part of a State program.

These two mechanisms are distinct and should not be conflated—one involves potential violations at specific sites, and one involves more systemic issues in State program enforcement. While it is true that, sometimes, a systemic issue with a State program can manifest itself in a violation at a site, it is also true that the TDN process is not the appropriate tool for resolving systemic, programmatic issues. Instead, the TDN process is designed to address alleged violations associated with individual permits. Importantly, however, § 733.12(d), as proposed and adopted in this final rule, provides that nothing in § 733.12 ''prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program, or OSMRE from taking appropriate oversight enforcement action, in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program.'' This provision will ensure that actual or imminent violations of an approved State program that often manifest in on-the-ground impacts, but may manifest by other means, are properly addressed even as OSMRE and a State regulatory authority are working to correct State regulatory program issues.

Despite the distinction between a site-specific violation and a systemic issue, OSMRE has received citizen complaints (*i.e.,* the site-specific process) that allege a State regulatory program issue (*i.e.,* a systemic issue). The regulatory revisions that OSMRE proposed, and that OSMRE is finalizing today, help to clarify the distinction between when OSMRE will use specific oversight tools—such as direct enforcement through the TDN process as opposed to an action plan under revised § 733.12. Specifically, the revision to the description of ''appropriate action'' at 30 CFR 842.11(b)(1)(ii)(B)(*3*) clarifies that, if OSMRE issues a TDN, and the State responds that it is working with OSMRE to ''immediately and jointly'' initiate steps to correct the systemic State regulatory program issue under 30 CFR 733.12, that response will be considered appropriate action, and OSMRE will not continue with the direct Federal enforcement process and will not perform a Federal inspection. Instead, OSMRE and the State regulatory authority will work to develop an action plan as set forth in revised 30 CFR 733.12 to address the underlying State regulatory program issue. To the extent that a systemic problem has resulted in a violation of the approved State program at a particular site, OSMRE will continue to use its direct Federal enforcement authority, including the TDN process, if warranted, to ensure such violation is corrected. This final rule serves to differentiate more accurately between the two distinct processes of oversight outlined in 30 CFR part 733 and 30 CFR parts 842 and 843. OSMRE's existing approach has demonstrated that a clarification of the distinction between these two processes is necessary to ensure that proper enforcement of SMCRA is achieved.

OSMRE understands the commenter's concern that 30 CFR 842.11(b)(1)(ii)(B)(*3*) refers to 30 CFR part 733, and OSMRE agrees with the commenter that, traditionally, using the existing part 733 process to cause the Federal enforcement of State regulatory programs or the withdrawal of approval of State regulatory programs is fairly severe and has been rarely used. However, OSMRE also proposed, and is finalizing, the addition of § 733.5 that specifically defines ''action plan'' and ''State regulatory program issue'' as used in final § 733.12, which specifically provides a process for OSMRE and a State regulatory authority to enter into an action plan to address systemic problems. The addition of the action plan process will allow OSMRE to more easily address, with the cooperation of the State regulatory authority, situations where an alleged violation can be traced to a systemic problem within an existing State regulatory program. This addition is consistent with SMCRA's cooperative federalism approach, and OSMRE expects to use revised 30 CFR 733.12 more frequently than it has traditionally used its authority to substitute Federal enforcement or withdraw State program approval because it will allow OSMRE to work with a State regulatory authority to cooperatively correct a State regulatory program issue.

The commenter also suggested that repealing OSMRE's Directive REG–8 would be a more effective tool for ensuring enforcement of SMCRA than the proposed revisions to 30 CFR part 733. OSMRE's Directive REG–8 is a detailed instructional document advising OSMRE staff on best practices for performing oversight consistent with 30 U.S.C. 1271. Within Directive REG–8, OSMRE identifies two types of regular oversight activities it uses to ensure a State regulatory authority is effectively administering, implementing, maintaining, and enforcing its approved regulatory program consistent with 30 U.S.C. 1271(b) and 30 CFR part 733. First, OSMRE prepares a report annually evaluating each State regulatory program. As set forth in Directive REG–8, each year, OSMRE uses certain fixed topics, such as off-site impacts and reclamation success, to evaluate the State regulatory authority. Each year, OSMRE also selects special topics for review. These special topics are chosen, in part, based on suggestions from the public. Second, OSMRE conducts inspections of surface coal mining and reclamation operations as necessary to monitor and evaluate the administration of approved State programs in accordance with 30 CFR part 842. This Directive is an internal document that OSMRE uses to ensure consistency across the bureau and to provide transparency to stakeholders on how OSMRE operates with respect to its routine evaluation of State regulatory authorities. Elimination of Directive REG–8 would increase the likelihood that various OSMRE offices would approach annual evaluation reports and oversight inspections differently, which could result in a lack of clarity for the public. For this reason, elimination of Directive REG–8 would not be a more effective method to implement change.

The regulations, as finalized, better distinguish between the distinct oversight tools authorized by 30 U.S.C. 1271, by better explaining when OSMRE will use each tool. As such, the finalized regulations encourage efficiency and effectiveness when resolving alleged violations and State regulatory program issues by categorizing them appropriately and eliminating wasteful administrative processes that may hinder prompt resolution.

OSMRE also acknowledges that citizens may determine that filing citizen complaints with both OSMRE and a State regulatory authority may be beneficial. However, in OSMRE's experience, State regulatory authorities are typically in a better position to respond quickly and ensure that violations are corrected. OSMRE has long since acknowledged that ''if citizens contact the State initially, most problems will be resolved satisfactorily without the need for intrusion by the Federal government.'' 47 FR at 35628. That is why, since 1982, OSMRE has required that a citizen notify a State regulatory authority ''in writing, of the existence of the violation, condition or practice'' before or simultaneously with notifying OSMRE of a request for Federal inspection. OSMRE still finds, as it did in 1982, that ''this citizen notification requirement will enhance the protection of citizens by giving the State an earlier opportunity to act. Information from a person can be transmitted to a State regulatory authority quickly and accurately when a citizen communicates directly with the State.'' *Id.* Thus, OSMRE has maintained the requirement in 30 CFR 842.12(a) to require a citizen, when requesting a Federal inspection, to inform OSMRE that the citizen has contacted the State regulatory authority. Additionally, OSMRE is finalizing the proposal that a citizen, when requesting a Federal inspection, also provide a basis for why the citizen asserts that the State regulatory authority has not taken action. This information will help OSMRE's authorized representative better ascertain whether the citizen followed the regulation by notifying the State regulatory authority and what information may exist that would be useful in determining whether the authorized representative has reason to believe a violation exists.

Comment: One commenter opined that OSMRE needs to codify the process for the action plan.

Response: Through this rulemaking, OSMRE is codifying the process for developing and using action plans to correct systemic State regulatory program issues. Currently, OSMRE uses a variation of this process as set forth in its Directives REG–8 and REG–23. As long as they are not arbitrary and capricious or contrary to SMCRA's specific statutory language, section 201(c)(2) of SMCRA confers on the Secretary of the Interior broad authority to ''publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provision of this Act.'' 30 U.S.C 1211(c)(2); *see also In re Permanent Surface Min. Regulation Litig.,* 653 F.2d 514, 523 (D.C. Cir. 1981) (*en banc*)); *Nat'l Min. Ass'n* v. *U.S. Dep't of the Interior,* 105 F.3d 691, 695 (D.C. Cir. 1997).

Section 521(b) of SMCRA provides that ''[w]henever on the basis of information available to him, the Secretary has reason to believe that violations of all or any part of an approved State program result from a failure of the State to enforce such State program or any part thereof effectively,'' the Secretary must initiate a process that could result in OSMRE substituting Federal enforcement for all or part of a State regulatory program or withdrawing approval of all or part of a State regulatory program. 30 U.S.C. 1271(b); *see also* 30 U.S.C. 1254(a). This rulemaking is not contrary to these provisions of SMCRA because it allows OSMRE to work with a State to correct a systemic issue that OSMRE has identified with a State program. The mere fact that a State is willing to work with OSMRE in good faith to correct a problem shows that it is working to adequately implement, administer, enforce, and maintain its approved program. Logically then, OSMRE would not have ''reason to believe'' under 30 U.S.C. 1271(b) that the State is failing to enforce its program effectively. Thus, no statutory change is needed for OSMRE to promulgate this regulation.

Comment: One commenter suggested specific changes to OSMRE's proposed definition of ''action plan'' at 30 CFR 733.5 to mean a ''detailed list of specific actions and the schedule OSMRE prepares to identify specific actions . . . .'' The suggested definition of ''action plan'' would also list examples of specific actions such as: Compliance with what the commenter has classified as ''Federal environmental regulations'' that the commenter later defines as ''Federal regulations,'' but which actually consist of Federal environmental statutes, that include, among others, the Migratory Bird Treaty Act and the Clean Water Act; public notification and involvement; and dates in which State regulatory issues are to be resolved. The commenter requested that its proposed definition of ''action plan'' include ''specific information on compliance measures including timelines, success criteria, and contingency plans in the event the success criteria are not reached.'' The commenter also suggested the addition of new definitions at § 733.5 for many of the terms included in its proposed definition of ''action plan,'' such as ''adequate funding'' and ''public notification and involvement.'' According to the commenter, these definitions would work in conjunction with the commenter's suggested revisions to the term ''action plan.'' For instance, the commenter indicated that an ''adequate funding'' definition would be useful to ensure that the State regulatory authority has sufficient funds to carry out compliance and mitigation measures described in the action plan. Likewise, the commenter suggested that the addition of ''public notification and involvement'' would include a list of various public notification methods and techniques relating to notifying the public.

Response: OSMRE disagrees that the appropriate location for the items suggested by the commenter is within the definitions at 30 CFR 733.5. OSMRE proposed most of the items suggested by the commenter at revised 30 CFR 733.12(b), which details what should be included in an action plan, such as the requirements that an action plan contain specific dates and timelines of when the State regulatory program issue is to be resolved and contingency plans if success is not achieved.

As to the suggested definition of ''adequate funding,'' State regulatory authorities must demonstrate that they have ''sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this Act.'' 30 U.S.C. 1253(a)(3). OSMRE provides administration and enforcement grants to State regulatory programs annually. 30 U.S.C. 1295(a). In addition, OSMRE conducts an annual oversight review of each State program, and, if necessary, OSMRE can evaluate the sufficiency of a State regulatory authority's funding, including the sufficiency of funding to carry out any action plans. For these reasons, OSMRE declines to add a definition of ''adequate funding'' to 30 CFR 733.5.

OSMRE also disagrees with the need to include a definition for ''public notification and involvement.'' Any definition of this term in 30 CFR 733.5 would only be applicable to the sections of part 733; OSMRE's general definitions for its permanent regulatory program are found in 30 CFR 700.5 and 701.5 and neither contains a definition of public notification and involvement or a similar term. SMCRA contains many provisions related to public participation. *See, e.g., W. Va. Highlands Conservancy, Inc.* v. *Norton,* 343 F.3d at 242. SMCRA's public notification and participation procedures have long been understood in the context of their usage and as part of each State's approved regulatory program. Moreover, while OSMRE's regulations do not provide for public involvement in the development of an action plan, revised 30 CFR 733.12(c) requires each State regulatory program issue, and benchmarks related to the resolution of that issue, to be tracked in each State's Annual Evaluation report, which is a public document published on OSMRE's website. Thus, the public will have access to any action plans that are developed.

Comment: A commenter suggested that OSMRE add a definition in § 733.5 for ''Federal regulations.'' The suggested definition makes reference to several Federal environmental regulations with which a State regulatory authority must comply, including the Endangered Species Act of 1973, the Migratory Bird Treaty Act, the Clean Water Act, and the Archaeological Resources Protection Act. The commenter also suggests the addition of a definition in § 733.5 for ''Listed species'' and refers to the meaning of the term under the Endangered Species Act of 1973. The commenter also requested that OSMRE define ''Migratory bird'' and make reference to the meaning of the term under the Migratory Bird Treaty Act. The same commenter also suggested adding a sentence to the end of OSMRE's definition of ''State regulatory program issue.'' The added sentence would state that ''State regulatory program issue'' would include ''the potential failure to comply with or completely implement Federal regulations.''

Response: These terms exist outside of SMCRA and are not part of this rulemaking effort. States must comply with all applicable Federal and State laws. For these reasons, OSMRE declines to include them in this rule.

Comment: Similar to the comment above, the same commenter, representing an NGO, suggested that OSMRE list specific Federal regulations that could result in a State regulatory program issue and a subsequent action plan in the commenter's proposed definition of ''Federal regulations.'' This commenter also suggested rule changes to reflect inclusion in the action plan of any mitigation measures ''that are necessary to return the affect[ed] area to pre-project conditions.'' The commenter also suggested that OSMRE include specific criteria to determine if the State regulatory program issue has been remedied or mitigated.

Response: OSMRE declines to add a definition of ''Federal regulations'' to 30 CFR 733.5 because the language at revised 30 CFR 733.12 is sufficiently broad to address whatever SMCRA program deficiency needs correction, and the regulation at final 30 CFR 733.12(b)(1) requires the action plan to ''be written with specificity to identify the State regulatory program issue . . . .'' Thus, any SMCRA provision or implementing regulation that is the subject of the program issue will be identified at that time. As to the suggestion to require the return of the affected area to pre-project conditions, there is no provision in SMCRA that requires the return of a mine site to its pre-project condition. Instead, SMCRA requires permit applicants to reclaim the mine site as required by the Act and the State or Federal program. 30 U.S.C. 1260(b)(2). SMCRA further requires, for example, restoration of the land affected by mining ''to a condition capable of supporting the uses which it was capable of supporting *prior to any mining, or higher or better uses of which there is a reasonable likelihood* . . . .'' 30 U.S.C. 1265(b)(2) (emphasis added). The commenter's suggestion is directly contrary to these provisions of SMCRA; therefore, OSMRE rejects this comment.

OSMRE agrees with the commenter that specific criteria should be included as part of each action plan so that OSMRE can evaluate whether the problem has been remedied. OSMRE, however, declines to adopt the specific language proposed by the commenter because, as proposed and finalized today, 30 CFR 733.12(b)(3)(iii) already includes language requiring actions plans to contain ''[e]xplicit criteria for establishing when complete resolution [of the State regulatory program issue] will be achieved.''

Comment: A commenter suggested that OSMRE not adopt ''Early identification and corrective action to address State regulatory program issues'' at proposed § 733.12 and instead incorporate OSMRE's suggested changes into existing OSMRE Directive REG–23. The commenters suggested varying degrees of positive and negative experiences with State-OSMRE action plans and their effectiveness.

Response: OSMRE declines to make this change. The enhanced 30 CFR part 733 process that OSMRE is finalizing today is an important part of clarifying when OSMRE will use its authority under 30 U.S.C. 1271(a) and when it will use its authority under 30 U.S.C. 1271(b). Codifying this procedure in the Federal regulations versus an internal guidance document will give OSMRE a transparent mechanism that has gone through public review and comment to resolve State regulatory program issues. OSMRE acknowledges the commenter's varying experiences with action plans, but OSMRE is expecting to obtain positive results from this regulatory process as adopted in this final rule.

Comment: A commenter made several specific suggestions to OSMRE's wording in proposed 30 CFR 733.12. These suggestions included wording related to actions taken by the Director to make some actions mandatory rather than discretionary and adding terms related to timing, such as ''immediately'' and ''without delay.'' The commenter also suggested reducing the specific timeframe in which State regulatory program issues need to be resolved to 30 days calendar days as opposed to the 180 days as proposed by OSMRE.

Response: The purpose behind OSMRE's proposed new 30 CFR 733.12 is to give OSMRE a new tool, the development of an ''action plan,'' to use to ensure that systemic issues with State regulatory programs are addressed in a measured, but no less accountable, manner. This tool provides OSMRE with another means to better manage situations where a SMCRA problem may exist but does not require immediate action under the TDN process, though it needs to be addressed in a shorter time frame than the traditional 733 process. An action plan is the vehicle to use in these situations. Adoption of the commenter's suggested changes to proposed § 733.12 would result in the loss of flexibility, which is the purpose of this section; thus, OSMRE is not making the suggested changes.

Comment: A group of commenters requested that OSMRE revise proposed § 733.12(a)(2) to ''fully reflect the flexibility in the Part 733 process and avoid any inference that OSM[RE] can skip steps in the process.'' The commenters suggested that paragraph (a)(2) should be revised as follows (commenters' suggested language in italics):

> If the Director *has reason to believe* [as opposed to ''concludes'' in the proposed rule] that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program, the Director may *initiate proceedings to* substitute Federal enforcement of a State regulatory program or withdraw approval of a State regulatory program as provided in Part 733.

Response: OSMRE declined to make the requested changes because final 30 CFR 733.12 will allow for the development of action plans to resolve State regulatory program issues; in contrast, the complete 30 CFR part 733 process is aimed at larger programmatic issues. An action plan is designed to prompt action *before* the full process for substituting Federal enforcement or withdrawing a part or whole State program occurs as outlined in existing 30 CFR part 733 is necessary or initiated. To include the steps associated with existing § 733.12 would muddy the distinction between an action plan used to resolve regulatory program issues, which can be at the permit level, and a programmatic problem involving a deeper systemic issue.

Comment: One commenter suggested revisions to proposed 30 CFR 733.12(b)(3) and (4) to specify that OSMRE notify the public when OSMRE identifies a State regulatory program issue by posting all relevant documents on OSMRE's website. The commenter further requested that the regulation be revised to allow public review and comment on action plans before they are adopted. Finally, the commenter suggested revising the regulation to require OSMRE to post action plans and State regulatory authority Annual Evaluation reports on OSMRE's website.

Response: As addressed above, the proposed regulation at 30 CFR 733.12(c), which is adopted with modifications in this final rule, will provide that ''[a]ll identified State regulatory program issues and any associated action plan must be tracked and reported in the applicable State regulatory authority's Annual Evaluation report.'' OSMRE already posts Annual Evaluation reports on OSMRE's website. *See https://www.odocs.osmre.gov/.* OSMRE also intended to post any action plans developed between OSMRE and a State regulatory authority on OSMRE's website. Therefore, OSMRE is revising the final rule to provide that OSMRE will make all Annual Evaluation reports available on OSMRE's website and at the applicable OSMRE office. Thus, the public will be notified of each identified State regulatory program issue and associated action plan.

While public participation is an essential and routine part of many aspects of OSMRE's regulatory program, public input in the development of an action plan would hamper OSMRE's ability to timely address identified State regulatory program issues. Even though OSMRE's process of developing an action plan does not include a public comment element, the inclusion of the term ''any source'' in revised 30 CFR 733.12(a)(1) makes it clear that a citizen, an organization, or any other source may provide information to OSMRE that could lead the Director to conclude that there may be a State regulatory program issue, which could result in an ''action plan.''

Comment: A commenter recommended the deletion of proposed § 733.12(d) because it would allow OSMRE to take an oversight enforcement action before a violation exists. The commenter referred to the portion of the proposed rule that read, ''*may imminently result* in an on-the-ground violation.'' Emphasis in original.

Response: OSMRE declines to make this change. Under this final rule, OSMRE retains the right to issue a TDN to a State regulatory authority if a previously identified State regulatory program issue has not been adequately addressed and results in an actual or imminent violation of the approved State program. In the final rule, as discussed in the section-by-section analysis, OSMRE has removed the reference to ''on-the-ground violation'' and replaced it with ''a violation of the approved State program.'' OSMRE recognizes that these violations often manifest as an on-the-ground impact, but OSMRE also recognizes that these violations may manifest by other means. For example, a permittee's failure to submit required monitoring reports or submit annual certifications may be a site-specific violation of the approved State program. Specific to the comment, when OSMRE determines that a violation of the approved State program is imminent, it makes sense for OSMRE to take action to prevent actual problems. One of the primary purposes of SMCRA is to protect society and the environment from the harmful effects of surface coal mining operations, and OSMRE will be able to fulfill that purpose, in part, under § 733.12(d), which is being adopted in this final rule.

I. Interrelationship of 30 CFR Part 733 and 30 CFR Part 842

Despite the distinct processes outlined in 30 U.S.C. 1271(a) and (b) for handling site-specific violations and those violations of a programmatic nature, the reality of OSMRE enforcement is that, in practice, the nature of these violations may sometimes blur. This overlap may occur as a result of circumstances, stakeholders conflating the processes, and complicated issues associated with coal mining. Thus, although a multi-state governmental organization commenter found OSMRE's inclusion of reference to one distinct process when discussing the other process to be ''perplexing,'' OSMRE's experience—and other comments received on this topic—demonstrate that the interrelationship must be considered.

Comment: Similar to a comment discussed above in Section II., H., a group of commenters claimed that the use of the proposed 30 CFR part 733 process to deal with any on-the-ground issue is inconsistent with SMCRA and will be more disruptive than using a TDN as directed by 30 CFR part 842. This group of commenters also claimed that a TDN is needed when a State regulatory authority fails to act on a violation.

Response: OSMRE agrees with the commenters that existing 30 CFR 733.12, now redesignated as 30 CFR 733.13 in this final rule, and entitled, ''Procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs,'' does not quickly effectuate change. However, OSMRE notes that this is a distinct process that must be implemented carefully and prudently. To bridge this gap, OSMRE proposed 30 CFR 733.12, which is being finalized today, as an early identification process for a prompter resolution of State regulatory program issues than under the existing regulations. This enhancement to the 30 CFR part 733 process serves to identify issues before the issues warrant the rare remedies of substitution of Federal enforcement or withdrawal of an approved State program. As previously discussed, the development and use of action plans in 30 CFR 733.12, as finalized, will resolve State regulatory program issues. In addition, even when OSMRE and a State regulatory authority are engaged in an action plan process, OSMRE will still take appropriate enforcement actions to address imminent harm situations and will issue TDNs for actual or imminent violations of an approved State program, such as those that have on-the-ground impacts. State regulatory program issues may also result in a direct Federal enforcement action under revised § 733.12(d) if the State regulatory authority does not address issues as outlined in the action plan and there is an actual or imminent violation of the approved State program.

Comment: OSMRE received a number of comments on what constitutes a ''State regulatory program issue.'' A commenting group requested that OSMRE clearly express the delineation between a ''violation'' as used in section 521 of SMCRA and a ''State regulatory program issue'' as proposed in § 733.5 and redesignated as § 733.12. The group further suggested that OSMRE consider adding language to the definition of State regulatory program issue that states that State regulatory program issues are not ''violations'' in the context of section 521(a)(1) of SMCRA.

Response: OSMRE declines to make this requested delineation and associated change because OSMRE is afforded a degree of discretion to determine if something is a State regulatory program issue that should be addressed under the enhanced and finalized 30 CFR part 733 process or is site-specific with on-the-ground impacts that fall under the TDN process outlined in part 842. Moreover, finalized § 733.12(d) continues to grant OSMRE the authority to take enforcement action to address an actual or imminent violation of an approved State program that often manifests as an on-the-ground impact. To do as the commenter suggests, *i.e.,* the wholesale exclusion of State regulatory program issues from the TDN process, would create a regulatory loophole and be inconsistent with congressional intent. Further, as stated previously, what constitutes a violation is well understood by OSMRE, State regulatory authorities, and permittees. Thus, no change to the definition of State regulatory program issue is needed.

Comment: A commenter suggested that OSMRE overtly state that State regulatory program issues are not the basis for a TDN.

Response: While at least initially, a State regulatory program issue will not result in the issuance of a TDN, OSMRE is reserving the right to conduct Federal enforcement in accordance with final rule § 733.12(d) in the event that a State regulatory authority does not adhere to an action plan or if a State regulatory program issue results in an actual or imminent violation of the approved State program that often manifests as an on-the-ground impact. Therefore, OSMRE declines to make the overt statement that the commenter requested.

Comment: A commenter group requested that OSMRE reconsider defining ''appropriate action'' for a ''State regulatory program issue'' under § 842.11 as an ''appropriate action'' in response to a TDN under 30 CFR part 842. The group noted that OSMRE spent considerable time in preamble text delineating OSMRE's authority for the TDN process under 30 U.S.C. 1271(a) and 30 CFR part 842 and the 30 CFR part 733 process as required by 30 U.S.C. 1271(b). The group further suggested that State regulatory program issues are not to be the basis for a TDN; therefore, the inclusion of an action plan to address a State regulatory program issue, as an element of the TDN process, seemed to conflate the apparent distinction OSMRE was making between the TDN and 30 CFR part 733 processes.

Response: As OSMRE understands the comment and associated request, OSMRE declines to accept this change. If a State regulatory authority, operating under final § 733.12, including development of an action plan, does not address the program issues identified in the action plan in the manner, and in accordance with the dates, outlined in the action plan, OSMRE may need to institute Federal enforcement to address the issue if there is an actual or imminent violation of the approved State program. The action plan process in final § 733.12 is not a vehicle to avoid Federal enforcement; instead, it is a tool to address State regulatory program issues promptly.

Comment: Several commenters challenged the use of the 30 CFR part 733 process, as it existed in the pre-existing regulations and with the enhancements finalized today, to address State regulatory program issues that result from State permitting deficiencies. Various commenters asserted that OSMRE has used TDNs (under 30 CFR part 842) for years to address such State regulatory program issues. One commenter opined that an ''enormous loophole'' will be created by addressing all State regulatory program issues through the 30 CFR part 733 process instead of through the TDN process.

Response: OSMRE disagrees with these comments. OSMRE has acknowledged that, at various times, it has addressed State permitting issues through the TDN process. When it did so, OSMRE followed internal policies. Under this final rule, OSMRE is clarifying that it will not use the TDN process for alleged issues with a State regulatory authority's implementation of its approved State program, unless there is an actual or imminent violation of the approved State program. In OSMRE's experience, these violations often manifest in on-the-ground impacts. Instead, OSMRE will initially address such issues through the enhanced 30 CFR part 733 process. After all, if a permittee obtained a permit from the State regulatory authority on the basis of an accurate and complete application, the permittee has initially fulfilled the requirements of SMCRA and the State regulatory program. *See, e.g., Coal River Mountain Watch* v. *Republic Energy, LLC,* No. 5:18–CV–01449, 2019 WL 3798219, at *8 (S.D.W. Va. Aug. 12, 2019). However, as this final rule provides, even if OSMRE and the State regulatory authority are engaged in the State regulatory program issue or action plan processes, the State and OSMRE can still take appropriate enforcement actions if a violation of the approved State program has occurred or is imminent. By using action plans as an additional regulatory tool, the intent of sections 504 and 521 of SMCRA will be met without any damage to the environment or to the detriment of permittees. As described and contained in this final rule, action plans are regulatory instruments to accomplish specific objectives and have required timelines to resolve issues at hand. If a State regulatory program issue cannot be resolved through an action plan, the issue could result in a Federal substitution or takeover of a State regulatory program. The State regulatory program issue and action plan processes in this final rule, coupled with the TDN process, should ensure a more complete and timely enforcement of State regulatory programs.

Comment: One commenter stated that violations emanating from ''permit defects'' should be handled through the TDN process set forth in 30 CFR part 842 and not under the proposed early identification and corrective action process outlined in the enhancements to 30 CFR part 733 or through the existing 30 CFR part 733 process. One commenter expressed concern that excluding the State regulatory authority from the TDN process undermines the balance between primacy and Federal oversight and the intent of Congress. Other commenters, pointing to past OSMRE decisions reviewing requests for Federal inspections related to State permitting decisions, requested that OSMRE clearly state that permit defects are totally excluded from the TDN process.

Response: In general, OSMRE interprets the term ''permit defect'' to be a deficiency in a permit-related action taken by a State regulatory authority. The term does not appear in SMCRA and is not contained in the existing regulations. Rather, OSMRE has used the term in internal documents over the years, though OSMRE no longer uses the term in its existing Directive INE–35, entitled ''Ten-Day Notices'' and dated May 3, 2019. Section 521(a)(1) of SMCRA refers to ''reason to believe any person is in violation of any requirement of [SMCRA]. . . .'' As explained in the proposed rule, 85 FR at 28906–07, and in this final rule, ''any person,'' in the context of who can be in violation of SMCRA or a State regulatory program, does not include a State regulatory authority, unless it is acting as a permit holder. OSMRE acknowledges that the term ''any person'' also appears earlier in the same sentence of 30 U.S.C. 1271(a), but, in that context, SMCRA is referring to ''any person'' that provides information to the Secretary about possible violations; the term in that context is broader and can include a State regulatory authority. Under this final rule, OSMRE generally will not issue a TDN to a State regulatory authority for an identified State regulatory program issue. More specific to the context of this comment, under this final rule, a so-called ''permit defect'' will typically be handled as a State regulatory program issue, unless there is an actual or imminent violation of the approved State program. OSMRE will continue to take an appropriate direct enforcement action under the TDN or imminent harm processes, even if the impact stems from an underlying State regulatory program issue.

Under this final rule, OSMRE will follow the statutory delineation of sections 521(a) (the site-specific TDN process at 30 CFR part 842) and 521(b) (the State regulatory program issue 30 CFR part 733 process) with respect to Federal enforcement. Although OSMRE has taken varying positions over the years, the best reading of SMCRA is that Congress intended the section 521(a) TDN process to be limited to violations at a specific site. In contrast, State regulatory program issues, which are more systemic in nature and could include alleged issues related to one or more permits issued by a State regulatory authority but do not result in site-specific violations of the approved State program, should be addressed under section 521(b) and the process outlined in finalized 30 CFR 733.12. In the proposed rule, OSMRE proposed to retain the ability to take Federal enforcement action if any issue being addressed as a State regulatory program issue, as outlined in redesignated 30 CFR 733.12, results in, or may imminently result in, on-the-ground violation. OSMRE is adopting this proposal in this final rule but has changed the terminology in § 733.12(b) to read, ''in violation of the approved State program.'' OSMRE has made this modification in response to public comments and because this change best addresses identified issues that are not specific to an individual site but are more systemic in nature. This is important because OSMRE will still take appropriate enforcement action for actual or imminent violations of an approved State program that often manifest as on-the-ground impacts even while OSMRE and a State regulatory authority are pursuing corrective actions for State regulatory program issues. A multi-state governmental organization representing the natural resource and related environmental protection interests of its 27 member States agreed that OSMRE can ''issue a TDN for an alleged permit defect that has resulted in an on-the-ground violation of a performance standard at a mine.'' Under § 733.12 of this final rule, OSMRE will use any number of compliance strategies, including action plans when appropriate, to address regulatory program issues that result from State regulatory authority permitting actions while also preserving OSMRE's ability to take enforcement action in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program. As a commenter pointed out, the 30 CFR part 733 process has historically been used after back and forth discussions between OSMRE and a State regulatory authority to identify and institute any necessary changes to a State program. The last resort in this situation, which is unaffected by this final rule, is for Federal substitution or withdrawal of all or part of a State regulatory program under the existing 30 CFR part 733 process. In OSMRE's view, the introduction of a definition for the phrase ''State regulatory program issue,'' combined with various compliance strategies, including action plans when appropriate, is an intermediary step between a Federal substitution or withdrawal of a State regulatory program under the part 733 process and the section 521(a) TDN process. An action plan, with associated issue-specific time frames, serves as a beneficial and productive middle ground. It is important to keep the goals of regulatory oversight in mind: Address issues as they arise while causing correction and minimization of on-the-ground impacts as soon as possible. The revisions to 30 CFR parts 733 and 842 in this final rule achieve those goals by providing OSMRE with more tools to more appropriately, efficiently, and quickly address the range of regulatory issues that arise.

Comment: A commenter opined that the citizen complaint process contained in 30 CFR part 842 should not be used to challenge state permitting issues under the guise of a ''violation of the Act or program.''

Response: As has been previously stated, Congress intended public participation in the implementation and enforcement of SMCRA and specifically added section 521(a) to the statute to account for that participation. The language of 30 U.S.C. 1271(a)(1) is clear that the TDN process should be used for a non-imminent harm situation when ''the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act. . . .'' However, if the alleged violation satisfies the definition of ''State regulatory program issue,'' which could include issues related to State permitting, OSMRE will use the process set forth in 30 CFR 733.12, as finalized, to address the issue. If it is not clear, at the time the citizen complaint is received, whether the alleged violation is actually a State regulatory program issue, OSMRE, if it has the requisite ''reason to believe,'' will still issue a TDN to a State regulatory authority. If, after review of the information provided in the State's response to the TDN, it turns out that the alleged violation is properly characterized as a State regulatory program issue, under revised 30 CFR 842.11(b)(1)(ii)(B)(*3*), the State will have taken appropriate action in response to the TDN by working with OSMRE to resolve the issue; thus, OSMRE will not conduct a Federal inspection. Of course, under finalized 30 CFR 733.12(d), if the State regulatory program issue manifests itself as a violation of the approved State program that often results in an on-the-ground impact, OSMRE can still take direct enforcement action.

Comment: A commenting group suggested that OSMRE revise the proposed definition of ''State regulatory program issue'' to exclude all programmatic and permitting issues from the TDN process found in 30 CFR part 842. The group also offered language at specific sections in proposed 30 CFR part 842 to effectuate this understanding. The suggested changes included adding a definition section to 30 CFR part 842 that defines the following phrases and terms: ''State regulatory program issue'' and ''violation'' as used in 30 CFR parts 733 and 842. The commenter also suggested deleting the proposed revisions to the term ''appropriate action'' regarding joint inspections and to the term ''good cause,'' which references 30 CFR part 733 State regulatory program issues. OSMRE infers from the comments that these suggested changes are presumably to indicate that State regulatory program issues are not appropriate subjects for a TDN.

Response: OSMRE declines to make these changes because, as already stated in this preamble, under this final rule, OSMRE will not follow the process in 30 CFR 842.11 for State regulatory program issues, unless there is an actual or imminent violation of the approved State program. However, as noted above, sometimes OSMRE may initially issue a TDN for something that turns out to be a State regulatory program issue.

J. Specific Responses to Other Comments Received About the Proposed Rule

Comment: One commenter questioned the validity of OSMRE's intention for clarifying the existing regulations. Specifically, this commenter alleged that despite OSMRE's rationale, the true rationale behind the proposed rulemaking is to ''reduce the workload of federal and state regulatory authorities due to lack of adequate funding to implement the Act as Congress intended it be done.''

Response: The commenter provided no evidence that the State regulatory authorities have insufficient funding to carry out their obligations under SMCRA. For this and many other reasons stated throughout the proposed rule and this final rule preamble, OSMRE disagrees with the commenter. To the contrary, this rulemaking is intended to add transparency to OSMRE's oversight responsibilities; promote regulatory certainty for State regulatory authorities, regulated entities, and the public; enhance OSMRE's relationship with the State regulatory authorities; reduce redundancy in inspection and enforcement; and streamline the process for notifying State regulatory authorities of possible violations and other issues. With respect to the commenter's allegation that insufficient funding is provided to State regulatory authorities, OSMRE notes that Federal administration and enforcement grants are awarded to State regulatory authorities based, in part, on the anticipated workload, such as permitting and inspection, that is necessary for State regulatory authorities to administer and enforce their approved State programs under SMCRA. *See* 30 CFR part 735 and OSMRE's Federal Assistance Manual, Chapter 5–200, The Application Process for a Regulatory Grant. In the event that OSMRE has reason to believe that a State regulatory authority is not effectively implementing, administering, maintaining, or enforcing any part of its approved program—including not sufficiently funding the approve State program, OSMRE may initiate procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs as detailed in redesignated 30 CFR 733.13.

Comment: A commenter expressed concern that the proposed change from ''shall'' to ''will'' in 30 CFR 842.11(b)(1) converts a previously mandatory duty into a discretionary duty.

Response: As explained in the preamble to the proposed rule, the purpose of changing ''shall'' to ''will'' in 30 CFR 842.11(b)(1) was to clarify potential ambiguity with the word ''shall.'' 85 FR at 28907. As Justice Ginsburg explained in *Gutierrez de Martinez* v. *Lamagna,* ''[t]hough 'shall' generally means 'must,' legal writers sometimes use, or misuse, 'shall' to mean 'should,' 'will,' or even 'may.' '' 515 U.S. 417, 432–33, n.9 (1995). Even in an enforcement provision like this one, the use of the word ''shall'' does not necessarily give rise to a mandatory, nondiscretionary duty. *See, e.g., Heckler* v. *Chaney,* 470 U.S. 821, 835 (1985); *Sierra Club* v. *Jackson,* 724 F. Supp. 2d 33, 38 n.l (D.D.C. 2010) (''the mandatory meaning of 'shall' has not been applied in cases involving administrative enforcement decisions''); Fed. R. Civ. P. 1, Advisory Committee Notes (2007) (''The restyled rules minimize the use of inherently ambiguous words. For example, the word ''shall'' can mean ''must,'' ''may,'' or something else, depending on context. The potential for confusion is exacerbated by the fact that ''shall'' is no longer generally used in spoken or clearly written English.'').

To guard against this potential ambiguity, OSMRE proposed to replace the word ''shall'' with the word ''will'' because ''will'' indicates an event (*i.e.,* a Federal inspection) that is to occur in the future under specific circumstances (*i.e.,* when the OSMRE authorized representative issues a TDN, and the State regulatory authority fails to respond with good cause or appropriate action). This word choice clarification was not intended to render the action at 30 CFR 842.11(b)(1) as anything but mandatory. However, in consideration of the comment, OSMRE is adopting this suggestion to remove any ambiguity over the mandatory nature of the authorized representative's responsibility to issue a TDN when ''reason to believe'' is formulated. However, instead of replacing ''shall'' with ''will,'' as proposed, OSMRE will substitute the word ''shall'' with ''must'' in order to more affirmatively communicate the mandatory requirement. The **Federal Register** Document Drafting Handbook provides, ''use 'must' instead of 'shall' to impose a legal obligation to your reader.'' Additionally, the Federal Plain Language Guidelines—referred to in the Federal Plain Writing Act of 2010—also direct Federal agencies to use ''must'' not ''shall'' to indicate requirements.

Comment: A commenting group suggested that OSMRE incorporate regulatory language that defines the term ''violation.'' The commenter asserted that, in the TDN context, a violation only occurs in the context of on-the-ground violations of a State regulatory program, rather than to infractions of SMCRA generally.

Response: OSMRE disagrees that changes to the existing regulations are necessary. The term ''violation'' has been used for greater than 40 years in SMCRA enforcement and has a common understanding that is not a subject of this rulemaking. However, as explained in the proposed rule, ''[a] reasonable reading of section 521(a)(1) is that the referenced violations are those that permittees, and related entities or persons, commit in contravention of State regulatory programs. Therefore, within the context of section 521(a) of SMCRA and the TDN regulations, the proposed rule would clarify that OSMRE will not send TDNs to State regulatory authorities based on allegations or other information that indicates that a State regulatory authority may have taken an improper action under the State's regulatory program.'' 85 FR at 28907. OSMRE reasserts that position here. OSMRE did not propose to define the term violation and finds that such a definition is unnecessary.

Further, OSMRE agrees that it will issue TDNs to State regulatory authorities only when it has reason to believe there is a violation of the applicable State program, but this result is already clear in the existing regulations. In other words, when OSMRE is determining whether it has reason to believe that there is a violation of SMCRA in the TDN context, it makes that determination under the requirements of the approved State program. This longstanding practice does not require regulatory clarification. Of course, State programs must consist of elements that are no less stringent than SMCRA and no less effective than its implementing regulations. *See* 30 CFR 732.15(a) (a State program must be ''in accordance with'' SMCRA and ''consistent with'' the Federal regulations) and 30 CFR 730.5 (defining ''in accordance with'' and ''consistent with''). As such, if there would be a violation under SMCRA and the Federal regulations, a violation of an approved State program is also likely. However, if OSMRE discovers that a State program is not as stringent as SMCRA, it will take appropriate action, such as requiring a State program amendment under 30 CFR 732.17. With regard to the commenter's reference to ''on-the-ground violations,'' that issue is discussed elsewhere in this final rule.

Comment: A commenter requested that OSMRE modify existing § 842.11 to ensure deference is given to the State regulatory authority when OSMRE is evaluating alleged violations, especially those stemming from what the commenter characterizes as ''permit defects.'' While the commenter noted that the existing regulations contain an ''arbitrary and capricious'' standard, the commenter suggested that OSMRE and the Department's Office of Hearings and Appeals (OHA) often ignore or pay lip service to the standard. The commenter suggested that OSMRE amend 30 CFR 842.11(b)(1)(ii)(B)(*2*) to make certain that deference is given to the State regulatory authority by adding a second sentence to read as follows: ''[t]he authorized representative will accord the State regulatory authority substantial deference in evaluating whether the response is arbitrary capricious or an abuse of discretion under the State program.''

Response: As explained above, under this final rule, OSMRE will not address problems with a State-issued permit through the TDN process, unless there is an actual or imminent violation of the approved State program. OSMRE agrees with the commenter that OSMRE should afford substantial deference to State regulatory authorities during the TDN process. This is a practice that OSMRE has routinely followed in conformity with the various provisions of SMCRA relevant to this issue. Under the ''arbitrary, capricious, or an abuse of discretion'' standard in the existing regulations, which is not affected by this final rule, OSMRE already affords substantial deference to State regulatory authorities that the commenter seeks, which is consistent with SMCRA's cooperative federalism model. After all, in primacy States, the State is the primary SMCRA regulatory authority, and OSMRE's role is one of oversight. Because the existing regulations already recognize the States' significant role in enforcing SMCRA, and OSMRE is appropriately deferential to the States, no change to the regulations is necessary to accomplish the commenter's goal. OSMRE also notes that, contrary to the commenter's assertion, neither OHA nor OSMRE is free to ignore or merely pay lip service to requirements in duly promulgated regulations. Likewise, OSMRE acknowledges that it must follow applicable provisions of SMCRA and relevant administrative and judicial case law. OSMRE already recognizes and applies the requisite deference owed to State regulatory authorities during the TDN process, and the TDN regulations and OSMRE's practice are fully in accord with SMCRA and court decisions.

Comment: A commenter questioned why OSMRE proposed changes to four of the five examples of what can constitute ''good cause'' at 30 CFR 842.11(b)(1)(ii)(B)(*4*) and made no changes to one of the five elements. The commenter also questioned OSMRE's proposal to include the term ''demonstrates'' in paragraphs (b)(1)(iii) and (iv) because it did not appear to change the meaning of the provisions.

Response: OSMRE has found it difficult to substantiate State regulatory authority's jurisdictional claims under existing paragraph (b)(1)(iii) and claims of preclusion to act under existing paragraph (b)(1)(iv). OSMRE does not intend to change the meaning of these provisions or its interpretation of what constitutes good cause for not taking an action under these subparagraphs. OSMRE added ''demonstrate'' to these subparagraphs of § 842.11(b)(1)(ii)(B)(*4*) to ask State regulatory authorities to provide OSMRE with a measure of certainty for their claims of good cause for not taking an action to correct a violation.

Comment: One commenter indicated general support for the proposed clarifications of ''good cause'' as set forth in 30 CFR 842.11(b)(1)(ii)(B)(*4*). However, the commenter recommended that the provisions related to good cause could be made more effective with the addition of language requiring the State regulatory authority to demonstrate it has ''dedicated all resources necessary to complete the investigation as soon as possible.''

Response: OSMRE understands that the commenter is requesting a defined time frame for the State regulatory authority to complete an investigation into a possible violation as outlined in 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*ii*) and also is requesting that the State regulatory authority make an affirmative showing that all resources necessary are used to complete the investigation. OSMRE does not accept the suggestion made by the commenter as it would place general, unreasonable expectations on the State regulatory authority to complete often complicated and fact-specific investigations. To be clear, the existing regulations require that when a State regulatory authority requires additional time to analyze the allegations in a TDN, this must be performed in a ''reasonable and specified additional time.'' The proposed rule, as finalized today, also contains this limit on a State regulatory authority's investigation time frame and takes a further step to ensure expeditious resolution of possible violations. In an effort to express the urgency of promptly resolving alleged violations, the final rule grants the OSMRE authorized representative discretion to ''determine how long the State regulatory authority should reasonably be given to complete its investigation . . . and [the authorized representative] will communicate to the State regulatory authority the date by which the investigation must be completed.'' At the conclusion of the specified time, the OSMRE authorized representative will re-evaluate the State regulatory authority's response. This reflects an appropriate balance of the State regulatory authority's knowledge of specific issues, the need to thoroughly gather information necessary to evaluate a possible violation, and the prompt resolution of possible violations. Furthermore, it does not place unreasonable expectations on State regulatory authorities to dedicate ''all resources'' to one issue.

Comment: One commenter suggested revisions to the ''good cause'' provisions in proposed § 842.11(b)(1)(ii)(B)(*4*)(*iv*) to address what the commenter has characterized as a shortcoming in the existing and proposed language that was identified during recent coal company bankruptcy proceedings. According to the commenter, during bankruptcy proceedings, evidence was discovered of collusion between State officials and coal companies that were self-bonded. The commenter alleged that either through this alleged collusion, or by direct action of the State officials, judicial action was taken to shield these companies from complying with the requirements of 30 CFR 800.16(e) (General terms and conditions of bond) and 30 CFR 800.23(g) (Self-bonding). The commenter surmised that these alleged actions could be prevented by revising § 842.11(b)(1)(ii)(B)(*4*)(*iv*) to include the requirement that the State regulatory authority ''demonstrate that no state official has coordinated with the mining company and or acted independently to secure an administrative review body or court of competent jurisdiction to preclude the State regulatory authority from taking action on the violation.''

Response: OSMRE declines to accept this suggestion because this proposed revision to the good cause requirements of 30 CFR part 842 is outside the scope of this rulemaking as OSMRE did not propose to substantively change the requirement in § 842.11(b)(1)(ii)(B)(*4*)(*iv*). OSMRE notes that if OSMRE discovers, at any time, that a State regulatory authority is failing to adequately implement, administer, maintain, or enforce a part or all of a State program, including enforcing the general bonding and self-bonding requirements established in 30 U.S.C. 1259 and 30 CFR part 800, OSMRE may initiate the existing 30 CFR part 733 process in accordance with 30 U.S.C. 1271(b).

Comment: A multi-state governmental organization that characterizes itself as supporting the natural resource and related environmental protection and mine safety and health interests of its 27 member States suggested that OSMRE develop a more thorough discussion of why the proposed regulations at 30 CFR parts 733 and 842 represent OSMRE's interpretation of SMCRA with respect to the procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs and the TDN process.

Response: OSMRE has already discussed the clarifying changes to 30 CFR parts 733 and 842 in the preamble to the proposed rule (85 FR 28904). These two rule sections have also been the subject of several previous rulemakings and associated **Federal Register** notices. *See, e.g.,* 44 FR 14902 (March 13, 1979), 47 FR 35620 (Aug. 16, 1982), 52 FR 34050 (Sept. 9, 1987), and 53 FR 26728 (July 14, 1988). Additionally, OSMRE has expanded upon the rationale for its clarifying changes, above.

Comment: A coal industry group comprised of several companies in an Appalachian Basin-based coal State offered its support for OSMRE's proposed clarification that OSMRE will not send TDNs to State regulatory authorities based on allegations that the State regulatory authority itself has acted improperly under the approved State program.

Response: As discussed briefly above, OSMRE agrees with the commenter's observations. Specifically, the commenter accurately recognizes that within the context of section 521(a)(1) of SMCRA, a State regulatory authority should not be considered ''any person'' who may be ''in violation of any requirement of this Act.'' 30 U.S.C. 1271(a)(1). As discussed in the proposed rule, but not commented upon, in this context, ''any person'' does not include OSMRE, State regulatory authorities, or employees or agents thereof, unless they are acting as permit holders. To be clear, OSMRE will not issue a TDN to a State regulatory authority for an alleged violation by the State regulatory authority, unless the State regulatory authority is acting as a permit holder because it is operating a surface coal mining operation or the State regulatory authority is standing in the shoes of the permittee due to bond forfeiture or any other unforeseen reason. This interpretation is consistent with the plain language of 30 U.S.C. 1271(a) that differentiates between ''any person'' providing information and ''any person [that] is in violation of any requirement of this Act. . . .'' However, OSMRE cautions that this interpretation does nothing to diminish OSMRE's authority to act if OSMRE becomes aware that there is a State regulatory program issue. Specifically, if OSMRE becomes aware that there is a State regulatory program issue that undermines a State regulatory authority's effective administration, maintenance, implementation, or enforcement of its State regulatory program, even with respect to a single operation, OSMRE may address the issue programmatically under the enhanced 30 CFR part 733 that is being finalized in this rulemaking while also taking enforcement action as prescribed by 30 U.S.C. 1271(a)(1) when there is a violation of the approved State program.

Comment: A citizen commenter suggested that OSMRE should define the terms ''readily available information'' and ''effective documentation.''

Response: Definitions for these two terms are unnecessary as the terms have generally accepted definitions and no specialized technical meaning in this rule. For example, ''readily'' is defined as ''without hesitating; without much difficulty.'' *Readily, Merriam Webster Online Dictionary, available at merriam-webster.com/dictionary/readily* (last accessed August 4, 2020). Moreover, as OSMRE explained in the preamble to the proposed rule, OSMRE considers ''any information that is accessible without unreasonable delay'' to be ''readily available information.'' 85 FR at 28907. Furthermore, OSMRE's authorized representative needs the flexibility to use his or her best professional judgment to determine what information is readily available based on the specific facts of each situation.

Similarly, it is also not necessary for OSMRE to define ''effective documentation'' as it is used in § 842.11(b)(2) to describe the type of information referenced in 43 U.S.C. 1271(a)(1) that a complainant should submit to OSMRE to show a possible violation because determining what constitutes ''simple and effective documentation'' will be a fact-specific consideration that OSMRE will take into account in formulating reason to believe on a case-by-case basis. Congress, when enacting SMCRA, recognized that OSMRE's authorized representative will consider ''a snapshot of an operation in violation or *other simple and effective documentation of a violation*'' in order to formulate reason to believe before issuing a TDN. H.R. Rep. No. 95–128, at 129 (April 22, 1977) (emphasis added). As used in the final rule at 30 CFR 842.11(b)(2), OSMRE adopts the language proffered by Congress; thus, OSMRE's authorized representative will be assessing both whether the complainant has submitted ''simple and effective documentation'' and whether ''facts that are otherwise known to the authorized representative'' constitute simple and effective documentation before formulating whether there is reason to believe a violation exists. However, that simple and effective documentation can also come from any other readily available source, in addition to the complainant. This may include, for example, information in OSMRE's files, from the public domain, provided by a State regulatory authority, or in a citizen complaint. Depending on the alleged violation, simple and effective documentation could also be a photograph of the alleged violation, boundary identifiers, water monitoring reports, or any other information readily available to OSMRE's authorized representative.

Comment: A citizen commenter stated that the proposed changes to § 842.11(b)(2) coupled with the ''new proposed 'reason to believe' standard'' will make it more likely that legitimate complaints will be rejected because the complaint may not include ''simple and effective documentation.'' Further, the commenter reasoned that the term ''simple and effective documentation'' is a new term that is undefined and that will place an unreasonable burden on citizens seeking to file a citizen complaint.

Response: OSMRE disagrees with this comment and notes that § 842.11(b)(2) states the authorized representative will be able to formulate reason to believe ''if the facts that a complainant alleges, *or facts that are otherwise known to the authorized representative,* constitute simple and effective documentation of the alleged violation, condition, or practice.'' (Emphasis added). The commenter has missed the portion of this provision that allows the authorized representative to rely on facts that are otherwise known to the authorized representative that may constitute simple and effective documentation, in addition to the facts that the complainant submits. Moreover, as OSMRE noted in response to a previous comment, the concept of ''simple and effective documentation'' was first introduced in 1977 when SMCRA was being drafted by Congress. This phrase was used to describe the type of information that could be used to document a possible violation. OSMRE is not imposing a new requirement or a burden on citizens when filing a citizen complaint and views this standard as a low bar describing the nature of documentation that may be used to show that a violation has taken or is taking place. In addition, OSMRE has clarified in this final rule that it will consider any ''simple and effective documentation''—including readily available information from the State regulatory authority or any other source—when formulating reason to believe.

Comment: OSMRE received several comments suggesting that OSMRE does not have statutory authority to issue a notice of violation (NOV) in a primacy State due to the construction and relationship between sections 504(b) and 521(b) of SMCRA. One of these commenters further suggested that once a State program is approved, and the State earns primacy, the approved State program becomes the operative law; therefore, Federal actions against a State permittee amount to a Federal takeover of the approved State program. Another one of these commenters echoed the same sentiment and added that Federal oversight in a primacy State created an unfair playing field relative to States that have not achieved primacy and therefore have only Federal enforcement. A commenter further suggested that OSMRE repeal the regulation authorizing NOVs in primacy states (30 CFR 843.12) and initiate a rulemaking to do so.

Response: The issue of OSMRE's statutory authority to issue NOVs is well-settled, and nothing in OSMRE's proposed rule suggested that OSMRE was reconsidering whether it has authority to issue NOVs in primacy States. *See* 48 FR 9199 (Mar. 3, 1983) (''[u]pon examination of the issue, the Department has concluded that the regulation contained at 30 CFR 843.12(a)(2) was properly and lawfully promulgated; therefore there is no need to reconsider the issue.''); *see also* 44 FR 14902. Over thirty years ago, OSMRE considered a rulemaking petition, which sought the repeal of all of the regulations ''authorizing Federal notices of violation in States with approved regulatory programs . . . .'' 52 FR at 21598. OSMRE denied this petition. 52 FR at 21601 (''After careful consideration of the Act, the legislative history, and public comments. . . , OSMRE determined that it has the authority to issue Federal NOV's in primacy States.''); *see also Nat'l Min. Ass'n* v. *U.S. Dep't of Interior,* 70 F.3d 1345, 1353 (D.C. Cir. 1995) (upholding OSMRE's rulemaking petition denial). Given OSMRE's longstanding interpretation of its authority and the lack of anything in the proposed rule that would indicate a change to this position, OSMRE considers this comment to be outside the scope of this rulemaking, and OSMRE is not adopting the suggestions made by these commenters.

Comment: One commenter suggested that OSMRE repeal 30 CFR 842.15(d) pertaining to formal appeals to OHA of the Director's informal review of an inspector's decision in response to a request for a Federal inspection. The commenter opined that SMCRA authorizes informal review of an authorized representative's decision to not inspect or not take enforcement action, but SMCRA does not authorize formal appeals, as the existing OSMRE regulations authorize. The commenter further stated that these ''formal'' appeals of OSMRE decisions not to inspect or enforce often languish for years while being resolved through the administrative litigation process of the OHA and the appellate administrative board, the Interior Board of Land and Appeals. In support of this proposed revision, the commenter cited efficiency and points out that long resolution times unnecessarily prolong uncertainty for operators and State regulatory authorities.

Response: OSMRE did not propose any revisions to 30 CFR 842.15 in response to this comment. OSMRE considers this comment to be outside the scope of this rulemaking and is not making any changes to the final rule as a result. Changes to the administrative review process for informal review decisions were neither proposed by OSMRE in the proposed rule nor would be a logical outgrowth of the current rulemaking effort. Therefore, OSMRE will not be addressing this comment or including the provisions proposed by the commenter in this final rule.

Comment: One individual commenter, representing the interests of a citizens' group, cites data from the U.S. Energy Information Administration (EIA) that predicts a 25 percent decline in domestic coal production from 2019 through 2020 and the ''financial demise of the coal industry'' as a rationale for why OSMRE should maintain appropriate regulations to safeguard and protect the environment from ''careless mining endeavors.''

Response: OSMRE agrees that it should maintain appropriate regulations to safeguard the environment and asserts that this final rule and the other Federal regulations accomplish that goal. Fundamentally, this final rule will enhance OSMRE's and the State regulatory authorities' ability to adequately administer and enforce SMCRA. To clarify, EIA estimates that U.S. coal consumption will decrease by 26 percent in 2020 and increase by 20 percent in 2021. Further, EIA estimates that coal production in 2020 will decrease by 29 percent from 2019 levels. *See* U.S. Energy Information Administration, ''Short-Term Energy Outlook,'' *available at https://www.eia.gov/outlooks/steo/(last accessed August 10, 2020).* OSMRE's obligations under SMCRA are informed by its purposes outlined at 30 U.S.C. 1202. SMCRA's purposes are not dependent upon the amount of coal consumption or production. Regardless of the amount of consumption or production of coal, OSMRE's oversight and enforcement responsibilities remain the same. Therefore, the estimated annual variance in coal production does not impact OSMRE's statutory obligations, which include, most relevant to this final rule, ''administer[ing] the programs for controlling surface coal mining operations. . .'' and ''cooperat[ing] with other Federal agencies and State regulatory authorities to minimize duplication of inspections, enforcement, and administration of [SMCRA].'' *See* 30 U.S.C. 1211(c)(1) and (12). This final rule will enhance administration and enforcement of SMCRA and State regulatory programs and also enhance cooperation between OSMRE and the State regulatory authorities.

Further, the commenter's recognition of decreased coal production, at least in the short term, supports the need for this rulemaking. As coal production decreases, coal mine operators may revise their mine plans or permanently cease operations and either commence final reclamation or, in the event of financial insolvency, forfeit their reclamation bond. In such cases, State regulatory authority workloads may initially increase due to higher volumes of permit revisions, inspection and enforcement activities, bond releases, and potential actions surrounding permit revocation and bond forfeiture. Due to the structure of the SMCRA program, the State regulatory authority will have permitting and inspection obligations on every mine site for a minimum of five to ten years after coal production ceases. Only after final bond release may a permit be terminated and the State regulatory authority relieved of its responsibilities. Federal administration and enforcement grants awarded by OSMRE to State regulatory authorities are based, in part, on the anticipated workload, such as permitting and inspection, that is necessary for State regulatory authorities to administer and enforce their approved State programs under SMCRA. *See* 30 CFR part 735 and OSMRE's Federal Assistance Manual, Chapter 5–200, The Application Process for a Regulatory Grant. As production decreases, permitting and associated costs may decrease over time; thus, State regulatory authorities may not receive the same level of funding as they do currently. This highlights the need to be more efficient with the resources that are available. This final rule should help to increase efficiency in inspections and enforcement.

Comment: Several commenters questioned the authority of Casey Hammond, serving in his capacity as Principal Deputy Assistant Secretary, to issue the proposed rulemaking.

Response: Mr. Hammond acted within the authority of the Assistant Secretary for Land and Minerals Management (ASLM) authority that was properly delegated to him when signing the proposed rulemaking. Reorganization Plan No. 3 of 1950 provides that ''all functions of all other officers of the Department of the Interior . . . .'' are ''transferred to the Secretary of the Interior. . . .'' 64 Stat. 1262 at section 1. The Secretary may then ''make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of the Interior of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.'' Id. at section 2. Indeed, Congress codified and affirmed the Secretary's ability to transfer ''all'' functions to ''any'' officer or employee of the Department in 1984 via Public Law 98–532.

SMCRA authorizes the Secretary to promulgate rules and regulations necessary to carry out the Act. See 30 U.S.C. 1211(c)(2). The Secretary has delegated this responsibility to the ASLM. 209 Departmental Manual (DM) 7.1.A. The Secretary delegated ''all functions, duties, and responsibilities'' of the ASLM to Mr. Hammond via Secretary's Order 3345 Amendment No. 32 on May 5, 2020, two weeks before he signed the proposed rulemaking. This delegation of authority excludes functions and duties that are required by statute or regulation to be performed only by the ASLM. The signing of the proposed rulemaking is not such an exclusive function or duty. Although the Secretary and OSMRE Director also have such authority (216 DM 1.1.B), that does not divest the ASLM from his properly delegated authority. 200 DM 1.9. Therefore, Mr. Hammond properly exercised the delegated authority of the Secretary in signing this proposed rulemaking. Mr. Hammond continues to exercise the delegable, non-exclusive functions, duties, and responsibilities of the ASLM pursuant to a Succession Order signed by the Secretary (latest version signed June 3, 2020).

Comment: One citizens' group representing many national citizen organizations and ''thousands of individuals'' across the country contends that the proposed rule required an Environmental Impact Statement (EIS) or Environmental Assessment (EA) to comply with the National Environmental Policy Act (NEPA). 42 U.S.C. 4321 *et seq.* In support of this assertion, the citizens' group states that the proposed rule would result in unabated violations due to an alleged delay in TDN issuance.

Response: We disagree with the premise of this comment. This final rule is designed to allow a State regulatory authority and OSMRE the ability to more efficiently address alleged violations at surface coal mining operations. As stated in the proposed rule, the final rule will allow a State regulatory authority to investigate an alleged violation before needing to divert resources away to respond to a TDN. 85 FR at 28907. As a result, any violations should be abated more quickly and more efficiently than under the existing rules.

Moreover, as discussed further in ''Procedural Determinations'' below, OSMRE has re-evaluated its compliance with NEPA after reviewing the comments received on the proposed rule. OSMRE still finds that this rulemaking falls within the Department's categorical exclusion at 43 CFR 46.210(i) because the clarifications of 30 CFR part 842 and enhancement of 30 CFR part 733 are of an administrative and procedural nature. Fundamentally, this final rule clarifies aspects of the procedures that OSMRE uses to evaluate citizen complaints to determine if it should issue a TDN and adds procedures for State regulatory authorities to take corrective action of State regulatory program issues. However, as explained above in response to other comments, none of these clarifications or enhancements materially alters OSMRE's enforcement of SMCRA in primacy states. Therefore, this rulemaking falls within this categorical exclusion. In addition, no extraordinary circumstances exist that would prevent OSMRE from using the categorical exclusion. 43 CFR 46.215.

It is true that the last time OSMRE proposed to substantively revise the TDN regulations, it did not use a categorical exclusion but instead prepared an environmental assessment. *See* 1987 Environmental Assessment entitled, *U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Environmental Assessment for Amending Rules in 30 CFR 842.11 and 843.12 on Evaluation of State Responses to Ten-Day-Notices.* Similar to OSMRE's final rule today, the 1988 final rule was aimed at improving cooperative federalism. Specifically, in the 1987 environmental assessment, OSMRE found, ''[t]o the extent that the revised procedures foster a better working relationship between OSMRE and the States in implementing SMCRA, the environmental consequences of the proposed action should be positive.'' Moreover, in the 1987 environmental assessment, OSMRE concluded that no significant environmental impacts were associated with the action. *Id.* This past analysis supports OSMRE's determination that no extraordinary circumstances apply that would preclude OSMRE's use of an applicable categorial exclusion. It also is consistent with the Department's goals of streamlining its NEPA reviews. *See, e.g.,* Secretarial Order No. 3355 (Aug. 31, 2017); *see also* Council for Environmental Quality, Memorandum, Establishing, Applying, and Revising Categorial Exclusions under the National Environmental Policy Act (Nov. 23, 2010), at 2–3 (''[C]ategorical exclusions provide an efficient tool to complete the NEPA environmental review process for proposals that normally do not require more resource-intensive EAs or EISs. The use of categorial exclusions can reduce paperwork and delay, so that EAs or EISs are targeted toward proposed actions that truly have the potential to cause significant environmental effects.'').

V. Discussion of the Final Rule and Section-by-Section Analysis

This part of the preamble provides a section-by-section analysis of the regulations promulgated in this final rule.

Part 733—Early Identification of Corrective Action, Maintenance of State Programs, Procedures for Substituting Federal Enforcement of State Programs, and Withdrawing Approval of State Programs

OSMRE proposed to revise the title for this part and to redesignate certain sections of the existing part to accommodate the addition of a definitional section at 30 CFR 733.5 and OSMRE's proposed enhancement to the 30 CFR part 733 process—a new proposed § 733.12, entitled, ''Early identification and corrective action to address State regulatory program issues.''

The existing regulations at 30 CFR part 733 establish requirements for the maintenance of State programs and the procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs. Citing OSMRE's 40-plus years of implementing and overseeing SMCRA and State regulatory programs, OSMRE proposed to add an enhancement to this part—the codification of an existing OSMRE internal policy aimed at early identification of and corrective action to address State regulatory program issues. When formulating the proposed rule, OSMRE reasoned that if issues remain unaddressed, these issues may result in a State regulatory authority's ineffective implementation, administration, enforcement, or maintenance of its State regulatory program. To prevent this from occurring and to encourage a more complete and more efficient implementation of SMCRA, OSMRE proposed to enhance existing 30 CFR part 733 by adding § 733.5 that would define the terms ''action plan'' and ''State regulatory program issue.'' Additionally, OSMRE proposed to redesignate existing § 733.12 as § 733.13, redesignate existing § 733.13 as § 733.14, and add a new § 733.12 to address how early identification of and corrective action for State regulatory program issues can be achieved. Further, in the sections proposed to be added or revised throughout 30 CFR part 733, OSMRE proposed to add the term ''regulatory'' between the terms ''State'' and ''program'' for consistency purposes. As discussed in the specific sections below, all of these changes are not substantive and are made for the purpose of clarity to differentiate between a regulatory program administered by OSMRE and a State regulatory program that is administered by a State that has achieved primacy after approval by OSMRE.

As discussed above in response to specific comments, OSMRE considers the enhancements to the existing regulations at 30 CFR part 733 to be beneficial for early identification, evaluation, and resolution of potential issues that may impact a State regulatory authority's ability to effectively implement, administer, enforce, or maintain its State regulatory program. Further, OSMRE finds that these mechanisms should avoid unnecessary substitution of Federal enforcement or withdrawal of State regulatory programs and minimize the number of on-the-ground impacts. Therefore, OSMRE is adopting, with minor modifications, based upon comments received from the public and further OSMRE analysis, the proposal to enhance 30 CFR part 733.

Final Rule § 733.5 Definitions

OSMRE proposed to add a definition section to 30 CFR part 733 that would define the terms ''action plan'' and ''State regulatory program issue.'' In short, under the proposed definition, the term ''action plan'' would mean ''a detailed schedule OSMRE prepares to identify specific requirements a regulatory authority must achieve in a timely manner to resolve State regulatory program issues identified during oversight of State regulatory programs.'' OSMRE proposed to define the term ''State regulatory program issue'' to mean an issue OSMRE identifies during oversight of a State or Tribal regulatory program that could result in a State regulatory authority not effectively implementing, administering, enforcing, or maintaining all or any portion of its State regulatory program, including instances when a State regulatory authority has not adopted and implemented program amendments that are required under 30 CFR 732.17 and 30 CFR subchapter T, and issues related to the requirement in section 510(b) of the Act that a State regulatory authority must not approve a permit or revision to a permit unless the State regulatory authority finds that the application is accurate and complete and that the application is in compliance with all requirements of the Act and the State regulatory program.

As discussed above in OSMRE's responses to public comments, OSMRE received many comments on the enhanced 30 CFR part 733 process in general, including comments on the proposed definitions. As OSMRE explained in response to specific comments, the proposed definitions are appropriate and it is adopting 30 CFR 733.5 as proposed, with one minor exception. In the definition of ''action plan,'' OSMRE is inserting the word ''State'' between ''a'' and ''regulatory authority'' to be consistent with the remainder of the Part and to differentiate between situations when OSMRE is the regulatory authority. Thus, the final definition will read, ''*[a]ction plan* means a detailed schedule OSMRE prepares to identify specific requirements a State regulatory authority must achieve in a timely manner to resolve State regulatory program issues identified during oversight of State regulatory programs.''

OSMRE most frequently identifies issues that it will now classify as State regulatory program issues during oversight of a State regulatory program, but OSMRE may also be alerted to a State regulatory program issue from a citizen complaint or a request for a Federal inspection. State regulatory program issues are those that may result in a State regulatory authority not adhering to its approved State regulatory program. Other examples of a State regulatory program issue include when a State regulatory authority does not adopt and implement program amendments that are required under 30 CFR 732.17 and 30 CFR subchapter T. The proposed definition of State regulatory program issue, which OSMRE is finalizing in this rule, includes issues related to the requirement in SMCRA section 510(b), 30 U.S.C. 1260(b), that a State regulatory authority must not approve a permit or permit revision, unless the State regulatory authority finds that the application is accurate and complete and is in compliance with all of SMCRA's requirements and those of the State regulatory program.

To provide greater context in which the term ''State regulatory program issue'' is used, the next two paragraphs will describe how the State regulatory program issues covered by 30 CFR part 733 sometimes overlap with the TDN and Federal inspection process provided for in 30 CFR part 842. As discussed below in relation to finalized 30 CFR part 842, the TDN and Federal inspection process in section 521(a) of SMCRA and the State regulatory program enforcement provisions in section 521(b) of SMCRA, along with the existing implementing regulations, differentiate between issues related to a State regulatory authority's failure to implement, administer, maintain, and enforce all or a part of a State regulatory program and possible violations that could lead to a TDN or Federal inspection. Most notably, the State regulatory program enforcement provisions of section 521(b) of SMCRA generally address systemic programmatic problems with a State regulatory program, not specific violations exclusive to an individual operation or permit as detailed in section 521(a) of SMCRA. However, citizens sometimes identify State regulatory program issues in citizen complaints under section 521(a) of SMCRA and 30 CFR part 842 that may result in a TDN. OSMRE may also become aware of a State regulatory program issue while overseeing enforcement of specific operations or permits.

SMCRA and the existing regulations provide a remedy for systemic programmatic issues at 30 CFR part 733 by identifying procedures for substituting Federal enforcement of State regulatory programs or withdrawing approval of State regulatory programs. The proposed addition of early identification and corrective action plans to address State regulatory program issues that OSMRE is adopting under this final rule will enhance OSMRE's ability to ensure prompt resolution of issues, which, if unattended, may result in OSMRE exercising the rare remedy of substituting Federal enforcement or withdrawing a State program. The definition of ''action plan,'' as finalized in § 733.5, will dovetail in practice with the concept of ''appropriate action'' found in § 842.11(b)(1)(ii)(B)(*3*), in that a State regulatory authority's action plan may qualify as appropriate action in response to a TDN under that finalized § 842.11(b)(1)(ii)(B)(*3*). In addition, the definition of ''State regulatory program issue,'' as finalized in § 733.5, helps to further clarify the differences between the types of violations or issues that will be addressed under the TDN and Federal inspection process in section 521(a) and the State regulatory program enforcement provisions in section 521(b) of SMCRA, respectively.

Final Rule § 733.10 Information Collection

OSMRE is adopting this section as proposed. As discussed more fully in the Procedural Determinations below, no additional burden is placed on the public as a result of the enhancements to 30 CFR part 733. Moreover, no public comments were received on this section.

Final Rule § 733.12 Early Identification and Corrective Action To Address State Regulatory Program Issues

OSMRE proposed to redesignate certain sections of existing 30 CFR part 733 to accommodate both the proposed new definition section at 30 CFR 733.5, discussed above, and the enhancement to 30 CFR part 733, proposed to be added as § 733.12 entitled, ''Early identification and corrective action to address State regulatory program issues.'' This redesignation is being adopted as proposed because both sections—*Definitions* and *Early identification and corrective action to address State regulatory program issues*—are being finalized.

Final § 733.12 contains substantive mechanisms and compliance strategies that OSMRE may use to resolve a State regulatory program issue (as defined in finalized 30 CFR 733.5). Although OSMRE and State regulatory authorities have historically worked closely and used similar approaches, incorporating these approaches into the regulations provides a clear mechanism for early identification and resolution of issues that will enable OSMRE to achieve regulatory certainty and uniform implementation of the procedures among State regulatory authorities. This addition to the regulations includes procedures for developing an action plan so that OSMRE can ensure that State regulatory program issues are timely resolved. When OSMRE identifies a State regulatory program issue, final § 733.12(a) provides that the OSMRE Director should take action to make sure that the issue is corrected as soon as possible in order to ensure that it does not escalate into an issue that would give the Director reason to believe that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program. The unresolved issue could otherwise trigger the process that might lead to substituting Federal enforcement of a State regulatory program or withdrawing approval of a State regulatory program as provided in 30 CFR part 733.

OSMRE is finalizing § 733.12(a)(1) as proposed with one minor modification. As proposed, this paragraph provided that ''[t]he Director may become aware of State regulatory program issues through oversight of State regulatory programs or as a result of information received from any person.'' In response to public comments, discussed in more detail above, OSMRE has substituted ''any source'' for the proposed language ''any person.'' OSMRE agrees with the commenter that this terminology is more expansive and inclusive and will likely result in OSMRE considering any information, no matter the source, about an alleged State regulatory program issue.

In general, final § 733.12(b) allows the OSMRE Director, or his or her delegate, as set forth in OSMRE's guidance, to ''employ any number of compliance strategies to ensure that the State regulatory authority corrects a State regulatory program issue in a timely and effective manner.'' This finalized language reflects a minor, grammatical change from the proposed rule. OSMRE has added ''a'' before ''State regulatory program'' and removed the ''s'' from ''issues'' to clarify the meaning of the sentence and place the sentence in the singular tense.

OSMRE has made another change to final § 733.12(b). This change is in the second sentence that, as proposed, read: ''However, if the Director or delegate does not expect that the State regulatory authority will resolve the State regulatory program issue within 180 days after identification or that it is likely to result in an on-the-ground violation, then the Director or delegate will develop and institute an action plan.'' In the final rule, OSMRE has modified the second sentence to read: ''However, if the Director or delegate does not expect that the State regulatory authority will resolve the State regulatory program issue within 180 days after identification or that it is likely to result in a *violation of the approved State program,* then the Director or delegate will develop and institute an action plan.'' (Emphasis added to show the revised language). OSMRE has adopted this final language due to the variety of comments, discussed above, raising concerns about OSMRE's differentiation between violations outlined in 30 U.S.C. 1271(a)—subject to the 30 CFR part 842 TDN process—and violations outlined in 30 U.S.C. 1271(b)—subject to 30 CFR part 733. Specifically, many commenters raised questions about how OSMRE would treat what the commenters characterized as ''permit defects,'' which might be informally viewed, as mentioned above, as a deficiency in a permit-related action taken by a State regulatory authority or problems in a permit that do not align with the approved State regulatory program. However, OSMRE is not defining the term ''permit defects'' in this preamble or in the final rule and it is not defined in SMCRA, OSMRE regulations, or current internal OSMRE policies and should not be viewed as a distinct form of violation. To avoid confusion and the possibility of creating further ambiguity by introducing the new term ''on-the-ground violation'' into OSMRE regulations, OSMRE is removing this proposed phrase. The term ''on-the-ground violation'' is also not defined in SMCRA, OSMRE regulations, or OSMRE internal documents and OSMRE declines to define this term as it may be misconstrued as a distinct type of violation. Therefore, OSMRE has decided, in response to comments, that it is best to substitute the phrase ''violation of the approved State program'' for the proposed phrase ''on-the-ground violation.'' The finalized phrase comports with the existing and finalized regulations at 30 CFR part 842 and bridges the gap between violations identified during the 30 U.S.C. 1271(a) TDN process that may actually be systemic in nature (and thus addressed in the 30 CFR part 733 State regulatory program issue process as finalized and authorized by 30 U.S.C. 1271(b)), but later results in a site-specific violation of an approved State program. OSMRE acknowledges that a site-specific violation of an approved State program often manifests as an on-the-ground impact. However, these violations may also manifest in other ways, such as a permittee's failure to submit required design plans, monitoring reports, or annual certifications. OSMRE offers these as examples and not as an exhaustive list of potential violations of the approved State program that may result in OSMRE exercising site-specific enforcement under 30 U.S.C. 1271(a), rather than continuing to address them as State regulatory program issues under 30 U.S.C. 1271(b).

As proposed, § 733.12(b)(1)–(3) provided details about requirements of action plans. OSMRE is substantively adopting the proposed requirements for an action plan. Specifically, OSMRE will prepare a written action plan with ''specificity to identify the State regulatory program issue and an effective mechanism for timely correction.'' When OSMRE is preparing the action plan, OSMRE will consider any input it receives from the State regulatory authority. When selecting corrective measures to integrate into the action plan, OSMRE may consider any established or innovative solutions, including the compliance strategies referenced above. Additionally, finalized § 733.12(b)(2), states that an action plan will identify any necessary technical or other assistance that the Director or his or her delegate can provide and remedial measures that a State regulatory authority must take immediately. Moreover, final § 733.12(b)(3), describes the contents of an action plan. To ensure that OSMRE can adequately track action plans and that the underlying State regulatory program issue is resolved, each action plan, under the proposed rule, was to include: ''An action plan identification number''; ''A concise title and description of the State regulatory program issue''; ''Explicit criteria for establishing when complete resolution will be achieved''; ''Explicit and orderly sequence of actions the State regulatory authority must take to remedy the problem''; ''A schedule for completion of each action in the sequence''; and ''A clear explanation that if the action plan, upon completion, does not result in correction of the State regulatory program issue, the provisions of 30 CFR 733.13 may be triggered.'' The only modification OSMRE is making to final paragraphs 30 CFR 733.12(b)(1)–(3) is to add the preposition ''an'' before ''action plan'' and remove the plural tense of action plan at the beginning of paragraphs (b)(1)–(3) to be grammatically correct and reflect the singular tense.

OSMRE has made modifications to final § 733.12(c) in response to a request by a NGO commenter to affirmatively state that OSMRE will track all identified State regulatory program issues and any associated action plans. Although it was OSMRE's intention to track and report both, OSMRE did not specifically state in the proposed rule that any action plan associated with identified a State regulatory program issue would be tracked and reported in the applicable State regulatory authority's Annual Evaluation report. OSMRE has removed this ambiguity by stating in the final rule that ''any associated action plan'' must also be tracked and reported in addition to the State regulatory program issues. Also, in response to the NGO commenter's request, OSMRE is including a requirement that the ''State regulatory authority Annual Evaluation reports will be accessible thorough OSMRE's website and at the applicable OSMRE office.'' OSMRE agrees with the commenter that this modification to the proposed rule promotes transparency and accountability.

OSMRE is adopting § 733.12(d) as proposed with one modification to comport with the change discussed above in relationship to final § 733.12(b). Specifically, final § 733.12(d) states that nothing in § 733.12 ''prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program, or OSMRE from taking appropriate oversight enforcement action, in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program.'' OSMRE relies on the same rationale described above for the removal of the term ''on-the-ground violation'' and the substitution of the phrase, ''a violation of the approved State program.'' In the context of finalized § 733.12(d), determining whether a violation is imminent depends on the circumstances, and OSMRE will rely on the authorized representative to use his or her professional judgment to determine whether a violation of the approved State program is imminent in a given situation.

In sum, finalized 30 CFR part 733 will ensure a more complete enforcement of SMCRA and provide guidance on early detection of potential problems that may, if left unaddressed, escalate to the point that OSMRE considers instituting the process that might result in OSMRE substituting Federal enforcement or withdrawing all or a portion a State program as outlined in finalized 30 CFR 733.13 through 733.14 while preserving (through 30 CFR 733.12(d)) the ability to take direct enforcement action in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program.

Final Rule Part 736 Federal Program for a State

OSMRE is updating the cross-reference in finalized § 736.11(a)(2) as proposed to account for the redesignation of existing ''§ 733.12'' to finalized ''§ 733.13.''

Final Rule § 842.11(b)(1)

In the proposed rule, OSMRE explained that existing 30 CFR 842.11(b)(1) describes the circumstances when OSMRE ''shall'' conduct a Federal inspection, but the paragraph primarily focuses on the process leading up to a Federal inspection, including the process for OSMRE's issuance of a TDN to a State regulatory authority. In general, consistent with section 521(a) of SMCRA, when there is no imminent harm situation and OSMRE issues a TDN to a State regulatory authority, OSMRE evaluates the State regulatory authority's response to the TDN before deciding whether to conduct a Federal inspection. Consistent with the existing regulations, and the regulations finalized today, OSMRE will issue a TDN to a State regulatory authority only when an authorized representative of OSMRE has reason to believe that there is a violation of SMCRA, the implementing regulations, the applicable State regulatory program, or any condition of a permit or an exploration approval. In general, OSMRE will also conduct a Federal inspection whenever there is any condition, practice, or violation that creates an imminent danger to the health or safety of the public or is causing, or that OSMRE reasonably expects to cause, a significant, imminent, environmental harm to land, air, or water resources. In the latter situation, OSMRE bypasses the TDN process and proceeds directly to a Federal inspection, if the person supplying the information provides adequate proof that there is an imminent danger to the public health and safety or a significant, imminent environmental harm and that the State regulatory authority has failed to take appropriate action.

OSMRE proposed to alter the introductory sentence at existing 30 CFR 842.11(b)(1), by replacing the word ''shall'' with the word ''will.'' However, after consideration of public comments, discussed in more detail above, and based on OSMRE's own expertise and analysis, OSMRE has determined that the word ''must'' is more appropriate because it explains an action that OSMRE is obligated to institute as prescribed by SMCRA under the circumstances described in 30 CFR 842.11(b)(1). Therefore, the final rule substitutes the word ''must'' for ''will'' to better communicate the mandatory nature of the authorized representative's action.

Final Rule § 842.11(b)(1)(i)

In the proposed rule, OSMRE also proposed to clarify that when an authorized representative assesses whether he or she has reason to believe a violation exists, the authorized representative will make that determination on the basis of ''any information readily available to him or her.'' This clarification is consistent with section 521(a)(1) of SMCRA, which sets forth that OSMRE can formulate reason to believe ''on the basis of any information available to [the Secretary], including receipt of information from any person.'' 30 U.S.C. 1271(a)(1). Based on SMCRA's plain language, such information is not restricted to information OSMRE receives from a citizen complainant. Rather, the information includes any information OSMRE receives from a citizen, the applicable State regulatory authority, or any other information OSMRE is aware exists. Also, the final rule and the preamble discussion above that is associated with this section clarifies that such information must be readily available, so that the process will proceed as quickly as possible and will not become open-ended. OSMRE is adopting this section as proposed, with one exception. In response to several comments, discussed in more detail above, OSMRE is further clarifying this section by adding to the final rule the phrase, ''from any source, including any information a citizen complainant or the relevant State regulatory authority submits, . . .'' This addition to the final rule now makes § 842.11(b)(1)(i) harmonize with final rule § 842.11(b)(2) that now includes the same phraseology.

Final Rule § 842.11(b)(1)(ii)(A)

Existing 30 CFR 842.11(b)(1)(ii)(A) reads as follows: ''There is no State regulatory authority or the Office is enforcing the State program under section 504(b) or 521(b) of the Act and part 733 of this chapter[.]'' OSMRE proposed only minor grammatical and conformity changes to this section. Specifically, OSMRE proposed to add the word ''regulatory'' between the words ''State'' and ''program'' to promote consistency throughout this rulemaking and clarify that OSMRE is referring to State regulatory programs. OSMRE has finalized this section as proposed.

Final Rule § 842.11(b)(1)(ii)(B)(1)–(4)

OSMRE proposed non-substantive changes to existing 30 CFR 842.11(b)(1)(ii)(B)(*1*) for readability, including capitalizing ''State'' when referring to the ''State regulatory authority'' and adding a comma after ''notification'', and changing the word ''shall'' to ''will''. These changes have been adopted as proposed. OSMRE did not propose any modification to the existing regulation at 30 CFR 842.11(b)(1)(ii)(B)(*2*), but the provision is discussed above to provide context related to the proposed clarifications in 30 CFR 842.11(b)(1)(ii)(B)(*3*), which describes the term ''appropriate action,'' and 30 CFR 842.11(b)(1)(ii)(B)(*4*), which describes the term ''good cause.'' Likewise, OSMRE is not altering § 842.11(b)(1)(ii)(B)(*1*).

Final Rule § 842.11(b)(1)(ii)(B)(3)

OSMRE proposed to add a provision to existing 30 CFR 842.11(b)(1)(ii)(B)(*3*), that appropriate action ''may include OSMRE and the State regulatory authority immediately and jointly initiating steps to implement corrective action to resolve any issue that the authorized representative and applicable Field Office Director identify as a State regulatory program issue, as defined in 30 CFR part 733.'' OSMRE is finalizing this subsection as proposed. The final rule gives the responsibility for identification of State regulatory program issues to the authorized representative and applicable Field

Office Director, as these officials possess significant knowledge of the specific requirements of and responsibilities under the applicable State regulatory program. Although OSMRE has historically allowed programmatic resolution of State regulatory program issues, such as implementation of remedies under 30 CFR part 732, to constitute ''appropriate action'' in a given situation, the regulations prior to this addition did not explain resolution of State regulatory program issues through corrective actions. In order to avoid confusion or uncertainty for the regulated community, State regulatory authorities, and the public at large, the finalized rule seeks to remove ambiguity and definitively states that ''appropriate action'' may include corrective action to resolve State regulatory program issues. This fits well with the finalized part 733 because final § 733.12(a)(2) reaffirms that, if OSMRE concludes that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program, OSMRE may substitute Federal enforcement of the State regulatory program or withdraw approval. Additionally, in accordance with finalized § 733.12(d), OSMRE reserves the right to reinstitute enforcement if, subsequent to a finding of appropriate action based upon a corrective action consistent with proposed 30 CFR part 733, a violation of the approved State program occurs or may imminently occur.

Final Rule § 842.11(b)(1)(ii)(B)(4)

OSMRE is adopting this subsection as proposed. Specifically, the final rule makes minor clarifications to the examples of what constitutes good cause as found in the existing regulations. First, final § 842.11(b)(1)(ii)(B)(*4*)(*i*) makes non-substantive changes for readability and consistency by adding the word ''regulatory'' between ''State'' and ''program'' and switching the position of two phrases in the provision. Second, the final rule revises § 842.11(b)(1)(ii)(B)(*4*)(*ii*) to provide that good cause includes: ''The State regulatory authority has initiated an investigation into a possible violation and as a result has determined that it requires a reasonable, specified additional amount of time to determine whether a violation exists.'' The final rule explains that an OSMRE authorized representative has discretion to determine how long the State regulatory authority should reasonably be given to complete its investigation of a possible violation. Also, under the final rule the authorized representative will communicate to the State regulatory authority the date by which the State regulatory authority's investigation must be completed. This revision promotes prompt identification and resolution of possible violations.

As proposed, the final rule makes a minor revision to § 842.11(b)(1)(ii)(B)(*4*)(*iii*). A State regulatory authority will demonstrate that it lacks jurisdiction over the possible violation to qualify for this good cause showing.

Similarly, as proposed, the final rule makes a minor, non-substantive modifications to § 842.11(b)(1)(ii)(B)(*4*)(*iv*) for readability and to clarify that, in order to show good cause, the State regulatory authority will demonstrate that an order from an administrative review body or court of competent jurisdiction precludes it from taking action on the possible violation.

Finally, as proposed, the final rule makes minor, non-substantive modifications to § 841.11(b)(1)(ii)(B)(*4*)(*v*) to enhance readability and clarity. Specifically, the final rule reads: ''Regarding abandoned sites, as defined in 30 CFR 840.11(g), the State regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the State regulatory program.''

Final Rule § 842.11(b)(2)

Section 842.11(b)(2) defines what is ''reason to believe'' when an authorized representative is determining if a possible violation exists as presented by a citizen complainant.

Because there was ambiguity surrounding this term, OSMRE proposed to revise this section to provide that an authorized representative will have reason to believe that a violation, condition, or practice referred to in paragraph (b)(1)(i) exists if the facts that a complainant alleges, or facts that are otherwise known to the authorized representative, constitute simple and effective documentation of the alleged violation, condition, or practice. In making this determination, the authorized representative will consider any information readily available to him or her, including any information a citizen complainant or the relevant regulatory authority submits to the authorized representative.

As discussed in great detail in response to comments above, OSMRE is adopting this section as proposed, with one exception. Consistent with this approach, the final rule modifies § 842.11(b)(2) to clarify that OSMRE will consider any information readily available and not only the facts alleged in a citizen complaint when determining whether it has reason to believe a violation exists. Nothing in SMCRA requires OSMRE to accept alleged facts as true in a vacuum. Rather, information that a citizen provides is usually only a portion of the readily available information that OSMRE would consider when deciding whether to initiate the TDN process. Moreover, the inclusion of the phrase ''reason to believe'' in section 521(a)(1) of SMCRA indicates that Congress intended for OSMRE to use discretion in determining whether to issue a TDN to a State regulatory authority. With the changes finalized today, after OSMRE receives an allegation of a violation and assess all readily available information, OSMRE will apply independent, professional judgment to determine whether OSMRE has reason to believe a violation exists. Congress created OSMRE to be the expert agency that administers SMCRA. Therefore, OSMRE should not be acting as a mere conduit for transmitting a citizen complaint to a State regulatory authority in the form of a TDN.

In response to a few commenters, OSMRE has added the phrase ''from any source'' in the last sentence of the finalized section. Specifically, the last sentence, will now read, ''[i]n making this determination, the authorized representative will consider any information readily available to him or her, *from any source*, including any information a citizen complainant or the relevant regulatory authority submits to the authorized representative'' (emphasis added to show the revised language). This change is to clarify that an authorized representative may consider any information readily available, regardless of where the information originates.

In summary, final § 842.11(b)(2) comports with finalized § 842.11(b)(1)(i), which allows OSMRE to consider ''any information readily available'' when making a ''reason to believe'' determination. Being able to read these two provisions in harmony should reduce or eliminate any conflict or confusion that the existing provisions created.

Final § 842.12(a)

OSMRE is adopting § 842.12(a) as proposed. Specifically, 30 CFR 842.12(a) identifies the process to request a Federal inspection. This finalized provision states that a person may request a Federal inspection by submitting a signed, written statement (or an oral report followed by a signed written statement) giving the authorized representative reason to believe that a violation, condition or practice referred to in § 842.11(b)(1)(i) exists and that the State regulatory authority has been notified in writing about the violation. The final rule includes the minor, non-substantive modifications to the provision as proposed. These provisions provide that when any person requests a Federal inspection, the person's written statement ''must also set forth the fact that the person has notified the State regulatory authority, if any, in writing, of the existence of the possible violation, condition, or practice'' and the requirement that the person's statement must also include ''the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' These provisions reflect the fact that, most often, a State regulatory authority will address a potential violation when the State regulatory authority is made aware of the situation.

Finalized 30 CFR 842.12(a) complements the clarifications outlined above in the discussion of finalized § 842.11(b)(1)'s ''reason to believe'' standard. Specifically, the final rule modifies the existing language in § 842.12(a) to clarify that, when a person requests a Federal inspection, the person's request must include, ''information that, along with any other readily available information, may give the authorized representative reason to believe that a violation, condition, or practice referred to in § 842.11(b)(1)(i) exists.''

OSMRE reiterates that under finalized § 842.12(a), when OSMRE determines whether a violation exists for purposes of issuing a TDN or determining whether to conduct a Federal inspection, a State regulatory program issue will not qualify as a possible violation unless there is an actual or imminent violation of an approved State program. Similarly, OSMRE will not consider a State regulatory authority's failure to enforce its State regulatory program as a violation that warrants a TDN or Federal inspection. The TDN and Federal inspection process in section 521(a) applies to oversight enforcement about site-specific violations. Congress differentiated this type of individual operation oversight from the State regulatory program enforcement provisions of section 521(b). Based on this distinction, the existing 30 CFR part 733 addresses State regulatory program issue enforcement identified in section 521(b).

VI. Procedural Determinations

A. Statutes

1. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) has determined that this rulemaking is not major rulemaking, as defined by 5 U.S.C. 804(2), because this rulemaking has not resulted in, and is unlikely to result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

2. Data Quality Act

In developing this rule, OSMRE did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–544, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154).

3. National Environmental Policy Act

OSMRE has determined that the non-substantive changes finalized in this rulemaking are categorically excluded from environmental review under NEPA. 42 U.S.C. 4321 *et seq.* Specifically, OSMRE has determined that the final rule is administrative or procedural in nature in accordance with the Department of the Interior's NEPA regulations at 43 CFR 46.210(i). The regulation provides a categorical exclusion for, ''[p]olicies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis. . . .'' The final rule primarily clarifies how OSMRE formulates reason to believe in the TDN context and the information OSMRE considers in this analysis. It also enhances a process, the development of an action plan, that already exists in an internal agency document so that OSMRE can better ensure that a State regulatory authority adequately implements, administers, enforces, and maintains its approved State program. As such, the final rule merely clarifies and enhances OSMRE's existing processes. Therefore, OSMRE deems these changes to be administrative and procedural in nature. These clarifications and enhancements are aimed at improving efficiency and enhanced collaboration among State regulatory authorities and OSMRE. OSMRE has also determined that the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

4. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 note *et seq.*) directs Federal agencies to use voluntary consensus standards when implementing regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This final rule is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA, and the requirements would not be applicable to this final rulemaking.

5. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that 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 is approved by OMB, and it displays a currently valid OMB control number. Of the existing regulations impacted by the final rule (30 CFR parts 733, 736, and 842), 30 CFR parts 733 and 842 have existing OMB control numbers. However, after research and input from State regulatory authorities, no additional burden is imposed by the enhancement of 30 CFR part 733—specifically the codification of 30 CFR 733.12—Early identification of corrective action and corrective action to address State regulatory program issues. Additionally, as explained herein the only modification of 30 CFR part 736 is to revise a cross-reference to be consistent with the redesignation of provisions within 30 CFR part 733. Existing 30 CFR part 842 requires an OMB information collection because it allows citizens to submit a written request for a Federal inspection using an OMB-approved form. *See* OMB No. 1029–0118 available on OSMRE's website. *https://www.osmre.gov/resources/forms/OMB1029-0118.pdf.* This final rule will not alter the PRA obligations under 30 CFR part 842. Similar to the research performed by OSMRE in relationship to 30 CFR part 733 as finalized, OSMRE has discovered that the clarification of 30 CFR part 842 will not place any additional burden on the public, including, ''individuals, businesses, and State, local, and Tribal governments'' as defined in the PRA. In fact, under this final rule, the burden will be reduced. Therefore, this final rule will not impose an additional collection of information burden, as defined by 44 U.S.C. 3502, upon any entity defined in the PRA. Moreover, no public comments were received on this matter.

6. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis for rules that are subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553), if the rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 601–612. Based on OSMRE's collaboration with State regulatory authorities and years of experience, OSMRE certifies that this final rule 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.*).

7. Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. 5 U.S.C. 804(2). Specifically, the final rule: (1) Will not have an annual effect on the economy of $100 million or more; (2) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United-States based enterprises to compete with foreign-based enterprises in domestic and export markets.

8. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate or have a significant or unique effect on State, local, or Tribal governments, or the private sector, that will result in the expenditure of funds by State, local, or Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. To the contrary, as discussed herein, this final rule is aimed at eliminating duplication of resources and processes between Federal and State agencies and enhancing cooperation between OSMRE and State regulatory authorities. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

B. Executive Orders

1. Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. The final rule primarily concerns Federal oversight of State regulatory programs and enforcement when permittees and operators are not complying with the law. Therefore, the final rule will not result in private property being taken for public use without just compensation. A takings implication assessment is not required.

2. Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

E.O. 12866 provides that OIRA in the OMB will review all significant rules. Despite being specifically briefed on this rulemaking as proposed and as finalized, both in writing and verbally, OIRA has not deemed this final rule significant because it will not have a $100 million annual impact on the economy, raise novel legal issues, or create significant impacts. The final rule primarily clarifies and enhances the existing regulations and OSMRE's processes to reduce the burden upon the regulated community and preserve resources by allowing for greater cooperation between OSMRE and State regulatory authorities.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. This final rule has been developed in a manner consistent with and will further these requirements.

3. Executive Order 12988—Civil Justice Reform

This final rule complies with the requirements of E.O. 12988. Among other things, this rule:

(a) Satisfies the criteria of Section 3(a) requiring that all regulations be reviewed to eliminate drafting errors and ambiguity; be written to minimize litigation; and provide clear legal standards for affected conduct; and

(b) satisfies the criteria of Section 3(b) requiring that all regulations be written in clear language and contain clear legal standards.

4. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

E.O. 13045 requires that environmental and related rules separately evaluate the potential impact to children. However, this final rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866; and this action will not concern environmental health or safety risks disproportionately affecting children.

5. Executive Order 13132—Federalism

Under the criteria in Section 1 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. While OSMRE's clarification and enhancement of the existing regulations and processes in this final rule will have a direct effect on OSMRE's relationship with the States, this effect is not significant as it neither imposes substantial unreimbursed compliance costs on States nor preempts State law. Furthermore, this final rule does not have a significant effect on the distribution of power and responsibilities among the various levels of government. In fact, the final rule will reduce burdens on State regulatory authorities and more closely align the regulations to SMCRA. Therefore, a federalism summary impact statement is not required.

6. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. OSMRE has evaluated this final rule under the Department's consultation policy and under the criteria in E.O. 13175 and has determined that it will not have substantial direct effects on federally recognized Tribes and that consultation under the Department's tribal consultation policy is not required. Currently, no Tribes have achieved primacy; therefore, OSMRE regulates all surface coal mining and reclamation operations on Indian lands with tribal input and assistance. Currently, OSMRE works in conjunction with the Crow, Hopi, and Navajo regarding enforcement of surface coal mining and reclamation operations. This final rulemaking will not directly impact the Tribes. However, because these three Tribes have expressed interest in perhaps having their own regulatory programs in the future, OSMRE has coordinated with the Crow, Hopi, and Navajo to inform them of, and to provide updates on the final rulemaking. OSMRE attended quarterly meetings of the Tribes in order to provide an overview of the proposed rule, provide updates on the rulemaking process, and address questions posed by the Tribes.

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

E.O. 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is: (1) Considered significant under E.O. 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy; or is designated as a significant energy action by OMB. Because this final rule is not deemed significant under E.O. 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

8. Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

E.O. 13771 directs Federal agencies to reduce the regulatory burden on regulatory entities and control regulatory costs. Consistent with E.O. 13771 and the April 5, 2017, Guidance Implementing E.O. 13771, the final rule will have total costs less than zero. Moreover, this final rule operates to reduce the burden on State regulatory authorities by promoting coordination between OSMRE and States, eliminating duplication of processes, and increasing efficiency in resolving State regulatory authority program issues. In addition, this final rule provides compliance clarity to the regulatory community. Therefore, this final rule is a deregulatory action.

9. Executive Order 13783—Promoting Energy Independence and Economic Growth

Section 2 of E.O. 13783 requires agencies to ''review all existing regulations, orders, guidance documents, policies, and any other similar agency actions'' with the goal of eliminating provisions that impede domestic energy production. Section 2(a) exempts agency actions ''that are mandated by law, necessary for the public interest, and consistent with the policy [to remove unnecessary regulatory burdens on domestic energy production while promoting clean air and water within the constraints of current statutes].'' OSMRE, in conjunction with its State regulatory authority partners, has determined that this final rule promotes coordination ''with other Federal agencies and State regulatory authorities to minimize duplication of inspections, enforcement, and administration of [SMCRA]'' as specified by 30 U.S.C. 1211(c)(12) while also furthering the purposes of SMCRA including, but not limited to, assuring that surface coal mining operations are so conducted as to protect the environment and to strike the appropriate balance ''between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.'' *See* 30 U.S.C. 1202(d) and (f). In sum, OSMRE finds that this final rule satisfies the requirements of E.O. 13783 by appropriately removing unnecessary duplication of Federal and State efforts that impedes efficient oversight and enforcement of SMCRA and that may otherwise divert valuable time and monetary resources and impede or burden domestic energy production.

List of Subjects

30 CFR Part 733

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 736

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

David L. Bernhardt,

Secretary, U.S. Department of the Interior.

For the reasons set out in the preamble, the Department of the Interior, acting through OSMRE, amends 30 CFR parts 733, 736, and 842 as follows:

PART 733—EARLY IDENTIFICATION OF CORRECTIVE ACTION, MAINTENANCE OF STATE PROGRAMS, PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS, AND WITHDRAWING APPROVAL OF STATE PROGRAMS

■ 1. The authority citation for part 733 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. The heading of part 733 is revised to read as set forth above.

■ 3. Add § 733.5 to read as follows:

§ 733.5 Definitions.

As used in this part, the following terms have the specified meanings:

Action plan means a detailed schedule OSMRE prepares to identify specific requirements a State regulatory authority must achieve in a timely manner to resolve State regulatory program issues identified during oversight of State regulatory programs.

State regulatory program issue means an issue OSMRE identifies during oversight of a State or Tribal regulatory program that could result in a State regulatory authority not effectively implementing, administering, enforcing, or maintaining all or any portion of its State regulatory program, including instances when a State regulatory authority has not adopted and implemented program amendments that are required under 30 CFR 732.17 and 30 CFR subchapter T, and issues related to the requirement in section 510(b) of the Act that a State regulatory authority must not approve a permit or revision to a permit unless the State regulatory authority finds that the application is accurate and complete and that the application is in compliance with all requirements of the Act and the State regulatory program.

■ 4. Revise § 733.10 to read as follows:

§ 733.10 Information collection.

The information collection requirement contained in § 733.13(a)(2) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0025. The information required is needed by OSMRE to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

§§ 733.12 and 733.13 [Redesignated as §§ 733.13 and 733.14]

■ 5. Redesignate §§ 733.12 and 733.13 as §§ 733.13 and 733.14, respectively.

■ 6. Add a new § 733.12 to read as follows:

§ 733.12 Early identification and corrective action to address State regulatory program issues.

(a) When the Director identifies a State regulatory program issue, he or she should take action to make sure the identified State regulatory program issue is corrected as soon as possible in order to ensure that it does not escalate into an issue that would give the Director reason to believe that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program.

(1) The Director may become aware of State regulatory program issues through oversight of State regulatory programs or as a result of information received from any source.

(2) If the Director concludes that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program, the Director may substitute Federal enforcement of a State regulatory program or withdraw approval of a State regulatory program as provided in this part.

(b) The Director or his or her delegate may employ any number of compliance strategies to ensure that the State regulatory authority corrects a State regulatory program issue in a timely and effective manner. However, if the Director or delegate does not expect that the State regulatory authority will resolve the State regulatory program issue within 180 days after identification or that it is likely to result in a violation of the approved State program, then the Director or delegate will develop and institute an action plan.

(1) An action plan will be written with specificity to identify the State regulatory program issue and an effective mechanism for timely correction.

(2) An action plan will identify any necessary technical or other assistance that the Director or his or her delegate can provide and remedial measures that a State regulatory authority must take immediately.

(3) An action plan must also include:

(i) An action plan identification number;

(ii) A concise title and description of the State regulatory program issue;

(iii) Explicit criteria for establishing when complete resolution will be achieved;

(iv) Explicit and orderly sequence of actions the State regulatory authority must take to remedy the problem;

(v) A schedule for completion of each action in the sequence; and

(vi) A clear explanation that if the action plan, upon completion, does not result in correction of the State regulatory program issue, the provisions of § 733.13 may be triggered.

(c) All identified State regulatory program issues and any associated action plan must be tracked and reported in the applicable State regulatory authority's Annual Evaluation report. These State regulatory authority Annual Evaluation reports will be accessible through OSMRE's website and at the applicable OSMRE office. Within each report, benchmarks identifying progress related to resolution of the State regulatory program issue must be documented.

(d) Nothing in this section prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program, or OSMRE from taking appropriate oversight enforcement action, in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program.

PART 736—FEDERAL PROGRAM FOR A STATE

■ 7. The authority citation for part 736 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.,* as amended; and Pub. L. 100–34.

■ 8. Revise § 736.11(a)(2) to read as follows:

§ 736.11 General procedural requirements.

(a) * * *

(2) The Director shall promulgate a complete Federal program for a State upon the withdrawal of approval of an entire State program under 30 CFR 733.13.

* * * * *

PART 842—FEDERAL INSPECTIONS AND MONITORING

■ 9. The authority citation for part 842 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

■ 10. Amend § 842.11 by revising paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(ii)(A), (b)(1)(ii)(B)(*1*), (*3*), and (*4*), and (b)(2) to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(b)(1) An authorized representative of the Secretary must immediately conduct a Federal inspection:

(i) When the authorized representative has reason to believe on the basis of any information readily available to him or her, from any source, including any information a citizen complainant or the relevant State regulatory authority submits (other than information resulting from a previous Federal inspection), that there exists a violation of the Act, this chapter, the State regulatory program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation that creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources; and

(ii)(A) There is no State regulatory authority or the Office is enforcing the State regulatory program under section 504(b) or 521(b) of the Act and part 733 of this chapter; or

(B)(*1*) The authorized representative has notified the State regulatory authority of the possible violation and more than ten days have passed since notification, and the State regulatory authority has not taken appropriate action to cause the violation to be corrected or to show good cause for not doing so, or the State regulatory authority has not provided the authorized representative with a response. After receiving a response from the State regulatory authority, but before a Federal inspection, the authorized representative will determine in writing whether the standards for appropriate action or good cause have been satisfied. A State regulatory authority's failure to respond within ten days does not prevent the authorized representative from making a determination, and will constitute a waiver of the State regulatory authority's right to request review under paragraph (b)(1)(iii) of this section.

* * * * *

(*3*) Appropriate action includes enforcement or other action authorized under the approved State program to cause the violation to be corrected. Appropriate action may include OSMRE and the State regulatory authority immediately and jointly initiating steps to implement corrective action to resolve any issue that the authorized representative and applicable Field Office Director identify as a State regulatory program issue, as defined in 30 CFR part 733.

(*4*) Good cause includes:

(*i*) The possible violation does not exist under the State regulatory program;

(*ii*) The State regulatory authority has initiated an investigation into a possible violation and as a result has determined that it requires a reasonable, specified additional amount of time to determine whether a violation exists. When analyzing the State regulatory authority's response for good cause, the authorized representative has discretion to determine how long the State regulatory authority should reasonably be given to complete its investigation of the possible violation and will communicate to the State regulatory authority the date by which the investigation must be completed. At the conclusion of the specified additional time, the authorized representative will re-evaluate the State regulatory authority's response including any additional information provided;

(*iii*) The State regulatory authority demonstrates that it lacks jurisdiction over the possible violation under the State regulatory program;

(*iv*) The State regulatory authority demonstrates that it is precluded from taking action on the possible violation because an administrative review body or court of competent jurisdiction has issued an order concluding that the possible violation does not exist or that the temporary relief standards of the State regulatory program counterparts to section 525(c) or 526(c) of the Act have been satisfied; or

(*v*) Regarding abandoned sites, as defined in 30 CFR 840.11(g), the State regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the State regulatory program.

* * * * *

(2) An authorized representative will have reason to believe that a violation, condition, or practice referred to in paragraph (b)(1)(i) of this section exists if the facts that a complainant alleges, or facts that are otherwise known to the authorized representative, constitute simple and effective documentation of the alleged violation, condition, or practice. In making this determination, the authorized representative will consider any information readily available to him or her, from any source, including any information a citizen complainant or the relevant State regulatory authority submits to the authorized representative.

* * * * *

■ 11. Revise § 842.12(a) to read as follows:

§ 842.12 Requests for Federal inspections.

(a) Any person may request a Federal inspection under § 842.11(b) by providing to an authorized representative a signed, written statement (or an oral report followed by a signed written statement) setting forth information that, along with any other readily available information, may give the authorized representative reason to believe that a violation, condition, or practice referred to in § 842.11(b)(1)(i) exists. The statement must also set forth the fact that the person has notified the State regulatory authority, if any, in writing, of the existence of the possible violation, condition, or practice, and the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation. The statement must set forth a phone number, address, and, if available, an email address where the person can be contacted.

* * * * *

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Part IV

Bureau of Consumer Financial Protection

12 CFR Parts 1070 and 1091

Amendments Relating to Disclosure of Records and Information; Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1070 and 1091

[Docket No. CFPB–2016–0039]

RIN 3170–AA63

Amendments Relating to Disclosure of Records and Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau's rule regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

DATES: This final rule is effective December 24, 2020.

FOR FURTHER INFORMATION CONTACT: David Snyder, Senior Counsel, Legal Division, 202–435–7758. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Consumer Financial Protection (Bureau) was established by title X of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, codified at 12 U.S.C. 5301 *et seq.*) (Dodd-Frank Act). The Dodd-Frank Act, among other things, directed the Bureau to ''prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.'' 12 U.S.C. 5512(c)(6)(A).

In order to establish safeguards for protecting the confidentiality of information, as well as procedures for disclosing information as appropriate, the Bureau published an interim final rule on July 28, 2011, 76 FR 45371 (Jul. 28, 2011), followed by a final rule on February 15, 2013, 78 FR 11483 (Feb. 15, 2013). The Bureau also made limited revisions to the rule during that period, related to the treatment of privileged information. *See* Notice of Proposed Rulemaking, Confidential Treatment of Privileged Information, 77 FR 15286 (Mar. 15, 2012); Final Rule, Confidential Treatment of Privileged Information, 77 FR 39617 (July 5, 2012).

Based on its experience over the previous several years, the Bureau published a notice of proposed rulemaking on August 24, 2016, 81 FR 58310 (Aug. 24, 2016), that proposed to amend the rule to clarify, correct, and amend certain provisions of the rule, and it solicited comments on the proposal. The Bureau issued a final rule on September 12, 2018, 83 FR 46075 (Sept. 12, 2018), that pertained to the portions of the Bureau's proposal related to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, and requests for Bureau information in legal proceedings. The Bureau now issues this final rule to address the portions of its proposal regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

II. Summary of the Final Rule

The final rule revises subparts A and D of section 1070 of title 12 of the Code of Federal Regulations.

The revisions to subpart A address definitions of terms that are used throughout the remainder of the part. The Bureau has revised several of these definitions to clarify their intended meanings as well as Bureau practices. The Bureau has also included one new definition and deleted one definition in the final rule. The Bureau declines to finalize one new definition, ''agency,'' which was proposed in the notice of proposed rulemaking.

The revisions to subpart D pertain to the protection and disclosure of confidential information that the Bureau generates and receives during the course of its work. Various provisions of the Dodd-Frank Act require the Bureau to promulgate regulations providing for the confidentiality of certain types of information and protecting such information from public disclosure. The Bureau has sought to provide the maximum protection for confidential information, while ensuring its ability to share or disclose information to the extent necessary to achieve its mission. The Bureau has included detailed procedures in its final rule in order to promote transparency regarding its practices and anticipated uses of confidential information.

The Bureau has sought to balance concerns regarding the need to protect confidential information, including sensitive personal information, business information, confidential investigative information (CII) and confidential supervisory information (CSI), against the need to use and disclose certain information in the course of its work or, as appropriate, the work of other agencies with overlapping statutory or regulatory authority.

The Bureau has revised subpart D to clarify, correct, and amend certain aspects of the rule based on its experience over the last several years. In response to comments, the Bureau has declined to finalize, or has further revised, several of the revisions initially proposed in its notice of proposed rulemaking. In particular, the Bureau has in part declined to finalize, and in part further revised, its proposal to address disclosure of confidential investigative information in § 1070.42. In addition, the Bureau has declined to finalize its proposal to revise its standard for discretionary disclosure of confidential supervisory information to partner agencies under § 1070.43(b)(1).

III. Overview of Comments Received

The Bureau received twenty-seven comment letters in response to the notice of proposed rulemaking. Twenty-three of the comments addressed its proposal related to the confidential treatment of Bureau information, including proposed definitions in subpart A and proposed revisions to subpart D.[1] Twelve of these comment letters were submitted on behalf of industry trade associations. Three of these comment letters came from public interest organizations; two comment letters from individual financial institutions; one comment letter from a consumer advocacy organization; one comment letter from a consulting organization; one comment letter from an individual; two comment letters from a member of Congress; and one comment letter from a group of State attorneys general.

Commenters generally expressed concerns about whether the rule, as proposed, would sufficiently protect sensitive information, including CSI. In particular, numerous commenters took issue with the Bureau's proposal to expand discretion under 12 CFR 1070.43(b) to disclose CSI to agencies that may not have ''jurisdiction'' over the supervised financial institution. Commenters also expressed concerns with a proposed new definition of ''agency'' in 12 CFR 1070.2, which they believed to be overly broad. Commenters expressed a variety of policy concerns with these proposals, and a number of commenters argued that the Bureau lacks statutory authority to make these revisions, disagreeing with the Bureau's interpretation of 12 U.S.C. 5512(c)(6), which was articulated in support of the proposal. One commenter expressed support for the Bureau expanding its discretion to disclose CSI.

[1] The Bureau received four comment letters that only addressed its proposal related to the Freedom of Information Act. The Bureau also received one comment letter that was unrelated to the notice of proposed rulemaking.

A number of commenters also expressed concerns about a Bureau proposal to expand 12 CFR 1070.42 to address the Bureau's disclosure of CII in the course of its enforcement activities, and limitations on further disclosure of CII. Several of these commenters argued that the proposal's restrictions on further disclosure of CII would constitute a content-based restriction and a prior restraint on speech and would run afoul of the First Amendment's free speech protections. Commenters also articulated various reasons why a recipient of CII may need or want to further disclose CII.

Comment letters expressed various other concerns regarding the Bureau's proposal as well. These included concerns with, among other things, a proposal to eliminate a requirement that Bureau contractors and consultants provide written certification that they will comply with legal requirements associated with confidential information; a proposal that would have allowed the Bureau to disclose CSI or CII concerning a person to its service providers; proposed changes to Bureau procedures for processing requests from partner agencies for confidential information; a proposed change to procedures regarding Bureau disclosure of confidential information to Congress; a proposal that would have allowed the Bureau to disclose confidential information ''related to'' an administrative or court proceeding to which the Bureau is a party; and a proposal to require persons in possession of confidential information to report to the Bureau improper disclosures of confidential information.

IV. Legal Authority

The Bureau proposed the rule pursuant to its authority under (1) title X of the Dodd-Frank Act, 12 U.S.C. 5481 *et seq.,* including (a) section 1022(b)(1), 12 U.S.C. 5512(b)(1); (b) section 1022(c)(6)(A), 12 U.S.C. 5512(c)(6)(A); and (c) section 1052(d), 12 U.S.C. 5562(d); (2) the Freedom of Information Act, 5 U.S.C. 552; (3) the Privacy Act of 1974, 5 U.S.C. 552a; (4) the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.;* (5) the Trade Secrets Act, 18 U.S.C. 1905; (6) 18 U.S.C. 641; (7) the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and (8) the Federal Records Act, 44 U.S.C. 3101. The Bureau received no comments on the applicability of these statutes, and it promulgates the final rule pursuant to these authorities.

V. Section-by-Section Analysis

Part 1070—Disclosure of Records and Information

Subpart A—General Provisions and Definitions

Section 1070.2—General Definitions

Proposed Section 1070.2(a) Agency

In the notice of proposed rulemaking, the Bureau proposed adding a new definition, ''agency,'' which it proposed to include ''a Federal, State, or foreign governmental authority or an entity exercising governmental authority.'' The Bureau declines to finalize this proposal.

As previously drafted, § 1070.43 provided the Bureau with discretion to share confidential information with Federal or State agencies in certain circumstances. The proposed definition, combined with proposed revisions to §§ 1070.43 and 1070.45, was intended to clarify the Bureau's ability to share confidential information with a broader category of entities with whom the Bureau may at times collaborate in the course of carrying out its authorities under Federal consumer financial laws. The Bureau stated in its proposal that this could include registration and disciplinary organizations like State bar associations. Proposed revisions to § 1070.47 also expanded protections for confidential information disclosed under subpart D to include information shared with these additional entities. Finally, the Bureau proposed additional technical corrections throughout the rule to account for use of the new term.[2]

The Bureau received a number of comment letters regarding this proposed definition, with particular emphasis on its interaction with proposed revisions to § 1070.43 regarding the Bureau's discretionary disclosure of confidential information (including confidential supervisory information) to other agencies.[3] Commenters largely took issue with the proposed definition's inclusion of ''entit[ies] exercising governmental authority,'' though several expressed concerns regarding its inclusion of ''foreign governmental authorit[ies]'' as well.

Several commenters stated that the proposed definition was overly broad. Commenters expressed concerns that non-governmental entities may lack jurisdiction over the persons that initially provided information to the Bureau, and that foreign agencies may not be subject to United States law. For example, one comment letter, from a group of industry trade associations, criticized the proposal's inclusion of ''entit[ies] exercising governmental authority'' as ''limitless;'' it stated that the Bureau provided no limitation on its interpretation of the term, and suggested that, in addition to State bar associations, it could include medical societies, national associations of State regulatory bodies (such as insurance or utility commissioners), or municipal entities (such as housing or transportation authorities). Another commenter suggested that the term could include quasi-governmental organizations such as State or local task forces, boards, commissions, licensing bodies, ombudsmen, self-regulatory organizations, or courts. Two industry trade association commenters questioned how confidential information from financial institutions could be relevant to entities like State bar associations—such as where the institution does not engage in the practice of law, or where the entity would not generally have authority over financial institutions.

One comment letter, from an industry trade association, criticized the proposed definition as outside the intended and normal usage of the term ''agency.'' It argued that the term unambiguously means a governmental entity with legal authority to supervise and regulate the individual or company to whom confidential supervisory information relates, and the Bureau lacks authority to expand the definition to include entities that, in the commenter's view, are clearly not agencies. It stated that while a State bar association may exercise governmental authority, it is a non-governmental, voluntary professional membership organization, and is not an agency. The commenter also analogized that the term ''agency,'' when used in the regulatory context (such as in the Administrative Procedure Act, 5 U.S.C. 551) refers to entities with administrative legal authority, and that section 342(g) of the Dodd-Frank Act defines ''agency'' to refer to specific financial regulatory bodies.[4]

Several commenters expressed concerns about the Bureau's authority to promulgate the proposed definition. One comment letter, from an industry trade association, stated that there is no legislative history to support a conclusion that the Bureau has discretion to share confidential

[2] The Bureau also proposed renumbering the definitions in § 1070.2 to account for the addition and subtraction of various definitions.

[3] See below for discussion of comments regarding proposed § 1070.43(b)(1).

[4] Section 342 of the Dodd-Frank Act establishes Offices of Minority and Women Inclusion in enumerated Federal financial regulators.

information with ''entities exercising governmental authority.'' Two comment letters, from an industry trade association and a group of industry trade associations, argued that 12 U.S.C. 5512(c)(6), which discusses Bureau disclosure of CSI to certain agencies, does not mention non-U.S. agencies or quasi-governmental authorities. One comment letter, from a member of Congress, suggested that the Bureau's proposed definition was meant to unlawfully expand its authority to share confidential supervisory information with entities that lack jurisdiction over the companies, including foreign regulators and entities that exercise governmental authority.

Several comment letters from industry trade associations argued that the Bureau's proposal provides insufficient rationale for, or clarity regarding, its proposed definition. One of these commenters suggested that sharing confidential supervisory information with non-regulatory or non-governmental entities is unnecessary for enforcement or supervisory purposes. Another commenter suggested that the Bureau publish a list of entities ''exercising governmental authority,'' and concrete examples about how the Bureau intends to share confidential information with them and how such sharing would advance the Bureau's purposes. This commenter also suggested that the Bureau provide more information regarding its procedures for sharing information with foreign agencies and create a procedure for institutions to challenge a proposed disclosure with a presumption in favor of nondisclosure.

The Bureau also received two comment letters, from a group of industry trade associations and an industry trade association, raising concerns that non-regulatory or non-governmental entities may have insufficient information security, protections, controls, or expertise to protect the Bureau's confidential information. A third comment letter, from a financial institution, expressed similar concerns that the disclosure of confidential information to such entities could unintentionally result in exposing the information to the public. One comment letter, from an industry trade association, suggested that the disclosure of confidential information to bar associations would lead to further disclosure to the plaintiffs' bar and use in litigation against the financial institution at issue.

One comment letter, from a group of industry trade associations, suggested that the proposed definition could raise tensions with other laws. It stated that the proposal would lead to financial institutions ''effectively sharing information in a manner that is inconsistent'' with Regulation P, 12 CFR part 1016, and the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.,* because it would enable certain entities to obtain data that they could not otherwise obtain from the financial institution itself. The commenter also suggested that the proposal would allow sharing of confidential information, including personally identifiable information about non-U.S. individuals, in a manner that could be inconsistent with non-U.S. privacy rules and other non-U.S. laws, though it did not identify specific laws or explain how the proposal would conflict.

Finally, one commenter expressed concern regarding the Bureau's inclusion of foreign regulators in its proposal, noting that the proposal differed from the Federal Trade Commission's (FTC's) practices, which include certain restrictions on disclosures to foreign governments.

In response to the comments received, the Bureau declines to include the proposed definition, ''agency,'' in the final rule. The Bureau likewise declines to finalize the technical corrections and renumbering proposed to account for the new definition. Any use of the word ''agency(ies)'' in subpart D will not be capitalized because the final rule does not define the term.

The proposal's inclusion of ''entit[ies] exercising governmental authority'' had been intended primarily to facilitate limited and occasional collaboration in the course of carrying out the Bureau's enforcement activities. However, the Bureau recognizes that the defined term's use in provisions that address its disclosure of confidential supervisory information could give the impression that the Bureau intends to disclose confidential supervisory information to these entities as well. The Bureau also recognizes that the potential breadth of the proposal could create uncertainty and undermine confidence that information provided to the Bureau will be used and protected appropriately. In light of the minimal benefit of finalizing the proposal, relative to these concerns and others expressed in the comments received, the Bureau declines to include this proposed text in the final rule.

The Bureau included ''foreign governmental authorit[ies]'' in the proposed definition because Bureau enforcement and supervisory activities occasionally require it to coordinate with foreign government regulators, such as where a transnational entity engages in related activities in multiple jurisdictions, or where an entity abroad interacts with U.S. consumers from a foreign location.

The Bureau disagrees with commenters' contention that it lacks statutory authority to promulgate a regulation that authorizes disclosure of confidential information to foreign regulators. The Bureau has broad authority under 12 U.S.C. 5512(c)(6)(A) to draft regulations regarding the confidential treatment of information that it obtains from persons in connection with the exercise of its authorities under Federal consumer financial laws. Even assuming that this rulemaking authority is restricted by section 5512(c)(6)(C)(ii)—which says the Bureau ''may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law''—disclosure to foreign regulators is consistent with this provision. First, section 5512(c)(6)(C)(ii) does not address, and thus does not limit disclosure of, confidential investigative information or other confidential information that is not CSI. Second, the provision's reference to ''other agency having jurisdiction'' is not expressly restricted to domestic agencies and can reasonably be read to include foreign agencies with jurisdiction over the supervised financial institution.

Nevertheless, while the Bureau believes that it has authority to disclose confidential information to foreign regulators, it declines to expressly address such disclosures in the rule because, historically, its need to make these disclosures has been extremely rare. Revising the regulation to allow disclosure of confidential information to foreign regulators under the Bureau's standard information-sharing processes addressed in § 1070.43 risks leaving a mistaken impression that such disclosures will take place with regularity.

Instead, in the event that the Bureau identifies a future need to share confidential information with a foreign regulator, and it cannot otherwise make the disclosure pursuant to subpart D, it will do so pursuant to § 1070.46, which permits the Bureau's director to authorize disclosure of confidential information other than as set forth in subpart D. The authorization must be in writing, must otherwise be permitted by law, and may not be delegated. *See* 12 CFR 1070.46(a), (c).

The Bureau recognizes that disclosure of confidential information to a foreign regulator warrants special considerations, such as the regulator's ability to protect the information under its country's laws. And to the extent that the confidential information includes sensitive information, such as privileged information, proprietary information, or consumers' personal information, the Bureau will take that into consideration as well and will appropriately limit the scope of its disclosure. The Bureau intends to exercise its discretion to disclose confidential information to foreign regulators with caution, subject to appropriate confidentiality assurances and only when needed to support Bureau mission needs such as enhancing consumer protection. Limiting such disclosures to the Director's authority under § 1070.46 reflects this commitment by requiring decision-making to take place at the Bureau's highest level.

For the aforementioned reasons, the Bureau declines to finalize the proposed definition of ''agency.''

Section 1070.2(a) Associate Director for Supervision, Enforcement and Fair Lending

The Bureau proposed adding a new definition for ''Associate Director for Supervision, Enforcement and Fair Lending'' in order to clarify the meaning of a term already used in the rule, as well as several times in the proposed revisions to the rule. The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Former Section 1070.2(e) Civil Investigative Demand Material

Former § 1070.2(e) defined the term ''civil investigative demand material.'' The Bureau proposed eliminating this definition and instead incorporating it into the definition of ''confidential investigative information'' in § 1070.2(h). The Bureau explained that, because the term ''civil investigative demand material'' only arose in the rule in § 1070.2(h), the separate definition was unnecessary. The Bureau received no comments regarding the elimination of this definition, and it finalizes the proposal without modification.[5]

Section 1070.2(f) Confidential Information

Section 1070.2(f) defines the term ''confidential information.'' Confidential information refers to three defined categories of non-public information—confidential consumer complaint information, confidential investigative information, and confidential supervisory information—as well as other Bureau information that may be exempt from disclosure pursuant to one or more of the statutory exemptions to the FOIA.

Confidential information does not include information contained in records that have been made publicly available or otherwise publicly disclosed by the Bureau. The Bureau proposed revising the definition to clarify that such appropriate disclosures may be made by either Bureau employees or other authorized agents of the Bureau. An unauthorized disclosure of information would not affect the information's confidentiality.

In addition, the Bureau proposed revising the definition to clarify that confidential information disclosed to a third party in accordance with subpart D shall remain the Bureau's confidential information.

The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Section 1070.2(g) Confidential Consumer Complaint Information

Section 1070.2(g) defines the term ''confidential consumer complaint information.'' The Bureau proposed expanding the definition to include any information received or generated by the Bureau through processes or procedures established under 12 U.S.C. 5493(b)(3). The Bureau has found that its Consumer Response system at times receives misdirected complaints for which it lacks authority to act, or complaints submitted by companies rather than consumers. The proposed revision was intended to clarify that any complaints submitted to the Bureau through its Consumer Response system, and any information generated therein, are similarly classified under its confidentiality rules and subject to the same confidentiality protections. The proposal did not alter the prior text which limits confidential consumer complaint information to only include information that is exempt from disclosure pursuant to 5 U.S.C. 552(b).

One comment letter, from an industry trade association, expressed support for this proposal, which it described as an important safeguard for companies that may be named erroneously in consumer complaints submitted to the Bureau.

The Bureau finalizes the proposal without modification.

Section 1070.2(h) Confidential Investigative Information

Section 1070.2(h) defines the term ''confidential investigative information.'' As discussed above with respect to former § 1070.2(e), the Bureau proposed incorporating the definition of ''civil investigative demand material'' into § 1070.2(h). In addition, we proposed revising the term to clarify that confidential investigative information includes any information obtained or generated in the course of Bureau enforcement activities, including general investigative activities that may not pertain to a specific institution. The Bureau also proposed replacing § 1070.2(h)(2)'s reference to ''materials'' with ''documents, materials, or records'' in order to parallel similar language in the definition of ''confidential supervisory information'' at § 1070.2(i)(2).

An industry trade association criticized this proposal, alleging that it would ''greatly expand'' the definition of CII. The trade association argued that the revision would now include any information that may reveal the existence of communication between the Bureau and a company in the enforcement context, including the existence of a civil investigative demand (CID). The commenter expressed concerns that any such information would be subject to the Bureau's discretionary authority to share confidential information.

The Bureau does not agree that its proposed revisions to the definition of CII would significantly expand it. The Bureau merely proposed to incorporate the text of the definition of ''civil investigative demand materials'' into the definition of ''confidential investigative information'' to eliminate the need for a separate defined term. It further proposed minor revisions to refine and clarify the definition's text, such as making clear that CII can be obtained or generated in the course of general investigative activities that may not pertain to a specific institution. The Bureau did not propose substantive changes along the lines described by the commenter.

The commenter appears to take issue with the definition's inclusion of information ''derived from'' materials otherwise considered CII. However, this text predated the notice of proposed rulemaking and it is not new. Other than the non-substantive replacement of the word ''documents'' with ''materials,'' the Bureau's proposed revisions did not impact this text or its meaning.

The Bureau also disagrees with the commenter's implication that classifying information as ''confidential investigative information'' reduces its protections because the Bureau has procedures for sharing confidential

[5] See below for discussion of comments regarding the definition of ''confidential investigative information'' in § 1070.2(h).

information with partner agencies. On the contrary, classification of information as ''confidential'' restricts the Bureau's disclosure (rather than expanding it) because it renders the information subject to subpart D's protections. Where information is not considered ''confidential,'' the rule's protections do not attach to it, and the Bureau may share it with agency partners without taking into account the limitations and protections of the rule.

For the aforementioned reasons, the Bureau finalizes the proposal without modification.

Section 1070.2(i) Confidential Supervisory Information

Section 1070.2(i) defines the term ''confidential supervisory information.'' The Bureau proposed revising § 1070.2(i)(1)(i) to clarify that the term includes supervisory letters and similar documents. Since adopting the current definition of ''confidential supervisory information,'' the Bureau has refined the formats it uses for summarizing and memorializing the results of an examination or other supervisory review of a supervised financial institution. The Bureau currently issues different types of documents, including examination reports and supervisory letters, to convey the results of its examinations and other supervisory reviews. These documents are the property of the Bureau and are provided to the supervised financial institution for its confidential use only.

In addition, the Bureau proposed revising § 1070.2(i)(1)(ii) to state that, in addition to ''documents'' prepared by, or on behalf of, or for the use of the Bureau or any other Federal, State, or foreign government agency in the exercise of its supervisory authority over a financial institution, confidential supervisory information also includes ''materials[ ] or records'' prepared by, or on behalf of, or for the use of the Bureau or any other Federal, State, or foreign government agency in the exercise of its supervisory authority over a financial institution. This revision was intended to clarify that any such physical materials can include confidential supervisory information, regardless of the format. Likewise, the Bureau proposed revising the definition to include information derived from such ''materials[ ] or records.'' We noted in the notice of proposed rulemaking that information ''derived'' from such documents, materials, or records could include either physical materials (such as other documents, materials, or records) or information known to individuals (such as oral testimony or interviews based on knowledge gleaned from the documents, materials, or records).

In addition, the Bureau proposed revising § 1070.2(i)(1)(iv) to delete the reference to information collected using the Bureau's authority to monitor for risks to consumers in the offering or provision of consumer financial products or services under 12 U.S.C. 5512(c)(4) (sometimes referred to as the Bureau's ''market monitoring'' authority). The Bureau explained that, in accordance with the definition of ''confidential information'' in § 1070.2(f), market monitoring information would continue to be classified and protected as ''confidential information'' to the extent that it is exempt from disclosure pursuant to one or more of the statutory exemptions to the FOIA.

The Bureau proposed replacing the ''market monitoring'' reference in § 1070.2(i)(1)(iv) with new language stating that confidential supervisory information includes information obtained by the Bureau ''for purposes of detecting and assessing risks to consumers and to markets for consumer financial products or services pursuant to 12 U.S.C. 5514(b)(1)(C), 5515(b)(1)(C), and 5516(b).'' The purpose of this revision was to clarify that confidential supervisory information continues to include information obtained by the Bureau under its supervisory authorities at 12 U.S.C. 5514(b)(1)(C), 5515(b)(1)(C), and 5516(b). The Bureau had previously interpreted § 1070.2(i)(1)(iv) to address information obtained using these authorities as well as information obtained using its market monitoring authority, and the proposal was intended to retain the former, but exclude the latter.

Finally, the Bureau proposed deleting § 1070.2(i)(2), which previously stated that confidential supervisory information does not include documents prepared by a supervised financial institution for its own business purposes and that the Bureau does not possess. This provision was intended to prevent any implication that a supervised financial institution's copies of internal documents would be deemed to be confidential supervisory information on the grounds that those documents had been submitted to the Bureau in the course of a Bureau supervisory process. The Bureau explained that because this interpretation already follows from the other provisions of the rule, including the definition of ''confidential supervisory information,'' the explicit inclusion of this exception is unnecessary. The Bureau proposed renumbering § 1070.2(i) in light of this revision.

In response to the Bureau's proposal, one comment letter, from a group of industry trade associations, requested further guidance regarding the type of information that the Bureau considers to be ''derived from'' confidential supervisory information and therefore subject to the term's definition. For example, in a scenario where a supervised financial institution undertakes a project in response to Bureau concerns expressed in the course of supervision, the commenter asked whether the institution's work plan would be considered CSI. The commenter stated that such guidance is particularly important in light of the Bureau's proposal to delete § 1070.2(i)(2), which previously stated that confidential supervisory information does not include documents prepared by a supervised financial institution for its own business purposes and that the Bureau does not possess.

Where a supervised financial institution generates an internal work plan as part of its efforts to address Bureau supervisory concerns, information in the work plan that is ''derived from'' the types of documents, materials, or records described in § 1070.2(i)(1) and (2) is CSI. For example, an internal document may reveal a Bureau compliance rating, a Bureau supervisory finding, a supervisory ''Matter Requiring Attention,'' or other confidential information that is contained in documents, materials, or records prepared by, or on behalf of, or for the use of the Bureau. This information is CSI even where it is contained in an internal document that is not shared with the Bureau (for example, minutes of an internal discussion).

Certain work plans or other documents generated by a supervised financial institution in the course of a project undertaken in response to Bureau supervision may constitute CSI because they are ''prepared . . . for the use of the [Bureau]'' as described in § 1070.2(i)(2). For example, updates or progress reports generated at the request of the Bureau and submitted to the Bureau by an institution as part of the Bureau supervisory process are generally CSI.

On the other hand, work plans or other internal documents such as official business policies are not ''derived from'' the types of documents, materials, or records described in § 1070.2(i)(1) and (2) simply because they are created, adopted, or modified in response to Bureau supervision. A work plan that does not reveal the content or existence of confidential supervisory communications need not be treated as containing CSI.

In addition, as explained above, the Bureau does not intend the deletion of § 1070.2(i)(2) to substantively alter the meaning of ''confidential supervisory information.'' Rather, we consider the paragraph to be superfluous because its substance is implied by the remainder of the rule. The Bureau does not consider ''confidential supervisory information'' to include documents prepared by a supervised financial institution for its own business purposes, which do not include communications or information about the Bureau's supervisory process, and that the Bureau does not possess. As the Bureau explained in its notice of proposed rulemaking, should a supervised financial institution submit copies of such documents to the Bureau in the course of a Bureau supervisory process, the copies of the documents in the Bureau's possession would be Bureau confidential supervisory information. However, submission of those documents to the Bureau does not convert the copies of those documents that are in the possession of the financial institution into Bureau confidential information.

To the extent that institutions have additional questions along these lines, the Bureau encourages them to contact appropriate Bureau regional staff for further guidance.

In addition to the request for guidance, the Bureau received two comment letters from industry trade associations that expressed concerns with the proposal's removal of information collected using the Bureau's market monitoring authority at 12 U.S.C. 5512(c)(4) from the definition of ''confidential supervisory information.'' One commenter expressed concerns that removing market monitoring information from the definition of CSI could result in disclosure of market monitoring information under the Freedom of Information Act. It argued that FOIA exemptions that do not pertain to confidential supervisory information provide less protection because they are subject to more agency discretion.

The second commenter disagreed with the Bureau's reasoning, expressed in the notice of proposed rulemaking, that it is unnecessary to classify market monitoring information as CSI where the information is not used for supervisory purposes. The commenter argued that, with respect to supervised financial institutions, the Bureau has authority to collect the same information either through its market monitoring authority at 12 U.S.C. 5512(c)(4) or through its various supervisory authorities, and it expressed concerns that these different methods would provide different protections.

With respect to the first comment, the Bureau does not agree that re-classifying categories of confidential information in the rule would alter the applicability of exemptions under the FOIA. The FOIA establishes a judicially enforced statutory regime that is distinct from the Bureau's treatment of confidential information. The FOIA exemption that pertains to the supervision of financial institutions, 5 U.S.C. 552(b)(8) (Exemption (b)(8)), exempts from disclosure records ''contained in, or related to, examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' Market monitoring information, which may be unrelated to the Bureau's supervision of financial institutions, is not necessarily subject to this exemption, regardless of whether the Bureau has a regulation that labels it ''confidential supervisory information.''

If Exemption (b)(8), or any other FOIA exemption, applies to market monitoring information, then under the Bureau's proposal it will be protected both from disclosure under the FOIA and pursuant to the Bureau's confidentiality rules. However, categorically classifying market monitoring information as CSI would not prevent the information's disclosure pursuant to a FOIA request in the event that no FOIA exemption can apply to it—for example, information collected for a study that is publicly available on the internet. The comment's conflation of the FOIA and the Bureau's independent confidentiality protections highlights the need for the proposed revision, in order to improve transparency and manage expectations related to the protections that attach to information collected by the Bureau.

The Bureau disagrees with the second commenter's argument as well. The comment letter correctly states that the Bureau could, conceivably, collect certain information under its 12 U.S.C. 5512(c)(4) market monitoring authority, or its 12 U.S.C. 5514(b), 5515(b), or 5516(b) supervisory authorities. While the commenter suggests that this counsels treating the information the same in all events, the Bureau thinks otherwise. Congress intentionally drafted the Dodd-Frank Act to provide the Bureau with distinct authorities to collect information for distinct purposes. The Bureau's proposal would categorize information in accordance with the authority used to collect the information and the information's intended use. Rather than conflating its authorities and uses, the proposal would improve transparency about the Bureau's classification and treatment of information.

Furthermore, even if the Bureau does not label it ''confidential supervisory information,'' market monitoring information will continue to be protected as confidential information to the extent that it is exempt from disclosure under the FOIA—in particular, information that contains confidential business information or personal information. *See* 5 U.S.C. 552(b)(4) & (6). Such information would largely be subject to the same protections accorded to CSI by the Bureau's confidentiality rules. And for the reasons already discussed, classifying this information as Bureau CSI would not protect it from disclosure under the FOIA to the extent that it is not actually subject to any exemption to the FOIA.

For the aforementioned reasons, the Bureau finalizes the proposal without modification.

Section 1070.2(k) Employee

Section 1070.2(k) defines the term ''employee.'' The Bureau proposed revising the definition to clarify that, for purposes of this rule, Bureau ''employees'' include certain contract personnel and employees of the Bureau's Inspector General.

The Bureau received one comment letter, from an industry trade association, expressing concern that classifying employees of the Bureau's Inspector General as ''employees'' could restrict the employees' ability to disclose confidential information and impair their ability to perform their jobs. For example, the commenter argued that § 1070.41 could prevent the Bureau's Inspector General from publishing reports regarding the Bureau's examination or supervision process, or other internal workings of the Bureau.

The Bureau disagrees with this commenter's concerns. Classifying employees of the Bureau's Inspector General as ''employees'' under the rule clarifies that Inspector General employees may access confidential information consistent with the rule. Furthermore, the Bureau does not agree with the commenter's concerns regarding § 1070.41's restrictions, as § 1070.41(c) allows for the publication of reports derived from confidential information to the extent that they do not identify, either directly or indirectly, any particular person to whom the information pertains. This concern is also addressed by proposed § 1070.48, which states that subpart D does not prohibit the Inspector General's office from disclosing confidential information ''as needed in accordance with the Inspector General Act of 1978, 5 U.S.C. App. 3.''[6]

For the aforementioned reasons, the Bureau finalizes this proposal without modification.

Subpart D—Confidential Information

Section 1070.41 Non-Disclosure of Confidential Information

Section 1070.41(b) Disclosures to Contractors and Consultants

Section 1070.41(b) provides that contractors and consultants may only receive confidential information if they certify in writing to treat the confidential information in accordance with these rules, Federal laws and regulations that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the Bureau may impose. The Bureau proposed removing the certification requirement and replacing it with an affirmative statement that contractors and consultants are required to follow the obligations previously identified in the certification. The Bureau explained in its proposal that this revision was intended to clarify that contractors and consultants are subject to § 1070.41(b)'s requirements irrespective of any affirmative certification. The Bureau will further revise its proposal in the final rule.

In response to this proposal, the Bureau received one comment letter, from an industry trade association, stating that contractors and consultants should continue to be required to provide the written certification, to help them understand the gravity of their access to confidential information, and so their nondisclosure obligations can be more easily enforced. The commenter suggested that the Bureau can provide the clarity articulated in its notice of proposed rulemaking while continuing to require such certifications.

The Bureau agrees with the commenter that it is a best practice for contractors and consultants to provide a written certification that they will follow the Bureau's confidentiality rules. The Bureau also agrees that this provision can be revised further to both clarify contractors' and consultants' obligations and retain the current certification requirement. The Bureau thus revises the proposed language by adding an additional sentence after the proposed text: ''CFPB contractors or consultants may receive confidential information only if such contractors or consultants certify in writing to treat such confidential information in accordance with these requirements.'' This will retain the current certification requirement while addressing the need for clarity identified in the notice of proposed rulemaking.

Section 1070.41(c) Disclosures of Materials Derived From Confidential Information

Section 1070.41(c) addresses the disclosure of materials derived from confidential information. It requires that, when the Bureau discloses such materials, they may not directly or indirectly identify any particular person to whom the confidential information pertains. The Bureau proposed replacing the phrase ''[n]othing in this subpart shall limit the discretion of the CFPB'' with ''[t]he CFPB may . . .'' in order to clarify that § 1070.41(c) authorizes such disclosure by the Bureau. The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Section 1070.41(d) Disclosures of Confidential Information With Consent

The Bureau proposed a new paragraph that, where practicable, authorizes the Bureau to, upon receipt of prior consent, disclose confidential information that directly or indirectly identifies particular persons. The proposed provision would require consent from all such persons to the extent that the identification constitutes confidential information, and any such disclosure would have to comply with applicable law. In the event that the person is a minor child or otherwise lacks capacity to give consent, consent can be provided on that person's behalf by someone with legal authority to give it, such as a parent or guardian, where applicable. The Bureau explained in its notice of proposed rulemaking that it may at times be useful to disclose such information in order to achieve the Bureau's mission objectives, and that by conditioning disclosure on consent, affected persons' interests would be appropriately protected. The Bureau also clarified that this new provision is intended to serve as a distinct authority for disclosure, and that it would in no way impact other methods of disclosure currently addressed in the rule, such as in § 1070.43. The Bureau proposed renumbering the section to account for the new paragraph.

The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Section 1070.41(e) Nondisclosure of Confidential Information Belonging to Other Agencies

Section 1070.41(e) previously provided that nothing in subpart D requires or authorizes the Bureau to disclose confidential information that it has received from other agencies where such disclosure would contravene applicable law or conflict with any agreement between the CFPB and the provider agency. The Bureau further revises this provision in the final rule to address concerns about this provision raised in a comment letter.

The Bureau proposed replacing the word ''disclosability'' in the paragraph's title with ''nondisclosure'' in order to clarify that this provision protects the confidentiality of other agencies' confidential information; the Bureau explained in its proposal that it did not intend the revision to substantively change the provision. The Bureau received no comments regarding its proposed revision to the paragraph's title.

However, the Bureau did receive one comment letter, from a consulting organization, which noted that the Bureau can at times obtain prudential regulators' CSI from financial institutions. The commenter expressed concern that the Bureau could potentially disclose that CSI via other provisions of the rule in ways in which the originating prudential regulator might disagree.

The commenter correctly pointed out that, whereas § 1070.41(e), as proposed, addressed information provided directly to the Bureau by another agency, it was silent regarding other agencies' information that the Bureau might obtain indirectly from a third party. The Bureau sees value in providing assurances, to other regulators and to regulated entities, that § 1070.41(e) applies regardless of whether the Bureau received the information from the agency itself or from a third party.

To that end, the Bureau is revising the paragraph's text in the final rule. Rather than referencing ''confidential information that another agency has provided to the CFPB,'' the paragraph will instead pertain to ''confidential information belonging to another agency that has been provided to the CFPB (either directly or through a holder of the information such as a financial institution).'' The Bureau likewise

[6] See below for additional discussion of comments regarding disclosures of confidential information by the Inspector General's office under § 1070.48.

revises the paragraph's title to reflect this revision.

The paragraph further states that the CFPB will not disclose confidential information belonging to another agency ''to the extent such disclosure contravenes applicable law or the terms of any agreement that exists between the CFPB and the agency to govern the CFPB's treatment of information that the agency provides to the CFPB.'' The Bureau understands the ''applicable law'' reference to include limits on its further disclosure of information in accordance with other agencies' regulations related to confidential treatment of information. *See, e.g.,* 12 CFR 261.20(a); 12 CFR 4.37(b); 12 CFR 309.6(a); 12 CFR 792.31. We note, though, that § 1070.41(e) does not limit the Bureau's use and disclosure of business records or other company materials simply because that information has also been provided to another agency.

Section 1070.42 Disclosure of Confidential Supervisory Information and Confidential Investigative Information

Section 1070.42 previously provided that the Bureau may, in its discretion, disclose confidential supervisory information concerning a supervised financial institution or its service providers to that supervised financial institution or its affiliates. In addition, § 1070.42 provided that, unless directed otherwise by the Bureau's Associate Director for Supervision, Enforcement and Fair Lending or by his or her delegee, any supervised financial institution in possession of confidential supervisory information pursuant to this section may further disclose the information to certain recipients, subject to certain conditions.

In its notice of proposed rulemaking, the Bureau proposed several discrete changes to this section. First, it proposed expanding the scope of § 1070.42 to also address the Bureau's disclosure of CII in the course of its enforcement activities, as well as the further disclosure of CII by recipients of the information. Second, the Bureau proposed revising § 1070.42(a) to provide that, in addition to disclosing information concerning a person, its affiliates, or its service providers to that person or its affiliates, the Bureau may also disclose such information to that person's service providers. Third, the Bureau proposed revising § 1070.42(b)(2) to allow disclosure of information to insurance providers in certain circumstances without first seeking permission from the CFPB. Finally, the Bureau proposed removing references to the Associate Director for Supervision, Enforcement and Fair Lending's delegee, which was rendered unnecessary due to the new definition of the term ''Associate Director for Supervision, Enforcement and Fair Lending'' in § 1070.2. Each of these discrete proposals, and the comments responding to them, will be addressed in turn.

The majority of the comments submitted to the Bureau regarding § 1070.42 pertained to its proposal to expand the section's scope to address enforcement activities. In response to comments received, the Bureau in part declines to finalize, and in part further revises, this proposal.

As the Bureau explained in its notice of proposed rulemaking, it proposed this revision to lend clarity (1) to how the Bureau discloses CII in the course of its enforcement activities, and (2) regarding financial institutions' discretion to further disclose CII. This was intended to reduce confusion caused by the dynamic in the previously promulgated rule, which provided explicit and detailed instructions in the supervisory context, but lacked such specificity in the enforcement context. The Bureau's proposed solution was to mirror the CSI instructions with respect to CII.

The Bureau received a number of comment letters expressing concerns about the proposal's limitations on further disclosure of CII. In particular, the Bureau received seven comment letters—four from industry trade associations, two from public interest organizations, and one from a member of Congress—arguing that the proposal would infringe on free speech rights protected by the First Amendment. They stated that the proposal's requirement to obtain permission from the Bureau prior to further disclosing CII (other than as permitted in the section) would constitute a content-based restriction and a prior restraint on speech. For such restrictions to be constitutionally valid, they must be narrowly tailored to meet a compelling government interest, and commenters argued that the Bureau's proposal does not meet this test. Commenters also stated that courts and Congress have required procedural safeguards where agencies have imposed limitations on further disclosure of information regarding their investigative activities, and that the Bureau's proposal did not include such procedures.

These comment letters also described free speech benefits that commenters believed the proposal would harm. For example, commenters noted that entities may need to further disclose CII to meet contractual obligations and for other business dealings; to consult with others who may have information relevant to the investigation (such as former employees of the institution); to seek guidance or assistance from a trade association; and to complain to the press, the public and elected officials about perceived government misconduct. Commenters noted that free speech in this context promotes the public interest by enabling accountability and oversight of government, and in turn discouraging government overreach.

In addition, two industry trade association commenters and one financial institution commenter argued that the Bureau provided insufficient rationale for its proposal, such as that the Bureau did not detail the confusion that its proposal was intended to resolve. Finally, two commenters—an industry trade association and a member of Congress—argued that the Bureau lacks authority to promulgate its proposal because, in their view, the Bureau's statutory authority for its rule only limits the Bureau's own disclosures of information. One comment letter, from a public interest organization, encouraged the Bureau to state in its final rule that a recipient of CII in the course of an enforcement investigation is not prohibited from further disclosing the CII.

The Bureau received one comment letter from a financial institution that was supportive of this proposal because it would lend clarity regarding treatment of CII.

The Bureau has evaluated the comments that it received regarding this proposal, and it declines to finalize § 1070.42 as proposed.

As explained above, the two purposes of this proposal were to clarify (1) how the Bureau discloses CII in the course of its enforcement activities, and (2) financial institutions' discretion to further disclose CII. Rather than finalize its proposal in full, the Bureau will finalize it in part, and will further revise the section's text in part, in order to achieve these purposes while taking into account the comments that it received.

First, in order to clarify how the Bureau discloses CII in the course of its enforcement activities, the Bureau will finalize its proposed revisions to paragraph (a), which addresses the Bureau's own disclosure of confidential supervisory information and confidential investigative information (subject to additional revisions related to disclosures to service providers, discussed below). Although commenters were largely critical of proposed limits on further disclosure of CII, comment letters did not express concerns about the Bureau clarifying its own discretion to disclose CII in the course of its enforcement activities.

Second, the Bureau declines to expand paragraph (b)—which addresses further disclosure of CSI—to include CII. Instead, paragraph (b) will retain its previous scope and only address further disclosure of CSI. To effectuate this, the Bureau will revise the paragraph's title to read ''Further disclosure of confidential supervisory information.'' In addition, the Bureau declines to finalize its proposal to have all references in paragraph (b) to ''confidential supervisory information'' be accompanied by the phrase ''confidential investigative information.'' Furthermore, although the Bureau had proposed replacing references to ''supervised financial institution'' in paragraph (b) with a broader reference to ''person'' in order to account for recipients of CII, the Bureau declines to make this change because it is unnecessary if paragraph (b) only pertains to further disclosure of CSI. The Bureau finalizes several non-substantive technical revisions that it included in its proposal for clarity, and on which it received no comments. In addition, to clarify that paragraph (b) only authorizes the further disclosure of the Bureau's—and not other agencies'—information, the Bureau revises paragraph (b)(3) to, like (b)(1) and (2), refer to confidential supervisory information ''of the CFPB;'' and it adds a new paragraph (b)(4), stating that nothing in paragraph (b) authorizes the disclosure of confidential information belonging to another agency.

Third, in order to lend greater clarity to financial institutions' discretion to further disclose CII, the Bureau will include a new paragraph (c) in its final rule. This paragraph, titled ''Further disclosure of confidential investigative information,'' states that ''[n]othing in this subpart shall prohibit any person lawfully in possession of confidential investigative information of the CFPB pursuant to paragraph (a) of this section from further disclosing that confidential investigative information.'' This paragraph will thus make clear that the Bureau's rule does not prohibit the recipients of the Bureau's CII under paragraph (a) from further disclosing it.[7] The Bureau also inserts ''paragraph (a) of'' before two references to ''this section'' in paragraphs (b)(1) and (2), respectively, for clarity and to mirror the specificity in new paragraph (c).

The Bureau proposed several other revisions to § 1070.42 in its notice of proposed rulemaking that garnered fewer comments. For instance, the Bureau proposed revising § 1070.42(a) to provide that, in addition to disclosing information concerning a person, its affiliates, or its service providers to that person or its affiliates, the Bureau may also disclose such information to that person's service providers. In proposing this change, the Bureau reasoned that such information may at times be relevant to supervision or enforcement activities related to service providers. The Bureau declines to finalize this proposal in the final rule.

The Bureau received several comment letters expressing concerns about this proposal. Two comment letters, from an industry trade association and from a financial institution, expressed concern that disclosure of CSI or CII by the Bureau to an institution's service providers could lead to unintended consequences, particularly if the disclosure includes attorney-client privileged materials or proprietary information obtained from the financial institution. Another comment letter, from an industry trade association, argued that such disclosures could interfere with contractual relations between the financial institution and its vendors, and expressed concern that disclosures of preliminary allegations of wrongdoing could ''poison the well'' with the vendor. This commenter suggested that the financial institution, and not the Bureau, should determine when service providers should have access to confidential information.

In response to these comments, the Bureau declines to finalize this proposal, and the final rule will instead contain the status quo text, unmodified (subject to revisions to § 1070.42(a) related to the Bureau's disclosure of CII, discussed above), which only authorizes disclosure to a person or its affiliates.

The Bureau declines to address disclosure of CSI or CII to a person's service provider in the rule because, historically, its need to make such disclosures has been extremely rare. Revising the regulation to allow Bureau staff to disclose such CSI or CII to service providers pursuant to § 1070.42(a) risks leaving a mistaken impression that these disclosures will take place with regularity.

Instead, in the event that the Bureau identifies a future need to share CSI or CII pertaining to a person with its service provider, and it cannot otherwise make the disclosure pursuant to subpart D, it will do so pursuant to § 1070.46, which permits the Bureau's Director to authorize disclosure of confidential information other than as set forth in subpart D. The authorization must be in writing, must otherwise be permitted by law, and may not be delegated. *See* 12 CFR 1070.46(a), (c).

The Bureau anticipates that, for example, we may need to disclose CSI obtained from a financial institution to that institution's service provider in limited circumstances where we identify problems at a supervised service provider through the supervision of its client. We anticipate such disclosures to be rare, such as where CSI pertains to the service provider and the service provider is subject to the Bureau's supervisory authority. In instances such as these, where disclosure pertains to the Bureau's authority over the service provider, it should be in the Bureau's purview to make the disclosure.

However, the Bureau appreciates commenters' concerns, such as that the Bureau could ''poison the well'' or otherwise make these disclosures in inappropriate ways or for inappropriate purposes. In deciding whether to use its discretion to disclose information to service providers, we would consider in part whether the information contains otherwise sensitive information, such as attorney-client privileged information or proprietary information, and we will limit the scope of disclosure as appropriate. Vesting the Director alone with authority to approve these disclosures under § 1070.46 reflects this commitment by requiring decision-making to take place at the Bureau's highest level.

In addition, the Bureau also proposed revising § 1070.42(b)(2) to clarify that a person in possession of confidential information pursuant to this section may disclose such information to an insurance provider pursuant to a claim for coverage made by that person under an existing policy.

The Bureau explained in its proposal that such disclosures could only be made if the Bureau had not precluded indemnification or reimbursement for the claim. The Bureau further explained that this revised language would only authorize disclosure to the extent necessary for the insurance provider to process and administer the claim for coverage. Further distribution or use of the information would be prohibited. We noted that these limitations do not foreclose an insurance provider from using information that has been publicly disclosed by the Bureau in making future underwriting determinations

[7] The Bureau notes that while it disagrees with two commenters' arguments that its authority under the Dodd-Frank Act to promulgate its confidentiality rules is limited to the Bureau's own disclosure of information, these commenters' arguments are rendered moot by the Bureau's revision in the final rule.

regarding the person or for other purposes—even if that information was originally submitted to the insurance provider as confidential information under this provision.

The Bureau received two comment letters regarding this proposal. One comment letter, from an industry trade association, expressed concerns about the proposal's limitation. It noted that insurance contracts may require timely notice of claims (including receipt of a CID or initiation of a regulatory proceeding) and argued that waiting to learn whether the CFPB has precluded indemnification or reimbursement may preclude recovery. The commenter also argued that, following an enforcement action, an entity may be subject to a private class action suit, and therefore should be permitted to disclose information to its insurers to obtain reimbursement for legal and other expenses associated with the follow-on lawsuit.

A second comment letter, from a financial institution, suggested that the Bureau allow the disclosure of confidential information to insurance providers for the purpose of underwriting insurance coverage, such as directors and officers liability coverage. The commenter reasoned that, although an institution can seek approval from the Associate Director for Supervision, Enforcement and Fair Lending, this process would add time and uncertainty, which could impact institutions' ability to timely obtain insurance coverage.

The Bureau notes that facets of these comments—that relate to the disclosure of CII to insurance companies—are rendered moot by revisions to the proposal described above. Under the final rule, § 1070.42 contains no limitations on institutions' disclosure of CII to an insurance company, and this appears to resolve much of the commenters' concerns.

In addition, it is unclear from the industry trade group's comment whether the group interprets proposed § 1070.42(b)(2) to require financial institutions, prior to disclosing information to an insurance provider, to first inquire as to whether the Bureau precludes indemnification or reimbursement for a claim. It does not. The provision would permit such disclosures without first seeking permission from the Bureau; if the Bureau has not already notified the financial institution that it precludes indemnification or reimbursement, the financial institution may make the disclosure.

The Bureau disagrees with the second commenter's suggestion that it allow disclosures to insurance providers for underwriting purposes. Again, the provision is now limited to further disclosure of CSI, and the Bureau does not believe that underwriting would be an appropriate use of its supervisory communications and ratings. We note that the prudential regulators similarly concluded in 2005 that their nonpublic information should not be disclosed to insurance companies for underwriting purposes. *See* FDIC, Financial Institution Letter, FIL–13–2005, ''Interagency Advisory on the Confidentiality of CAMELS Ratings and Other Nonpublic Supervisory Information (Feb. 28, 2005), *available at https://www.fdic.gov/news/news/financial/2005/fil1305.html* (last visited Oct. 8, 2020).

For the aforementioned reasons, the Bureau finalizes this proposal without modification.

Finally, the Bureau proposed to remove references to the Associate Director for Supervision, Enforcement and Fair Lending's delegee. The Bureau reasoned that such reference is no longer necessary because the new definition of Associate Director for Supervision, Enforcement and Fair Lending, located at § 1070.2, includes delegees. The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

In addition to the comments regarding its proposed revisions to § 1070.42, the Bureau also received a comment letter, from a group of industry trade associations, asking the Bureau to revise the rule to allow service providers to disclose CSI to the financial institutions to which they provide service. The current rule allows financial institutions to disclose CSI to their service providers, and the commenter suggested making this allowance reciprocal. The commenter reasoned that financial institutions' responsibility to monitor third-party relationships is made more difficult if the service provider can withhold negative supervisory evaluations from the financial institution.

The Bureau declines to make this suggested revision. The Bureau believes that supervisory communications with service providers could be undermined if the service providers knew that their clients could request the information. This concern is heightened with supervised nonbank institutions that are subject to the Bureau's supervision and happen to act as service providers.

Lastly, the Bureau received one comment letter, from a group of industry trade associations, seeking guidance on whether the Bureau's rule prohibits entities from making certain disclosures pursuant to securities law. This issue was similarly raised in comment letters that argued against the proposal's limitation on further disclosure of CII (discussed above) due to securities law obligations.

The Bureau agrees that further clarity on this issue would be helpful, as the comment letter makes clear that it is a source of confusion. As a preliminary matter, under § 1070.42(c) of the final rule, there are no restrictions on institutions' further disclosure of CII obtained pursuant to § 1070.42(a). In addition, the rule does not prohibit an institution from further disclosing confidential information, including confidential supervisory information, where such disclosure is otherwise required by law. *See* 12 CFR 1070.41(a). This includes where an institution determines that it is required to make a disclosure in order to comply with securities law. Such disclosure should be limited to that which is necessary to comply with securities law. The Bureau encourages financial institutions to reach out to appropriate regional staff with further questions regarding this issue.

The Bureau notes that its discussion of the authorization to make disclosures under the securities laws is limited to disclosure of the Bureau's confidential information; with respect to confidential information that belongs to other regulators, financial institutions should consult with the regulator(s) to which the confidential information belongs.

Section 1070.43 Disclosure of Confidential Information to Agencies

Section 1070.43 sets forth the circumstances in which the Bureau may disclose confidential information to other government agencies. The Bureau proposed several revisions to this section. First, as a general matter, the Bureau proposed to revise the section's title and subtitles to delete the references to ''law enforcement agencies'' and ''other government agencies;'' to revise the text throughout the section to account for the new defined term ''agency;'' and to make various other non-substantive technical corrections. Second, the Bureau proposed revising the standard, in § 1070.43(b)(1), regarding the Bureau's discretion to disclose CSI to other agencies. Third, the Bureau proposed revising § 1070.43(b)(2) to, among other things, move responsibility for acting on agency requests for confidential information from the Bureau's General Counsel to the Bureau's Associate Director for Supervision, Enforcement and Fair Lending. Fourth, the Bureau proposed deleting § 1070.43(c), which pertains to requests for information that is not confidential information. The Bureau also received a comment on proposed § 1070.43(c) (formerly § 1070.43(d)) which addresses the negotiation of standing requests for confidential information between the Bureau and other agencies.

The Bureau proposed revising the section's title and subtitles to delete the references to ''law enforcement agencies'' and ''government'' agencies because it believed the references to be superfluous. Instead, the title and subtitles would reference ''agencies.'' This was not intended to be a substantive change. The Bureau proposed various other non-substantive technical corrections in the section as well. The Bureau received no comments that directly address these proposed revisions, and it finalizes them without modification.

The Bureau also proposed revisions throughout the section to account for the proposed defined term ''agency.'' [8] For the reasons discussed above with respect to proposed § 1070.2(a), and because the Bureau has declined to include the new definition in the final rule, the Bureau declines to finalize these proposed revisions in § 1070.43. Previous references to ''Federal or State agency'' will remain references to ''Federal or State agency'' without modification.

Section 1070.43(a)(1)

Section 1070.43(a)(1) requires, among other things, that the Bureau disclose a final report of examination, including any and all revisions to that report, to a Federal or State agency with jurisdiction over a supervised financial institution, provided that the Bureau receives from the agency reasonable assurances as to the confidentiality of the information disclosed. The Bureau revises this provision in the final rule.

The Bureau has previously explained that this provision implements 12 U.S.C. 5512(c)(6)(C)(i). *See* 78 FR 11484, 11494, 11496 (Feb. 13, 2013). In particular, in the preamble to its 2013 final rule, the Bureau concluded that section 5512(c)(6)(C)(ii)'s mandate that the Bureau disclose examination reports to ''State regulator[s]'' does not require the disclosure of CSI to a State attorney general unless that State attorney general regulates the covered person or service provider. *See* 78 FR 11484, 11496. The Bureau concedes that although it articulated this interpretation in the 2013 final rule's preamble, § 1070.43(a)'s inclusion of the more general term ''Federal or State agency'' could be cause for confusion.

Although the Bureau proposed no revisions to § 1070.43(a), it revises this provision in the final rule to clarify that it will disclose a final report or examination, including any and all revisions to such a report, ''as provided in 12 U.S.C. 5512(c)(6)(C)(i),'' to a Federal or State agency with jurisdiction over that financial institution, provided that the Bureau receives from the agency reasonable assurances as to the confidentiality of the information disclosed.

Several comments, while addressing the Bureau's proposed revisions to other provisions, touched on issues raised by § 1070.43(a). For example, one comment letter, from an industry trade association, expressed concern that, between the Bureau's proposed definition of ''agency'' and the Bureau's proposed interpretation of 12 U.S.C. 5512(c)(6), the Bureau could draft a rule that enables a State bar association to require the Bureau to disclose reports to it—a dynamic that the commenter described as absurd. Another comment letter, from a group of State attorneys general, expressed support for the Bureau's proposal to remove the jurisdictional requirement for sharing CSI with a partner agency under § 1070.43(b), suggesting that this revision would permit the Bureau to share CSI with State enforcement agencies more freely.

The Bureau notes, in response to the first comment, that concerns regarding the disclosure of CSI to State bar associations are fully addressed by the Bureau's decision to not finalize the proposed definition of ''agency'' in the final rule; and regarding the commenter's broader point, that the Bureau could conceivably draft § 1070.43(a) more broadly, the Bureau has not proposed such a rule. In response to the second comment, the Bureau notes that its policy regarding sharing CSI with State attorneys general is set forth in Bulletin 12–01. It did not intend its proposal to alter this policy, and Bulletin 12–01 will remain in place after the final rule becomes effective.

Nevertheless, these comments do highlight concerns and confusion related to disclosure of reports of examination to State agencies, including under § 1070.43(a). The Bureau thus revises the provision to clarify in its text that its scope parallels the scope of 12 U.S.C. 5512(c)(6)(C)(i). This revision does not change the interpretation articulated in the preamble to the 2013 final rule; it merely codifies that interpretation in the regulation's text.

In addition, for consistency with this new text, the Bureau revises § 1070.43(a)'s separate reference to disclosures of draft reports of examination ''in accordance with 12 U.S.C. 5515(e)(1)(C)'' to say that the draft reports of examination will be disclosed ''as provided in 12 U.S.C. 5515(e)(1)(C).'' Replacing the phrase ''in accordance with'' with the phrase ''as provided in'' is a technical revision that is not intended to change the meaning of that text.

Section 1070.43(b) Discretionary Disclosure of Confidential Information to Agencies

Section 1070.43(b)(1)

Section 1070.43(b)(1) sets forth the standard under which the Bureau may disclose confidential information to other agencies in its discretion. The Bureau's prior rule established two distinct standards for disclosing confidential supervisory information and other confidential information. It stated that the Bureau may disclose confidential information to an agency ''to the extent that the disclosure of the information is relevant to the exercise of the [Agency's] statutory or regulatory authority,'' but that it may only share confidential supervisory information with agencies ''having jurisdiction over a supervised financial institution.''

The Bureau proposed removing the separate standard for confidential supervisory information, which would have aligned the two standards and provided the Bureau with discretion to disclose either confidential supervisory information or other confidential information to another agency ''to the extent that the disclosure of the information is relevant to the exercise of the [agency's] statutory or regulatory authority.'' The Bureau declines to finalize this proposed revision.

The Bureau explained in its notice of proposed rulemaking that this proposed change was intended to facilitate communication and information-sharing among the Bureau and other governmental authorities. The Bureau stated that it had determined that sharing confidential supervisory information in situations where the disclosure of the information is relevant to the exercise of the receiving agency's statutory or regulatory authority would facilitate the Bureau's purposes and objectives. It noted that multiple agencies engage in operations that potentially affect the offering and provision of consumer financial products and services, as well as the

[8] See above for discussion of comments regarding the proposed definition of ''Agency'' in proposed § 1070.2(a).

markets, industries, companies, and other persons relevant to the Bureau's work, and that multiple agencies have interests and obligations relating to implementation, interpretation, and enforcement of the Dodd-Frank Act and the other Federal consumer financial laws administered by the Bureau. The Bureau also explained that the proposed change would have assisted it in implementing and administering Federal consumer financial law in a more consistent and effective fashion, and would have enabled the Bureau to work together with other agencies having responsibilities related to consumer financial matters. The Bureau said that it believed that the proposed change would comport with the intent of the Dodd-Frank Act, since effective coordination and communication among agencies is essential in order for the regulatory framework established by that Act to work as Congress intended.

The Bureau stated in its proposal that, in its judgment, the prior rule's restrictions had proven overly cumbersome in application, posed unnecessary impediments to cooperating with other agencies, and otherwise risked impairing the Bureau's ability to fulfill its statutory duties. Unnecessary impediments to information-sharing in such circumstances impede supervisory and enforcement coordination and create opportunities for potential conflict, inefficiency, and duplication of efforts across agencies. The Bureau reasoned that retaining discretion to share confidential supervisory information in such situations would better promote the Bureau's mission and overall effectiveness.

The Bureau also stated in its proposal that the proposed change would codify a revised interpretation of 12 U.S.C. 5512(c)(6). *See generally* 81 FR 58310, 58317–18 (Aug. 24, 2016).

The Bureau received a number of comments regarding its proposed revision to § 1070.43(b)(1), and they were largely critical of the proposal. Commenters expressed general concerns regarding the potential breadth of proposed § 1070.43(b)(1), and the proposal's potential impact on the supervisory process. Commenters also raised concerns regarding the proposal's interaction with definition of ''agency'' in proposed § 1070.2(a).[9] In addition, a number of comment letters took issue with the Bureau's revised interpretation of 12 U.S.C. 5512(c)(6).

Several commenters criticized the Bureau's proposed revision to § 1070.43(b)(1) for being overly broad. For example, several industry trade associations stated that the proposed ''relevance'' standard would allow the Bureau to disclose CSI to any interested domestic or foreign agency, even if it has no role in the regulation of financial institutions. One comment letter, from a group of industry trade associations, suggested that if an institution operated in only one State and only sold a product in that State, any domestic or foreign regulator might find CSI regarding the institution ''relevant'' to their statutory or regulatory authority to the extent that consumers within their jurisdiction could purchase the same product. Another commenter argued that there is no logical stopping point to ''relevance,'' and that the proposal would enable disclosure of CSI by the Bureau even if information were only tangentially related to an agency's authority.

The Bureau received several comment letters that stated that broader disclosure of confidential supervisory information raises concerns regarding the protection of privileged material. Although not all Bureau CSI consists of material subject to a financial institution's privilege, financial institutions do at times submit materials subject to the attorney-client privilege and/or attorney work-product privilege in the course of the Bureau's supervisory activities. *See generally* 12 U.S.C. 1828(x). Commenters expressed concern that the transfer of privileged information to agencies or entities that are not covered by 12 U.S.C. 1828(x) or 12 U.S.C. 1821(t) could result in a breach or waiver of the privilege. Commenters also stated that the Bureau's proposal was likely to make entities less willing to voluntarily produce privileged materials to the Bureau due to such risks. One commenter suggested that uncertainty regarding the Bureau's protection of privilege could make institutions less likely to engage counsel or obtain written advice, which could negatively impact compliance. This commenter also stated that the U.S. Department of Justice and Securities and Exchange Commission do not condition cooperation credit on the waiver of privilege. Another comment letter stated that there is no indication in 12 U.S.C. 1828(x) that Congress intended the provision to enable a banking agency to circumvent the inability of other agencies to obtain privileged materials.

In light of these concerns, one commenter suggested that the Bureau modify its proposal to limit disclosure of privileged information to Federal agencies that are referenced in 12 U.S.C. 1821(t). Another commenter went further, suggesting that the Bureau state that it would not transfer privileged materials subject to 12 U.S.C. 1828(x) to other agencies or parties at all.

The Bureau also received several comment letters that expressed concern that broader dissemination of CSI increases risk that the CSI may not be protected sufficiently, including from data breach, hacking, and other unauthorized disclosures. One comment letter, from an industry trade association, stated that such disclosures could lead to the information being taken out of context, or could raise safety and soundness issues. A comment letter, from a group of industry trade associations, stated that, once the Bureau discloses CSI to an agency or entity, there is no mechanism to ensure that the recipient has taken appropriate steps to prevent data breaches or to resolve data breaches when they occur; and there is no meaningful way for the Bureau to prevent the further transmission of CSI by a recipient. This commenter also argued that the recipient's certification, required by § 1070.43(b)(2)(v), is inadequate. One comment letter, from an industry trade association, expressed concern that recipients of CSI may be unable to protect it from disclosure due to State and foreign disclosure or privacy laws (which may require greater disclosure than that mandated by the Freedom of Information Act, 5 U.S.C. 552) or discovery requests in civil litigation.

Commenters also stated that broad disclosure of CSI would undermine the Bureau's supervisory process. One commenter explained that it is logical to share CSI subject to heightened disclosure restrictions, compared to other confidential information like CII, because CSI plays a critical role in effective supervision. Several industry trade association commenters stated that the proposal would make institutions less likely to cooperate with the Bureau and produce information to the Bureau in the course of its supervisory activities. One comment letter, from a group of industry trade associations, articulated that the proposal would undermine the relationship of trust between banks and the Bureau, and it suggested that this could be detrimental to banks' safety and soundness. This commenter argued that the proposal would undermine the bank examination privilege because more routine

[9] The Bureau's final rule does not include the proposed definition of ''agency'' in response to these and related concerns. See above for discussion of comments regarding proposed § 1070.2(a).

disclosure of CSI would increase the risk that courts will no longer protect confidential supervisory information from disclosure in private litigation. This commenter suggested that the Bureau only disclose CSI in rare cases when the disclosure serves a strong governmental interest, and not merely advancement of the Bureau's mission.

The Bureau also received a number of comment letters that criticized its proposal for providing insufficient rationale or clarity. Several commenters stated that the Bureau's proposal did not establish a record for how the status quo rules impede its activities, and how the proposal would resolve those issues. One comment letter, from a group of industry trade associations, stated that the Bureau had not conducted a thorough analysis of the risks associated with expanded disclosure of CSI, including supervisory, litigation, and reputational risks, which it suggested surpassed the potential benefits of the proposal. Another comment letter, from an industry trade association, disagreed with the Bureau's justification for its proposal—that it would enable cooperation with other agencies having responsibilities related to consumer financial matters—because the proposal's definition of ''agency'' included non-financial regulators and other entities without responsibilities related to the enforcement of consumer financial laws or prudential regulation. A second industry trade association commenter argued that the proposal to disclose CSI to agencies that lack jurisdiction over supervised financial institutions would not help the Bureau administer consumer financial laws, reasoning that the status quo rule did not restrain the Bureau's supervisory or enforcement authorities. This same commenter rejected the Bureau's coordination rationale, reasoning that any agency that has supervisory or enforcement authority over a covered financial institution could already receive CSI under the previous rule.

In addition, the Bureau received several comment letters that argued that the Bureau's proposal was inconsistent with other regulators' practices, stating that other regulators do not disclose CSI to agencies that lack jurisdiction. For example, one comment letter, from a group of industry trade associations, stated that the proposal was inconsistent with the policies of Federal prudential regulators, which it said have broader statutory authority than the Bureau to share CSI. *See* 12 U.S.C. 1817(a)(2)(C)(iii) (Federal banking agencies may ''furnish any report of examination or other [CSI] concerning any . . . entity examined by such agency . . . to . . . any . . . person that the Federal Banking agency determines to be appropriate.''). The commenter contrasted this language with 12 U.S.C. 5512(c)(6)(C)(ii), arguing that by not extending section 1817's discretionary authority to the Bureau, Congress indicated an intent to limit the Bureau's discretion to disclose CSI. The commenter stated that, in practice, regulators have adopted regulations that strictly limit such disclosure, which provides comfort to supervised entities. The commenter noted, for example, that the Office of the Comptroller of the Currency (OCC) has promulgated regulations that limit disclosure of non-public OCC information to State agencies where those agencies have ''authority to investigate violations of criminal law'' or are ''state bank and state savings association regulatory agencies,'' and when disclosure is ''necessary, in the performance of their official duties.'' 12 CFR 4.37(c).

Another comment letter, from a consulting organization, argued that the Bureau's proposal was inconsistent with other agencies' practices, and that it would compromise the reliability of the bank examination privilege and would violate the Bureau's obligations to the FFIEC to maintain supervisory consistency. This same commenter stated that Congress had intended 12 U.S.C. 5512(c)(6)(C) to mirror regulations by the Board of Governors of the Federal Reserve System (''FRB''), at 12 CFR 261.20, which it described as limiting the Board's sharing of CSI to agencies with supervisory jurisdiction. Another comment letter, from an industry trade association, similarly stated that FRB regulations, at § 261.20, permit disclosure to Federal prudential regulators and State supervisory agencies. This commenter also stated that the Bureau failed to explain why it needed greater flexibility in light of other agencies' practices.

The Bureau received other critical comments as well. For example, one comment letter, from a group of industry trade associations, suggested that the Bureau's proposal would result in an increase in requests for the Bureau's information, which would burden Bureau staff. Two commenters, a consulting organization and an industry trade association, expressed concern that sharing CSI with non-supervisory agencies would expand the Bureau's supervisory power in contravention of *Cuomo* v. *Clearing House Ass'n,* 557 U.S. 519 (2009), and related authorities.

Several commenters suggested that, in the event that the Bureau adopted its proposal, it should provide formal guidance or make additional changes to the rule. For example, one commenter proposed that the Bureau codify in the rule a formal policy and practice of sharing CSI only in limited circumstances, such as where the requestor demonstrates a substantial need for the requested information that outweighs the Bureau's need to maintain its confidentiality. This commenter also suggested that, absent circumstances that compel otherwise, the Bureau should notify the impacted supervised financial institution prior to disclosing CSI related to the institution to any entity other than Federal or State financial supervisory agencies with jurisdiction, or in certain cases U.S. Department of Justice, and give the supervised financial institution a reasonable opportunity to object and redact the information. Another commenter suggested that, in the event that the Bureau receives misdirected complaint data from credit unions over which it lacks jurisdiction, it should not share the data with any agency other than the National Credit Union Administration (NCUA) and that it should defer to the NCUA on whether the information is ''relevant'' to other agencies' statutory or regulatory authority.

In addition to these issues, a number of the comment letters received by the Bureau disagreed with the revised interpretation of 12 U.S.C. 5512(c)(6) that the Bureau articulated in its proposal. Commenters described the Bureau's interpretation as ''tortured,'' ''unreasonable,'' and contrary to statutory language and to the statute's clear intent. In particular, several of the comment letters, received from industry trade associations and a member of Congress, disagreed with the Bureau's conclusion that 12 U.S.C. 5512(c)(6)(C)(ii) is ambiguous, instead concluding that the provision is unambiguous and restrictive. The Bureau also received several comment letters, from industry trade associations, that stated that the Bureau's interpretation of 12 U.S.C. 5512(c)(6) renders subparagraph (C)(ii) superfluous. And several comment letters, also from industry trade associations, argued that its proposed interpretation conflicted with legislative history and congressional intent. Finally, one comment letter, from a consulting organization, suggested that the Bureau did not sufficiently substantiate the change in policy articulated in its proposal. *See Encino*

Motorcars v. *Navarro,* 136 S. Ct. 2117, 2125–26 (2016).[10]

The Bureau received one comment that was supportive of its proposal, from a group of State attorneys general. The comment letter suggested that the proposal would permit the Bureau to share CSI with State enforcement agencies. It argued that sharing CSI would properly increase resources available to address consumer abuses by supervised institutions, and that it would support coordination and collaboration between State attorneys general and the Bureau in their enforcement efforts.[11]

The Bureau disagrees with commenters' claims that it did not sufficiently substantiate the change in policy articulated in its proposal. The Bureau stated in its proposal that it had determined that broader discretion to disclose CSI would facilitate the Bureau's purposes and objectives, and it explained how such discretion would assist its work. *See* 81 FR 58310, 58317 (Aug. 24, 2016).

However, the Bureau declines to finalize its proposal. Instead, the final rule will retain § 1070.43(b)(1)'s status quo dual standards, unmodified: The Bureau may disclose confidential information to an agency ''to the extent that the disclosure of the information is relevant to the exercise of the [Agency's] statutory or regulatory authority,'' and confidential supervisory information to an agency ''having jurisdiction over a supervised financial institution.''

The Bureau had proposed changing the standard for disclosure of CSI to provide flexibility to address rare situations where it may have a need to disclose information identified as confidential supervisory information to an agency that does not necessarily have jurisdiction over a given financial institution. However, the Bureau acknowledges that commenters have raised the general concern that, as proposed, § 1070.43(b)(1)'s potential breadth could create uncertainty and decrease confidence that information provided to the Bureau in the course of its supervisory activities will be used and protected appropriately. In light of these concerns, the Bureau declines to revise the regulation as proposed.

Section 1070.43(b)(2)

Section 1070.43(b)(2) sets forth a process for agencies to submit written requests (sometimes referred to as ''access requests'') to the Bureau in order to obtain access to its confidential information pursuant to § 1070.43(b). Whereas the section previously required submission of access requests to the General Counsel, the Bureau proposed to instead require submission to the Associate Director for Supervision, Enforcement and Fair Lending.[12] The Bureau further revises § 1070.43(b)(2) in the final rule in several ways. In particular, rather than vesting authority to act upon access requests with either the General Counsel or the Associate Director for Supervision, Enforcement and Fair Lending, the final rule will vest the authority with the Director or her designee. Thus, instead of codifying a delegation via regulation, the final rule will provide the Director with the flexibility to change the delegation if warranted, without the need for further rulemaking.

The Bureau explained in its notice of proposed rulemaking that it believed the proposed change would lead to increased efficiency because the vast majority of access requests submitted to the Bureau pertain to work conducted by its Division of Supervision, Enforcement and Fair Lending. The Bureau stated that the Associate Director for Supervision, Enforcement and Fair Lending would continue to consult with other Bureau stakeholders, including the Legal Division, as necessary. The Bureau reasoned that, in making these changes, the authority to act upon access requests would shift from the Legal Division to other Bureau staff with expertise more directly related to processing these requests. The Bureau also proposed that access requests be emailed to a single email address, *accessrequests@cfpb.gov,* or to the Bureau's mailing address at 1700 G Street NW, Washington, DC 20552, in order to facilitate processing.

The Bureau received five comment letters, all from industry trade associations, that were critical of the proposal to shift the authority to act upon access requests from the General Counsel to the Associate Director for Supervision, Enforcement and Fair Lending.

Three comment letters expressed concern that the proposal could create a conflict of interest. For example, one commenter argued that the Associate Director could use access requests as a ''negotiating tool'' in situations where an agency may ask the Associate Director for CSI regarding an entity while the Division is simultaneously engaged in an enforcement action against the same entity. A second commenter expressed concerns that the Associate Director might lack impartiality, given that he or she also oversees requests for information from institutions during the course of an investigation, as well as requests from institutions to further disclose information under § 1070.42(b). Another comment letter, from a group of industry trade associations, stated that the Associate Director would have a potential conflict of interest because he or she may have reasons to grant access requests related to the work conducted by his or her Division.

Four comment letters argued that the Bureau's General Counsel is better suited to the role of approving access requests. The group of trade associations stated that the General Counsel is in a better position to weigh the impact of disclosure on the bank examination privilege and other legal obligations. The commenter also argued that agencies' assertions in access requests regarding their legal authority are more appropriately addressed by the General Counsel. Similarly, two commenters asserted that the General Counsel is better suited than the Associate Director for making determinations that impact personal and commercial privacy interests of entities. One commenter argued that shifting the authority for access requests could lose a check on ensuring that disclosure of CSI is rooted in the Bureau's statutory and regulatory authority, rather than political or ideological motivations. Two commenters recommended that the General Counsel maintain a role in deciding whether to approve access

[10] One commenter interpreted 12 U.S.C. 5512(c)(6)(C) to apply to confidential investigative information (in addition to confidential supervisory information), and to require the Bureau to provide confidentiality assurances to the impacted financial institution prior to disclosing the confidential information to another agency under subparagraph (C)(i). The Bureau disagrees with these interpretations. First, subparagraph (C) explicitly references ''confidential supervisory information,'' which is a narrower term than subparagraph (A)'s more general reference to ''information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.'' CII is thus outside the scope of subparagraph (C), and the Bureau's rule makes clear in § 1070.2(h) and (i) that the Bureau considers ''confidential investigative information'' to be different from ''confidential supervisory information.'' Second, the Bureau disagrees that subparagraph (C)(i) requires the Bureau to provide confidentiality assurances to the supervised financial institution about whom a report of examination pertains; because the provision addresses the exchange of information between the Bureau and another agency, the Bureau understands it to require the agency obtaining the report of examination to provide such assurances of confidentiality *to the Bureau.*

[11] The Bureau notes that its policy regarding sharing CSI with State attorneys general is set forth in Bulletin 12–01. It did not intend its proposal to alter this policy, and Bulletin 12–01 remains in place subsequent to the final rule becoming effective.

[12] The Bureau likewise proposed moving the General Counsel's related ''access request'' authorities in 12 CFR 1070.47(a)(1)–(2) to the Associate Director for Supervision, Enforcement and Fair Lending. The comment letters received by the Bureau generally addressed both revisions together.

requests, with one suggesting more specifically that General Counsel approval be required, in addition to the Associate Director's approval.

Two commenters also criticized the proposal for departing from other agencies' practices. The group of industry trade associations noted that the FRB vests authority to decide access requests with its Legal Division. Another commenter argued that other agencies vest their General Counsel with responsibility to ''oversee FOIA requests and production of information.'' This same commenter expressed concern that moving access-request authority could result in inconsistent decisions regarding the release of information in response to access requests, FOIA requests, or requests under the Bureau's *Touhy* regulations at 12 CFR 1070.30 through 1070.37.[13]

As the Bureau explained in the notice of proposed rulemaking, we proposed moving access-request authority from the General Counsel to the Associate Director for Supervision, Enforcement and Fair Lending in order to increase efficiency because most access requests submitted to the Bureau pertain to work conducted by that Division. The Bureau believes that the Associate Director may be in a better position than the General Counsel to make a policy determination whether to authorize an access request, since the Division of Supervision, Enforcement and Fair Lending is more familiar with the information at issue and the context of the access request. The Bureau does not agree with the contention that this change creates a conflict of interest, as the Bureau would consider the same policy grounds for granting an access request regardless of where the authority is located.

In addition, while some agencies, such as the FRB, may vest access-request authority with their General Counsel, others do not. For example, the FDIC vests access-request authority in the director of the division having primary authority over the records. *See* 12 CFR 309.6. Likewise, the Securities and Exchange Commission vests access-request authority in senior officers at or above the level of Associate Director or Associate Regional Director. *See* Securities and Exchange Commission, Division of Enforcement, Enforcement Manual section 5.1 (Nov. 28, 2017), *available at https://www.sec.gov/divisions/enforce/enforcementmanual.pdf* (last visited Oct. 8, 2020); 17 CFR 240.24c–1. Given the size and organization of the Bureau, and for the reasons described above, we think it reasonable to vest access-request authority in an official other than the General Counsel.

Nevertheless, in light of the concerns expressed, the Bureau declines to codify in the rule that authority to act upon access requests is vested in the Associate Director for Supervision, Enforcement and Fair Lending. Instead, the final rule will vest the authority in the ''Director,'' which is defined in 12 CFR 1070.2(j) to include a designee of the Director. Thus, while the Director may delegate the authority to the Associate Director for Supervision, Enforcement and Fair Lending, this shift can be reversed or otherwise changed without requiring a rulemaking—such as if experience shows that the Bureau's Legal Division was in a better position to address access requests.

The Bureau notes that if responsible for acting upon access requests, the Division of Supervision, Enforcement and Fair Lending would continue to consult with the Legal Division as needed, such as when an access request raises legal questions regarding authority, privilege, privacy, trade secrets, or other legal obligations.[14]

Furthermore, the Bureau does not share one commenter's concern that its proposal could lead to different results where determinations are made in response to an access request, a FOIA request, or a request under the Bureau's *Touhy* regulations. These disclosures occur in different contexts, subject to different protections, and should not necessarily result in identical determinations. In addition, as stated above, the Bureau's Legal Division would continue to be consulted as needed in access-request determinations.

Finally, although the Bureau received no comments on the email address or mailing address that it proposed for access request submissions, it declines to include this contact information in the final rule because it has concluded that codification of such information is unnecessary.

In addition to changing the authority to act on access requests, the Bureau proposed revising § 1070.43(b)(2)(iii), for purposes of clarity, to state that, among other things, access requests must include a statement certifying and identifying the agency's ''statutory or regulatory authority that is relevant to the requested information, as required by paragraph (b)(1).'' We explained in the proposal that, in our experience, the previous formulation (the agency must certify or identify its ''authority for requesting the documents'') can lead to confusion.

The Bureau received no comments on this proposal. However, because the Bureau has declined to finalize its proposed revision to § 1070.43(b)(1) regarding discretionary disclosure of CSI, it needs to further revise paragraph (b)(2)(iii) to track the dual standards in paragraph (b)(1) and achieve the same clarity sought in the proposal. Thus, the Bureau further revises the text in the final rule to read, ''A statement certifying and identifying, as required by paragraph (b)(1) of this section, the agency's statutory or regulatory authority that is relevant to the requested information or, with respect to a request for confidential supervisory information, the agency's jurisdiction over a supervised financial institution.''

Finally, although the Bureau proposed no revisions to § 1070.43(b)(2)(v), it received two comment letters from industry trade associations regarding the paragraph, which requires agencies to include in an access letter ''[a] certification that the agency will maintain the requested confidential information in confidence, including in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the CFPB may impose.'' One commenter described the requirement as inadequate, and the other argued that the certification does not substitute for evaluation of the agencies' data security policies.

These comments are similar to a comment that the Bureau received when it initially promulgated the rule, where a commenter suggested that the Bureau audit agencies' data security practices prior to sharing confidential information with them. *See* 78 FR 11484, 11495 (Feb. 15, 2013). We considered and rejected the suggestion at the time, explaining in the previous final rule that, prior to disclosure, the Bureau takes reasonable steps to ensure that a requesting agency is legally authorized to protect the information, and that it has systems in place to safeguard the information from theft, loss, or

[13] This commenter also claimed that the Bureau's proposal would shift responsibility for determining FOIA requests to the Associate Director for Supervision, Enforcement, and Fair Lending. The Bureau made no such proposal. Authorities to decide FOIA requests remained unchanged in the Bureau's proposal, and are unchanged in this final rule and in 83 FR 46075 (Sept. 12, 2018).

[14] The Bureau occasionally receives access requests for confidential information that is neither CII nor CSI, such as information originating from another Bureau Division that is exempt from disclosure under the FOIA. In those instances, the Division of Supervision, Enforcement and Fair Lending would consult with impacted Divisions as warranted.

unauthorized access or disclosure. *See id.* at 11497. The Bureau's view remains unchanged, and it finalizes § 1070.43(b)(2)(v) without modification.

Former Section 1070.43(c) State Requests for Information Other Than Confidential Information

Former § 1070.43(c) stated that State agency requests for information other than confidential information were not to be made and considered under § 1070.43. The Bureau proposed deleting this paragraph because it believed the paragraph to be unnecessary and confusing. Because, by its own terms, § 1070.43 only applies to confidential information, there is no need to state that it does not apply to information that is not confidential. The Bureau received no comments on this proposal, and it finalizes the proposal without modification.

Proposed Section 1070.43(c) Negotiation of Standing Requests

Proposed § 1070.43(c) (formerly § 1070.43(d)) states that the Bureau may negotiate terms governing the exchange of confidential information with agencies on a standing basis. The Bureau proposed no substantive revisions to this paragraph (other than replacing a reference to ''Federal or State agencies'' with ''Agencies,'' which is discussed above).

The Bureau received one comment letter, from an industry trade association, which stated that the Bureau could use this authority to negotiate data security standards, and it requested clarification from the Bureau that such standards are non-negotiable.

The Bureau disagrees with the commenter's implication that the Bureau can use proposed § 1070.43(c) to negotiate data security standards lower than the standards required by § 1070.43(b)(2). Paragraph (b)(2) requires agencies to make certain confidentiality assurances in order for the Bureau to approve an access request. Proposed paragraph (c), meanwhile, merely states that the Bureau can agree to the exchange of information on a standing, rather than a case-by-case, basis. In this context, the Bureau interprets proposed paragraph (c) to require that such standing agreements be consistent with the requirements of paragraph (b)(2). In addition, we note that the Bureau's obligations under the Dodd-Frank Act, such as the confidentiality requirements of 12 U.S.C. 5512(c)(8), apply equally to disclosures under paragraphs (b) and (c).

For the aforementioned reasons, the Bureau finalizes the proposal without modification.

Section 1070.44 Disclosure of Confidential Consumer Complaint Information

Section 1070.44 addresses the Bureau's disclosure of confidential consumer complaint information in the course of investigating, resolving, or otherwise responding to consumer complaints. The Bureau proposed replacing the phrase ''[n]othing in this subpart shall limit the discretion of the CFPB'' with ''[t]he CFPB may . . .'' in order to clarify that § 1070.44 authorizes such disclosure by the Bureau. The Bureau also proposed replacing the phrase ''concerning financial institutions or consumer financial products and services'' with ''concerning consumer financial products and services or a violation of Federal consumer financial law'' in order to clarify that the section broadly addresses any information received or generated by the Bureau through processes or procedures established under 12 U.S.C. 5493(b)(3), including where complaints do not concern financial institutions, or where the Bureau lacks authority to act on them. The Bureau received no comments on this proposal, and it finalizes the proposal without modification.

Section 1070.45 Affirmative Disclosure of Confidential Information

Section 1070.45 addresses various instances where the Bureau may make disclosures of confidential information on its own initiative. The Bureau proposed several revisions to clarify, supplement, or amend the disclosures previously addressed in the section. Any disclosures made pursuant to this section must be made in accordance with applicable law.

The Bureau proposed deleting the reference in § 1070.45(a) to ''confidential investigative information'' in the phrase ''confidential investigative information or other confidential information.'' The Bureau explained in its proposal that this reference is unnecessary because confidential investigative information is a sub-category of confidential information. The Bureau also noted that, while it may disclose any category of confidential information under § 1070.45(a), disclosures made under this section—particularly paragraphs (a)(3) and (4) and proposed (a)(6)—are more likely to involve confidential investigative information, rather than other categories of confidential information, such as confidential supervisory information. The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Paragraph (a)(2) addresses disclosure of confidential information to either House of the Congress, or to an appropriate committee or subcommittee of the Congress, as set forth in 12 U.S.C. 5562(d)(2). The text states that, upon receipt of a request from the Congress for confidential information that a financial institution submitted to the Bureau along with a claim that such information consists of trade secret or privileged or confidential commercial or financial information, or confidential supervisory information, the Bureau ''shall notify'' the financial institution in writing of its receipt of the request and provide the institution with a copy of the request. The Bureau proposed revising the text to state that it ''may notify'' the financial institution in such circumstances. The Bureau declines to finalize this proposal.

The Bureau reasoned in its proposal that this revision would provide greater flexibility and more closely align with 12 U.S.C. 5562(d)(2), which states that the Bureau ''is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.''

The Bureau received four comment letters that addressed this proposal. Three commenters—an industry trade association, a group of industry trade associations, and a financial institution—stated that notification should be mandatory so that financial institutions have an opportunity to object to the disclosure to Congress, or at least to prepare to be able to assist Congress or to respond to potential publicity. One comment letter, from a group of industry trade associations, argued that notice is critical to ensuring that information is not misused, misunderstood, inaccurately reported, or inadvertently disclosed. The commenter reasoned that notice allows institutions to be prepared to respond to questions and potentially avoid panic or inappropriate or harmful reactions. The two industry trade association commenters also stated that they did not believe the Bureau sufficiently explained its need for ''flexibility'' in its proposal, and that any such need is outweighed by the importance of preserving the confidentiality of CSI. One of the commenters also noted that the Bureau's proposal differs from a similar rule promulgated by the FTC that requires agency notice in similar situations. *See* 16 CFR 4.11(b). Finally, the Bureau received a comment letter, from a public interest organization, expressing concern that the Bureau's proposal could reduce institutions' ability to prevent, or at least object to, the disclosure of information to Congress, which could threaten the privileged status of any such information.

In light of these comments, the Bureau declines to finalize this proposal, and the final rule instead will contain the status quo text, unmodified, which requires notification by the Bureau prior to disclosures to either House of the Congress or to an appropriate committee of subcommittee of the Congress. The Bureau appreciates commenters' concerns about a financial institution's need to know when its sensitive information is being produced to Congress. The Bureau also recognizes that a mandatory, rather than discretionary, notification process establishes predictability and increases confidence regarding the Bureau's protection and appropriate treatment of information. The Bureau's proposal had been intended to give the Bureau flexibility where it receives Congressional requests for less sensitive information—for example, publicly available market monitoring materials that the rule previously classified as ''confidential supervisory information.'' However, other revisions to the rule, such as the removal of market monitoring material from the definition of ''confidential supervisory information'' in § 1070.2(i), alleviate the need for such flexibility. Further, the Bureau concludes that the benefits of the mandatory notice requirement outweigh the marginal benefits of retaining flexibility in instances where the Bureau receives requests for less sensitive information.

Paragraph (a)(3) pertains to the disclosure of confidential information in ''investigational hearings and witness interviews, as is reasonably necessary, at the discretion of the CFPB.'' This paragraph was initially intended to address disclosure in the course of investigations and enforcement actions. *See* 76 FR 45372, 45375 (Jul. 28, 2011). The Bureau proposed revising the paragraph to state that it may disclose confidential information in ''investigational hearings and witness interviews, or otherwise in the investigation and administration of enforcement actions, as is reasonably necessary, at the discretion of the CFPB.'' It explained that this revision would clarify that the Bureau may disclose confidential information in its discretion to conduct its investigations or perform administrative tasks to further its own enforcement actions. This includes, for example, disclosures to expert witnesses, service process servers, or other Federal and State agencies that may provide assistance with space for investigational hearings or advise the Bureau on local rules regarding a court filing. This would also include instances in which the Bureau is partnering with another agency and determines that it needs to share specific information with that agency to further an investigation or administer the filing or settlement of a joint enforcement action. The Bureau received no comments on this proposal, and it finalizes the proposal without modification.

Paragraph (a)(4) authorizes the disclosure of confidential information ''[i]n an administrative or court proceeding to which the CFPB is a party.'' The Bureau proposed revising this paragraph to state that it may disclose confidential information ''[i]n or related to an administrative or court proceeding to which the Bureau is a party.'' The Bureau declines to finalize this proposal.

The Bureau explained in its proposal that it intended this revision to clarify that it may disclose confidential information not only during an administrative or court proceeding to which the Bureau is a party, such as in complaints and consent orders, but also when related to the Bureau's implementation of ongoing administrative or court orders. It noted that such disclosures could be made in furtherance of the Bureau's reporting requirements and could include, for example, updates on required consumer remuneration and the payment of civil money penalties.

The Bureau received two comments regarding this proposed revision. One comment letter, from a group of industry trade associations, criticized the proposal as overly broad and unnecessary. It expressed concern that such disclosure could increase litigation and reputation risk for financial institutions and potentially undermine the bank examination privilege. The commenter also stated that the Bureau's proposal did not indicate how broadly it could construe ''related to,'' and that it did not justify why such disclosures are necessary or how that need would outweigh the Bureau's need to maintain confidentiality. Another comment letter, from an industry trade association, expressed concern that the proposal could allow the Bureau to disclose confidential information prior to commencement or after conclusion of a proceeding.

In light of these concerns, the Bureau declines to make the proposed revision in the final rule. As the Bureau explained in its proposal, it occasionally has a need to disclose confidential information about an administrative or court proceeding outside the context of the actual proceeding, such as updating the public and Congress about consumer remuneration and the payment of civil money penalties. While such disclosures are relatively rare and only occur in limited circumstances, addressing these disclosures in § 1070.45(a)(4) risks leaving a mistaken impression that such disclosures will take place with regularity. Furthermore, as indicated by the commenters' expressed concerns, the potential breadth of the proposed text could lead to this provision being applied more broadly than the proposal intended.

Instead, in the event that the Bureau identifies a future need to disclose confidential information about an administrative or court proceeding outside the context of the actual proceeding, and it cannot otherwise make the disclosure pursuant to subpart D, it will do so pursuant to § 1070.46, which permits the Bureau's director to authorize disclosure of confidential information other than as set forth in subpart D. The authorization must be in writing, must otherwise be permitted by law, and may not be delegated. *See* 12 CFR 1070.46(a), (c).

Disclosures contemplated by the proposal should only be made when appropriate and subject to due consideration of the disclosure's impact. Vesting the Director alone with authority to approve these disclosures under § 1070.46 reflects this commitment by requiring decision-making to take place at the Bureau's highest level.

Paragraph (a)(4) also permits the submitter of confidential investigatory materials that consists of trade secrets or privileged or confidential financial information, or confidential supervisory information, to seek a protective or other order prior to the information's disclosure in an administrative or court proceeding. For clarity, the Bureau proposed replacing the phrase ''confidential investigatory materials'' with ''confidential investigative information,'' a defined term used throughout the rule. Likewise, the Bureau proposed replacing the reference to ''appropriate protective or in camera order'' with ''appropriate order,'' which would encompass both examples in the previous version. Finally, the Bureau proposed revising the rule to also allow the Bureau to seek an appropriate order in its discretion. Whereas the prior text only discusses the submitter seeking such an order, there may be times where it would be more efficient or appropriate for the Bureau itself to make such a request. The Bureau received no comments regarding these proposed revisions, and it finalizes the proposal without modification.

The Bureau did, however, receive one comment letter, from a group of industry trade associations, asking the Bureau to further revise paragraph (a)(4) to require it to notify institutions of its intended use of certain information in connection with administrative or court proceedings. The commenter argued that, by allowing submitters to seek protective and similar orders, paragraph (a)(4) implicitly requires that the Bureau first notify submitters of its intended use of the information; it suggested that the Bureau make such a requirement explicit.

In accordance with this provision, it is the Bureau's practice to take steps to ensure that the submitter has an opportunity to seek a protective order where it has a cognizable claim for one. However, the Bureau does not agree with the commenter's interpretation that paragraph (a)(4) imposes an implicit notification requirement on the Bureau, as there is no textual basis for that conclusion. Furthermore, we do not think it necessary for the rule to codify a formal notification process. For these reasons, the Bureau declines to revise the rule as suggested by the commenter.

The Bureau proposed a new paragraph, proposed paragraph (a)(5), that states that the Bureau may disclose confidential information in ''CFPB personnel matters, as necessary and subject to appropriate protections.'' The Bureau explained in its proposal that this paragraph was intended to clarify that confidential information may at times be disclosed in the course of equal employment opportunity matters, grievance proceedings, and other personnel matters. We noted that such disclosures would only be made as necessary, in accordance with applicable law, and subject to appropriate protections. The Bureau also proposed re-numbering § 1070.45 to account for this new paragraph. The Bureau received no comments on this proposal, and it finalizes the proposal without modification.

Proposed paragraph (a)(6) (formerly paragraph (a)(5)) addresses disclosure to other agencies of confidential information in summary form in certain circumstances. The Bureau explained in its proposal that the purpose of this provision is to allow it to inform agencies about potential legal violations in which they may have an interest, including situations in which they may wish to submit a request for information under § 1070.43. The Bureau proposed revising this paragraph to authorize disclosure to ''Agencies in summary form to the extent necessary to confer with such Agencies about matters relevant to the exercise of the Agencies' statutory or regulatory authority.'' This was intended to clarify the paragraph's intended purpose and more closely align with the standard used for disclosing confidential information to agencies under § 1070.43.

The Bureau received one comment letter, from a group of industry trade associations, which stated that this revision was ''unnecessary.'' The commenter argued that 12 U.S.C. 5566 mandates that the Bureau transmit evidence to the Attorney General if it has evidence that may constitute a violation of Federal criminal law, and that no similar provision suggests that the Bureau may share CSI with other Federal or State law enforcement agencies. The commenter also expressed concerns that the proposal was overbroad due to the definition of ''agency'' in proposed § 1070.2(a).

The Bureau disagrees with the commenter's argument, which appears to misunderstand the purpose of this paragraph. The provision is primarily intended to enable preliminary, high-level discussion that facilitates submission of an access request under 12 CFR 1070.43. For example, it could include a summary of the nature of an investigation or the kinds of confidential information that the Bureau possesses; more substantive information may then be provided to the agency in response to a request under § 1070.43. The discussions contemplated by this provision are necessary for other agencies to determine whether they have an interest in submitting an access request to the Bureau, and if so, what statements to include in it. Otherwise, an agency may not even know that the Bureau possesses confidential information in which it is interested. The Bureau proposed revising this paragraph to align it with § 1070.43 in order to clarify and facilitate the two provisions' interaction.[15] We do not agree that 12 U.S.C. 5566, which requires criminal referrals to the Attorney General in certain circumstances, forecloses the Bureau from drafting regulations pursuant to 12 U.S.C. 5512(c)(6)(A) that authorize other affirmative disclosures of confidential information to partner agencies.

In addition, as discussed above regarding proposed § 1070.2(a), the Bureau has declined to finalize the proposed definition of ''agency,'' addressing concerns regarding this paragraph's breadth.

For the aforementioned reasons, the Bureau finalizes the proposal without modification.

Section 1070.47 Other Rules Regarding the Disclosure of Confidential Information

The Bureau proposed reorganizing § 1070.47 for clarity. Specifically, it proposed moving paragraph (a)(5) to immediately after paragraph (a)(2) because the two paragraphs both address further disclosure by the recipient of confidential information. The Bureau further proposed making paragraph (a)(3), which addresses third-party requests for information, a new paragraph titled ''Third party requests for information'' to highlight the provision and lead to better ease of use. Finally, the Bureau proposed re-numbering the section to account for these changes. The Bureau received no comments regarding this reorganization of the section, and it finalizes the proposal without modification.

Section 1070.47(a) Further Disclosure Prohibited

Section 1070.47(a) describes certain steps that recipients of confidential information under subpart D must take to protect the information. It notes that confidential information disclosed under this subpart remains Bureau property, it prohibits further disclosure of confidential information without the Bureau's prior written permission, and it sets forth procedures to follow in the event that a recipient of confidential information receives from a third party a legally enforceable demand for the information.

Consistent with proposed revisions to § 1070.43(b), the Bureau proposed shifting from its General Counsel to the Associate Director for Supervision, Enforcement and Fair Lending the authority in paragraph (a)(1) to provide in writing that confidential information is no longer Bureau property, and the authority in paragraph (a)(2) to provide written permission to further disclose confidential information. In the final rule, the Bureau declines to finalize the proposed revision to paragraph (a)(1), and it further revises paragraph (a)(2).

The Bureau explained in its proposal that it believed that its proposed

[15] Although the Bureau has declined to finalize its proposed changes to § 1070.43(b)(1), thus retaining dual standards for disclosure of CSI and other confidential information under that provision, we will not further revise proposed § 1070.45(a)(6). While the Bureau will only disclose CSI under § 1070.43(b)(1) to agencies with jurisdiction over a supervised financial institution, we may need to disclose CSI at a high level to confer with agencies about matters relevant to the exercise of their statutory or regulatory authority—for example, in order to determine whether the agency has jurisdiction over a supervised financial institution.

changes would lead to increased efficiency because the vast majority of access requests submitted to the Bureau pertain to work conducted by its Division of Supervision, Enforcement and Fair Lending. The Bureau also noted that it intended the General Counsel to retain his or her authority with respect to legally enforceable demands or requests for confidential information, described in paragraph (a)(3). Finally, as discussed above with respect to proposed § 1070.2(a), the Bureau proposed revisions to account for the newly proposed defined term ''agency.''

Comment letters that addressed this proposal generally discussed it together with proposed revisions to § 1070.43(b), regarding the move of access request authority from the General Counsel to the Associate Director for Supervision, Enforcement and Fair Lending. For a discussion of these comments, please see the discussion regarding § 1070.43(b) above. In light of these comments, the Bureau declines to finalize its proposal to transfer from the General Counsel to the Associate Director for Supervision, Enforcement and Fair Lending the authority in paragraph (a)(1) to provide in writing that confidential information is no longer Bureau property. This authority will instead be retained by the Bureau's General Counsel. In addition, for the reasons addressed in the discussion regarding § 1070.43(b) above, the Bureau will further revise paragraph (a)(2) in the final rule, to vest with the Director (or her designee) the authority to provide written permission to further disclose confidential information.

For a discussion of comments on the definition of ''agency,'' please see the discussion regarding proposed § 1070.2(a) above. For the reasons addressed in that discussion, the Bureau declines to finalize revisions intended to account for the proposed definition of ''agency.''

Section 1070.47(d) Return or Destruction of Records

The Bureau proposed adding a new paragraph (d) to clarify that the Bureau may require any person in possession of confidential information to return the records to the Bureau or destroy them.

Paragraph (d) is further revised in the final rule for consistency with new § 1070.42(c), which was added in response to comments on proposed revisions to § 1070.42.[16] 12 CFR 1070.42(c) states, ''Nothing in this subpart shall prohibit any person lawfully in possession of confidential investigative information of the CFPB pursuant to paragraph (a) of this section from further disclosing that confidential investigative information.'' The Bureau adds to paragraph (d), ''[e]xcept with respect to confidential investigative information disclosed pursuant to § 1070.42(a) of this subpart,'' because a requirement to return or destroy these records would raise tension with the ability to further disclose the information. This further revision is not intended to impact the Bureau's ability to enter into a protective order, or to otherwise reach mutual agreement with a party with respect to the protection of CII.

The Bureau received one comment letter regarding this proposal, from a public interest organization. The commenter suggested that this proposal, among other proposed revisions to § 1070.47, was intended to assure supervised and regulated entities that the Bureau's separate proposals that would expand its discretion to share information would not prejudice those entities. The commenter expressed concern that the provision may not be enforceable with respect to information disclosed to foreign agencies, State agencies, Congress, or other government agencies that are not subject to the Bureau's jurisdiction. The commenter suggested that this provision could create an ''illusion of certainty'' for entities that disclose privileged information to the Bureau in reliance on this and other provisions.

The purpose of this proposal was to facilitate the Bureau's control over its own confidential information. The proposed text is relatively common for information sharing agreements, and the Bureau's intent was to codify such language in its regulations to put recipients of its confidential information on notice that it may require the return or destruction of such records. For these reasons, the Bureau finalizes this proposal without modifying it in response to this comment.

Section 1070.47(e) Non-Waiver of CFPB Rights

The Bureau proposed adding a new paragraph (e) to clarify that the Bureau's disclosure of confidential information under subpart D does not waive the Bureau's right to control, or impose limitations on, the subsequent use and dissemination of its confidential information.

Paragraph (e) is further revised in the final rule for consistency with new § 1070.42(c), which was added in response to comments on proposed revisions to § 1070.42.[17] 12 CFR 1070.42(c) states, ''Nothing in this subpart shall prohibit any person lawfully in possession of confidential investigative information of the CFPB pursuant to paragraph (a) of this section from further disclosing that confidential investigative information.'' The Bureau adds to paragraph (e), ''[e]xcept as provided in § 1070.42(c),'' because the new text in § 1070.42(c) permits further disclosure of confidential investigative information in certain circumstances.

The Bureau received one comment letter regarding proposed § 1070.47(e), from the same public interest organization that commented on proposed § 1070.47(d). As it did with respect to proposed § 1070.47(d), the commenter suggested that this paragraph was intended to assure entities that the Bureau's separate proposals that would expand its discretion to share information would not prejudice them, and it expressed concerns that this provision may not be enforceable with respect to government authorities, and that the proposal could give create an ''illusion of certainty'' for entities that disclose privileged information to the Bureau in reliance on this provision.

Like proposed § 1070.47(d), the purpose of this proposal was to facilitate the Bureau's control over its own confidential information. The Bureau intended this provision to parallel 12 CFR 4.37(d), a provision that serves a similar purpose in analogous regulations promulgated by the OCC. The Bureau's purpose was to codify such language in its own regulations to put recipients of its confidential information on notice that the Bureau does not intend its disclosure of confidential information to waive its rights with respect to the information. For these reasons, the Bureau finalizes the proposal without modifying it in response to this comment.

Section 1070.47(f) Non-Waiver of Privilege

The Bureau proposed moving the former paragraph (c), *Non-waiver,* to a new paragraph (f), and making corresponding technical corrections to paragraph (f)(2), in order to account for the two new paragraphs described above. In addition, the Bureau proposed replacing the title ''Non-waiver'' with a new title ''Non-waiver of privilege'' so as to clarify the distinction between this paragraph and the new paragraph (e), *Non-waiver of CFPB rights.*

[16] See above for discussion of comments regarding § 1070.42.

[17] See above for discussion of comments regarding § 1070.42.

The Bureau received two comment letters regarding this paragraph, from a public interest organization and a group of industry trade associations. The public interest organization commenter argued that most Federal circuits reject selective waiver doctrine and may not protect privilege in the absence of statutory authority, and that entities that rely on proposed § 1070.47(f) to disclose privileged information to the Bureau may risk the Bureau waiving their privilege because the paragraph's reference to ''any Federal or State Agency'' is broader than the express anti-waiver protection in 12 U.S.C. 1821(t). The industry commenter expressed similar concerns, that if the Bureau transferred privileged material that it had received under 12 U.S.C. 1828(x), that transfer could endanger the material's privilege.

The Bureau notes that it did not propose any substantive changes to this provision, which already exists in the rule. We previously considered and addressed these issues in a 2012 rulemaking in which we readopted this provision in modified form. *See generally* Final Rule, Confidential Treatment of Privileged Information, 77 FR 39617 (July 5, 2012). Our view has not changed since then. As we explained at the time, this provision is ''primarily intended to protect the Bureau's privileges—including, for example, its examination privilege, its deliberative process privilege, and its law enforcement privilege—in the context of a coordinated examination or joint investigation.'' *Id.* at 39621. We also explained that, per Bulletin 12–01, the Bureau only requests privileged information from institutions in limited circumstances, and there is a presumption against sharing confidential supervisory information with non-supervisory agencies. *Id.* We noted that ''[t]he Bulletin's presumption against sharing confidential supervisory information would be even stronger'' where it includes information subject to attorney-client or work-product privileges. *Id.*

Moreover, the Bureau concluded in its 2012 rulemaking that it had statutory authority to promulgate a regulation that protected against waiver of privilege in the event that information is shared with State agencies. *See* Notice of Proposed Rulemaking, Confidential Treatment of Privileged Information, 77 FR 15286, 15289 (Mar. 15, 2012); *see also* Final Rule, 77 FR at 39621. This conclusion has been buttressed by Congress's subsequent amendment to 12 U.S.C. 5514(b)(3), which states that, in coordinating the supervision of nondepository covered persons with prudential regulators, the State bank regulatory authorities, and the State agencies that license, supervise, or examine the offering of consumer financial products or services, ''[t]he sharing of information with such regulators, authorities, and agencies shall not be construed as waiving, destroying, or otherwise affecting any privilege or confidentiality such person may claim with respect to such information under Federal or State law as to any person or entity other than such Bureau, agency, supervisor, or authority.''

For the aforementioned reasons, the Bureau finalizes the proposal without modification.

Section 1070.47(g) Reports of Unauthorized Disclosure

The Bureau proposed adding a new paragraph (g) that would have required any persons in possession of confidential information to immediately notify the Bureau upon discovery of any disclosures of confidential information made in violation of subpart D. The Bureau further revises the proposal in the final rule.

The Bureau received three comment letters that addressed this provision, from a group of industry trade associations, from a consumer advocacy organization, and from a financial institution. The group of industry trade associations expressed concern that this proposal would create an ''independent violation'' for ''any person'' in possession of confidential information to fail to immediately notify the Bureau upon discovery of improper disclosures. The group argued that, unlike supervised financial institutions, imposing notification requirements on other potential recipients of confidential information, including individuals or non-regulated third parties, is not appropriate, and would heighten legal risks for individuals and institutions. The commenter noted that it can be difficult to determine whether a particular document or piece of information is CSI; it expressed further concerns that the provision presumes that recipients of confidential information would know what constitutes confidential information and what disclosures are permitted by the rule, and it concluded that such expectations are unreasonable. The commenter alleged that the ''imposition of additional liability'' on recipients of improper disclosures would ''improperly shift the burden to those who are, in essence, innocent bystanders in a violation.'' The consumer advocacy organization expressed similar concerns that journalists or other members of the public could be subject to these notification requirements, which could chill journalistic or other inquiries.

This proposal was intended to instruct agencies, institutions, or other persons that may improperly disclose the Bureau's confidential information to notify the Bureau so that, where warranted, the Bureau can take appropriate steps to mitigate any harm caused by such disclosure. For example, if an agency partner were to publicly disclose CII without permission, the Bureau would work to limit public disclosure and protect the privacy or proprietary interests of those affected by the disclosure. This is in line with the Bureau's obligations under 12 U.S.C. 5512(c)(8), which requires that, ''[i]n collecting information from any person [or] publicly releasing information held by the Bureau, . . . the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from disclosure under [the FOIA] or [the Privacy Act of 1974], or any other provision of law, is not made public under this title.''

The Bureau appreciates commenters' concerns that the proposal's notification requirement could apply to third parties without a direct relationship with the Bureau, who may not realize that they possess confidential information or know of this subpart's requirements. And it likewise appreciates the commenter's concerns about chilling journalistic or other inquiries. To address these concerns, the Bureau will further revise and narrow the proposed text, limiting this provision to persons ''that obtain confidential information under this subpart.'' Agencies, institutions, and other persons that obtain confidential information under this subpart should be advised of their receipt of the Bureau's confidential information and any obligations to protect the information's confidentiality.

In addition to these comments regarding the proposal's applicability to third parties, the Bureau also received a comment letter from a financial institution that expressed concern regarding the proposal's inclusion of the term ''immediately.'' The commenter suggested that ''immediately,'' read literally, would create an impossible standard to meet, and it instead recommended a ''more reasonable'' standard, such as ''promptly.''

The Bureau agrees that a requirement for ''immediate'' notification, if read literally, could create compliance difficulties. To address this concern, the Bureau revises the proposal's temporal standard to instead require notification "as soon as possible and without unreasonable delay." In adopting this standard, the Bureau analogizes to the same temporal standard adopted by the Office of Management and Budget with respect to Federal agency breach reporting. *See* Office of Management and Budget, M–17–12, "Preparing for and Responding to a Breach of Personally Identifiable Information" (Jan. 3, 2017). This is also intended to be analogous to the reporting standard set forth in interagency information security guidance by the prudential regulators, which advises as a best practice that a financial institution "notify[] its primary Federal regulator as soon as possible when the institution becomes aware of an incident involving unauthorized access to or use of *sensitive* customer information." *See* Interagency Guidelines Establishing Information Security Standards, 12 CFR part 208, appendix D–2 (emphasis in original).

Finally, the same financial institution requested clarification regarding the proposal's interaction with existing requirements and supervisory expectations applicable to financial institutions, their employees, and other institution-affiliated parties, as defined in 12 U.S.C. 1813(u). The commenter stated that, upon discovery of improper disclosure, supervised financial institutions would already be expected to take certain steps, including notifying regulators as appropriate, pursuant to supervisory expectations and under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.,* and State breach laws.

This provision is consistent with the Bureau's existing supervisory expectations. In addition, this provision does not impact other notification expectations relating to the Gramm-Leach-Bliley Act or requirements under various State breach laws, as they generally do not require notification to the Bureau and, depending on the information's content, may not apply to the Bureau's confidential information.

Former Section 1070.48 Privileges not Affected by Disclosure to the CFPB

Former § 1070.48 provided that the submission by any person of any information to the Bureau in the course of the Bureau's supervisory or regulatory processes will not waive or otherwise affect any privilege such person may claim with respect to such information under Federal or State law as to any other person or entity. This section had been promulgated separately from the rest of the rule. *See* Final Rule, Confidential Treatment of Privileged Information, 77 FR 39617 (July 5, 2012). Congress subsequently enacted Public Law 112–215, 126 Stat. 1589, Dec. 20, 2012, which amended 12 U.S.C. 1828(x) to provide these same protections to privileged information submitted to the Bureau. Because 12 U.S.C. 1828(x), as revised, provided the exact same protections as former § 1070.48, it rendered former § 1070.48 superfluous and unnecessary, and the Bureau therefore proposed deleting the provision in its regulation text to avoid potential confusion.

The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Proposed Section 1070.48 Disclosure of Confidential Information by the Inspector General

The Bureau proposed adding a new section to clarify that part 1070 does not limit the discretion of its Inspector General's office to disclose confidential information as needed in fulfilling its responsibilities under the Inspector General Act of 1978, 5 U.S.C. App. 3. Because the Bureau proposed deleting the current text of § 1070.48, this new section replaces that text.

The Bureau received two comment letters regarding this proposal. One comment letter, from an industry trade association, stated that it was unclear whether the "as needed" language limits the Bureau's Inspector General's ability to publish reports containing confidential information. It asked that the Bureau either delete the proposal or clarify the extent to which its Inspector General's office may disclose confidential information. A second comment letter, from a public interest organization, expressed concern that the proposal could make it easier for the Bureau's Inspector General's office to further disclose privileged supervisory information submitted to the Bureau, which could undermine the information's privileged status and discourage the submission of privileged materials to the Bureau.

To be clear, the proposal's "as needed" language is intended to enable the Bureau's Inspector General's office, in its discretion, to disclose confidential information to the extent that it deems such disclosure necessary to fulfill its duties under the Inspector General Act of 1978, 5 U.S.C. App. 3. Furthermore, as explained above with respect to inclusion of Inspector General employees in the definition of "employee" in § 1070.2(k), § 1070.41(c) already allows for the publication of reports derived from confidential information to the extent that they do not identify, either directly or indirectly, any particular person to whom the information pertains.[18]

With respect to the commenter's concern that the Inspector General's office may further disclose financial institutions' privileged information in a manner that could undermine the privilege, the Inspector General's office will give due consideration to the applicable privileges associated with any disclosures that it may make.

For the aforementioned reasons, the Bureau finalizes the proposal without modification.

Part 1091—Procedural Rule To Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination

Section 1091.103 Contents of Notice

The Bureau proposed to revise paragraph (a)(2)(vii) to remove the cross-reference to § 1070.2(i)(1) and replace it with a cross-reference to § 1070.2(j). The Bureau received no comments on this proposal. Because the definitions in § 1070.2 are renumbered in the final rule, the final rule further revises the proposal to appropriately cross-reference § 1070.2(i).

Section 1091.115 Change of Time Limits and Confidentiality of Proceedings

The Bureau proposed to revise § 1091.115(c) to remove the cross-reference to § 1070.2(i)(1) and replace it with a cross-reference to § 1070.2(j). The Bureau received no comments on this proposal. Because the definitions in § 1070.2 are renumbered in the final rule, the final rule further revises the proposal to appropriately cross-reference § 1070.2(i).

V. Section 1022(b)(2)(A) of the Dodd-Frank Act

In developing this final rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[19] The Bureau has consulted, or offered to consult with, the

[18] For further discussion of comments regarding the inclusion of Inspector General employees in the definition of "employee," see the above discussion of proposed § 1070.2(k).

[19] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer.

prudential regulators and the Federal Trade Commission, including consultation regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[20]

The Bureau has chosen to consider the benefits, costs, and impacts of the final rule as compared to the status quo: The current statutory provisions and the regulations as set forth by the Bureau on February 15, 2013, 78 FR 11483 (Feb. 15, 2013) (which includes the protections for privileged information which Congress enacted in Pub. L. 112–215, 126 Stat. 1589, Dec. 20, 2012, which amended 12 U.S.C. 1821(t)(2)(A) and 1828(x)).[21] The Bureau does not have data with which to quantify the benefits or costs of the final rule, nor were any data provided by commenters. The discussion below considers the qualitative costs, benefits, and impacts that the Bureau anticipates from the rule. The Bureau also notes that the discussion below should be read in conjunction with the discussion of impacts in the Section by Section discussion above.

Summary of main aspects of rule. In this analysis, the Bureau focuses on the benefits, costs, and impacts of the main aspects of the final rule, which are found in subparts A and D.

The changes to the definitions in subpart A will alter the treatment of certain information submitted to the Bureau. The revised definition of confidential consumer complaint information will now include any information received or generated by the CFPB through processes or procedures established under 12 U.S.C. 5493(b)(3), clarifying that any complaints submitted to the CFPB through its Consumer Response system, and any information generated therein, are similarly classified under its confidentiality rules and subject to the same confidentiality protections. The revised definition of confidential supervisory information will no longer include reference to information collected using the Bureau's market monitoring authority.

The changes in subpart D will provide that a person lawfully in possession of confidential supervisory information provided directly to it by the Bureau pursuant to § 1070.42 may disclose the information to an insurance provider pursuant to a claim made under an existing policy, provided that the Bureau has not precluded indemnification or reimbursement for the claim and to the extent necessary for the insurance provider to process and administer any claims for coverage.

In addition, the changes in subpart D will authorize the Bureau, upon receipt of prior consent, to disclose confidential information that directly or indirectly identifies particular persons. The rule includes a clarification that the Bureau may disclose confidential information in its discretion as needed to conduct its investigations or perform administrative tasks to further its own enforcement actions.

Lastly, the final rule adds § 1070.47(g), which will require any person that obtains confidential information under subpart D to, as soon as possible and without unreasonable delay, notify the CFPB upon the discovery of any further disclosures made in violation of subpart D.

The Bureau views the remainder of the final rule to mainly include clarifications, corrections and technical changes, which will have limited impacts on consumers and covered persons.

Costs and benefits to consumers and covered persons of changes in Subpart A. The final rule's changes to certain definitions in subpart A will impact the Bureau's ability to disclose confidential information, which will in turn result in some costs and benefits for consumers and covered persons.

The expansion of the definition of confidential consumer complaint information to include any complaints submitted through the Bureau's Consumer Response system should provide benefits for consumers and covered persons. Specifically, because all such complaints will now be subject to the Bureau's confidentiality rules, this change should afford greater confidentiality protections to consumers and covered persons submitting or referenced in any misdirected complaints that the Bureau receives and that are now covered under the definition.

The deletion of market monitoring information collected pursuant to 12 U.S.C. 5512(c) from the definition of confidential supervisory information will not impose costs on financial institutions because this information will continue to be protected as confidential information under the Bureau's rules, to the extent that the information includes confidential business information, personal information, or other sensitive information that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b). But this change will mean that Bureau will have more flexibility to use and disclose less-sensitive, non-confidential information collected for market monitoring purposes, such as data that are already publicly available. This change will allow the Bureau to implement and administer Federal consumer financial law more efficiently, which will benefit consumers. In addition, this flexibility should not impose additional costs for covered persons because such less-sensitive information would already be subject to public access via the FOIA.

Costs and benefits to consumers and covered persons of changes in Subpart D. As noted above, the new provisions in subpart D authorize the Bureau to disclose confidential information in certain circumstances. Consumers will generally benefit from these provisions because each of these changes allows more efficient sharing of confidential information between the CFPB and various parties and thus also results in more efficient administration of consumer financial laws. The Bureau notes, however, that any benefits are limited, relative to the proposal, given the narrower scope of the final rule.

These changes may entail certain costs to covered persons, such as increased risk for a loss of confidentiality. However, the final rule expands the circumstances in which confidential information may be disclosed only in discrete circumstances, and moreover, any recipient of confidential information from the Bureau may not further disclose such information without the prior written permission of the Bureau. Therefore, any increased risk for a loss of confidentiality should be minimal. The Bureau continues to seek to provide stringent protection for confidential information while ensuring its ability to share or disclose information to the extent necessary to achieve its mission.

The new requirement that any person that obtains confidential information under subpart D must notify the CFPB upon the discovery of any further disclosures made in violation of subpart D should not cause additional burden for supervised entities with respect to CSI, as this provision is consistent with the Bureau's existing supervisory expectations. It should not cause additional burden on recipients of CII

[20] Two comment letters received by the Bureau, from a consulting organization and a group of industry trade associations, suggested that the Bureau did not meet its obligations to consult with prudential regulators regarding its proposed rule pursuant to 12 U.S.C. 5512(b)(2)(B). This is not true. The Bureau consulted with the prudential regulators regarding its proposed rule, including its proposed revision to § 1070.43(b)(1) and the definition of ''agency'' in proposed § 1070.2(a). The Bureau consulted with the prudential regulators regarding its final rule as well.

[21] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline.

under § 1070.42(a), as further disclosure of such information is not prohibited by the final rule. It may result in some additional burden in cases where confidential consumer complaint information is further disclosed by a covered person, which will now have the obligation to notify the Bureau. Consumers should benefit from this requirement because notification should facilitate the mitigation of any harms caused by the unauthorized disclosure.

Other impacts. The CFPB does not expect that the final rule will have an appreciable impact on consumers' access to consumer financial products or services. The scope of the rulemaking is limited to matters related to access to and disclosure of certain types of information, and does not relate to credit access.

The Bureau does not believe that this rule will have a unique impact on insured depository institutions or insured credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. The rule does not distinguish in any material way information regarding such institutions. In addition, because the Bureau has limited supervisory authority over these institutions, they are generally less likely to share information with the Bureau, and therefore any impacts of the rule related to confidential supervisory information may be less compared to other institutions.

The Bureau also does not believe that this rule will have a unique impact on consumers in rural areas. The rule does not distinguish information regarding consumers in rural areas, or regarding institutions that provide products or services to consumers in rural areas. In addition, to the extent that these consumers may use smaller financial service providers over which the Bureau has limited supervisory authority, and which may be less likely to share information with the Bureau, the impacts of the rule related to confidential supervisory information may be less for these consumers than for other consumers.

VI. Regulatory Requirements

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (the RFA), requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Director so certifies. The rule does not impose any obligations or standards of conduct for purposes of analysis under the RFA, and it therefore does not give rise to a regulatory compliance burden for small entities.

The Bureau also has determined that this rule does not impose any new recordkeeping, reporting, or disclosure requirements on members of the public that would be collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Finally, pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Signing Authority

The Director of the Bureau, Kathleen L. Kraninger, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects

12 CFR Part 1070

Confidential business information, Consumer protection, Freedom of information, Privacy.

12 CFR Part 1091

Administrative practice and procedure, Consumer protection, Credit, Trade practices.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR parts 1070 and 1091 to read as follows:

PART 1070—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 1070 continues to read as follows:

Authority: 12 U.S.C. 5481 *et seq.;* 5 U.S.C. 552; 5 U.S.C. 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 31; 44 U.S.C. ch. 35; 12 U.S.C. 3401 *et seq.*

Subpart A—General Provisions and Definitions

■ 2. Revise § 1070.2 to read as follows:

§ 1070.2 General definitions.

For purposes of this part:

(a) *Associate Director for Supervision, Enforcement and Fair Lending* means the Associate Director for Supervision, Enforcement and Fair Lending of the CFPB or any CFPB employee to whom the Associate Director for Supervision, Enforcement and Fair Lending has delegated authority to act under this part.

(b) *Business day* means any day except Saturday, Sunday or a legal Federal holiday.

(c) *CFPB* means the Bureau of Consumer Financial Protection.

(d) *Chief FOIA Officer* means the Chief Operating Officer of the CFPB.

(e) *Chief Operating Officer* means the Chief Operating Officer of the CFPB, or any CFPB employee to whom the Chief Operating Officer has delegated authority to act under this part.

(f) *Confidential information* means confidential consumer complaint information, confidential investigative information, and confidential supervisory information, as well as any other CFPB information that may be exempt from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. 552(b). Confidential information does not include information contained in records that have been made publicly available by the CFPB or information that has otherwise been publicly disclosed by an employee, or agent of the CFPB, with the authority to do so. Confidential information obtained by a third party or otherwise incorporated in the records of a third party, including another agency, shall remain confidential information subject to this part.

(g) *Confidential consumer complaint information* means information received or generated by the CFPB through processes or procedures established under 12 U.S.C. 5493(b)(3), to the extent that such information is exempt from disclosure pursuant to 5 U.S.C. 552(b).

(h) *Confidential investigative information* means:

(1) Any documentary material, written report, or written answers to questions, tangible thing, or transcript of oral testimony received by the CFPB in any form or format pursuant to a civil investigative demand, as those terms are set forth in 12 U.S.C. 5562, or received by the CFPB voluntarily in lieu of a civil investigative demand; and

(2) Any other documents, materials, or records prepared by, on behalf of, received by, or for the use by the CFPB or any other Federal or State agency in the conduct of enforcement activities, and any information derived from such materials.

(i) *Confidential supervisory information* means:

(1) Reports of examination, inspection and visitation, non-public operating,

condition, and compliance reports, supervisory letter, or similar document, and any information contained in, derived from, or related to such documents;

(2) Any documents, materials, or records, including reports of examination, prepared by, or on behalf of, or for the use of the CFPB or any other Federal, State, or foreign government agency in the exercise of supervisory authority over a financial institution, and any information derived from such documents, materials, or records;

(3) Any communications between the CFPB and a supervised financial institution or a Federal, State, or foreign government agency related to the CFPB's supervision of the institution;

(4) Any information provided to the CFPB by a financial institution for purposes of detecting and assessing risks to consumers and to markets for consumer financial products or services pursuant to 12 U.S.C. 5414(b)(1)(C), 5515(b)(1)(C), or 5516(b), or to assess whether an institution should be considered a covered person, as that term is defined by 12 U.S.C. 5481, or is subject to the CFPB's supervisory authority; and/or

(5) Information that is exempt from disclosure pursuant to 5 U.S.C. 552(b)(8).

(j) *Director* means the Director of the CFPB or his or her designee, or a person authorized to perform the functions of the Director in accordance with law.

(k) *Employee* means all current employees or officials of the CFPB, including contract personnel, the employees of the Office of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction, or control of the Director, as well as the Director. The procedures established within this part also apply to former employees where specifically noted.

(l) *Financial institution* means any person involved in the offering or provision of a ''financial product or service,'' including a ''covered person'' or ''service provider,'' as those terms are defined by 12 U.S.C. 5481.

(m) *General Counsel* means the General Counsel of the CFPB or any CFPB employee to whom the General Counsel has delegated authority to act under this part.

(n) *Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(o) *Report of examination* means the report prepared by the CFPB concerning the examination or inspection of a supervised financial institution.

(p) *State* means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)), and includes any political subdivision thereof.

(q) *Supervised financial institution* means a financial institution that is or that may become subject to the CFPB's supervisory authority.

■ 3. Revise subpart D to read as follows:

Subpart D—Confidential Information

Subpart D—Confidential Information

§ 1070.40 Purpose and scope.

This subpart does not apply to requests for official information made pursuant to subpart B, C, or E of this part.

§ 1070.41 Non-disclosure of confidential information.

(a) *Non-disclosure.* Except as required by law or as provided in this part, no current or former employee or contractor or consultant of the CFPB, or any other person in possession of confidential information, shall disclose such confidential information by any means (including written or oral communications) or in any format (including paper and electronic formats), to:

(1) Any person who is not an employee, contractor, or consultant of the CFPB; or

(2) Any CFPB employee, contractor, or consultant when the disclosure of such confidential information to that employee, contractor, or consultant is not relevant to the performance of the employee's, contractor's, or consultant's assigned duties.

(b) *Disclosures to contractors and consultants.* CFPB contractors or consultants must treat confidential information in accordance with this part, other Federal laws and regulations that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the CFPB may impose. CFPB contractors or consultants may receive confidential information only if such contractors or consultants certify in writing to treat such confidential information in accordance with the requirements identified in this paragraph (b).

(c) *Disclosure of materials derived from confidential information.* The CFPB may, in its discretion, disclose materials that it derives from or creates using confidential information to the extent that such materials do not identify, either directly or indirectly, any particular person to whom the confidential information pertains.

(d) *Disclosure of confidential information with consent.* Where practicable, the CFPB may, in its discretion and in accordance with applicable law, disclose confidential information that directly or indirectly identifies particular persons if the CFPB obtains prior consent from such persons to make the disclosure.

(e) *Nondisclosure of confidential information belonging to other agencies.* Nothing in this subpart requires or authorizes the CFPB to disclose confidential information belonging to another agency that has been provided to the CFPB (either directly or through a holder of the information such as a financial institution) to the extent that such disclosure contravenes applicable law or the terms of any agreement that exists between the CFPB and the agency to govern the CFPB's treatment of information that the agency provides to the CFPB.

§ 1070.42 Disclosure of confidential supervisory information and confidential investigative information.

(a) *Discretionary disclosure of confidential supervisory information or confidential investigative information by the CFPB.* The CFPB may, in its discretion, and to the extent consistent with applicable law, disclose confidential supervisory information or confidential investigative information concerning a person or its service providers to that person or to its affiliates.

(b) *Further disclosure of confidential supervisory information.* Unless directed otherwise by the Associate Director for Supervision, Enforcement and Fair Lending:

(1) Any supervised financial institution lawfully in possession of confidential supervisory information of the CFPB provided directly to it by the CFPB pursuant to paragraph (a) of this section may disclose such information, or portions thereof, to its affiliates and to the following individuals to the extent that the disclosure of such confidential supervisory information is relevant to the performance of such individuals' assigned duties:

(i) Its directors, officers, trustees, members, general partners, or employees; and

(ii) The directors, officers, trustees, members, general partners, or employees of its affiliates.

(2) Any supervised financial institution or affiliate thereof that is lawfully in possession of confidential supervisory information of the CFPB provided directly to it by the CFPB pursuant to paragraph (a) of this section may disclose such information, or portions thereof, to:

(i) Its certified public accountant, legal counsel, contractor, consultant, or service provider;

(ii) Its insurance provider pursuant to a claim made under an existing policy, provided that the Bureau has not precluded indemnification or reimbursement for the claim; information disclosed pursuant to this paragraph (b)(2)(ii) may be used by the insurance provider solely for purposes of administering such a claim; or

(iii) Another person, with the prior written approval of the Associate Director for Supervision, Enforcement and Fair Lending.

(3) Where a supervised financial institution or its affiliate discloses confidential supervisory information of the CFPB pursuant to paragraph (b) of this section:

(i) The recipient of such confidential supervisory information shall not, without the prior written approval of the Associate Director for Supervision, Enforcement and Fair Lending, utilize, make, or retain copies of, or disclose confidential supervisory information for any purpose, except as is necessary to provide advice or services to the supervised financial institution or its affiliate; and

(ii) The supervised financial institution or its affiliate disclosing the confidential supervisory information shall take reasonable steps to ensure that the recipient complies with paragraph (b)(3)(i) of this section.

(4) Nothing in this paragraph (b) authorizes a supervised financial institution or affiliate thereof to further disclose confidential information belonging to another agency.

(c) *Further disclosure of confidential investigative information.* Nothing in this subpart shall prohibit any person lawfully in possession of confidential investigative information of the CFPB pursuant to paragraph (a) of this section from further disclosing that confidential investigative information.

§ 1070.43 Disclosure of confidential information to agencies.

(a) *Required disclosure of confidential information to agencies.* The CFPB shall:

(1) Disclose a draft of a report of examination of a supervised financial institution prior to its finalization, as provided in 12 U.S.C. 5515(e)(1)(C), and disclose a final report of examination, including any and all revisions made to such a report, as provided in 12 U.S.C. 5512(c)(6)(C)(i), to a Federal or State agency with jurisdiction over that supervised financial institution, provided that the CFPB receives from the agency reasonable assurances as to the confidentiality of the information disclosed; and

(2) Disclose confidential consumer complaint information to a Federal or State agency to facilitate preparation of reports to Congress required by 12 U.S.C. 5493(b)(3)(C) and to facilitate the CFPB's supervision and enforcement activities and its monitoring of the market for consumer financial products and services, provided that the agency shall first give written assurance to the CFPB that it will maintain such information in confidence, including in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity.

(b) *Discretionary disclosure of confidential information to agencies.* (1) Upon receipt of a written request that contains the information required by paragraph (b)(2) of this section, the CFPB may, in its discretion, disclose confidential information to a Federal or State agency to the extent that the disclosure of the information is relevant to the exercise of the agency's statutory or regulatory authority or, with respect to the disclosure of confidential supervisory information, to a Federal or State agency having jurisdiction over a supervised financial institution.

(2) To obtain access to confidential information pursuant to paragraph (b)(1) of this section, an authorized officer or employee of the agency shall submit a written request to the Director. The request shall include the following:

(i) A description of the particular information, kinds of information, and where possible, the particular documents to which access is sought;

(ii) A statement of the purpose for which the information will be used;

(iii) A statement certifying and identifying, as required by paragraph (b)(1) of this section, the agency's statutory or regulatory authority that is relevant to the requested information or, with respect to a request for confidential supervisory information, the agency's jurisdiction over a supervised financial institution;

(iv) A statement certifying and identifying the agency's legal authority for protecting the requested information from public disclosure; and

(v) A certification that the agency will maintain the requested confidential information in confidence, including in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the CFPB may impose.

(c) *Negotiation of standing requests.* The CFPB may negotiate terms governing the exchange of confidential information with Federal or State agencies on a standing basis, as appropriate.

§ 1070.44 Disclosure of confidential consumer complaint information.

The CFPB may, to the extent permitted by law, disclose confidential consumer complaint information as it deems necessary to investigate, resolve, or otherwise respond to consumer complaints or inquiries concerning consumer financial products and services or a violation of Federal consumer financial law.

§ 1070.45 Affirmative disclosure of confidential information.

(a) The CFPB may disclose confidential information, in accordance with applicable law, as follows:

(1) To a CFPB employee, as that term is defined in § 1070.2 and in accordance with § 1070.41;

(2) To either House of the Congress or to an appropriate committee or subcommittee of the Congress, as set forth in 12 U.S.C. 5562(d)(2), provided that, upon the receipt by the CFPB of a request from the Congress for confidential information that a financial institution submitted to the CFPB along with a claim that such information

consists of a trade secret or privileged or confidential commercial or financial information, or confidential supervisory information, the CFPB shall notify the financial institution in writing of its receipt of the request and provide the institution with a copy of the request;

(3) In investigational hearings and witness interviews, or otherwise in the investigation and administration of enforcement actions, as is reasonably necessary, at the discretion of the CFPB;

(4) In an administrative or court proceeding to which the CFPB is a party. In the case of confidential investigative information that contains any trade secret or privileged or confidential commercial or financial information, as claimed by designation by the submitter of such material, or confidential supervisory information, the submitter, or the CFPB, in its discretion, may seek an appropriate order prior to disclosure of such material in a proceeding;

(5) In CFPB personnel matters, as necessary and subject to appropriate protections;

(6) To agencies in summary form to the extent necessary to confer with such agencies about matters relevant to the exercise of the agencies' statutory or regulatory authority; or

(7) As required under any other applicable law.

(b) [Reserved]

§ 1070.46 Other disclosures of confidential information.

(a) To the extent permitted by law and as authorized by the Director in writing, the CFPB may disclose confidential information other than as set forth in this subpart.

(b) Prior to disclosing confidential information pursuant to paragraph (a) of this section, the CFPB may, as it deems appropriate under the circumstances, provide written notice to the person to whom the confidential information pertains that the CFPB intends to disclose its confidential information in accordance with this section.

(c) The authority of the Director to disclose confidential information pursuant to paragraph (a) of this section shall not be delegated. However, a person authorized to perform the functions of the Director in accordance with law may exercise the authority of the Director as set forth in this section.

§ 1070.47 Other rules regarding the disclosure of confidential information.

(a) *Further disclosure prohibited.* (1) All confidential information made available under this subpart shall remain the property of the CFPB, unless the General Counsel provides otherwise in writing.

(2) Except as set forth in this subpart, no supervised financial institution, Federal or State agency, any officer, director, employee or agent thereof, or any other person to whom the confidential information is made available under this subpart, may further disclose such confidential information without the prior written permission of the Director.

(3) No person obtaining access to confidential information pursuant to this subpart may make a personal copy of any such information, and no person may remove confidential information from the premises of the institution or agency in possession of such information except as permitted under this subpart or by the CFPB.

(b) *Third party requests for information.* (1) A supervised financial institution, Federal or State agency, any officer, director, employee or agent thereof, or any other person to whom the CFPB's confidential information is made available under this subpart, that receives from a third party a legally enforceable demand or request for such confidential information (including but not limited to, a subpoena or discovery request or a request made pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or any State analogue to such statutes) should:

(i) Inform the General Counsel of such request or demand in writing and provide the General Counsel with a copy of such request or demand as soon as practicable after receiving it;

(ii) To the extent permitted by applicable law, advise the requester that:

(A) The confidential information sought may not be disclosed insofar as it is the property of the CFPB; and

(B) Any request for the disclosure of such confidential information is properly directed to the CFPB pursuant to its regulations set forth in this subpart; and

(iii) Consult with the General Counsel before complying with the request or demand, and to the extent applicable:

(A) Give the CFPB a reasonable opportunity to respond to the demand or request;

(B) Assert all reasonable and appropriate legal exemptions or privileges that the CFPB may request be asserted on its behalf; and

(C) Consent to a motion by the CFPB to intervene in any action for the purpose of asserting and preserving any claims of confidentiality with respect to any confidential information.

(2) Nothing in this section shall prevent a supervised financial institution, Federal or State agency, any officer, director, employee or agent thereof, or any other person to whom the information is made available under this subpart from complying with a legally valid and enforceable order of a court of competent jurisdiction compelling production of the CFPB's confidential information, or, if compliance is deemed compulsory, with a request or demand from either House of the Congress or a duly authorized committee of the Congress. To the extent that compulsory disclosure of confidential information occurs as set forth in this paragraph (b)(2), the producing party shall use its best efforts to ensure that the requestor secures an appropriate protective order or, if the requestor is a legislative body, use its best efforts to obtain the commitment or agreement of the legislative body that it will maintain the confidentiality of the confidential information.

(c) *Additional conditions and limitations.* The CFPB may impose any additional conditions or limitations on disclosure or use under this subpart that it determines are necessary.

(d) *Return or destruction of records.* Except with respect to confidential investigative information disclosed pursuant to § 1070.42(a), the CFPB may require any person in possession of CFPB confidential information to return the records to the CFPB or destroy them.

(e) *Non-waiver of CFPB rights.* Except as provided in § 1070.42(c), the disclosure of confidential information to any person in accordance with this subpart does not constitute a waiver by the CFPB of its right to control, or impose limitations on, the subsequent use and dissemination of the information.

(f) *Non-waiver of privilege*—(1) *In general.* The CFPB shall not be deemed to have waived any privilege applicable to any information by transferring that information to, or permitting that information to be used by, any Federal or State agency.

(2) *Rule of construction.* Paragraph (f)(1) of this section shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (f)(1) of this section does not apply to the transfer or use of that information.

(g) *Reports of unauthorized disclosure.* Any person that obtains confidential information under this subpart shall, as soon as possible and without unreasonable delay, notify the CFPB upon the discovery of any further disclosures made in violation of this subpart.

§ 1070.48 Disclosure of confidential information by the Inspector General.

Nothing in this subpart shall limit the discretion of the Office of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau to disclose confidential information as needed in accordance with the Inspector General Act of 1978, 5 U.S.C. App. 3.

PART 1091—PROCEDURAL RULE TO ESTABLISH SUPERVISORY AUTHORITY OVER CERTAIN NONBANK COVERED PERSONS BASED ON RISK DETERMINATION

■ 4. The authority citation for part 1091 continues to read as follows:

Authority: 12 U.S.C. 5512(b)(1), 5514(a)(1)(C), 5514(b)(7).

Subpart B—Determination and Voluntary Consent Procedures

■ 5. Section 1091.103 is amended by revising paragraph (a)(2)(vii) to read as follows:

§ 1091.103 Contents of Notice.

(a) * * *

(2) * * *

(vii) In connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i).

* * * * *

Subpart D—Time Limits and Deadlines

■ 6. Section 1091.115 is amended by revising paragraph (c) to read as follows:

§ 1091.115 Change of time limits and confidentiality of proceedings.

* * * * *

(c) In connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i).

Dated: October 27, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–24113 Filed 11–23–20; 8:45 am]

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